

CITIZENS'

UTILITY

BOARDS:

**Because Utilities
Bear Watching**

By Beth Givens

Foreword by Robert C. Fellmeth

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Note: The subtitle, "Because Utilities Bear Watching," is used with the permission of the Citizens' Utility Board of Oregon.

PREFACE

This report chronicles the history and development of citizens' utility boards (CUBs), a unique form of consumer advocacy group that organizes and empowers consumers to play a significant role in the regulation of the public utilities.

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The author personally acknowledges the generous assistance of the CUB directors and staff members as well as other CUB pioneers who participated in lengthy interviews and supplied considerable documentation for this report. While too numerous to thank individually here, all are listed in Appendix D. A special thanks goes to the Oregon Citizens' Utility Board for granting permission to adapt its newsletter title, "Because Utility Companies Bear Watching....," for the subtitle of this report; and to the Center for Study of Responsive Law for allowing its model CUB legislation to be included as Appendix B of this report.

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The Center for Public Interest Law

Created in 1980, the University of San Diego's Center for Public Interest Law (CPIL) serves as an academic center of research, learning, and advocacy in administrative law; teaches direct clinic skills in public interest law to students at the USD School of Law; represents the interests of the unorganized and underrepresented in state regulatory proceedings; and attempts to make the regulatory functions of state government more efficient and visible by serving as a public monitor.

CPIL focuses its efforts on the study of an extremely powerful, yet often overlooked, level of government: state regulatory agencies. Staffed by experienced public interest attorneys, lobbyists, and law student interns, the Center publishes the quarterly *California Regulatory Law Reporter*, the only journal in the nation which comprehensively covers the activities of 70 agencies and 25 public interest organizations. CPIL maintains offices in San Diego, Sacramento, and San Francisco, California.

FOREWORD

The Role of CUBs in the Reclamation of American Government

by Robert C. Fellmeth

Political scientists now describe the American system of government as a "pluralistic model." Although somewhat obtuse, the term acknowledges that the civics model we studied in ninth grade has yielded to a "mixed" system. That is, the purity of constitutional democracy has been influenced by unofficial actors, including political parties, private interests, and entrenched bureaucracies. While many of these additions to the American three-branch design may well be benign, the increasing power of those organized around a narrow profit stake in public policies increasingly presents a threat of malignant character.

Some political theorists have foolishly rationalized that private organized influence simply represents "intensity of interest" entitled to greater weight than would be produced by the strict application of one person-one vote democracy. The problem with this conclusion is its failure to consider that there are many different kinds of intensely held interests, and that those which are now dominant represent intensity of economic interest in the here and now. Current apologists discount the fundamental ethical call of humankind to represent a set of diffuse interests—diffuse but nevertheless entitled to intensity of consideration: the concerns of consumers at large, the helpless and unorganized, and the future we leave to our legatees through the millennia to come.

The representation of the broad and long-term public interest is a vision America's founders expected our public officials to carry with them, and to guide them as they pondered the merits—and only the merits—of the issues which are the subjects of their official deliberations. To the extent those with such a public charge delegate their powers to those whose concern is narrow, pecuniary, self-interested, and temporal, that vision is betrayed.

The most unsettling form of private interest contamination is borne through private trade association and political action committee (PAC) influence of state officials. It is now a consensus judgment in the most arcane towers of academia: the three branches, constitutionally checking each other as they make public decisions in the perceived interests of the general citizenry, are no longer the determinants of American public policy. Rather, private interest groups have an influence substantially greater than was countenanced in our constitutional design.

How did we create an overlay of private influence to circumvent our traditional values of public control of public institutions? What are the implications of that creation? The answer is complicated, and disturbing to those who maintain some reverence for the principles of Jefferson and Adams.

Trend #1: The Horizontalization of America. Three trends in recent history particularly threaten the sustenance of democratic values. First, we have become a horizontalized

society. There was a time when we related to each other more intimately in a vertical format: doctors identified with their patients, attorneys with their clients, businesses with their customers. We were a nation of small and for the most part independent entrepreneurs, subject to marketplace discipline. Increasingly, we have become a nation of employees, large corporate farms, factories, and, at the retail level, chains. In most industries and trades, we have organized around our occupational grouping. We now identify with our trade or professional peers. We have formed trade associations by the thousands. We are organized as never before in history along horizontal lines—each occupation with its own association, separate bureaucracy, and political action program.

The horizontalization that has occurred has been facilitated by strong support for its political manifestation—the now ubiquitous PACs. Normally, where competitors at the same level of production (such as physicians, or oil companies, or auto dealers, or banks) meet and discuss any subject, they are subject to strict scrutiny and limitations. They are by definition a "conspiracy or combination" under state and federal antitrust law. Competitors are supposed to compete, not cooperate. Cooperation undermines democracy and, instead of the consumer determining the marketplace by choosing between different products, the producers can determine (at least in the short run) the marketplace by limiting what is offered by private agreement. Such agreements can be to limit supply, not produce a product, not deal with another entity, allocate bids or territories, or fix prices. Such agreements are most likely to restrain trade, and constitute a felony offense.

But the most serious of these restraints—horizontal price fixing—seems to have an exception. In an abuse of the *Noerr-Pennington* doctrine,¹ trade associations believe that they may in fact fix prices horizontally at higher levels if they use the proceeds for purposes of political influence. Where a trade association representing the brunt of a market for a product or service so assesses its membership, the monies raised for its own political purposes do not come from the stockholders who own the enterprises and for whose benefit they are raised. Rather, applied industrywide, the assessment acts as an indirect tax on the consumers of that industry. Hence, when the insurance industry wanted to raise money for 1988 political initiative campaigns in California, it raised over \$60 million dollars by agreeing to assess itself 1% of the premiums collected the prior year. This assessment was passed on to the public, which paid the bill—more than the amount spent by either national party on the presidential campaign in that same year. It cost the insurance industry little or nothing. Hundreds of associations have this kind of pass-through quasi-public power—the ability to assess the public huge sums using cartel arrangement and antitrust exemption, often in order to mislead the public, abuse its interests, and undermine the integrity of its government.

Trend #2: The Corruptive Influence of Political Money. The second troubling trend has been the influence of money on the making of public decisions. Certainly the problem of bribery remains, accentuated by the tendering of job offers to public officials while still in public employ, and the common offer of honoraria for speaking—which, for much of the nation, can consist of three minutes of ringing oratory at a breakfast meeting with the three lobbyists of the benefactor PAC. But much more troubling is the influence of campaign contributions. At present, for example, California has no limitations on campaign spending

¹ The *Noerr-Pennington* doctrine allows competitors to combine and restrict trade—where under taken for purposes of political advocacy before government. *Eastern Railroad Presidents Conference v. Noerr Motor Freight, Inc.* 365 U.S. 127, 81 S. Ct. 523 5 L.Ed.2d 464 (1961); *United Mine Workers v. Pennington*, 381 U.S. 657, 85 S.Ct 1585, 14 L.Ed.2d 626 (1965).

or campaign contributions except for a limited number of local races. One PAC can give \$500,000 to a single candidate. Exacerbating this problem are newly-enacted state office term limits which require huge campaign funds by public officials who need to move to new seats and challenge those incumbents, who in turn must raise large war chests for defense.

Trend #3: The Growth of the Regulatory-Industrial Complex. The third recent dynamic is the growth of regulatory agencies. These agencies have been created by legislative act in substantial numbers—California now has over 200. Regulatory boards and commissions now “license” or regulate most of the economy of the state. They determine who can and who cannot practice a trade or profession—ranging from barbers and contractors to physicians and attorneys. They determine the state of our environment—the future of the land and water of the state, the heritage we shall leave our progeny. And they regulate our financial institutions and our utilities.

The regulation of financial institutions carries with it the particularly important determination of our basic financial health as a society: the flow of capital for new investment, the supply of credit for consumer purchases of autos, appliances, and homes. These institutions operate under restricted conditions of competition, and often in an adhesive manner *vis-a-vis* consumers—through the use of standardized contracts and the unilateral determination of late charges, balloon payments, prepayment penalties, etc. The financial industry’s regulation has included unusual protection financed by public resources: the assessment of fees for publicly arranged insurance (fees which are assessed industrywide and passed through to consumers as an indirect tax); and by general fund taxpayer backstop.

In general, these regulatory agencies operate without close examination by legislatures and journalists, and substantially out of the public light. They are often governed by officials with immediate economic conflicts of interest as to the public policies they are empowered to decide. Most of them are current practitioners of the very trade or participants in the very industry they are charged to restrain in the public interest. Hence, not only are the regulatory agencies administered by persons often appointed by officials subject to campaign contribution influence, and governed by boards responsive to the same corrupting dynamic, but they consist of persons presently practicing in the trade or industry allegedly regulated for the protection of the broad public. Decisions are subject to the political power of the PACs, stimulated by job offers, and augmented by actual industry investiture as public officials.

Regulatory agencies operate under very general enabling statutes and are given broad authority to legislate through rulemaking. They have the power to define the requirements to engage in a business or trade, and specify what is and is not a violation of law. And they act as courts to discipline administratively those who violate state law or their rules, including the power to fine and expel licensees from their chosen occupation. Unlike formal judicial proceedings, however, these officials are permitted to engage in private or *ex parte* communications about pending rules or cases with persons who are parties to or interested financially in the outcome. Their decisions are subject to court review, but courts now substantially defer to their judgments on matters of substance.

A regulatory agency operates formally as a neutral legislator or judge, compelled to weigh two conflicting interests: the likely public-protection spirit of its enabling legislation, versus the constitutional requirement not to “take” contrary to law. That is, an agency may not deprive a regulated entity of property or limit its rights without due process and perhaps without just compensation. This is the setting for the momentous decisions made by

regulatory agencies. In this context, and quite apart from the identity of the decisionmakers, the *imbalance* of advocacy before the agency exacerbates the distortion. As noted, those with an immediate profit stake have almost unlimited financial resources for purposes of advocacy, and they dominate in state regulatory proceedings. The balance is tilted against the broad interests of society—that is, consumers in general, taxpayers, the environment, the weak and dispossessed, children, and the future. In these agencies, influence by those organized to keep or to take for their immediate financial gratification is most manifest.

Confronting the Systemic Breakdown: The Options

The dilemma which confronts our democracy on a basic level is how to deal with the forces undermining democratic responsiveness; how to restore and preserve the proper concern for broader interests; how to check the excessive influence of groups with immediate financial goals; and how to bring a balance of advocacy before the tribunals determining important public policy. This is the political reality of the last decade of the twentieth century.

Option #1: Atomize. There are three basic approaches to rectifying the current dangers. The first is to atomize the excessive horizontal organization for political purposes by limiting campaign contributions, reversing the *Noerr-Pennington* doctrine which arguably permits industry to tax consumers to finance political activities, or applying antitrust principles. We recognize the right of each individual to engage in private business, but we enforce antitrust law to preclude collusion which undermines the economic democracy of a marketplace responsive to general consumer demand, determined from the bottom up by individual purchasing preferences. There is no divine law preventing us from applying this same rule to the political arena: you can do whatever you want as an individual, but we are limiting your right to act politically as an *organized commercial* entity.

However attractive this first option may be to utopia aficionados, it suffers from serious defects, including properly revered counter-values respecting the rights of political association. However, options two and three are worthy of serious consideration.

Option #2: Create an Independent State Which Makes Decisions on the Merits. The second tactic is to create an informed and fairly balanced political state—by assuring that there is a wall of integrity between those making decisions on our behalf and those with a profit-stake interest seeking to influence them. We accomplish this reform through the public financing of campaigns; the prohibition of all private honoraria, gifts, gratuities, and future employment from private groups to public officials; and by requiring public officials themselves to have no vested profit stake in the policies they decide for the general weal. To the extent expertise is needed, adequate and equally independent agency staffs properly provide it. And we assure balanced advocacy between groups with narrow, pecuniary interests and groups with broader interests.

Option #3: Organize the Diffuse and Dispossessed to Counterbalance. The third tactic is to organize more general interests to counterbalance the intensive organization of those easily coalesced around a profit stake. This tactic comports with the widespread—and perhaps regrettable—acceptance of the "pluralistic" model by political scholars. It has the advantage of fitting into the current societal ground rules of advocacy and influence. Most important, it satisfies the primal tenet of social change: never try to take anything away from anybody. It is easier to not give someone something than to take it away after it has been given. Stated more pointedly, it is easier to add another actor to the play than to cut the

parts of those who have learned their parts and have been profiting from them for many years.

CUBs: Ninth-Grade Civics Brought to Life

In this setting, the concept of citizens' utility boards (CUBs) is ingenious. It does not cost the taxpayer money. It does not subtract or directly challenge the political rights of any group. It simply facilitates the horizontal organization of those otherwise not in the script—those whose interests are most seriously underrepresented. It responds to the American instinct to let people organize and participate; to allow someone in; to provide balance and fairness to a legislative or judicial proceeding.

The CUB option partially addresses two of the three remedial strategies most capable of successful actualization. It provides more balanced advocacy in regulatory proceedings themselves—a kind of technical equity making the results more legitimate in terms of due process concepts. And it creates a political entity by horizontally organizing those who lack formal representation in the influence of public officials. To the extent political scientists correctly view such public officials as driven in vector-like fashion by their sources of influence, such political organization is essential. The CUB concept recognizes the reality that even if one were to succeed in accomplishing the second tactic of creating a wall of integrity so that the state made decisions on the merits of the issues, it would still be necessary to counterbalance advocacy before those neutral decisionmakers. Even where the decisionmakers is well-intentioned and deliberating on the merits, information and advocacy are also power and will often determine the result.

CUBs have begun to organize in a most propitious forum warranting their presence: the public utility commissions (or public service commissions) which regulate monopoly utilities. Here, the political power of those with a vested profit stake (the utilities) is momentous in terms of campaign contributions and often the selection of the regulators themselves. Legal and advocacy resources are even more egregiously imbalanced. The utilities are able to assess the costs of their legal advocacy from the ratepayers. This cost is considered by law a virtually automatic "prudent expense" passed through for direct consumer assessment—even where incurred at extremely high levels. Expert witnesses, in house and retained counsel, and the use of utility staff give these entities an overwhelming advantage in any rulemaking or ratesetting proceeding. There are few limits on what can be spent, and those in whose interests the advocacy is advanced—the stockholders of the company—pay for little or none of it.

Utility regulators have an explicit constitutionally imposed duty to provide a fair rate of return to utility stockholders, which must be neutrally balanced against ratepayer, environmental, and other interests. The regulator is not a consumer advocate and is not permitted to impose a tyranny of the majority on the legitimate property rights of utility (or other) investors. Even where the regulator seeks to create an internal and separate staff role to accomplish ratepayer representation, the regulator remains an inadequate proxy for advocacy on behalf of the many. On a theoretical level, the agency staff is too politically removed from the direct control of the general constituency; on the practical level, the staff normally is not free to appeal to the courts a decision of the agency within which it operates. A CUB structure directly controlled by and responsible to ratepayers is capable of more legitimate representation of ratepayer interests, and only it is capable of assuring that balanced advocacy extends to court review, where precedents dictating standards and procedures of special import may be decided

What CUBs ask for is nothing less than societal ground rules to facilitate what we claim to be our most cherished birthright—to organize, to contribute voluntarily, to discuss social issues, to provide helpful information to public officials, to counterbalance governmental proceedings dominated by one group at the expense of a larger group whose interests form the *raison d'être* of the forum itself.

CUBs ask that public assets be made available simply so that citizens can communicate one to the other for these purposes; so they may establish private democratic institutions to enrich public democratic institutions, to the detriment of no one—except to the extent “detriment” consists of additional evidence and arguments to inhibit imbalanced and unfair rules and adjudications.

Our political, corporate, securities, and commercial laws allow for the organization, legal recognition and—in many respects—the public subsidy of those organized around their direct and immediate financial concerns. Laws give individuals immunity from personal civil liability where corporations are formed, and confer numerous tax advantages on various commercial forms of organization—from limited partnerships to real estate syndications. There is no “natural order” to these societal ground rules; they represent policy choices about facilitating human organization for beneficial purposes. Adjusting our laws and rules to facilitate the organization of those underrepresented and excluded interests creates no radical precedent—even if the form of such stimulation may be different. Encouraging the general public to organize creates a defensible “pluralism”—where the whole plurality is included. Where generalized interests are present and strong, government by self-interested trade-offs of those immediately profiting is counterbalanced.

As Beth Givens’ CUB study establishes, CUBs are not merely capable of performing such a function. They have proven themselves on four separate fields of encounter: Wisconsin, San Diego, Illinois and Oregon. CUBs have, at no expense to any citizen who does not wish to participate, influenced public decisions to limit what would otherwise be monopoly excesses by many billions of dollars, hundreds of times more in amount than their total cost to those voluntarily contributing. Nor has their impact been confined to rates. In a single contested case, the San Diego CUB (UCAN) was a primary litigator successfully halting what would have been the largest utility merger in United States history. The 1991 decision of the California Public Utilities Commission rejecting the merger found its direct and indirect social costs to be staggering—a decision to reject which few had anticipated at the outset of the request, and one attributable substantially to CUB advocacy and its ability to organize thousands of ratepayers around the issue.

Moreover, as Givens’ study implies, the CUB model may well be properly extended into other industries such as insurance and finance, where analogous abuses addressed by CUBs are equally capable of amelioration by application of the CUB concept. What would have been the course of the savings and loan debacle had federal and state regulators been forced into open and informed examination of the practices of those regulated and the implications of their own policies on the public weal? We believe that the CUB concept addresses the underlying modern infirmity in the American governmental structure, and that it certainly would have made a difference in our financial institution crisis, where our contentions about secret and industry-solicitous proceedings of regulatory agencies are particularly applicable. The hundreds of billions of dollars in public resources lost through this single series of unforgivable blunders could have ended world hunger, and substantially reclaimed the earth from its now-dominant human predators in the bargain.

The CUB model is an allegory for what ails the body politic in general. And it is also the antidote—an elixir of citizen energy, based on three age-old repositories of American value: fair play, balance, and the right of all of us to be heard—even the majority.

INTRODUCTION AND SUMMARY

"Citizens' Utility Boards." The name sounds benign enough, especially when shortened to its commonly used acronym, CUB. The concept—the creation of organized advocacy groups to give consumers a voice in the regulatory proceedings which control monopoly utilities—is certainly consistent with the American goal of citizen representation in governmental decisionmaking. Yet CUBs have been the focus of acrimonious debates and precedent-setting legal struggles that have stretched from state regulatory commissions to the United States Supreme Court.

CUBs empower utility ratepayers by organizing them into democratically governed advocacy groups. They give consumers an effective voice in regulatory proceedings concerning utilities by arming them with the kind of expertise normally afforded only by the utilities, state regulatory commissions and government intervenors. In other words, CUBs allow consumers to be "players" in utility rate proceedings. As such, CUBs present a counterbalance to the regulated monopolies which bring electricity, gas and telephone services into our homes. They provide a forum for residential ratepayers to coordinate their efforts, control rates and establish policies that benefit consumers.

CUBs are voluntary organizations that make no use of tax dollars. They are not affiliated with any government agencies or private interests. Rather, they are nonprofit corporations funded primarily by membership contributions. In addition to representing consumers in utility proceedings before regulatory agencies, CUBs educate consumers on a variety of issues, from the complexities of the ratesetting process to ways consumers can conserve energy and cut electricity bills.

CUBs are a product of the consumer movement spurred by Ralph Nader and other consumer activists in the late 1960s and 1970s. In 1980 the first CUB opened its doors in Wisconsin. The early 1980s saw the formation of additional CUBs in California, Illinois and Oregon. At that time CUBs were also on the drawing boards in several other states, including Massachusetts, New York, Missouri, Kansas and Florida.

Historically, the heart of the CUB concept is the use of the "extra space" in utility billing envelopes to communicate with ratepayers—to inform them about upcoming rate hearings, encourage them to participate in regulatory proceedings, and invite them to join CUB and contribute funds toward its advocacy work. The architects of the CUB concept saw the importance of communicating directly with all ratepayers on a regular basis. They also recognized the necessity of creating a funding mechanism that would maintain CUBs' independence from government agencies, legislative bodies and corporate interests, as well as ensure an adequate and relatively stable source of revenue.

When CUBs were authorized in Wisconsin, Illinois and California, they were granted bill enclosure privileges—Wisconsin (1979) and Illinois (1983) through legislation, and California (1983) through Public Utilities Commission action. CUBs' use of the extra space in monthly utility bills to solicit memberships proved to be extremely effective. All three organizations attracted enough members to establish viable organizations and begin advocating for ratepayers' interests in phenomenally short periods of time. Each was operational within a year of the first billing insert.

A utility court challenge in California culminated in a 1986 U.S. Supreme Court decision which struck down the use of bill inserts by consumer groups on first amendment grounds.

As a result of *Pacific Gas & Electric Co. v. Public Utilities Commission of California (PG&E v. PUC)*,¹ CUBs lost a powerful means of raising funds and organizing consumers. However, the four CUBs created prior to 1986 have weathered the storm, saving consumers literally billions of dollars in utility bills and contributing to the formation of consumer-beneficial public policies governing utility practices. In the most recent illustration of the vitality of the CUB concept, New York Governor Mario Cuomo signed an executive order in January 1991 which paves the way for the formation of the nation's fifth CUB.

This report describes the historical development of CUBs and examines the effects CUBs have had in representing consumers against the considerable power and resources of utilities. It analyzes alternate means of raising funds and suggests ways in which CUBs can continue to form and operate despite the limitations resulting from the loss of utility billing envelopes as a means of communicating with consumers.

Report Summary

The CUB concept is grounded in the principle of American public policy that diversity of viewpoints is essential to the democratic process. In the regulatory arena, and more specifically, the regulation of the monopoly utilities, CUBs play a vital role in representing residential ratepayers—consumers whose interests have traditionally been accorded little weight. Before CUBs are discussed in depth, however, this report first places them in context within the regulatory process and the role of the state in representing the interests of residential consumers.

Ratepayer Advocacy—Balancing the Record. The agencies of state government that regulate the monopoly public utilities are charged with dual and conflicting roles—to protect the interests of consumers by ensuring adequate service at reasonable rates and, at the same time, to sanction and protect the monopoly status of the utilities by guaranteeing them a fair rate of return. In order to balance their often countervailing missions, these agencies—called public utilities or public service commissions in most states—convene formal proceedings to establish rates and set policies. Ideally the positions of all affected parties—the utility and its shareholders, the ratepayers, and the regulatory agency—are brought before the commissioners in a quasi-judicial setting where all voices are accorded equal hearing.

However, residential consumers have additionally been on the losing side of this process. As a group, they are inherently unorganized and lack both the expertise and funding to adequately represent their collective interests. The utilities, on the other hand, bring considerable resources to regulatory proceedings—the expertise of full-time attorneys, rate analysts, engineers and other specialists—all paid by consumers through the rates set by the public utilities commission.

Many states have attempted to redress this imbalance by establishing agencies that represent ratepayers in regulatory proceedings—offices of “consumer counsel” housed either within the attorney general’s office (approximately 18 states), the public utilities commission (2 states), or formed as a separate department of state government appointed by the governor (20 states). Of these types of “proxy advocacy,” a division within the public utilities commission is the least common form of ratepayer representation because of the

¹ *Pacific Gas & Electric Co. v. Public Utilities Commission of California, et al.*, 475 U.S. 1 (1986).

potential that conflicts of interest and political pressure will bias the positions taken by the staff.

The presence of ratepayer advocates within state government is a great step forward for utility customers. However, government proxies are seriously constrained in scope and impact. Whether located within the regulatory agency, the attorney general's office or an independent agency, they usually lack sufficient funding and staff resources to carry out a comprehensive program of consumer advocacy across a broad spectrum of concerns. More significantly, government proxies can be subject to political and other pressures contrary to the interests of those they purportedly represent. Perhaps the greatest handicap is their inability to organize grassroots consumer involvement in regulatory issues.

While independent nonprofit consumer groups also step into the regulatory arena to represent their constituents, they too are plagued with the ever-present problem of insufficient funds. Effective participation in regulatory proceedings can cost tens of thousands of dollars to hire legal specialists and expert witnesses. As a result, few such organizations have sufficient funds to participate consistently in regulatory proceedings.

A handful of states has recognized the value of supporting grassroots participation in regulatory proceedings by establishing "intervenor compensation" programs. Citizens groups that represent ratepayers in regulatory agency proceedings may be awarded fees based on the nature, extent and impact of their involvement. Such programs are generally funded by assessments on the utilities and are administered by the state's public utilities commission. This report has identified intervenor compensation programs in only five states, however, and those programs are generally inadequately funded to allow participation by many organizations at marketplace rates of compensation.

History of the CUB Concept. The development of viable independent consumer organizations—free from both the political constraints which encumber government proxy advocates and the funding dilemmas experienced by grassroots citizens groups—has long been the goal of consumer activists. In the early 1970s Ralph Nader proposed "bill inserts" as a means to secure funding for a variety of consumer organizations.

To enable customers of legal monopolies and all companies using pre-printed contracts to join forces and hire expertise to advocate on their behalf, Nader proposed that messages soliciting contributions to and membership in independent consumer organizations be included in the unused space of the regular billing envelopes mailed by these companies to their customers. Fundraising for consumer groups would thus be "piggybacked" onto existing financial transactions—the statements and bills that customers regularly receive from such services as insurance companies, energy utilities, local telephone companies and financial institutions.

Nader's specific proposal for the formation of advocacy organizations representing utility consumers was advanced in a 1976 publication by Robert B. Leflar and Martin H. Rogol.¹ In the following years, consumer activists organized coalitions of support in a dozen states to advocate the formation of citizens' utility boards. The first CUB to get off the ground was

¹ Robert B. Leflar and Martin H. Rogol, "Consumer Participation in the Regulation of Public Utilities: A Model Act," *Harvard Journal of Legislation* 13 (Feb. 1976): 235-97. See also Ralph Nader, "A Utility Reform Plan," *Washington Star-News* (Oct. 27, 1974).

in Wisconsin, authorized by the state legislature in 1979. In the next four years, CUBs were established in Illinois, Oregon and San Diego, California.

CUB Characteristics. CUBs are a unique form of consumer organization. Their statutory authorization, traditional mechanism for fundraising (utility bill inserts) and democratic form of governance set them apart from other grassroots organizations.

Bill Inserts. The use of the “extra space” in utility billing envelopes allowed CUBs to communicate with ratepayers—to inform them of upcoming regulatory action and to invite them to join the CUB. Bill inserts offer the advantage of fundraising efficiency by enabling the organization to communicate inexpensively with all ratepayers. By keeping expenses low, CUBs require only minimal membership dues (under \$10), thereby allowing low- and moderate-income households to join the organization.

The CUBs in Wisconsin, Illinois and California were able to take advantage of the bill insert mechanism to attract members, building sizable memberships within their first two years.¹ However, in 1986 the U.S. Supreme Court held in *PG&E v. PUC* that bill inserts of consumer groups violated the free speech rights of the utilities. Thereafter, CUBs were forced to rely on the more expensive and less reliable methods of direct mail and door-to-door canvassing to solicit members and raise money. Illinois amended its CUB statute in 1987 to allow messages to be inserted in the mailings of state government agencies. This innovative answer to the loss of the utility bill insert privilege has proved to be successful. It promises to become the model for newly developing CUBs.

Democratic Form of Governance. CUBs are governed by their members who elect a board of directors from CUB districts, usually the state’s congressional districts or multiples thereof. In contrast to government proxies and to many consumer organizations, CUBs are directly accountable to their members. CUB legislation and/or bylaws impose strict conflict of interest and campaign contribution restrictions on board members to guard against undue influence from special interests.

Authorized Advocacy. CUBs are authorized by statute and/or administrative action to represent consumers before the state’s regulatory commission as well as the legislative and judicial branches of government.

Organizational Independence. CUBs are membership-supported nonprofit corporations whose affiliation is voluntary. They receive no taxpayer funding. As independent consumer-funded organizations, CUBs avoid the pressures from political and special interests that can plague government agencies charged with representing the interests of ratepayers.

Consumer Participation and Education. Through grassroots organizing, CUBs foster consumer involvement in regulatory and legislative proceedings. They thereby empower utility ratepayers through increased knowledge of and participation in utility issues. CUBs are also actively involved in consumer education, informing their members of the intricacies of the regulatory process as well as providing such practical information as energy conservation tips through newsletters, fliers, and speaking engagements.

¹ The Oregon CUB was never able to insert its messages in utility bill inserts and, as a result, never did attract as many members as the three other CUBs.

CUB Development. Although the existing CUBs in Wisconsin, Illinois, California and Oregon share a number of similarities, each CUB has evolved into a unique organization, as profiled below, in order to address the issues that pertain to its particular regulatory environment.

Wisconsin. After three years of grassroots organizing, coalition building, and legislative lobbying by community organizers, the Wisconsin legislature passed the CUB statute in 1979. CUB opened its doors in 1980, the first consumer group in the nation authorized to insert its own messages in utility bills.

CUB began enclosing membership solicitations in the billing envelopes of energy and telephone utilities in 1980. In all, its enclosures were included in approximately 90 utility mailings over the next five years. Bill inserts proved to be as effective as consumer advocates had predicted. Membership quickly grew—from 15,000 in 1980 to at least 100,000 in 1985—generating a budget of \$700,000 from membership dues at the organization's height. CUB supplemented its fundraising through door-to-door canvassing and direct mail. It has also received funding from the state's intervenor compensation program.

Key victories established CUB as an aggressive advocate for residential and farm ratepayers. Its advocacy resulted in reduced utility rates as well as such consumer beneficial policies as the elimination of the automatic fuel adjustment clause and the capping of the energy utilities' fixed monthly service charges. By 1984 CUB could assert that it had saved consumers \$100 for every \$1 spent on dues, totaling \$81 million in savings. In 1989 CUB computed its ratepayer savings as \$29 for every \$1 spent on dues in the past two years.

When the *PG&E v. PUC* decision curtailed the use of bill inserts in 1986, the CUB board of directors voted to separate the organization from the CUB statute and reorganize as a private nonprofit organization. The board felt that the statute had ceased to offer fundraising or organizational benefits.

Since 1986 CUB has obtained revenue from membership dues and the state's intervenor compensation program in order to continue its advocacy on behalf of residential, farm and small business ratepayers. It has experienced organizational ups and downs due to the vagaries of both sources of revenue. CUB currently operates on a budget of approximately \$250,000 with a full-time staff of four persons.

UCAN (San Diego, California). The Utility Consumers' Action Network (UCAN) is unique among CUBs. It is the only CUB to serve a local constituency, the customers of the area's lone energy utility, the San Diego Gas and Electric Company (SDG&E). And it is the only CUB to be authorized by administrative rather than legislative action.

In 1982 a group of faculty members and students at the Center for Public Interest Law (CPIL) at the University of San Diego School of Law filed a complaint with the California Public Utilities Commission (PUC) requesting billing envelope access for the purpose of soliciting members in a new consumer group that would represent local consumers in regulatory proceedings.

The PUC approved CPIL's request in April 1983.¹ Local interest in and support of the new organization was unprecedented. Over the next two years, UCAN inserted messages in four of SDG&E's bills, drawing a phenomenal 70,000 members from the 850,000 households in the San Diego area—8% of ratepayer households. Twenty-six candidates vied for the nine positions on the board of directors. At its height, UCAN employed a staff of three and operated with a budget of \$340,000.

Since the loss of bill insert privileges, UCAN has conducted canvassing (since curtailed) and direct mail campaigns to raise funds. It has also received funding from the PUC's intervenor compensation program for its participation in regulatory proceedings. UCAN currently operates with a staff of 1.5 full-time employees on a trim annual budget of \$150,000.

UCAN's advocacy has paid off for San Diego ratepayers. Since it became active in PUC proceedings in 1985, SDG&E's rates have dropped 47% due in large part to energy procurement practices championed by UCAN which require SDG&E to import cheaper power. In its first three years of advocacy, the savings to SDG&E ratepayers resulting from UCAN's work is estimated at \$265 million. For the past three years UCAN has worked with a coalition of civic leaders to oppose the proposed merger of the local utility and Southern California Edison, which would have created the largest energy utility in the nation. In May 1991 the PUC rejected the merger, concluding that the mammoth utility would exert undue anticompetitive pressures in the region and that the proposed takeover was not in the public interest.

In addition to energy utility proceedings, UCAN also participates in proceedings involving the telephone utility, Pacific Bell. It has advocated reforms in the marketing of the phone company's inside wiring services and has opposed the introduction of "Caller ID" on privacy grounds.

Illinois. The Illinois CUB was the third in the nation to be formed. Illinois' electricity rates skyrocketed during the 1970s due in large part to overly ambitious programs of nuclear power plant construction in the state. Consumers' frustration at the Illinois Commerce Commission's (ICC) inaction led to a call for an elected Commission. CUB legislation was passed in 1983 as a compromise measure, the culmination of ten years of organizing by a broad coalition of consumer activists.

Utility bill inserts proved to be as effective as they had been in Wisconsin and San Diego. Within two years CUB attracted 170,000 members. The loss of bill insert privileges in 1986 was a severe setback for CUB, and the following year CUB experienced a budget deficit. It had lost one-fourth of its members because it no longer had the inexpensive means of bill enclosures to attract new members to replace those lost through attrition.

Help was around the corner in the form of innovative legislation. The legislature amended the CUB statute to allow the organization to insert its messages in state agency mailings that reach at least 50,000 households. This method proved to be virtually as effective as utility bill inserts, except that CUB's messages now lack the "punch" they had when read in conjunction with the monthly utility bills. CUB's budget and membership have since bounced back to pre-1986 levels. CVB currently employs a 12-member staff and

¹ Cal. P.U.C. Dec. No. 83-04-020 (Apr. 6, 1983).

operates on a \$1.7 million budget generated from the dues contributed by its 170,000 members. CUB's sophisticated direct mail operation bolsters the funding obtained through state agency mailing enclosures.

CUB's three-pronged advocacy approach—before the ICC, the legislature and the courts—has racked up a series of impressive victories for consumers. Total savings attributed to CUB's interventions exceed \$2 billion since 1985, an average of \$100 to \$150 per year for each household. CUB's major advocacy has been to oppose rate hike requests of the Commonwealth Edison Company. While CUB has rarely made headway before the ICC, its court challenges of ICC decisions have usually produced victories for ratepayers.

CUB is known for its aggressive grassroots organizing and member activism. It employs both direct mail and phone banking to inform members of timely issues and encourage them to contact their lawmakers and commissioners. Members are prolific letter-writers and petition-signers. Hundreds regularly attend rallies and lobby days to make their presence known in the state capitol.

With its healthy budget, strong membership base and well-rounded staff, the Illinois CUB probably comes closest to the ideal set forth by Ralph Nader and his colleagues in the 1970s—a grassroots organization completely independent of government funding sources which is sufficiently funded to advocate effectively for residential consumers.

Oregon. The nation's fourth CUB is the only one to have been established by citizens initiative. Popular support for reform of the Oregon Public Utility Commission (PUC), a one-member commission appointed by the governor, resulted in placement of a CUB initiative on the 1984 ballot. The initiative succeeded despite being outspent 40-1 by the utilities. CUB was never able to take advantage of bill inserts to build a membership base, however. In 1985, a coalition of utilities successfully challenged CUB's enclosure privilege on first amendment grounds. When CUB was in the process of appealing the decision, the U.S. Supreme Court issued *PG&E v. PUC* which ruled that bill inserts are unconstitutional.

Predictably, CUB's growth has not been as meteoric as the CUBs which were able to take advantage of bill inserts. The organization grew to a membership high of 20,000 in 1989, primarily due to an ongoing canvassing operation (since discontinued). It could have expected to obtain twice that many members if it were able to solicit members through utility bills. CUB currently has 10,000 members and operates with a staff of two and a budget of \$50,000. Dedicated supporters contribute a considerable amount of *pro bono* legal expertise to CUB, amounting to nearly 70% of the organization's legal work. CUB is lobbying for the establishment of an intervenor compensation fund, either through legislative or administrative action, to enable it to expand its ratepayer advocacy.

CUB's achievements on behalf of consumers are impressive, especially in light of its small budget and limited staff resources. Its first order of business was to join forces with the Oregon Public Interest Research Group to lobby the legislature for a three-member appointed PUC. The legislature sent the issue to the voters in a referendum and it passed in 1986, a major victory for both organizations.

CUB participates in the regulatory proceedings of both the energy and telephone utilities, although it focuses primarily on telephone issues. It has argued successfully before the PUC for US West rate reductions as well as policies beneficial to low-income consumers, such as the establishment of "lifeline" rates. By 1990 CUB's advocacy had

resulted in refunds and reductions totaling \$124 million, a savings of \$318 for every \$1 of membership dues spent.

New Developments in New York. Efforts to establish a New York CUB in the early 1980s failed despite overwhelming popular support. Although authorized by the state's Public Service Commission (PSC) in 1984, CUB was derailed by a utility court challenge before the New York Supreme Court and, ultimately, by *PG&E v. PUC*.

In the ensuing years the New York Public Interest Research Group worked closely with Governor Mario Cuomo, a strong CUB supporter, to revitalize CUB legislation. When the CUB bill failed again in 1989, Cuomo explored other ways to establish a CUB. In January 1991 he signed an executive order modeled closely on the Illinois CUB. It grants access by a CUB to state agency mailings up to four times per year for a period of three years in order to solicit membership contributions. A New York CUB is expected to begin operating by late 1991, the fifth such consumer organization in the country and the second to take advantage of state agency mailings for membership and fundraising appeals.

Legal Challenge. The "heyday" of CUBs was short-lived. Only four CUBs were established prior to the Supreme Court ruling banning the use of utility bill inserts. While efforts during the early 1980s to establish CUBs in other states were promising—among them, Massachusetts, Florida, Nevada, Rhode Island, Kansas and Montana—the loss of the key fundraising mechanism effectively curtailed further development

The roots of the ill-fated Supreme Court decision date back to 1980. A California consumer group, Toward Utility Rate Normalization (TURN), complained during a PUC rate proceeding about Pacific Gas and Electric Company's (PG&E) practice of inserting newsletters in its bills at ratepayer expense, in particular using them as a forum to espouse political positions beneficial to the shareholders. As a result, the PUC invited consumers to bring a test case before it to explore potential uses of the "extra space" in billing envelopes.¹ UCAN was the first California consumer group to respond to the PUC's invitation. As discussed above, it was granted bill insert authorization by the PUC in 1983.²

Later that year TURN followed suit and filed a petition with the PUC seeking access to PG&E billing envelopes. PUC granted access four times a year for a period of two years, similar terms to UCAN's authorization.³ Unlike SDG&E, PG&E challenged TURN's access by filing a petition for review before the California Supreme Court. When that court refused to hear the case, PG&E brought the case before the U.S. Supreme Court.

In a 5–3 plurality decision issued in February 1986, the Court ruled that the PUC's "compelled access" order infringed on PG&E's "negative free speech" rights, or its right "not to speak."⁴ The *PG&E v. PUC* decision held that a consumer group's use of utility billing envelopes for its own enclosures impermissibly forces the utility to associate with messages which might compel it to respond when it may prefer to remain silent, or to limit its own speech in order to avoid controversy. Further, the Court found that bill insert access was not content-neutral but, rather, content-based because it provided access only to groups which oppose the utility in regulatory proceedings. The Court did specify, however, that content-

¹ Cal. P.U.C. Dec. No. 93887 (Dec. 1981), as modified by Dec. No. 82-03-047 (Mar. 2. 1982).

² Cal. P.U.C. Dec. No. 83-04-020 (Apr. 6, 1983).

³ Cal. P.U.C. Dec. No. 83-12-047 (Dec. 20, 1983).

⁴ 475 U.S. at 9.

neutral informational inserts such as legal notices would not violate a utility's first amendment rights.¹

The opinion came as a shock to the consumer groups which filed *amicus curiae* briefs in support of the PUC's order. These groups were particularly concerned that the opinion ignored the fact that PG&E is not a mere corporation; it is a regulated monopoly which is often required to carry messages with which it probably disagrees such as PUC announcements about upcoming rate hearings and notices that ratepayers are due refunds. Critics of the ruling questioned whether corporations indeed have free speech rights, in particular the negative free speech right not to associate with points of view with which they disagree, as the decision purports. They argue that utilities' free speech rights are not necessarily threatened by bill inserts, especially if inserts do not espouse a point of view but, rather, inform ratepayers of the presence of intervenors and tell them how they can find out more about them, similar to a legal notice. Furthermore, the issue of who owns the "extra space" in utility billing envelopes was not conclusively resolved in *PGE v. PUC*, leaving that argument open for interpretation.²

The Illinois Model. Illinois has breathed new life into the CUB concept by passing legislation which authorizes CUB to enclose its messages in state agency mailings. This mechanism has preserved CUB's low-cost communication vehicle and has enabled it to reach virtually the same households as utility bill enclosures did before the 1986 Supreme Court ruling.

The Illinois CUB has chosen to enclose its membership solicitations in motor vehicle registrations and income tax refunds. In practice, state agency inserts have proved to be nearly as effective as utility enclosures in attracting new members to the organization. Its inserts reach approximately 10 million households each year. With a return rate of just under 0.5% (approximately 4,000 new members per month), CUB is able to replace those members lost through the normal process of attrition, thereby maintaining a stable funding base.

Because the Illinois model sidesteps the constitutional issues raised in *PGE v. PUC* by placing CUB messages in the mailings of neutral agencies, it promises to be the practice adopted by other states. New York is the first such state to adopt the Illinois model.

Funding Alternatives—Intervenor Compensation. The considerable costs of hiring attorneys and expert witnesses for regulatory proceedings usually exhaust a major portion of a CUB's annual budget. The funding required to effectively represent ratepayers varies little whether the organization is located in small state or a populous one, whether the proceeding involves a small utility or a large one.

Intervenor compensation programs can provide an important supplemental or alternative source of CUB funding in at least two scenarios: (1) states with small populations in which the revenue from state agency enclosures is not sufficient to ensure funding stability over

¹ *Id.* at 15 n.12.

² Because utility rates are traditionally determined by the "cost of doing business," and part of "doing business" is billing customers, the cost of mailing the monthly bills to customers is paid by the ratepayers themselves. Therefore, some legal observers contend that ratepayers essentially have a property interest in the extra space in those billing envelopes—the space not used by the bill itself, up to the one-ounce limit for first-class postage—because they are in fact bearing the full cost of mailing the monthly bills whether that space is left empty or is filled with additional material.

the long run; and (2) states where the legislative climate is not conducive to passing a bill authorizing a CUB to enclose its messages in state agency mailings. In these situations, an intervenor compensation program can make the difference between a viable organization, one that aggressively represents ratepayers before a broad range of utility proceedings, and an organization that can participate only infrequently in regulatory proceedings.

This report has identified five states which provide some form of compensation for organizations that intervene in regulatory proceedings on behalf of ratepayers—California, Colorado, Idaho, Michigan and Wisconsin. Their intervenor compensation programs encourage the representation of diverse points of view in regulatory proceedings. However, each is seriously flawed. All except Michigan's program are administered by the state's public utilities commission, putting the intervenor in the potentially conflict-laden situation of "biting the hand that feeds it." Most programs are underfunded and compensate intervenors at less than market rates. California's program suffers the additional drawback of delaying payments until well after the proceeding has concluded, forcing already financially strapped consumer groups to wait months and sometimes years to be reimbursed for their expenses.

The shortcomings of existing intervenor compensation programs suggest a "model" program, one that would:

- Insulate the award process from pressures which may be exerted by the public utilities commissioners and staff by delegating program administration to an entity outside the commission.
- Define criteria for participation in order to encourage qualified intervenors and minimize barriers to entry.
- Compensate intervenors at full market rates and base awards on overall contribution to the proceeding, not on whether the substance of that contribution is adopted in the final decision.
- Provide compensation while the proceeding is in progress rather than only at the conclusion.

Structural Issues. The organizational architects of CUBs proposed a funding mechanism (mailing enclosures) and a governance structure (democratically elected board of directors) that would support the mission of CUBs. CUBs are not monolithic institutions, however. Each has evolved into a unique organization exhibiting variations from the model originally drafted by the early CUB proponents.

Local vs. Statewide Scope. CUBs were originally envisioned as statewide consumer organizations which represent the interests of all residential ratepayers in the state. In virtually all of the dozen states that were considering CUBs prior to the 1986 *PG&E v. PUC* decision, consumer activists promoted legislation based on the single-organization, multiple-utility statewide model. Three of the four existing CUBs—in Wisconsin, Illinois and Oregon—were established through legislation mandating statewide scope. Only one CUB, UCAN, has pursued the local model.

A statewide organization assures a large population base from which to solicit enough members and funds to establish a viable organization. The economies of scale of a statewide approach enable the CUB's staff to apply the expertise gained in one case to

other similar cases. Further, a statewide organization can provide a more integrated and comprehensive approach to utility policy development.

Proponents of local CUBs have hailed from California and New York—states with large populations and marked regional differences. Early CUB organizers in both states cited ratepayer responsiveness and the ability to organize grassroots participation as the key advantages of a local/regional approach. Indeed, UCAN's phenomenal early growth and its impressive advocacy record attest to the benefits of a local organization focused on a single utility. As a practical matter, however, the necessity of raising sufficient funds to support aggressive and sustained consumer advocacy demands that CUBs be developed as statewide organizations.

The Challenge of Maintaining a Working Democracy. One of the more vexing organizational problems which face CUBs is maintaining a truly democratic structure. A functioning democracy requires both time and money—the staff time that goes into the considerable grassroots organizing required to “cultivate” active volunteers willing to run for office and serve on the board, and sufficient funding to pay the expenses of the election process. While two of the existing CUBs (Illinois and Oregon) continue to hold regular elections for the board of directors, UCAN and the Wisconsin CUB have not held elections since 1988, although both are still governed by a representative board of directors.

CUB leaders do not have easy answers to the dilemma of maintaining a functioning democracy. Organizations with skeletal staffs and minimal budgets are hard-pressed to devote the time and money necessary to nurture the democratic process, especially when their scarce resources are allocated to participating in regulatory proceedings. The solution to this dilemma is, of course, an adequate source of ongoing funding—what CUB architects sought in utility bill inserts and now state agency enclosures, and barring this, a program of intervenor compensation.

Variations on the CUB Theme. The CUB concept as originally proposed may not be appropriate or even practical in all situations. In some states, legislation authorizing access to the mass mailings of state agencies would be difficult if not impossible to pass. In these situations, the overriding goal of supporting ratepayer representation in regulatory proceedings could be provided by a quasi-CUB organization that is funded in part from a state appropriation and in part from membership dues.

The state funding source could be an intervenor compensation or grant program funded by utility assessments, similar to existing intervenor compensation programs. Another source of funding could be the sale of the unused space in utility billing envelopes to the utilities themselves or to commercial advertisers and application of the revenue to a consumer-based ratepayer representation program, an idea which has been explored (but not implemented) by the California PUC. A third option would be to require that utilities contribute a percentage of whatever they spend to advocate their own interests in regulatory proceedings to an intervenor compensation fund. In any of these scenarios, the funds could be appropriated to a statutorily designated CUB which would represent residential ratepayers statewide, or as existing intervenor compensation programs are administered, to any qualifying organizations that participate in regulatory proceedings.

Other Applications of the CUB Concept. When Ralph Nader advocated that informational inserts placed in the regular mailings of certain industries be used to organize consumers into associations, his proposal extended to far more arenas than the public utilities. He envisioned that, in addition to legal monopolies, a notice inviting customers to

join a consumer organization be included in the mailings of all companies that use preprinted contracts, called contracts of adhesion. Such contracts include insurance policies, landlord leases, installment loan arrangements and warranties.

Three industries in particular have since been singled out by consumer activists for the formation of CUB-like organizations—financial institutions, the insurance industry and the postal service. Each industry has experienced considerable deregulation in the past two decades, with consumers suffering the unfortunate consequences of increasing rates and decreasing services.

Consumer advocates at both the national and state levels (New York, Illinois and California) have proposed legislation to establish Financial Consumers' Associations (FCAs). Although not successful to date, these measures would authorize organizations to advocate for consumers in the regulation of the banking and savings and loan industries, as well as provide consumers with information to help them navigate the increasingly complex maze of choices facing them in a deregulated environment. Members would be solicited through factual inserts included four times a year in the monthly statements mailed to bank customers. (Recent Illinois legislation sidesteps the expected first amendment-related objections by proposing that such enclosures be included in state agency mailings.) Like CUBs, FCAs would be democratically governed. Consumer advocates have also proposed the formation of "citizens' insurance boards" along similar lines to serve as consumer watchdogs for the insurance industry.

To return a measure of accountability to the postal service which was partially deregulated in 1971, Ralph Nader has proposed the establishment of a nonprofit Post Office Consumer Action Group (POCAG) modeled on the CUB concept. Pursuant to congressional authority, the postal service would be required to deliver POCAG mailings twice a year free of charge to all residential postal addresses. The mailings would solicit membership in POCAG through voluntary contributions of \$10 a year. POCAG staff would be authorized to represent individual postal customers before the Postal Rate Commission, Congress and the courts.

While such organizations have yet to be established, interest in pro-consumer legislation is growing at the state and national levels. As the harmful impacts of deregulation become more evident, consumer advocates and policymakers are likely to look more seriously at the benefits of consumer associations modeled on the CUB concept.

Future of CUBs. The relevance of CUBs is as strong today as it was in the 1970s when Ralph Nader first proposed that messages inserted in utility bills be used to organize consumers into voluntary nonprofit consumer organizations. The need for a means to organize and empower consumers may be even more compelling now than it was then. Real income has dropped for most Americans since the 1970s. The gap between the rich and poor has widened dramatically. Corporate mergers have created multinational conglomerates that control an ever-broadening array of consumer goods and services. In short, consumers face even stiffer challenges in attempting to shape the market to their real needs and in building effective mechanisms to redress their grievances.

Telephone services are at the top of every CUB's advocacy agenda. Since the divestiture of AT&T in 1984, consumers have been confronted with an overwhelming array of decisions regarding services and new technologies. Energy utilities are restructuring in much the same way as the telephone system has since the divestiture of AT&T. Even though the rate shocks of the 1970s and early 1980s have largely subsided, important

electricity and gas decisions are being made that will have ramifications ten to fifteen years from now, complex and vitally important issues that are likely to escape the attention of residential ratepayers unless their interests are represented by professionals with sufficient expertise to understand the issues and argue their case effectively in regulatory proceedings.

CUBs offer a compelling model for the 1990s, not only for utilities issues but other industries such as insurance and finance where consumers have traditionally had little power to affect the outcome of regulatory proceedings. CUBs provide a unique combination of characteristics not found in government offices charged with representing ratepayers. They not only advocate for consumers, but also give their members a platform on which to participate in the regulatory process. On the one hand, they empower individuals by providing information and instructions on how to participate through such actions as letter-writing and testifying at hearings. On the other hand, they employ the technical expertise necessary to act on members' behalf in regulatory proceedings. Both sides of the equation—consumer empowerment and professional advocacy—are required for effective representation of consumers' interests.

Chapter 1

THE HISTORY OF CUB DEVELOPMENT

Administrative proceedings to establish utility rate structures and operating policies have become increasingly complex. The often time-consuming processes require the expertise of economists, engineers and attorneys. None come cheaply.

Residential ratepayers have typically been left out of the bargaining process. The funding required to finance effective participation in regulatory proceedings is often beyond the means of consumer groups, much less individual consumers. Many states have recognized the need for consumer representation by establishing advocacy offices. However, consumer representation by government agencies is generally restricted due to limited staff and resources, and even political constraints.

Utilities, on the other hand, are not restrained by limited funds and inadequate expertise. They typically spend hundreds of thousands, sometimes millions, of ratepayer dollars per case to defend their interests. Utilities' funding for advocating their own interests is fully allowed as a cost of operation and is involuntarily assessed on ratepayers. "Prudency" standards to limit such utility advocacy or to require that it be financed from profits (by stockholders whose interests that utility represents in its advocacy) have not yet been established either by regulation or legislation. Hence, utility funding of its own advocacy in ratemaking and other regulatory proceedings has few limitations.

This chapter discusses the types of consumer advocacy that have evolved to redress the imbalance in utility regulatory proceedings. It looks at the consumer representation provided by government proxies as well as the efforts of citizens groups. The chapter concludes with an analysis of the key players and rulings that led to the formation of citizens' utility boards.

Types of Consumer Advocacy

Public utilities operate as monopolies and exist with the sanction and protection of the state. To safeguard the public from any harm that could occur because of the monopoly advantage, the state is charged with regulating the utilities. The state's role in both sanctioning utilities and protecting ratepayers from potential monopoly abuse poses a dilemma for the regulatory agency. On the one hand, it must protect the interests of consumers by ensuring adequate service at reasonable rates. On the other, it is constitutionally required to guarantee a fair rate of return for the utilities and their shareholders.¹

Regulatory agencies, called public utility commissions or public service commissions in most states, convene formal proceedings in order to establish rates and set policies. Such proceedings are intended to be quasi-judicial in nature, with the interests of all affected parties—the utility, its ratepayers and the regulatory agency—brought before the commissioners deliberately and comprehensively. The utilities bring considerable resources to regulatory proceedings, vigorously representing the interests of their stockholders with the expertise of their full-time attorneys, rate analysts and specialists. Residential

¹ See, for example, *FPC v. Hope Natural Gas Co.*, 320 U.S. 591 (1944).

ratepayers, however, rarely—some would say never—obtain the benefit of representation on an equal footing with the utilities. As a group, they are inherently unorganized and lack both the expertise and funding to adequately represent their collective interests.¹

Government Proxy Representation. Many states have attempted to balance consumers' interests before regulatory proceedings by creating offices that represent ratepayers. Three forms of "proxy advocates" have evolved to redress this imbalance: (1) a separate division within the public utilities commission, (2) a unit within the state attorney general's office, or (3) an independent consumer counsel in a separate state agency or office.²

Many such ratepayer proxies were established in the 1970s, called the "golden era of institutional reform" by political scientist William Gormley.³ Reformers on the state and federal levels established a number of measures to open up the regulatory process to citizens and prod bureaucracies to be more responsive to their constituents. Reforms instituted in the 1970s include "freedom of information" or public records statutes, requirements for public hearings in administrative proceedings, sunshine laws and, as discussed above, the establishment of proxy advocates for citizens unable to represent themselves.

The least common remedy among the states is a division within the public utilities commission which represents ratepayers' interests.⁴ In California, for example, the Public Utilities Commission established the Division of Ratepayer Advocates (DRA) in 1986 to represent consumers in regulatory proceedings.⁵ Residential and small business ratepayers in West Virginia are represented by the Consumer Advocate Division of the Public Service Commission. In both cases, some attempt is made—either formally or informally—to insulate the in-house division of consumer representation from influences by the commissioners.⁶

A more common alternative to a division within the public utilities commission is an office in the attorney general's office, usually within a consumer protection division, which advocates on behalf of utility customers. Such consumer representation is available in

¹ Robert B. Leflar and Martin H. Rogol, "Consumer Participation in the Regulation of Public Utilities: A Model Act," *Harvard Journal of Legislation* 13 (Feb. 1976): 239-40.

² William T. Gormley, Jr., *The Politics of Public Utility Regulation* (Pittsburgh: University of Pittsburgh Press, 1983). See also Robert N. Mayer, Cathleen D. Zick and John R. Burton, "Consumer Representation and Local Telephone Rates," *Journal of Consumer Affairs* 23:2 (Winter 1989): 267-83. See also Leflar, "Consumer Participation."

³ William T. Gormley Jr., *Taming the Bureaucracy: Muscles, Prayers, and Other Strategies* (Princeton: Princeton University Press, 1989), 45.

⁴ This study identified only two states—California and West Virginia—with ratepayer representation within the regulatory commission.

⁵ Pub. Util. Code § 309.5. The Division of Ratepayer Advocates was originally called the Public Staff Division.

⁶ In West Virginia, the PSC adopted a rule (General Order No. 195.2, Sept. 1980) which established the Consumer Advocate Division (CAD) as a separate entity, financially and departmentally, within the PSC. The state legislature appropriates funding for CAD separate from that of the PSC. The CAD is even housed in a separate location. Telephone interview with Billy Jack Gregg, Director of Consumer Advocate Division, West Virginia Public Service Commission (Apr. 26, 1991).

In California, however, the line between the in-house consumer advocate and the rest of the Commission is blurred. Although the DRA is mandated by statute, Pub. Util. Code § 309.5, no statute, regulation or PUC order expressly insulates DRA staff from the influence or control of the commissioners.

approximately 18 states.¹ In some states, attorneys general are charged with representing state agencies as well as the interests of the public.

Approximately 20 states have established independent consumer offices to represent ratepayers, separate from the public utilities commission and the attorney general's office.² Consumer counsel are usually appointed by the governor. Most such offices are funded by legislative appropriation, although some receive a portion or all of their funding from assessments on utilities. A majority of consumer counsel offices are charged with representing all consumers in public utility commission proceedings—residential, commercial and industrial ratepayers. Most are empowered to represent consumers before the courts and federal agencies in addition to the state's regulatory commission.

The presence of ratepayer advocates within state government is a great step forward for utility customers. Full-time expertise, charged with watching out for consumers' interests, has added a dimension to regulatory proceedings that had previously been absent. However, government proxies representing the interests of ratepayers are not without their drawbacks. Whether located within the regulatory agency, the attorney general's office or an independent agency, they usually lack sufficient funding and staff resources to carry out a comprehensive program of consumer advocacy across a broad spectrum of concerns. They must therefore pick their issues quite selectively. As agencies that are statewide in scope, proxy advocates are inclined to aggregate their support, often concentrating their efforts on proceedings with the broadest impact and ignoring those which affect smaller interests. More significantly, government proxies are subject to political and other pressures contrary to the interests of those they purportedly represent.³ Perhaps the greatest handicap of government proxies is their inability to organize grassroots consumer involvement in regulatory issues. In addition, many are prohibited from lobbying for consumer beneficial legislation unless specifically asked to testify before the legislative body.

Of the three types of government proxies, ratepayer representation within the regulatory commission is most troublesome from the standpoint of political pressure. Despite attempts to insulate in-house ratepayer advocates from the decisionmakers, the potential exists for consumer staff to view the commissioners—not the ratepayers—as their constituency. In the case of California, a further drawback to locating the ratepayer advocacy office within the Public Utilities Commission is that it lacks standing to appeal decisions of its own Commission to the courts.⁴ The DRA may theoretically be independent within the agency, but it is still part of it and is therefore bound by the final decision of the Commission. Even though the ratepayer advocacy office offers consumers some form of representation in utility proceedings, any benefit which may befall consumers is ultimately short-changed because

¹ Telephone interview with Debra Berlyn, Executive Director, National Association of State Utility Consumer Advocates (NASUCA) (Mar. 13, 1991). See also Gormley, *The Politics of Public Utility Regulation*, 50-51.

States in which attorneys general intervene on behalf of utility ratepayers include Colorado, Michigan, Massachusetts, New Mexico, Nevada and North Carolina.

² Telephone interview with Debra Berlyn, Executive Director, National Association of State Utility Consumer Advocates (NASUCA) (Mar. 13, 1991). See also Gormley, *The Politics of Public Utility Regulation*, 52-53.

States with independent consumer counsel include Connecticut, Georgia, Maryland, Ohio and New Hampshire.

³ For example, an attorney general running for re-election may desire utility campaign finance support; or a ratepayer advocate within a public utilities commission may depend upon agency approval for transfers or promotions. These forces may cause a consumer advocate to bend toward the will of the agency or utility rather than the consumer.

⁴ See, for example, *Consumers Lobby Against Monopolies v. Public Utilities Comm'n*, 25 Cal. 3d 891, 908 (1979) (California Supreme Court notes that the Public Utilities Commission's staff advocates lack standing to seek either rehearing or judicial review of the Commission's decisions).

of the DRA's inability to appeal the Commission's decisions before the California Supreme Court. Since only the utilities are effectively able to appeal, experts believe that, over time, the law bends inequitably in the direction of the utility.¹

While generally superior to placing consumer advocacy within the commission, ratepayer representation within the attorney general's office is fraught with some of the same difficulties. In states where attorneys general are charged with representing state agencies as well as the public, there may well exist conflicts of interest in carrying out the dual roles. The attorney general's office could view its most important function as representing state agencies, to the exclusion or at least the detriment of consumer representation. In states where the attorney general is elected (a majority of states), political considerations are likely to take precedence over consumer interests. Interparty conflicts often frame the issues, rather than the needs of various consumer interests involved in the utility proceedings.²

Although independent offices of consumer counsel avoid some of the pitfalls inherent in ratepayer representation by regulatory agency staff and the attorney general's office, they face limitations nonetheless. By far the largest roadblock to effective advocacy is limited funding and staff resources.³ And as government agencies, they are not totally immune from political pressures. In addition, offices of consumer counsel are subject to few measures of consumer accountability. None are elected officials.

Grassroots Citizens Groups as Intervenors. Independent consumer groups, operated as nonprofit corporations, also represent residential ratepayers in utility commission proceedings. Like government proxy offices, many were established during the 1970s. Some, such as environmental and low-income groups, are involved in a wide range of consumer issues in addition to utility proceedings. Others, like Toward Utility Rate Normalization (TURN) in northern California, focus all their attention on utility matters. Consumer groups often form coalitions to represent residential consumers in regulatory proceedings.

Citizens groups are generally not constrained by the political pressures that hamper government proxies. In addition, they are more free to define their constituency than government offices, and therefore can take on cases for discrete interests such as retired persons and low-income consumers.

Their major limitations are financial. With a typical regulatory proceeding requiring as much as \$100,000 in legal and expert witness fees, the ability of consumer groups to mount extensive and frequent interventions on behalf of residential ratepayers is limited, particularly on a long-term basis. Utility proceedings, especially controversial ones, come and go, and with them go the membership-based coffers of consumer groups. (Major rate re-examinations of monopoly utilities usually occur every three to five years.) Grassroots groups generally obtain funding from members whose support increases when issues are "hot," and decreases when controversies fade from public view or are difficult to understand. As such, consumer groups are often reactive rather than proactive. Many are short-lived and are forced to close their doors when members' interest declines and contributions no longer meet expenses.

¹ Interview with Robert C. Fellmeth, Director of the Center for Public Interest Law, in San Diego (Mar. 13, 1990).

² Leflar, *"Consumer Participation,"* 249.

³ During fiscal crises, governor-appointed consumer counsel are likely targets of budget cutbacks. As a case in point, Illinois Governor Jim Edgar eliminated the Office of Consumer Services in 1991.

A handful of states have recognized the value of supporting grassroots participation in regulatory proceedings by establishing “intervenor compensation” programs.¹ Citizens groups that represent residential ratepayers in regulatory agency proceedings may be awarded fees based on the nature, extent and impact of their involvement. Intervenor compensation programs are usually funded by assessments on utilities which are passed on to ratepayers. Although the programs operate differently in each state, their goal is to increase consumer representation and encourage a broader diversity of interests brought before regulatory proceedings. (See Chapter 3 for further discussion of intervenor compensation.)

In California, for example, TURN obtains a substantial percentage of its budget from the Public Utilities Commission’s intervenor compensation program. The Wisconsin Citizens’ Utility Board and the Utility Consumers’ Action Network in California have also obtained intervenor compensation funding. If these organizations were to rely solely on membership dues, they would not be likely to raise sufficient income to foster the necessary staff expertise to participate in any meaningful capacity over the long term.

The Birth of the CUB Concept

The development of viable and independent consumer organizations—free from both the political constraints which encumber government proxy advocates and the funding dilemmas faced by grassroots citizens groups—has long been the goal of consumer activists. During the 1960s and 1970s, members of the burgeoning consumer movement pushed for legislation to create a Consumer Protection Agency at the federal government level. The failure of this bill in 1975 (it was vetoed by President Gerald Ford) was a significant loss for the consumer movement.

Consumer activists subsequently considered other means to establish organizations that could both advocate on behalf of consumers and provide a forum for citizen participation. They recognized the need to create funding mechanisms and governance structures that would promote the development of financially healthy, long-tenured organizations. They also wanted to foster the development of organizations that would be independent of both government and private interests and responsible to the needs and interests of their constituents—and only their constituents.

Bill Insert Mechanism. In the early 1970s, Ralph Nader’s Center for Study of Responsive Law proposed “bill inserts” as a means to secure funding for a variety of consumer organizations.² To enable customers of legal monopolies and all companies using pre-printed contracts (such as insurance policies and landlord leases) to join forces and hire expertise to advocate on their behalf, Nader proposed that messages soliciting contributions to and membership in such consumer organizations be included in the regular billing envelopes mailed by these companies to their customers.

¹ This study has identified intervenor compensation programs in California, Colorado, Idaho, Michigan and Wisconsin.

For a detailed critique of the California Public Utilities Commission’s intervenor compensation program, see James R. Wheaton, “Funding Consumer Representation: Failed Models and Fresh Approaches,” *California Regulatory Law Reporter* 10:1 (Winter 1990): 1-11.

² Leflar, “Consumer Participation,” 3. See also Arthur Best and Bernard L. Brown, “Governmental Facilitation of Consumerism: A Proposal for Consumer Action Groups,” *Temple Law Quarterly* 50:2 (1977): 253-300.

Fundraising for consumer groups would thus be “piggybacked” onto existing financial transactions—the statements and bills that customers regularly receive for services such as insurance, energy utilities, local telephone companies and financial institutions. In addition to the company’s bill, the customer would receive an invitation to contribute toward a consumer group that would represent the customer in proceedings before the regulatory commission, the legislature and the judicial system. The purpose of the consumer group would be to control rate increases and promote policies that benefit the customer of that particular industry.

Nader proposed that the “carrier function” be authorized by state or federal law. The law would charter the nongovernmental consumer group and empower it to represent consumers before the appropriate regulatory agencies, the legislature and the courts.¹

Nader and his colleagues saw bill inserts as an efficient and effective means to raise money as well as encourage broad consumer participation. The consumer would read about the advocacy group at the time when he or she is most responsive to its message—when paying the bill. Communications would be highly efficient because organization messages would reach all customers of that industry. The organization spawned through customer responses to the bill insert would not be taxpayer-funded or government-sponsored, thereby adding no extra layers of bureaucracy onto government agencies.

The “bill insert” concept is a variation of the “check-off” mechanism to organize consumers, and is not new.² The check-off essentially makes use of transactions already engaged in by an industry to communicate with consumers or employees of that industry. It hails from the labor movement where union dues have been subtracted from paychecks as far back as 1898. Farmers also use the check-off to fund organizations which promote consumption of agricultural commodities (such as eggs, cotton and wool) as well as lobby for legislation. Cotton farmers, for example, pay a flat fee per bale when their crops are sold to the gin. Their check-off is “refundable,” although a majority of farmers do not request refunds. The most pervasive of all check-offs is employed by state and federal governments to deduct taxes from paychecks. The latter is a “mandatory” check-off, refundable only to those taxpayers who, at the end of the year, have contributed more than they owe.

As originally proposed by Nader, a check-off card would be included in the company’s billing envelope, allowing the customer to indicate an amount he or she was adding to the payment for the purpose of supporting an independent consumer group. The company would compile all contributions and pass them on to the consumer group each month.

The check-off was first employed by Nader and his colleagues in 1971 as a means to fund and organize student groups to conduct full-time advocacy on behalf of students and other consumers. At colleges where the check-off mechanism has been approved by a majority of the students, fees are included on each semester’s college bills to support Public

¹ Ralph Nader, “Foreword” to Andrew Sharpless and Sarah Gallup, *Banding Together: How Check-Offs Will Revolutionize the Consumer Movement* (Washington D.C.: Center for Study of Responsive Law, 1981), i.

² Andrew Sharpless and Sarah Gallup, *Banding Together: How Check-Offs Will Revolutionize the Consumer Movement* (Washington D.C.: Center for Study of Responsive Law, 1981). See also Ralph Nader, “A Utility Reform Plan,” *Washington Star-News* (Oct 27, 1974).

Interest Research Groups (PIRGs).¹ Students who do not want to contribute to the PIRG may receive a refund.

The First CUB. During the late 1970s organizers from one of Nader's organizations, the Corporate Accountability Research Group, criss-crossed the country in an effort to stimulate the development of consumer organizations for utility customers based on the bill insert concept. With the help of PIRG activists and a broad coalition of supporters, Wisconsin was the first state to pass legislation authorizing the use of utility bill inserts to create a citizens utility board, or CUB. In 1979 the Wisconsin legislature passed a bill requiring Wisconsin utilities to carry statements from CUB up to four times per year inviting utility customers to join the organization for a minimum fee.²

The bill insert mechanism was as effective as its proponents had envisioned. In less than a year, over 50,000 utility customers joined CUB. A professional staff was soon in place, representing consumers in utility proceedings and the state legislature. Before long, CUB's impact was evident. In its first three years of operation, it was instrumental in significantly limiting the residential rate increases requested by both energy and telephone utilities. In 1984 CUB could claim that it had saved Wisconsin ratepayers \$100 for every \$1 invested in membership fees in the past 18 months.³ (For more information on the Wisconsin CUB, see Chapter 2.)

CUB Characteristics. The structure of CUBs was proposed in publications which appeared in the late 1970s.⁴ Robert Leflar and Martin Rogol drafted a model act for a Residential Utility Consumer Action Group (RUCAG) which, with modifications, formed the basis of the 1979 Wisconsin CUB act. Three more CUBs were formed in the ensuing years in California, Illinois and Oregon. CUB legislation was under consideration in at least nine other states in the late 1970s and early 1980s.⁵

Although CUBs vary from state to state, they all share similar characteristics:

- Prior to 1986, CUBs were authorized to insert messages in the billing envelopes of utilities a specific number of times each year, usually four. The text was prepared by CUBs and approved by the public utilities commission and the affected utility before being included in the mailing.⁶ If the CUB insert could be enclosed in the utility bill without exceeding the one-ounce weight limit, no postage fee was incurred by the CUB. Bill inserts described the mission of the CUB, explained the types of activities it undertook on behalf of consumers and solicited membership contributions.

¹ PIRGs have been formed in 24 states and as many as 150 campuses (although not all have approved the check-off mechanism). Most maintain full-time staffs who conduct research and publish reports, promote legislation, and organize citizens around environmental and consumer issues. PIRG achievements include a seminal study Minnesota on the hazards of nuclear power, worker protection laws in North Carolina and bottle deposit legislation in Oregon. As discussed later, several PIRGs were instrumental in advocating the creation of now-successful citizens utility boards.

² Wis. Stat § 199.01 *et seq.* See Chapter 2 for further information.

³ Wisconsin Citizens' Utility Board, "What Is CUB?" (flier, 1984).

⁴ Leflar, "Consumer Participation." See also Best, "Governmental Facilitation of Consumerism," 253.

⁵ Additional states in which CUB legislation or citizens initiatives were proposed include Nevada, Missouri, Florida, Rhode Island, Montana, Kansas, New York, Massachusetts, and California (a statewide "TeleCUB").

⁶ San Diego's Utility Consumers' Action Network is the lone exception to this rule. The California Public Utilities Commission did not require prior approval of bill insert texts.

- Contributions to CUBs are voluntary. They are held to a minimum to ensure a broad base of support, including low-income households and persons on fixed incomes. Wisconsin's minimum contribution, for example, was initially \$3. A maximum contribution is usually specified in order to avoid undue influence by any one individual.
- CUBs are not government agencies and are therefore not supported with taxpayer dollars. Rather, they are privately-funded nonprofit corporations whose membership is voluntary.
- Through grassroots organizing, CUBs foster consumer involvement in regulatory and legislative proceedings. They thereby empower utility ratepayers through increased knowledge of and participation in utility issues.
- CUBs are democratically governed by the members who elect a board of directors. Once the newly-authorized CUB has reached a critical mass of members, it holds an election for board of directors. In order to qualify for the ballot, candidates must obtain a specified number of members' signatures on a nominating petition. Board members are elected from regions for set terms, usually two to four years. For statewide CUBs, the regions are generally the state's congressional districts or multiples thereof.
- CUB legislation and/or bylaws impose strict conflict of interest regulations and campaign contribution restrictions on board members in order to guard against undue influence from special interests.
- In order to ensure accountability to its members, CUB statutes and/or bylaws usually prescribe stringent requirements not imposed on traditional citizens organizations concerning public records, open meetings, annual reports and supervised elections.
- CUB organizations are authorized to represent consumers before the state's regulatory commission as well as the legislative and judicial branches of government.

CUB Advantages. The main benefits of the CUB model are: (1) fundraising efficiency, (2) organizational independence, (3) a mechanism for consumer participation and empowerment, and (4) a governance structure that is accountable to the members.

(1) Fundraising Efficiency. At the heart of the CUB concept is the use of the extra space in utility billing envelopes for the benefit of the customers of that utility. Utilities have traditionally used the extra space to send their own newsletters and even political messages to ratepayers. Consumer advocates have argued that ratepayer access to that space, at least a few months out of the year, would bring more balance to utility-ratepayer communications.

Because utility rates are traditionally determined by the "cost of doing business," and part of "doing business" is billing customers, the cost of mailing the monthly bills to customers is paid by the ratepayers themselves. Therefore, consumer advocates argue that ratepayers have a property interest in the extra space in those billing envelopes—the space not used by the bill itself, up to the one-ounce limit for first-class postage—because they are in fact bearing the full cost of mailing the monthly bills whether that space is left empty or

is filled with additional material.¹ Advocates further argue that the extra space is of value to ratepayers as a means of communicating and organizing for their own benefit.

Utility bill inserts, therefore, provide a highly effective and efficient means of communicating with all utility customers and soliciting funding support from them. CUB messages arrive in envelopes that will be opened, unlike direct mail solicitations which tend to be treated as “junk” and often reach the wastebasket unopened. In addition, CUB messages are read at a time when the utility customer is sensitized to utility issue—when it’s time to pay the bill. Not only are utility customers more likely to pay attention to the information in the insert—which may, for example, alert the reader to a proposed rate increase—but they are also more likely to consider joining the consumer group and contributing a membership fee to support the work of the CUB.

The money savings for CUBs by “piggybacking” onto utility billing envelopes are considerable. The cost per “hit” of traditional direct mail is approximately 25 to 40 cents per envelope mailed. When CUB messages are inserted in utility bill envelopes, the cost to the CUB is only one to two cents per insert. Thus the overall cost to the CUB of communicating with members and potential members is as little as one-twentieth the cost of using direct mail, the major savings being postage and labor.

By taking advantage of utility billing envelopes to communicate with ratepayers, CUBs can direct the money they would have spent on fundraising to their first order of business, consumer advocacy. Low fundraising costs enable CUBs to maintain minimal dues requirements, from \$3 to \$10, thereby attracting members from low- and fixed income households. In contrast, citizens groups which must raise funds solely through direct mail campaigns and door-to-door canvassing must set much higher membership fees, at least \$25 per year, in order to pay the substantial overhead expenses of these methods.

The additional cost to the utility of enclosing the CUB’s flyer is virtually nil, as long as the insert does not cause the envelope to weigh more than one ounce. Most utilities, especially those with a large customer base, have enough “envelope stuffing” equipment to handle as many as three extra inserts in addition to the bill.

Overall, the fundraising efficiency of utility bill enclosures can be the key to a CUB’s financial success and, hence, its ability to work for consumers’ interests over the long run. In contrast, the budgets of consumer groups funded by direct mail solicitations and canvassing are often insufficient to intervene consistently. Likewise, government advocates are generally limited by fiscal and political constraints. The financial self-sufficiency of CUBs, engendered by the use of bill inserts to solicit membership contributions, provides the foundation for their long-term stability and organizational independence. CUBs have the added advantage of not imposing additional costs on taxpayers, nor on those who do not wish to participate in the CUB.

(2) *Organizational Independence.* CUBs are independent, nongovernment, nonprofit organizations funded with membership contributions. They are not supported with taxpayer

¹ The validity of this argument has never been conclusively decided. In 1981, the California Public Utilities Commission concluded that “the extra space in the billing envelope is properly considered as ratepayer property.” Cal. P.U.C. Dec. No. 93887 (Dec. 1981), as modified by Dec. No. 82-03-047 (Mar. 2, 1982).

The plurality in *PG&E v. PUC* took no position on this issue, 475 U.S. at 17-18. In dissent, Justice Rehnquist agreed with the PUC, finding that “the extra envelope space belongs to the customers as a matter of state property law.” *Id.* at 26 (Rehnquist J., dissenting).

dollars and, as such, are not subject to the political pressures and budgetary vagaries of government agencies. Nor do they add a layer of bureaucracy to any government departments.

CUBs, therefore, are able to directly and solely advocate for consumer interests. They have one client. They need not be concerned, as must government agencies, that the budget will be axed due to interparty conflicts, the pressures of special interests or budgetary shortfalls. Nor must they temper either their message or the nature of their actions to suit the individuals and political party in power.

(3) *Consumer Empowerment and Participation.* Acting alone, very few individuals have the financial means and expertise to participate in any depth in utility proceedings. By the same token, consumer groups cannot match the utilities which have full-time staffs of specialists dedicated to presenting their cases before the regulatory commission. But by pooling their money through CUBs, consumers can hire experts to speak for them in commission hearings, legislative committee meetings and court proceedings.

According to Nader, CUBs therefore represent a means to empower consumers in order to “redress the imbalance of power between utilities and consumers.”¹ Even if they have only minimal impact on rates, CUBs give consumers a “privately-controlled voice,” and one that has legal standing to represent ratepayers before utility proceedings in all three branches of government.²

Integral to empowerment is participation. CUBs have the potential “to involve citizens in the regulation of one of society’s most important economic institutions, the utilities.”³ The payment of monthly utility bills can seem as uncontrollable and inevitable as “death and taxes,” and at least as confounding. CUBs hold the potential to alleviate the confusion and frustration by educating consumers about the intricacies of utility regulation. At the same time, CUBs can give consumers a platform on which to participate in the ratemaking process. As a case in point, members of the four existing CUBs are noted for their participation in hearings and their active letter-writing campaigns to public utilities commissioners and legislators.

(4) *Accountable Governance Structure.* CUBs are governed by a board of directors elected by the members of discrete districts, usually the congressional districts of the state. In order to qualify for the ballot, candidates must gather a minimum number of CUB members’ signatures on a nomination petition (typically, 30 signatures). This ensures that the candidate has some organizing capabilities as well as the support of existing CUB members within the candidate’s district—in other words, evidence of community ties.

A democratic organizational structure is one of the hallmarks of the CUB concept. It serves to keep the CUB accountable and responsive to its members. In addition, the democratic foundation of CUBs separates it from other types of organizations that provide consumer advocacy on utility issues. Government agencies that represent consumers in

¹ New York Public Service Commission, *Proceeding on Motion of the Commission to Examine Ratepayer Access to Utility Billing Envelopes and the Concept of a Citizens’ Utility Board*, Dec. No. 28655 (May 14, 1984) at 10 (testimony of Ralph Nader).

² *Id.* (testimony of Lt. Gov. Del Bello).

³ Mark Green and Michael Waldman, “CUB Comes to New York: Finally, Power to the People,” *Village Voice* 28:38 (September 20, 1983).

utility proceedings tend to be accountable to the appointing person or political party, not necessarily to residential consumers.

Similarly, consumer groups that are membership-based, but not democratically structured, generally do not have strong accountability mechanisms that link membership interests to organization actions. While their very existence depends on addressing consumer issues effectively, their communication is often one-way—from the organization to the membership. CUBs, on the other hand, with their emphasis on democratic elections of representatives, have a built-in link to the membership.

Utility Challenges to Bill Inserts

Early CUB developments were promising. The Wisconsin CUB got off to a strong start from its inception in 1979. By 1984, CUBs had been formed in three other states—California, Illinois and Oregon—with CUB legislation pending in several other states. The utilities responded to this growing consumer movement by challenging CUBs' ability to use the extra space in billing envelopes on first amendment grounds.

California Bill Insert Experiments. The roots of the legal challenge to bill insert privileges date back to 1980. As an intervenor in a ratemaking proceeding, a consumer group in northern California, Toward Utility Rate Normalization (TURN), challenged the practice of the state's largest utility, Pacific Gas and Electric Company (PG&E), of inserting its newsletter in billing envelopes at ratepayers expense. In particular, TURN objected to PG&E's espousal of political positions in its newsletters. As a result of TURN's complaint, the California Public Utilities Commission, in a December 1981 decision, invited consumer groups to bring a test case before it to explore potential uses of the extra space.¹

The following year, the Center for Public Interest Law (CPIL), an organization affiliated with the University of San Diego School of Law, filed a complaint with the PUC requesting use of the extra space in the billing envelopes of the local energy utility, San Diego Gas and Electric Company (SDG&E). At that time, SDG&E rates were ranked second highest in the nation. CPIL asked the PUC to require SDG&E to allow a new local consumer group structured as a citizens' utility board to insert membership appeals in its billing envelopes and, once fully operational, to intervene on behalf of SDG&E ratepayers before the PUC and in legislative and court proceedings.

The PUC held hearings on the complaint and approved the request to use bill inserts in April 1983,² concluding that "the space had great value to ratepayers, that the [PUC] had a strong regulatory interest in determining how that space should be used, and that ratepayers had the equivalent of a property interest in that space."³ When the extra space is used for a utility's own advertising instead of other purposes, such as selling the space to advertisers or including energy conservation information, the ratepayers "forego savings from advertising revenue or savings generated by conservation information....[At the same time, the utilities] may capture the value of such savings, thereby recovering an 'opportunity cost' from the ratepayers."⁴

¹ Cal. P.U.C. Dec. No. 93887 (Dec. 1981), as modified by Dec. No. 82-03-047 (Mar. 2, 1982).

² Cal. P.U.C. Dec. No. 83-04-020 (Apr. 6, 1983).

³ Leonard Grimes, President of the California Public Utilities Commission, Testimony before the New York Public Service Commission in Case No. 28655 *Proceeding on Motion of the Commission to Examine Ratepayer Access to Utility Billing Envelopes and the Concept of a Citizens' Utility Board* (Jan. 26, 1984) (emphasis original).

⁴ Cal. P.U.C. Dec. No. 83-04-020 (Apr. 6, 1983) at 3.

The CUB that was subsequently created, the Utility Consumers' Action Network (UCAN), was the first in the state to be granted permission to use billing envelopes for membership and fundraising solicitations. The PUC initially limited UCAN's bill insert privileges to a two-year experimental period, after which the practice would be evaluated. Six months and two bill inserts later, UCAN had attracted a phenomenal 50,000 members, making it the second largest consumer group in the state. After only two years in existence, membership grew to 70,000. (See Chapter 2 for more information about UCAN.)

In May 1983 TURN followed suit and filed a petition with the PUC seeking access to PG&E billing envelopes. TURN sought to insert a check-off form listing the names and descriptions of several consumer groups, including TURN. Utility customers would have the opportunity to contribute to one of those organizations along with their utility bill payment. The PUC granted access to TURN, but did not authorize the use of a check-off form because no other groups had sought access to the PG&E envelopes. Because TURN was not structured democratically as a CUB (in contrast to the democratically-established UCAN in San Diego), the PUC required that TURN establish adequate accounting mechanisms for ratepayer contributions and that it report annually to its contributors.¹

Unlike SDG&E, PG&E challenged TURN's access to its utility billing envelopes by filing a petition for review before the California Supreme Court. When that court refused to hear the case, PG&E brought the case before the U.S. Supreme Court in October 1984. That case, *Pacific Gas & Electric Co. v. Public Utilities Commission of California, et al.*, has come to be known as *PG&E v. PUC*.²

During the same period of time, bill insert cases that would eventually have an impact on *PG&E v. PUC* were under consideration in New York. In the late 1970s the New York Public Service Commission (PSC) attempted to prohibit utilities from including political advertising in their monthly bills—specifically, advertising by Consolidated Edison Company in support of nuclear power and newsletter messages by Central Hudson Gas and Electric Corporation promoting the use of electricity. Both companies' legal challenges were decided by the U.S. Supreme Court in 1980. In both *Consolidated Edison Co. of New York v. Public Service Commission of New York*³ and *Central Hudson Gas and Electric Corp. v. Public Service Commission of New York*,⁴ the Court found that the utilities' free speech rights had been violated because the PSC had attempted to restrict the content or subject matter of the utility companies' messages.

When the California Public Utilities Commission weighed these Supreme Court rulings in its 1983 UCAN and TURN decisions, it decided that the two New York cases were not applicable.⁵ The PUC determined that its order would not limit the content of the utility's speech and therefore was not a violation of the utility's right of free speech. The PUC reasoned that it had made no attempt to regulate how the utility used the extra space during those months when UCAN did not have access to the billing envelopes.⁶

¹ Cal. P.U.C. Dec. No. 83-12-047 (Dec. 20, 1983).

² 475 U.S. 1 (1986).

³ 447 U.S. 530 (1980).

⁴ 447 U.S. 557 (1980).

⁵ Cal. P.U.C. Dec. No. 83-04-020 (Apr. 6, 1983) at 17; Cal. P.U.C. Dec. No. 83-12-047 (Dec. 20, 1983).

⁶ UCAN requested and was given access to the extra space of SDG&E's billing envelopes up to four times per year.

PG&E v. PUC. However, five justices of the U.S. Supreme Court disagreed with the California Public Utilities Commission. In a 5-3 plurality decision, the Court ruled that the PUC's "compelled access" order requiring PG&E to carry TURN's inserts infringed on PG&E's "negative free speech" rights, or its right "not to speak."¹ The decision, written by Justice Lewis Powell, held that a consumer group's use of utility billings envelopes for its own enclosures impermissibly forces the utility to associate with messages which might compel it to respond when it may prefer to remain silent, or to limit its own speech in order to avoid controversy.² The opinion cited *Miami Herald Publishing Co. v. Tornillo*³ and *Wooley v. Maynard*⁴ as supporting both the utility's right not to speak and its right not to be compelled by the state to publish something against its wishes.

Further, the Court found that the access afforded to such consumer groups through bill inserts was not content-neutral, but rather content-based.⁵ In other words, the PUC's order restricted access to billing envelopes to those expressing certain viewpoints—specifically, those who opposed the utility in regulatory proceedings. As such, the order could not be classified as a permissible "time, place or manner" regulation.⁶

Finally, the Court ruled that the compelled access order was not a "narrowly tailored means of serving a compelling state interest."⁷ While the state's interest in fair and effective utility regulation may be compelling, "the State can serve that interest through means that would not violate [PG&E's] First Amendment rights, such as awarding costs and fees."⁸ As to the state's asserted interest in "promoting speech by making a variety of views available to [PG&E's] customers," the Court reiterated that "this interest is not furthered by an order that is not content neutral."⁹ The ruling did indicate, however, that content-neutral informational inserts would not violate a utility's first amendment rights. Legal notices or other types of informational disclosures sponsored by the PUC would be acceptable as bill inserts.¹⁰

The plurality opinion came as a shock to the consumer groups which filed *amicus curiae* briefs in support of the PUC's order. These groups were particularly concerned that the opinion ignored the fact that PG&E is not a mere corporation; it is a regulated monopoly and, as such, is often required to carry messages with which it probably disagrees, such as announcements of upcoming hearings and notices that ratepayers are due refunds. *Amici* found it particularly ironic that first amendment standards were used in the case to limit diversity of expressed views, by blocking access to the citizenry of views otherwise not available and on behalf of those paying involuntarily for the medium.¹¹

¹ 475 U.S. at 9. Justice Powell wrote the plurality decision, joined by Justices Burger, Brennan and O'Connor. Justice Marshall concurred in the judgment. Justice Rehnquist dissented, and Justices White and Stevens joined in part of the dissent. Justice Blackmun did not take part.

² *Id.*, 10-12.

³ 418 U.S. 241 (1974).

⁴ 430 U.S. 705 (1977).

⁵ 475 U.S. at 12-17.

⁶ *Id.*, 20.

⁷ *Id.*, 19-20.

⁸ *Id.*, 19.

⁹ *Id.*, 20.

¹⁰ *Id.*, 15 n.12.

¹¹ Interview with Robert C. Fellmeth, Director of the Center for Public Interest Law, in San Diego (Mar. 15, 1991).

The plurality opinion has been the subject of several critical commentaries. See, for example:

Kenneth C. Crowley, "Access to Public Utility Billing Envelopes: The Changing Fortunes of Consumer Representation in PUC Proceedings," *California Regulatory Law Reporter* 8:3 (Summer 1988): 1-9.

The ruling had immediate and deleterious ramifications on CUB developments throughout the country, both on existing CUBs and those that were on the drawing boards. At the time of the Supreme Court's decision, the Massachusetts Public Interest Research Group had gathered enough signatures on a CUB initiative to qualify it for the November 1986 ballot. The Supreme Court decision scuttled that effort before the election occurred. No further actions to create a CUB were undertaken by Massachusetts consumer activists. The decision temporarily delayed the formation of a CUB in New York. In 1984 the New York Public Service Commission authorized the creation of a statewide CUB, granting it the right to enclose its messages in utility billing envelopes. Utilities subsequently petitioned the courts to block PSC action on first amendment grounds. Following the issuance of the Supreme Court decision, the CUB concept lay dormant until 1991, when Governor Mario Cuomo issued an executive order authorizing the establishment of a CUB. (See Chapter 2 for more information.)

For the existing CUBs in Wisconsin, Illinois, Oregon and San Diego (profiled in Chapter 2), the loss of bill insert privileges resulted in a period of financial downturn. Each subsequently increased its use of other and more costly methods of fundraising such as indirect mail and canvassing. The Oregon CUB was never able to take advantage of bill inserts to build a membership base; as a result, its membership reached only one-half the size of the other CUBs. Illinois' answer to the PG&E decision was to pass legislation allowing CUB to enclose its messages in state agency mailings, thereby avoiding the first amendment issues inherent in "forced" access to utility bills. Enclosure return rates have been similar to those in utility bills, and Illinois CUB's membership base and operating budget have since rebounded to pre-1986 levels.

Summary

The legal and regulatory path taken by CUBs since the concept was first proposed in the 1970s has been fraught with arduous twists and turns. The financial foundation for CUBs—access to the extra space in utility billing envelopes—has been successfully routed by utilities' legal challenges. Nonetheless, the approach taken by Illinois through access to state agency mailings holds promise.

The following Table 1.1 charts the major events and rulings that mark the history of CUBs.

Mitchell C. Tilner, "Government Compulsion of Corporation Speech: Legitimate Regulation or First Amendment Violation: A Critique of PG&E v. PUC," *Santa Clara Law Review* 27 (1987):485.

"The Supreme Court—Leading Cases—Negative Speech Rights for Corporations," *Harvard Law Review* 100 (1986): 183.

Jeffrey L. Harrison, "Public Utilities and the First Amendment: The Economics and Ideology of Pacific Gas & Electric," *University of Florida Law Review* 38 (1986): 319.

Table 1.1
Chronology of Significant Events Affecting CUB Development

1974	Ralph Nader proposes consumer group messages enclosed in industry mailings (bill inserts) as a vehicle to fund organizations to represent consumers in several industries, including utilities, insurance companies and financial services.
1976	Leflar and Rogol publish a “ model act ” for a Residential Utility Consumer Action, the basis for CUBs.
1979	The Wisconsin legislature authorizes the first CUB in the country. CUB becomes operational in 1980.
1980-81	TURN, a California consumer group, files a complaint against PG&E in 1980 charging inappropriate use of its newsletter for political messages. In December 1981 the California PUC invites consumer groups to propose a test case for use of utility billing envelopes, declaring that “extra space” belongs to ratepayers.
Apr. 1983	A San Diego CUB, Utility Consumers’ Action Network (UCAN) , receives PUC authorization in April to insert its own mailers four times per year in the billing envelopes of San Diego Gas & Electric. In December the PUC similarly authorizes TURN to enclose messages in PG&E’s billing envelopes.
Nov. 1983	The Illinois legislature establishes a CUB after statewide advisory referenda show strong support. CUB becomes operational in 1984.
May 1984	A New York CUB is established via Public Service Commission action. Utilities petition the court to block the decision.
1984-85	PG&E requests a re-hearing before the California Supreme Court in 1984 seeking reversal of PUC’s decision to allow TURN access to its billing envelopes. The Court refuses to re-hear the ruling. PG&E appeals to the U.S. Supreme Court. The case is argued in October 1985.
1984-85	A 1984 citizens initiative establishing a CUB is voted into law in Oregon, the only CUB to be established by initiative. Bill enclosure privileges are challenged in District Court by the utilities in 1985.
Feb. 1986	The U.S. Supreme Court rules in PG&E v. PUC (5-3 plurality) that bill access by TURN violates PG&E’s first amendment right of free speech.
Oct. 1986	The U.S. District Court in Illinois rules in Central Illinois Light Co. v. CUB that the bill enclosure sections of the state’s CUB statute violate utilities’ right of free speech.
Nov. 1987	The Illinois legislature amends the CUB statute to allow enclosure access to mass mailings of state agencies. Mailings begin in 1988.
Jan. 1991	A CUB is authorized in New York by executive order of Gov. Cuomo, allowing access to state agency mailings similar to Illinois.

Chapter 2

CUB PROFILES

The 1986 *PG&E v. PUC* Supreme Court decision not only curtailed CUBs' use of the extra space in utility bills for membership solicitations. It effectively halted the formation of new CUBs throughout the nation. At the time of the ruling, CUBs were on the drawing boards in a number of states, with consumer coalitions already organized and legislation drafted.

However, in spite of the loss of one of their most potent weapons, the CUBs formed prior to the 1986 decision all have survived and continue to successfully represent utility customers in regulatory proceedings, legislative action and court challenges. The existing CUBs in Wisconsin, Illinois, California and Oregon share a number of similarities. Each solicits members from residential households, keeping dues to a minimum to ensure a broad base of support. Each is funded primarily from membership contributions. And perhaps most significantly, each exists as an independent organization, separate from government and corporate affiliation.

Each CUB has also evolved into a unique organization with major differences from the other CUBs.

- Oregon's CUB, the most recently created, is the only one which did not build its membership through bill inserts. It is also unique in that it is the only CUB to be established by citizens initiative.

- The Utility Consumers' Action Network (UCAN) in San Diego, California, is the only CUB to be created through an order of a regulatory commission, the California Public Utilities Commission. It is also the only CUB which serves a local constituency. The rest are statewide in scope.

- Both the Wisconsin and Illinois CUBs were created by state statute and took advantage of utility bill insert privileges for several years. The Wisconsin CUB has since disbanded as a quasi-state agency and has reorganized as a private nonprofit corporation.

- In Illinois, on the other hand, the CUB statute has been amended to allow CUB messages to be included in the mailings of state government agencies. It is the first CUB to take advantage of state agency mailings to communicate with utility consumers. Its innovative answer to the loss of utility bill insert privileges promises to become the model for newly developing CUBs.

This chapter provides an overview of the four existing CUBs, noting the catalysts that brought them into being, their growth as consumer organizations and their major achievements on behalf of consumers. It also discusses the recent creation of the nation's fifth CUB in New York.

Wisconsin: The Nation's First CUB

Origin. After three years of grassroots organizing and legislative defeats, the Wisconsin state legislature passed the Citizens' Utility Board Act in 1979.¹ Rising utility bills had forged formidable public support for any legislation that would give more control to residential ratepayers. Nonetheless, the CUB coalition of consumer groups, senior citizens and labor organizations faced strong opposition from utility lobbying. The utilities grudgingly withdrew opposition to the CUB bill when public support for an elected Public Service Commission (PSC) grew. The CUB concept became the "lesser of two evils," a politically acceptable alternative to elected commissioners.

The enabling statute prescribes the mission of the citizens' utility board as twofold. It is a statewide organization which represents individual farm and residential utility consumers before regulatory agencies, the legislature and other government bodies. And CUB is charged with providing consumer education on utility service costs as well as methods of energy conservation.

The Wisconsin CUB would be the first consumer group in the nation to insert its own messages in utility bills. The experiment in utility consumer representation had begun. Ralph Nader's dream of establishing communication with consumers through monthly utility bills was about to be tested.

Membership Development and Fundraising Strategies. The enabling statute required that formal organizational status could only be granted when CUB obtained a minimum number of members (1,000) with at least 50 members in each congressional district. Although CUB had five years to obtain the requisite number of members, it crossed this threshold within a few months. In March 1980, CUB convened an interim board of directors, appointed by the governor. In December 1980 it held its first election to fill two board positions for each of Wisconsin's nine congressional districts.²

CUB wasted no time in taking advantage of utility bill inserts to invite farm and residential ratepayers to join the new organization. In July 1980, it included a test enclosure in the monthly bill of Wisconsin Power and Light Company. Although the utility objected to the message, the PSC approved it. The enclosure was designed as a self-mailer. It described the mission of the new consumer organization and solicited members to contribute an annual dues of \$3 (or more if they chose), the minimum prescribed by the CUB law.

Soon thereafter CUB directed its first full statewide mailing to telephone customers of Wisconsin Bell. The enclosure's headline asked, "Are you mad as #!!# about your phone bills? Now, for less than 1¢ per day, you can do something about it! Join the Citizens' Utility Board." It explained the mission of CUBs and invited phone customers to join the new consumer organization.

¹ Wis. Stat. § 199.01 *et seq.*

² Much of the information in this section was taken from interviews with Kathleen O'Reilly former, Executive Director of the Wisconsin Citizens' Utility Board, in San Diego (June 4, 1990) and by telephone (Apr. 17 and 24, 1991); a telephone interview with Tom Lonsway, Resident, Board of Directors of the Wisconsin Citizens' Utility Board (Apr. 3, 1990); interviews with Dennis Dums, Program Director, Wisconsin Citizens' Utility Board, in Madison (Oct. 4, 1990) and by telephone (Apr. 24, 1991); and telephone interviews with Christopher Blythe, Executive Director of the Wisconsin Citizens' Utility Board (Mar. 13, 1991, and Apr. 24, 1991). Information was also obtained from newsletters (*CUB Prints*) and annual reports.

By October 1980 enclosures had drawn 5,000 members to CUB. Membership grew to 15,000 by November of CUB's first year of operation. By 1981 CUB had become a full-fledged organization with the hiring of an executive director, staff attorney and support staff. A canvassing operation was initiated in 1982 to increase the membership and supplement the funds raised through utility bill enclosures.

CUB's first executive director resigned in 1982, and the organization was without a director for nearly a year. Kathleen O'Reilly, former head of the Consumer Federation, a nationwide consumer organization, became the new executive director in April 1983. In the next few years, CUB grew to 100,000 members, with an annual budget as high as \$700,000 and an ambitious caseload.

The organization's growth was fostered by strengthening the canvass, increasing CUB's media visibility throughout the state, and winning major victories for Wisconsin ratepayers. Three full-time canvassers and an army of college students spread CUB's canvassing operation statewide, attracting thousands of new members to the organization. CUB developed a statewide media strategy by actively pursuing media channels to disseminate CUB's message throughout the state. Key consumer victories "really put CUB on the map," according to O'Reilly—including the 1983 defeat of Wisconsin Bell's request for mandatory local measured service and the demise of legislation that would have allowed the energy utilities to diversify through the formation of unregulated holding companies.¹

Organizational strength did not necessarily translate into financial security, however. With the loss of billing insert privileges in 1986, the Wisconsin CUB had to rely on direct mail appeals and door-to-door canvassing to maintain an adequate membership base. Canvassing, although effective when first implemented, had become an unpredictable and overhead-intensive means to solicit members and was curtailed in 1988.

In the meantime, the Wisconsin legislature made an intervenor compensation fund available to organizations that represent consumers before the PSC.² The fund, available since 1983, has allowed CUB to enhance its consumer advocacy by hiring rate analysts and expert witnesses. Intervenor compensation has not always been a reliable source of funding, however. According to O'Reilly, CUB experienced difficulty in obtaining approval of some of its requests by the PSC. Nonetheless, the fund has provided a continued source of support for outside witnesses and legal expertise.

Consumer Advocacy. The Wisconsin CUB hit the ground running in its first year of consumer advocacy. In 1981 it spoke out against the automatic fuel adjustment clause which allowed the energy utilities to raise rates without submitting to formal PSC proceedings; it opposed utilities' efforts to diversify into unregulated businesses; and it alerted telephone customers to the coming debate over local measured service, which would treat local calls like long distance service, charging for length of time, distance and time of day. CUB's achievements in the ensuing years include the following:

- In 1983 CUB was instrumental in saving consumers \$40 million in a Wisconsin Power and Light (WPL) rate case, CUB's first major victory. In another electrical utility case

¹ Unfortunately, the legislature passed holding company legislation two years later, in 1985 (Wis. Stat. § 196.795); and the PSC allowed the phone company to provide mandatory local measured service in 1990, although CUB is supporting legislation to require that Wisconsin Bell offer a flat rate option.

² Wis. Stat § 196.31 (Intervenor Compensation Fund).

that year, Northern States Power was granted just 10% of the rate increase it had requested from the PSC.

- In another 1983 victory for CUB, the legislature passed a law that excludes from utility rates most money spent on advertising. Only in limited circumstances is utility advertising funded by ratepayers, for example, information about safety and energy conservation.¹
- In 1983 CUB also championed the elimination of the automatic fuel adjustment clause which had been in place since the oil embargo days of the early 1970s. Electric utility companies had been authorized to pass their fuel cost increases on to their customers on a monthly basis without going through ratemaking proceedings, resulting in steadily rising rates. CUB contended that this practice not only bypassed the regulatory process but also provided no incentives for the utilities to seek the cheapest suppliers. The new energy procurement process eventually resulted in a ratepayer refund of \$9 million in 1989 for overpayments by WPL to a Montana coal company.
- In a 1983 victory for low-income consumers, CUB convinced the PSC to consider ratepayers' ability to pay in all future rate cases, the first such requirement in the country, according to O'Reilly.
- A 1985 Wisconsin Electric Power Company request was reduced from \$50 million to \$34 million.
- Beginning in 1985, at a time when utilities cited the "insurance crisis" as a basis for increasing certain rates, CUB challenged the utilities' insurance procurement and payment practices, the first such intervenor in the nation to do so, according to O'Reilly. The PSC subsequently developed standards for disallowing certain premiums—those, for example, which provide coverage to the utility's unregulated subsidiaries or affiliates.
- In several rate cases in the mid-1980s, CUB fought successfully against utility and commission staff recommendations to raise the fixed monthly charges of the energy utilities.

CUB has also taken an active role in telephone issues, not only in rate cases but also in regulatory proceedings regarding rate structure:

- In a 1983 Wisconsin Telephone proceeding, the phone company requested a rate increase of \$162 million. CUB's intervention resulted in a final PSC decision of \$89 million, a \$23 million decrease from PSC's own recommendation of \$112 million and a 45% decrease from the original request.
- In 1985 CUB was instrumental in obtaining a refund of \$14.65 per telephone customer. PSC ordered a total refund of \$24 million for windfall profits when Wisconsin Bell overestimated the effect on rates of the divestiture of AT&T.

¹ Wis. Stat. § 196.595 (Utility Advertising Practices).

- In 1988 CUB charged Wisconsin Bell with fraud and abusive telemarketing practices, resulting in a \$1.2 million fine, the largest fine ever imposed by a Wisconsin attorney general on a corporation.
- Until 1990 CUB succeeded in thwarting Wisconsin Bell's attempt to institute a cost-per-call method of assessing phone bills (local measured service). However, the PSC passed a mandatory local measured service plan in September 1990 that would put all residential phone usage on a pay-per-call basis, starting at six cents per call. At this writing, CUB and a broad coalition of citizens groups are supporting legislation that will preserve the flat rate option for residential customers and prohibit mandatory charges for duration, distance and time-of-day on local calls.

Savings to Ratepayers. By 1984 CUB could assert that it had saved Wisconsin ratepayers \$100 for every \$1 invested in membership fees in the previous eighteen months. That amount represented rate reductions of \$81 million for proceedings in which CUB played a major role, and an additional \$161 million where CUB cooperated with the PSC.¹

In subsequent years, despite cutbacks in staffing and budget due to curtailment of the use of bill enclosures, CUB continued to be an effective voice for ratepayers. In 1989 savings attributed to proceedings where CUB took the lead in the prior two years were estimated at \$29 for every \$1 spent in members' dues. From 1988 to 1989, CUB action resulted in shaving \$30 million off rate requests involving the major Wisconsin energy and telephone utilities.²

Not included in these figures are CUB efforts on issues to which no price tag can be attached. As an example, O'Reilly cites CUB's contribution in leading the effort to strengthen Wisconsin's winter disconnection policies. CUB's role in sharpening the regulations that govern utilities are also difficult to quantify, such as its successful efforts to prohibit utilities from including advertising costs in their rates unless they can show direct benefit to customers.³

CUB'S consumer education activities are also difficult to assess in dollars-and-cents benefits to ratepayers. Since its beginning, CUB has promoted energy conservation by informing its members of ways to reduce their utility bills by cutting back on energy use. It has publicized conservation practices through its newsletter, energy fairs, and the distribution of educational materials at public events.

Enclosure Gains and Losses. From 1980 to 1985, CUB inserted its enclosures in over 90 mailings of Wisconsin energy and telephone utilities. The advantages of using billing inserts were immediately evident to the Wisconsin CUB. Membership grew by leaps and bounds, enabling the organization to be fully staffed and actively operating within a year of creation. Because of the bill insert mechanism, CUB was able to keep the costs of communicating with ratepayers low, thereby directing its financial resources to advocating for ratepayers' interests.

The price of the enclosure privilege was ultimately high, however. When CUB's consumer advocacy grew stronger and its victories increased, utilities began to employ a

¹ Wisconsin Citizens' Utility Board, "What Is CUB" (flier, 1984).

² Wisconsin Citizens' Utility Board, "For Every Dollar CUB Recently Received..." (flier, 1989).

³ Wis. Stat. § 196.595 (Utility Advertising Practices).

variety of methods to dilute CUB's messages. During 1984, utilities inserted "counter-messages" in billing envelopes which contained CUB enclosures, rebutting points raised in CUB messages. While the statute required CUB to submit its proposed enclosure text to the PSC in advance for approval,¹ no such legal requirement was imposed on the utilities with respect to their counter-messages. According to Kathleen O'Reilly, utilities also tampered with the placement of enclosures. In 1984 six Wisconsin utilities placed the inserts backwards and upside down, thereby rendering the enclosures less visible in the envelope.

The overall impact was a marked decrease in enclosure effectiveness. The loss of the billing insert privilege brought about by the 1986 Supreme Court decision was "almost a moot point at that time," according to board of directors president Tom Lonsway. "CUB was breaking even at best."² At the time of the Supreme Court decision, the organization had ceased using enclosures altogether. Instead, it focused on canvassing, direct mail and media exposure to solicit new members and maintain its existing membership base.

In 1986 CUB abandoned its quasi-state agency status and became a private nonprofit organization. Several factors led CUB to sever its ties with the statute that had guided it since 1979. The board believed that the responsibilities of state agency status now outweighed any advantages once conferred by the statute.³ Bill inserts, a key provision of the law, had been nullified by *PG&E v. PUC*; furthermore, inserts had become an ineffective way to solicit new members and were no longer being used by CUB. Some provisions of the law were burdensome and expensive to follow, such as the requirement that CUB board meeting minutes be placed in every library in the state. Further, the statute limited CUB to representing only residential and farm consumers. CUB wanted to broaden its membership base to include small businesses and utility cooperatives. Finally, as a private organization CUB would no longer have to live under the threat that the legislature would abolish it by repealing the CUB statute. Therefore, the board legally dissolved as CUB in April 1986 and reorganized as the Citizens' Utility Board, Inc., a private nonprofit and nonstock corporation.⁴ The new organization retains its democratically elected board of directors.

Recent Developments. In recent years, CUB has experienced further organizational change. After six years as executive director, Kathleen O'Reilly resigned in 1989. Her successor was short-tenured, leaving CUB without a full-time director for nearly a year. (Board president Tom Lonsway served as interim director.)

In 1990 the PSC and the attorney general's office conducted investigations of CUB's computation of intervenor compensation funds during the previous two years. Although both offices determined that CUB had calculated the funds appropriately, the investigation consumed considerable staff time and financial resources. During a nine-month period, CUB was not able to participate as extensively in utility proceedings as it had in the past, although it continued to make headway in several key telephone issues. Fundraising activities were also hampered. By the end of 1990, CUB's budget was seriously depleted.⁵

¹ Wis. Stat. § 199.10(2). The PSC formally approved the statement if it determined that it was "not false or misleading." See also "CUB Deserves a Fair Shake," *Capital Times* (editorial, Madison, WI) (Oct. 22, 1984).

² Telephone interview with Tom Lonsway, President, Board of Directors of the Wisconsin Citizens' Utility Board (Apr. 3, 1990).

³ Wisconsin Citizens' Utility Board, *CUB Prints* (newsletter) (Spring 1986): 4.

⁴ Wisconsin Citizens' Utility Board, *CUB Prints* (newsletter) (Spring 1986). See also Wis. Stat. § 199.02 (History note).

⁵ Dave Jensen, "Armed with New Leaders, CUB Hopes to Leave a Disastrous Year Behind," *Business Journal of Milwaukee* (Jan. 21, 1991): Sec. 2-8.

CUB has since taken steps to rebuild, both financially and organizationally. In January 1991 the board of directors hired an executive director, a legislative director, and an office manager to join the organization's program director. The new director, Christopher Blythe, is a past CUB employee and long-time CUB activist. According to Blythe, CUB is "revitalizing as a grassroots organization" by building coalitions around PSC and legislative issues and involving the members in an activist network. Blythe adds that CUB is also "engaging in ongoing direct mail and telemarketing campaigns to strengthen CUB's membership and fundraising base."¹

UCAN: The Only Local CUB

Origin. The California Public Utilities Commission opened the door for consumer groups' access to utility bill envelopes in December 1981 when it invited consumer groups to bring a test case before it to explore potential uses of the extra space in utility billing envelopes.² In 1982 a group of faculty members and students at the Center for Public Interest Law (CPIL) at the University of San Diego School of Law filed a complaint with the PUC requesting that it require the local energy utility, San Diego Gas and Electric Company (SDG&E), to insert CUB membership appeals in its monthly bills. In a series of contested hearings, CPIL presented legal services attorneys, community leaders and expert testimony to establish that: (1) PUC proceedings were resource-imbalanced in favor of SDG&E (2) the PUC had no office or staff south of Los Angeles; (3) serious and numerous problems afflicted the operation of SDG&E—from the competence of its management to its compliance with existing PUC rules and tariffs; and (4) there was empty space in the SDG&E billing envelopes.³

The PUC approved CPIL's request in April 1983.⁴ The resulting CUB, the Utility Consumers' Action Network (UCAN), was the first in the nation to be created by regulatory commission action, and the first and only in the nation to organize as a local utility watchdog (all others are statewide organizations).⁵

The PUC declined to be involved in appointing an interim board of directors and transferred that authority to the Center for Public Interest Law. Robert Fellmeth, director of CPIL and one of the founders of the new CUB, appointed an interim board in 1983. Fellmeth chose, in his words, a "super blue-ribbon board" composed of noted community leaders.

¹ Telephone interview with Christopher Blythe, Executive Director, Wisconsin Citizens' Utility Board (Apr. 24, 1991).

² Cal. P.U.C. Dec. No. 93887 (Dec. 1981), as modified by Dec. No. 82-03-047 (Mar. 2, 1982).

³ Much of the information in this section is taken from interviews with Robert C. Fellmeth, Director of the Center for Public Interest Law, in San Diego (Mar. 13, 1990; Mar. 15, 1991), and interviews with Michael Shames, Executive Director of the Utility Consumers' Action Network, in San Diego (Mar. 1, 1990, Mar. 13, 1991, and Apr. 27, 1991). Information was also obtained from newsletters (*UCAN Watchdog*).

⁴ Cal. P.U.C. Dec. No. 83-04-020 (Apr. 6, 1983).

⁵ Although UCAN is the only local CUB in the nation, its constituency is larger than many states. San Diego County includes over two million residents, and the City of San Diego is now the sixth largest city in the nation.

A local Consumer Utility Board, known as CUB was formed in Washington, D.C., in 1977. Community leaders and consumer activists have addressed issues of energy conservation and power plant construction in the District of Columbia. The organization's structure is considerably different from the traditional CUB concept, however (e.g., not statutorily created, no use of utility bill enclosures, voluntary rather than democratically elected board members). As such, it is not discussed in depth in this report. At this writing, consumer advocates are seeking formal statutory authorization for a D.C. citizens utility board through city council action. Telephone interviews with Brian Lederer, former People's Counsel (Apr. 25, 1991), and Dan Wedderburn, Chair of D.C. Consumer Utility Board (Nov. 21, 1990).

The interim board included the mayor of San Diego, who served as chair; a labor leader, a state assemblymember and a state senator, each from different political parties; a law school dean; the foreman of the grand jury, a retired Marine Corps general; and representatives from the three major prosecuting entities, the U.S. Attorney, the District Attorney and the City Attorney. According to Fellmeth, prominent individuals were selected “to lend credibility to the organization and to underscore the importance of CUB’s mission.”¹ Fellmeth served as acting director during UCAN’s first year of operation, until March 1984.

Membership Development. Six months after the interim board of directors was convened and bylaws were drafted, the first UCAN membership appeal was mailed with SDG&E bills. The message reached 850,000 households in the San Diego area: “Why do you think this bill is so high?...Because SDG&E has many lawyers, rate experts and accountants to influence the public utilities commission...and you do not. Now you have the chance to even the odds.”

The insert drew a phenomenal 35,000 members to UCAN, a return rate of 4%. A second membership appeal, mailed in December 1983, attracted another 15,000 members. In five short months, UCAN’s membership had reached 50,000.

The first election for board of directors was held January 1984. Community interest in the election was extraordinarily high. Twenty-six candidates vied for nine positions on the board, each having obtained the requisite number of signatures on nominating petitions to qualify for candidacy (30 signatures from UCAN members in the candidate’s district). Over 30% voted for their representatives to the nine-member board, a voting rate higher than most statewide elections. By June, UCAN had hired a full-time executive director, and soon thereafter began to participate in regulatory proceedings on behalf of San Diego ratepayers.

UCAN continued to grow with each subsequent utility bill insert. A total of eight enclosures were mailed to San Diego ratepayers in 1984 and 1985, bringing UCAN’s membership to nearly 70,000, 8% of area households. UCAN had become the second largest consumer group in the state and the third largest CUB in the country, an astounding achievement considering its membership appeals were limited to a metropolitan area of 850,000 households.²

Enclosure and Fundraising Setbacks. In April 1985 UCAN applied to the PUC for renewal of bill insert privileges. (The PUC’s original ruling in 1983 had authorized a two-year trial run.) The PUC voted in favor of UCAN’s request, but stayed the order pending the outcome of the *PG&E v. PUC* case.³ UCAN’s use of SDG&E billing envelopes for membership solicitation was, for all practical purposes, curtailed. Its last insert was enclosed in the April 1985 SDG&E billing envelope.

UCAN faced a deficit at the same time that its tried-and-true means of attracting new members could no longer be employed. In October 1985 it hired a new director, Michael Shames, who, as a law student at the University of San Diego, had organized the hearings that led to the formation of UCAN as a Center for Public Interest Law advocacy project. He and the board of directors instituted an austerity budget and within a year reversed UCAN’s deficit.

¹ Interview with Robert C. Fellmeth, Director of the Center for Public Interest Law, in San Diego (Mar. 13, 1990).

² Memorandum of Points and Authorities in Support of Application of UCAN for Extension or Renewal of Right of Access to Billing Envelopes, filed in Cal. P.U.C. Dec. No. 83-04-020 (Apr. 15, 1985) at 9-10.

³ Cal. P.U.C. Dec. No. 85-07-014 (July 10, 1985).

UCAN employed both direct mail and canvassing to bolster its membership ranks. It discontinued the canvassing operation because of high overhead costs and limited results. Since 1986 UCAN has supplemented its budget with PUC intervenor compensation funds for its contributions to SDG&E ratesetting cases. This source of funding has not been extensive or reliable, however. (See Chapter 3 for more information on intervenor compensation.)

UCAN now has an active membership of about 24,000 members, and it continues to communicate with former and “intermittent” members comprising a total membership base of 53,000 San Diegans. The organization operates on a trim \$150,000 annual budget. Currently UCAN’s advocacy and outreach are handled by a three-person staff. Executive director Shames oversees UCAN’s participation in regulatory proceedings, and two part-time employees coordinate membership outreach and media relations.

Consumer Advocacy. Between 1973 and 1983, SDG&E’s electric rates had become among the highest in the nation, jumping 387% for residential customers and 536% for commercial and industrial customers. In 1985, SDG&E requested a \$123 million rate increase, the same year that UCAN became active in PUC proceedings. In the ensuing years, SDG&E’s rates have dropped 47%, due in large part to energy procurement practices championed by UCAN which have required SDG&E to import cheaper power. By 1989, SDG&E’s electrical rates had become the lowest of California’s “big three” power utilities. UCAN’s interventions on behalf of San Diego consumers include the following:¹

- The PUC ordered a \$36 million rate reduction in a 1985 energy cost adjustment clause (ECAC) proceeding, including \$6.7 million in savings from a requirement that SDG&E buy cheaper power from southwest utilities. Between 1986 and 1988, the change in SDG&E purchasing policies accounted for an estimated \$91.6 million savings.
- In late 1985 UCAN led an effort to transfigure a \$123 million rate increase into an unprecedented \$137 million rate decrease. UCAN’s arguments for a 1.5% drop in SDG&E’s rate of return, plus penalties for faulty oil purchase contracts and other computational adjustments, amounted to \$45 million of that decrease.
- In the same 1985 General Rate Case, the PUC accepted UCAN’s evidence of a “sweetheart deal” between SDG&E and its electricity-generating subsidiary Applied Energy, Inc. The resulting disallowance saved SDG&E customers \$20 million.
- In 1986, the PUC effectively rejected SDG&E’s application to create a utility holding company by imposing restrictions on SDG&E’s diversification efforts and ordering ratepayer reimbursement for assets used by the unregulated affiliates of the holding company. SDG&E abandoned the proposal rather than accept the PUC’s conditions, many of which had been recommended by UCAN.
- In a 1987 ECAC proceeding, UCAN’s expert testimony and computations were attributed as a substantial factor in the PUC’s order reducing SDG&E’s rates by \$141 million.

¹ Interview with Michael Shames, Executive Director of the Utility Consumers’ Action Network, in San Diego (Mar. 13, 1991, and Apr. 27, 1991). See also *UCAN Watchdog* (newsletter) (Winter 1986): 3.

- In 1988 UCAN was a major intervenor in SDG&E's 1989 General Rate Case in which the company entered into a settlement with intervenors to reduce rates by \$134 million. The PUC expressly recognized UCAN's proposals for allocation of this reduction to residential customers in its decision accepting the settlement.
- In 1988 the PUC accepted UCAN's arguments and repealed a controversial \$4.80 monthly charge that had been approved in late 1987. One thousand people, most of them UCAN members, attended a hearing to protest the charge.
- In 1989 the PUC ordered SDG&E to return \$31 million to its customers for mismanaging power purchases from southwest utilities. The PUC adopted UCAN's criticisms of SDG&E's power contracting policies.
- In 1990 UCAN's testimony contributed to reducing SDG&E's proposed \$99 million rate increase by half.
- In 1991 UCAN succeeded in persuading the PUC to trim SDG&E's proposed \$67 million rate increase to \$4 million, UCAN's effort to capture a \$25 million windfall for customers was the primary factor in the case.

Savings to Ratepayers. In its first three years of advocacy (1985 to 1988), the savings to SDG&E ratepayers resulting from UCAN's work is estimated at nearly \$265 million.¹ Director Shames warns that these figures, although impressive, "don't tell the whole story."² He points out that a great deal of UCAN's work cannot be quantified in dollars and cents.

As an example, Shames cites UCAN's opposition to SDG&E's 1986 request to diversify via a holding company structure. As a result of UCAN's intervention, the PUC placed severe restrictions on SDG&E's ability to branch out into unregulated businesses.³ On the other hand, Southern California Edison (SCE) had requested and received PUC authorization to diversify by establishing holding companies. The PUC's Division of Ratepayer Advocates (DRA) subsequently charged that SCE had overcharged ratepayers \$300 million through its holding company scheme. Shames poses the hypothetical question: "If SDG&E had been allowed to diversify to the degree that Edison did, would San Diego ratepayers have been overcharged in a similar way?"⁴ He points out that the effect of UCAN's intervention in this case, while substantial, is virtually impossible to quantify.

Recent Advocacy. Since 1988 UCAN advocacy has focused on the attempt by Southern California Edison to take over SDG&E and become the largest energy utility in the country. UCAN has opposed the merger on grounds that local ratepayers will be ill-served by the merger--that rates will eventually rise and that air quality will worsen. In February 1991 PUC administrative law judges recommended that the commissioners reject the merger on grounds that the mammoth utility would exert undue anticompetitive pressures in the region. The commissioners followed suit in May with a 5-0 vote against the merger.

¹ *UCAN Watchdog* (newsletter) (Winter 1986): 3.

² Interview with Michael Shames, Executive Director of the Utility Consumers' Action Network, in San Diego (Mar. 1, 1990).

³ Cal. P.U.C. Dec. No. 86-03-090 (Mar. 28, 1986).

⁴ Interview with Michael Shames, Executive Director of the Utility Consumers' Action Network, in San Diego (Mar. 1, 1990).

The PUC's rejection was a particularly sweet victory for UCAN and the civic leaders who fought the merger against seemingly overwhelming odds for three years. The utilities spent over \$100 million on merger proceedings compared to an estimated \$15 to \$20 million spent by city government, the regulators and UCAN combined.¹

Although UCAN's primary focus has been on energy utility cases, it has also been active in telecommunications issues. Since 1986 UCAN has monitored the effect of the deregulation of telephone inside wiring services on residential consumers, protesting what it believes to be excessive and confusing Pacific Bell service charges. UCAN has also voiced strong opposition to the proposed implementation by Pacific Bell of "Caller ID," citing concerns about loss of privacy by residential telephone customers.

Illinois: A New Model for CUB Fundraising

Origin. Illinois' volatile utilities environment provides the backdrop for the creation of its CUB, the third in the nation to be formed. Ambitious programs of nuclear power plant construction by the state's largest utilities led to dramatic increases in residential energy rates in the mid- to late-1970s. The demand for electricity did not materialize, however, and the costs of the power plants were being borne by a smaller number of customers than the utilities had projected.²

Throughout this period of escalating energy rates, consumer advocacy before the Illinois Commerce Commission (ICC) was limited. As a result, consumer frustration at the ICC's inaction led to popular support for an elected ICC. As in Wisconsin, CUB legislation was eventually passed as a compromise bill, satisfying the proponents of an elected commission while still giving consumers a voice in utilities proceedings.

The CUB bill was not an easy victory, however. Passage of CUB legislation was the culmination of nearly ten years of organizing by a broad coalition of citizen activists. The Labor Coalition on Public Utilities, the Coalition for Political Honesty and the Illinois Public Action Council comprised a particularly strong lobbying force for the CUB bill. After failing three times between 1975 and 1981, the CUB bill became law in 1983.³ It received overwhelming popular support throughout the state, with voters in 111 communities favoring it in advisory referenda.

Like the Wisconsin statute, the Illinois bill set forth a twofold mission for CUB—ensuring "effective and democratic representation of utility consumers" before the ICC, federal regulatory agencies, the judicial system and other public bodies, as well as providing consumer education on utility-related issues and energy conservation.

Membership Development. In March 1984 the new consumer group convened an interim board of directors and set about the task of obtaining enough members to achieve

¹ Michael Shames, "The Ill-Advised Utility Merger: \$100 Million Immorality Play Ends," *San Diego Union* (May 16, 1991).

² Much of the information in this section is taken from interviews with Susan Stewart, Executive Director of the Illinois Citizens Utility Board (telephone interview Mar. 29, 1990, and interview in Chicago Oct. 2, 1990); and interviews with Martin Cohen, Associate Director of the Illinois Citizens Utility Board in Chicago (Oct 2, 1990); Jimmie Seidita, former Research Director of the Illinois Citizens Utility Board, in Chicago (Oct. 2, 1990); Patricia Clark, Public Relations Coordinator of the Illinois Citizens Utility Board in Chicago (Oct. 2, 1990); and Seamus Glynn, Organizing Coordinator of the Illinois Citizens Utility Board, in Chicago (Oct. 2, 1990). Information was also obtained from newsletters (*CUB News*) and from annual reports.

³ Ill. Rev. Stat. ch. 111 2/3 §§ 901-21.

formal organizational status. After the first enclosure was mailed to the state's 4.5 million telephone customers, 15,000 members joined CUB. The insert exhorted, "If you think your phone bill is too high, wait until you see your gas, water and electric bill! Now you can do something about it. You can join CUB."

As in Wisconsin and San Diego, CUB quickly obtained the required number of members (a minimum of 10,000) to hold an election for board of directors. In October 1984 members voted for one director from each of Illinois' 22 congressional districts; 53 candidates vied for the positions.

Membership rose to 50,000 by the end of 1984 and tripled the following year to 160,000 members, an indication of consumers' concerns over rising rates. Membership rose to a high of 170,000 in 1986 and, except for a decline in 1987, has remained at that level.

While the minimum membership contribution is \$5, the average contribution is closer to \$10. Over the years, CUB's operating budget has ranged from \$800,000 to a current high of \$1.7 million. Of that, approximately 40% is expended on casework, the costs of participating in regulatory proceedings and court challenges, primarily the expenses of legal advisors and expert witnesses.

CUB funding is strictly membership-based. It receives no funding from intervenor compensation, foundations or corporate donations. Its current staff of 12 includes specialists in rate analysis, legal and regulatory proceedings, organizing and membership development,

With its healthy budget, strong membership base and well-rounded staff, the Illinois CUB is able to carry out an ambitious caseload on behalf of utility consumers. Of all CUBs, it comes closest to the ideal set forth by Nader and his associates in the early 1970s—an organization with a broad-based and active membership, completely independent of government funding sources, with a sufficient operating budget to aggressively advocate for consumers.

Enclosure Setbacks and Innovative Solutions. Between 1984 and 1986, the practice of enclosing membership appeals in utility billing envelopes reaped substantial benefits for CUB. By law CUB could enclose its own messages up to four times per year per utility. CUB took advantage of inserts approximately 30 times, quickly drawing a broad membership base from throughout the state.

The loss of insert privileges in 1986 was a severe setback for CUB, according to executive director Susan Stewart.¹ It no longer had a means to replace the members lost through the normal process of attrition. In 1987 CUB saw its first budget deficit. Ironically, it was also the first year Illinois residential consumers began to see rate reductions instead of increases, due in large part to CUB's efforts.

¹ Following the Supreme Court's decision in *PG&E v. PUC*, Illinois utilities brought suit against CUB to invalidate the billing insert privileges afforded by the CUB statute. Although CUB distinguish its legislatively created structure from the private status of TURN, the court found no difference between the Illinois CUB statute and the California PUC's "compelled access" order and struck down the billing insert privilege. *Central Illinois Light Co. v. Citizens Utility Board*, 645 F.Supp. 1474 (N.D.Ill. 1986) *aff'd*, 827 F.2d 1169 (7th Cir. 1987).

See also Steven F. Pflaum, "Forced Dissemination of Information About Consumer Organizations: Lessons from Illinois' Experience," *California Regulatory Law Reporter* 9:1 (Winter 1989): 8-11.

Help was around the corner in the form of innovative legislation. HB401 allowed CUB to solicit members through enclosures in state agency mailings. The legislature overrode Governor James Thompson's veto, and the bill took effect in January 1988.¹

The new legislation retains many of the benefits of utility bill enclosures while avoiding the thorny constitutional issues raised in *PG&E v. PUC*. The use of state agency mailings enables CUB to include its messages in the envelopes of neutral publicly-funded agencies that play no part in utility proceedings, thereby defusing the first amendment concerns of utilities. State agency mailings reach nearly as many residents as did the utility mailings. And CUB has preserved an inexpensive means to communicate with Illinois consumers—the cost per insert is less than two cents per flier compared to at least 30 cents if CUB had to pay the full price for direct mailings. The only disadvantage is that CUB's message now lacks the "punch" it had when read in conjunction with the monthly utility bill.

CUB may enclose membership forms up to four times per year in any state agency mailing that exceeds 50,000 pieces. It has chosen two agency mailings—motor vehicle registrations and state income tax refunds—as those most likely to elicit new members. The average return rate is from one-quarter to one-half percent, bringing about 4,000 new members per month to CUB. This is enough to compensate for the 40% of members who do not renew their contributions each year. According to associate director Martin Cohen, the enclosure return rate is normal for untargeted mass mailings. (Targeted mailings, on the other hand, usually draw a 2% return rate.)²

After the first year of state agency mailings, CUB was back on its feet, hailed as a "bull terrier" for consumer rights by a *Chicago Tribune* correspondent.³ Having lost 70,000 of its 180,000 members during 1986 and 1987, membership rose to 125,000 after the first state agency mailing and has since leveled off at about 170,000 members.

Consumer Advocacy. While the stakes for residential consumers' interests are high in utility rate proceedings wherever they occur, ratemaking battles are waged on a particularly grand scale in Illinois. Since 1984 the savings that can be attributed to CUB's efforts are estimated to be in the billions of dollars.

- CUB's first major victory was the revision of the state's Public Utilities Act in 1985.⁴ The act now requires energy utilities to use the least expensive power available and to conduct management audits as well as audits on construction projects. It also reorganized the ICC and reduced the power of the chairperson. The Office of Public Counsel was established as part of the act, a governor-appointed position charged with representing ratepayers in ICC and court proceedings.
- Another 1985 victory on behalf of consumers' pocketbooks was an Illinois Power (IP) rate case which saved the average consumer \$150.
- In 1987 CUB convinced the ICC to reject a \$660 million Commonwealth Edison (Com Ed) rate increase.

¹ 1987 Ill. Laws P.A. 85-879, *amending* Ill. Rev. Stat. ch. 111 2/3 § 909.

² Interview with Martin Cohen, Associate Director of the Illinois Citizens Utility Board, in Chicago (Oct 2, 1990). See also Pflaum, "Forced Dissemination."

³ Bruce R. Dold, "Watchdog Sharpens Bite on Utilities," *Chicago Tribune* (July 18, 1988): 1-C.

⁴ Ill. Rev. Stat. ch. 111 2/3, § 1-101 *et seq.*

- CUB has won three court cases against Com Ed, overturning rate hikes approved by the ICC: (1) In the "Byron I" case involving cost overruns at a nuclear power plant, the Illinois Supreme Court rejected the ICC's accounting methods and threw out a \$495 million rate increase granted to Com Ed. On remand, the ICC reduced the rate increase and ordered Com Ed to refund ratepayers \$200 million.¹ (2) After an 18-month battle over alleged cost overruns at Com Ed's Byron II and Braidwood I and II facilities, the Illinois Supreme Court recently overturned Com Ed's \$480 million rate hike approved by the ICC in 1988.² Com Ed was subsequently ordered to refund \$250 million to ratepayers, about \$50 per residential ratepayer, and to reduce rates by 6%.³ (3) Finally, CUB's efforts in the "summer rates" case resulted in court rejection of an ICC rate restructuring decision which had led to a \$150 million windfall for the utility.⁴ Each of these rulings is still in litigation.
- Another drawn-out battle was recently resolved, a 1986 class action complaint which resulted in a 1990 ICC order requiring Com Ed to notify all customers of possible overcharges in fixed monthly service fees. Refunds could total as much as \$400 per affected customer.

CUB's efforts on behalf of telephone customers are less conclusive. CUB has been only partially successful in stemming the tide of mandatory local measured service. (Illinois is one of only three states that does not have a flat rate option.) Phone customers in the Chicago metropolitan area and downstate areas are charged by the length of the call, at minimum about a nickel a call.⁵ CUB did succeed in persuading the ICC to retain the flat rate option in GTE and Contel cases, but lost the first round against Illinois Bell which serves 80% of the state's customers. Because a court rejected that ICC decision, CUB will have another opportunity to challenge mandatory measured rate service at an upcoming ICC rehearing of the Illinois Bell case. Additionally, at this writing, CUB is supporting legislation requiring the local telephone utilities to offer flat rate service as an alternative to local measured service.

Savings to Ratepayers. Savings to residential utility customers attributable to CUB's efforts exceed \$2 billion. The typical consumer has saved \$100 to \$150 per year since CUB has been in existence.⁶ Not all of CUB's work can be easily summed up in dollars and cents, however. It has been very active in the legislative arena, promoting consumer legislation. In addition, it has consistently provided consumer education information to its members on energy savings techniques through newsletter articles and fact sheets.

CUB's overall impact, according to executive director Stewart, has been to create heightened public awareness of the Illinois Commerce Commission and to encourage citizen participation. "We're organizing consumers to more actively participate both in the legislative process as well as the regulatory process, explaining to them how they can use

¹ *People ex rel. Hartigan, et al. v. Illinois Commerce Comm'n*, 117 Ill.2d 120, 510 N.E.2d 865 (1987). See also *CUB News* (newsletter) (Fall 1989): 1.

² *Business and Professional People for the Public Interest, et al. v. Illinois Commerce Comm'n, et al.*, 136 Ill.2d 192, 555 N.E.2d 693 (1989). See also *CUB News* (newsletter) (Winter 1990): 1.

³ *CUB News* (newsletter) (Summer 1990): 1.

⁴ *Commonwealth Edison v. Illinois Commerce Comm'n*, 180 Ill. App. 3d 899, 536 N.E.2d 724 (1st Dist. 1988).

⁵ The Chicago metropolitan area has had a form of mandatory local measured service for many years. Flat rate service is virtually unknown there, according to CUB associate director Martin Cohen.

⁶ *CUB News* (newsletter) (Winter 1990). See also "Citizen Boards Battle the Utilities," *New York Times* (Oct 25, 1987).

their organized numbers to advance their agenda or make their agenda something that legislators or the Commission will sit up and notice.”¹

Sophisticated Communications Capabilities. CUB has emerged as the largest consumer lobbying organization in Illinois, according to Stewart. This is a result of its ambitious organizing strategies as well as its sophisticated computer capabilities.

Since its beginning, CUB has used the services of a professional mailing list management firm. Stewart credits the expertise of the firm and the capabilities of CUB’s data base with building an extremely effective member-based lobbying effort. CUB’s computer system can segregate its members by the energy and telephone utilities which serve them, by their legislators and by the voting records of legislators on key CUB issues. On relatively short notice, the system can generate personalized letters which give CUB members explicit instructions on how to contact their legislators or ICC commissioners with specific messages. Associate director Cohen says CUB members are prolific letter writers. “I think the legislators groan when they see the mailman coming because we produce more mail than anybody else in Springfield.”²

Information Power. CUB subscribes to the adage that information is power. CUB’s research function serves as an antidote to a regulatory process that discourages public intervention. According to former research director Jimmie Seidita, “an informed consumer is the best consumer.” Seidita believes that when consumers are knowledgeable about utilities issues, they are more inclined to take part in the regulatory process by writing letters, visiting legislators, attending hearings and signing petitions.

The Illinois CUB plays two roles—and these are basically the same for all CUBs. On the one hand, CUB participates in the regulatory arena in order to represent the interests of ratepayers. It has become expert in finding its way through the maze of red tape and legal technicalities of the regulatory process. On the other hand, it translates the complexities of the regulatory arena into language that can be understood by laypersons. According to Seidita, the research director’s role is “to go between the two—to work with the attorneys and our experts in taking the interests of the ratepayers and translating them into language the commission [ICC] can understand, and the flip side, to take the technical legalese and translate it for our members in the CUB newsletter.”³

Organizing Strategies. While a major goal of CUB’s consumer advocacy is to reduce rates for utility ratepayers, its organizing activities aim to empower its members by both informing them and giving them an opportunity to participate in the regulatory process. Organizing coordinator Seamus Glynn explains it this way: “We are not simply an agency that collects money and does something without involving our members. We essentially validate our fundraising and casework through our organizing.”⁴

CUB is noted for its member activism. It employs both direct mail and phone banking to inform members of timely issues and encourage them to contact their lawmakers and commissioners. The most active members comprise a network of at least 10,000 individuals

¹ Telephone interview with Susan Stewart, Executive Director of the Illinois Citizens Utility Board (Mar. 29, 1990).

² Interview with Martin Cohen, Associate Director of the Illinois Citizens Utility Board, in Chicago (Oct 2, 1990).

³ Interview with Jimmie Seidita, former Research Director of the Illinois Citizens Utility Board, in Chicago (Oct. 2, 1990).

⁴ Interview with Seamus Glynn, Organizing Coordinator of the Illinois Citizens Utility Board, in Chicago (Oct 2, 1990).

throughout the state. Staff and board members organize bus caravans to take CUB members to Springfield to meet their legislators. In January 1989, for example, 1,000 members rallied in the state capitol on CUB's annual lobby day. Members also participate in rallies on the steps of the ICC and the state capitol when particularly controversial measures are being considered. It is not uncommon for several hundred CUB members to convene for a rally or attend a hearing.

CUB also sponsors petitions in order to communicate to decisionmakers the existence of broad consumer support behind especially controversial issues. In 1987, for example, it obtained 250,000 signatures on a petition opposing a Com Ed rate hike.

Board members are directly involved in CUB's organizing activities. Directors hold local meetings each year in every district, as required by the CUB statute. Members are informed of utility issues of local significance and are encouraged to participate in phone banks and to write letters to the appropriate decisionmakers. Glynn reports that attendance at these meetings is growing. He sees a return of interest in collective action and political participation.

CUB's direct organizing is backed up with media outreach, thereby keeping CUB's positions and activities constantly before the citizens of the state. CUB's public information officer, Patricia Clark, releases at least one news item per week to the 600-plus media outlets in the state. CUB board members and staff alike are interviewed frequently.

Glynn sums up the importance of organizing by stressing its value in channeling members' concerns. "Without CUB, people would become very cynical. The [regulatory] process does not consider ratepayers' interests. We in CUB are able to say that if you participate, you will have an impact. CUB is always able to come up with some way that people can respond. Members can channel their frustration and anger, and that's what good organizing is. It gives people something to do. It maintains their faith."¹

Oregon: A CUB Created by Citizens Initiative

Origin. Strong public discontent for the Oregon Public Utility Commission (PUC) was at the heart of citizens' support for CUB. Until 1986 the PUC was comprised of a single member, appointed by the governor. The regulatory process allowed very little consumer representation. As a result, PUC proceedings heavily favored the adoption of utility company proposals.²

Spurred by the organizing efforts of the Oregon State Public Interest Research Group (OSPIRG), a coalition of consumer groups launched a successful petition drive to place a CUB initiative on the 1984 ballot. Despite formidable odds—the utilities outspent consumer groups 40-1—the initiative passed by a margin of 53-47%. The Oregon CUB was the fourth in the nation to be formed and the first and only one to be created by citizens initiative.

The initiative created a CUB and authorized it to enclose membership appeals in utility billing envelopes as many as six times per year. CUB was never to reap the benefit of

¹ *Id.*

² Much of the information presented in this section is taken from telephone interviews with Barbara Head, former Director of the Citizens' Utility Board of Oregon (Mar. 5, 1990); and Kimberly Moore Webster, Executive Director of the Citizens' Utility Board of Oregon (Aug. 23, 1990; Mar. 13, 1991). See also Citizens' Utility Board of Oregon, Strategic Plan (1989) and *The Bear Facts* (newsletter).

enclosure usage, however. A group of three utilities launched a legal challenge to the initiative's enclosure provision on first amendment grounds. In September 1985 a federal district court decided for the utility plaintiffs, temporarily blocking CUB's use of bill inserts while CUB appealed the decision to the U.S. Ninth Circuit Court of Appeals.¹ With the February 1986 Supreme Court decision, CUB withdrew the appeal.

Membership Development. The subsequent loss of enclosure privileges left CUB to seek members through costlier and less effective means—direct mail appeals and door-to-door canvassing. CUB obtained the requisite 5,000 members to attain formal organizational status in January 1986, more than a year after the passage of the CUB initiative. By contrast, UCAN and CUBs in Wisconsin and Illinois met this requirement when the first insert was mailed in utility bills.

The Oregon CUB held its first election for board of directors in April 1986. Membership reached 10,000 by 1988 and grew to a high of 20,000 in 1989, approximately 2% of Oregon's one million ratepayer households. Although this number has allowed CUB to be a viable organization—albeit on a smaller scale than the other CUBs—organizers could have expected to draw at least twice that many members via utility bill inserts, based on Illinois' and Wisconsin's experiences.²

CUB membership decreased to 10,000 in 1991. Door-to-door canvassing, the mainstay of CUB's membership campaign, was temporarily curtailed in 1990 as part of a comprehensive re-evaluation of fundraising methods. CUB will resume both direct mail appeals and canvassing during 1991 in order to bolster its membership. According to executive director Kimberly Moore Webster, CUB is also actively pursuing foundation grants to supplement its operating budget.

Consumer Advocacy. Despite limited funding in its first year of operation, the board of directors decided to forge ahead and represent ratepayers in regulatory and legislative proceedings. One of CUB's first orders of business was to lobby the legislature, in conjunction with OSPIRG, for a three-member appointed PUC. The legislature sent the issue to the voters in a referendum, and it passed in 1986, a major victory for both organizations.

CUB's achievements on behalf of consumers are impressive, especially in light of its small budget and limited staff resources. Former director Barbara Head explains that CUB has had to be selective on which issues it covers. "We have taken on more telephone than energy cases because the telephone companies have been really aggressive in getting damaging 'reform' of the regulatory system. In addition, the telephone lobbyists have more influence on the legislature than the energy lobbyists."³

- In 1986 CUB convinced the PUC that a local phone company did not need its requested \$7.4 million rate increase.
- CUB succeeded in arguing for rate reductions totaling \$37 million for both natural gas and electricity rates in 1986.

¹ *Oregon Independent Telephone Ass'n, et al., v. Citizens' Utility Board of Oregon*, No. 85-875 (D. Oregon 1985).

² At its peak, the Wisconsin CUB drew a membership of approximately 5% of the state's households, the Illinois CUB approximately 4%, and UCAN, a local CUB, nearly 8% of San Diego households.

³ Telephone interview with Barbara Head, former Director of the Oregon Citizens' Utility Board (Mar. 5, 1990).

- In 1987 CUB's largest telephone victory resulted in the first-ever refund to Oregon ratepayers. CUB argued before the PUC for a \$45 million reduction in telephone rates. As a result, US West refunded \$14 to each customer, and the phone companies had to reduce rates by \$2 each month.
- CUB joined a coalition which pushed "lifeline" rates through the legislature in 1987, obtaining lower phone rates for low-income households.
- In CUB's biggest energy utility victory, the PUC ordered a \$127 million rate reduction for Portland General Electric (PGE) in 1987.

CUB currently has a staff of two and an annual operating budget of \$150,000. Dedicated supporters contribute a considerable amount of pro bono legal expertise. In fact, about 70% of CUB's legal work is donated.

Savings to Ratepayers. In all, CUB's advocacy has resulted in refunds and reductions totaling nearly \$124 million. CUB asserts that from 1984 to 1989, it saved Oregon ratepayers \$318 for every \$1 of membership dues spent. It is currently challenging another \$174 million in proposed rate increases.

A nonquantifiable benefit of CUB, according to former director Head, is the kind of appointments made to the PUC and the tenor of its decisions. Under the former one-member system, PUC rate regulation was essentially a "rubber-stamp process which favored the utilities. Now the process is more balanced."¹

Current Activities. Current CUB advocacy continues to focus on telephone issues, according to executive director Kimberly Moore Webster. CUB has challenged two US West policies that directly affect low-income customers. It has protested a new phone company policy in which the owners of neighborhood pay stations (usually located in convenience stores) are no longer paid to collect phone bills. This has resulted in the closure of pay stations which are located primarily in low-income neighborhoods where phone company customers are more likely to make last-minute "payday" bill payments.

CUB has also filed a complaint with the PUC about the phone company's policy of charging libraries for phone directories, a practice which results in many public libraries no longer carrying the phone books of other Oregon communities. To many library users, out-of-town phone books represent free do-it-yourself directory assistance for long distance calls. CUB will also continue to intervene in rate cases of both the telephone and energy utilities as they arise.

CUB's long-term goal is to triple its current operating budget to \$500,000 so it can substantially increase its caseload. Executive director Webster states that in addition to expanding its membership base, CUB will also seek the passage of intervenor compensation legislation in order to obtain reimbursement for its advocacy on behalf of consumers. Although supported by the PUC commissioners, intervenor compensation legislation has failed three times in the legislature because of strong utility opposition.

New CUB Developments in New York

¹ Telephone interview with Barbara Head, former Director of the Oregon Citizens' Utility Board (Mar. 5, 1990). See also *The Bear Facts* (newsletter) (Nov.-Dec. 1989 and Apr. 1990).

Despite overwhelming popular support, efforts to establish a New York CUB in the early 1980s did not succeed. Working with a coalition of over sixty organizations, the New York Public Interest Research Group (NYPIRG) garnered strong grassroots support for CUB legislation. Governor Mario Cuomo sent CUB legislation to the state assembly as one of his high priority “program bills” in 1983. The bill passed the state assembly but was derailed by the senate.¹

Governor Cuomo then sought alternate means to create a CUB. He asked the Public Service Commission (PSC) to authorize a CUB through administrative action. The PSC held hearings throughout the state and subsequently permitted the formation of a CUB in May 1984.² The PSC concluded that providing ratepayer access to utility billing envelopes is in the public interest and that the Commission was within its legal authority to require utilities to provide access for this purpose.

A coalition of twenty consumer organizations incorporated as the New York Citizens’ Utility Board (NYCUB) and applied to the PSC for access to utility billing envelopes in October 1984. The PSC was expected to act favorably on its request. At the same time, seven utilities filed suit to block PSC action, contending that the enclosure privilege violated their first amendment rights, was an illegal taking of their property and exceeded the PSC’s statutory jurisdiction.

CUB formation was put on hold to await the state court decision. In April 1985 the New York Supreme Court invalidated the PSC’s access authorization as an infringement on the utilities’ first and fourteenth amendment rights.³ The PSC, NYCUB and others appealed the decision to the Appellate Division of the Supreme Court. Shortly after the U.S. Supreme Court released its *PG&E* decision in February 1986, the Appellate Division upheld the lower court’s ruling, citing the first amendment issues raised in *PG&E*.⁴

NYPIRG continued to work closely with Governor Cuomo and his administration to revive the CUB concept. Cuomo introduced a modified CUB bill in the 1989 legislative session which had been amended to incorporate the Illinois practice of enclosing membership appeals in state agency mailings. When that failed, he explored ways to establish a CUB through administrative action.

In January 1991 Cuomo signed an executive order that paves the way for the formation of a CUB to represent residential utility customers in regulatory proceedings.⁵ The order grants access by a CUB to state agency mailings up to four times per year in order to solicit membership contributions. Mailing envelope access is allowed for three years after a

¹ Much of the information presented in this section is taken from telephone interviews with Blair Horner, Legislative Director of the New York Public Interest Research Group (May 9, 1990); and Chris Klaehn, CUB Coordinator of the New York Public Interest Research Group (Mar. 15, 1991). See also Mark Green and Michael Waldman, “CUB Comes to New York: Finally, Power to the People,” *Village Voice* 28:38 (Sept 20, 1983).

² New York Public Service Commission, *Statement of Policy Governing the Access of Intervenor Organizations to the Extra Space in the Utilities’ Billing Envelopes*. No. 28655 (May 14, 1984), *reh’g denied*, Nov. 14, 1984.

³ *Consolidated Edison Co. of New York v. Public Service Comm’n*, 127 Misc. 2d 1085, 488 N.Y.S.2d 352 (Apr. 10, 1985).

⁴ *In the Matter of Consolidated Edison Co. of New York, Inc. v. public Service Comm’n of New York, et al.*, 119 A.D.2d 850, 500 N.Y.S.2d 423 (Apr. 3, 1986). See also Letter from Ralph Nader to Governor Mario Cuomo (Nov. 6, 1989) (discussing the history of the New York CUB).

⁵ Exec. Order No. 141 (Jan. 3, 1991).

permanent board of directors is elected, although the CUB may petition the PSC for an extension.

The specifications for CUB enclosures are similar to the Illinois program. CUB is not required to reimburse the state agency for postage as long as the enclosure does not increase the cost of the mailing. The content of CUB messages is limited to an explanation of CUB's purposes, activities and achievements; a statement which specifies that CUB is a nonprofit, democratically governed organization with no ties to utility companies or government entities; and information on how one can become a member of CUB.

A New York CUB is expected to begin operating by late 1991, the fifth such consumer organization in the country and the second to take advantage of state agency mailings for membership and fundraising appeals.

Summary

The profiles of CUBs in Wisconsin, California, Illinois and Oregon portray consumer organizations that—despite the loss of their primary means of raising funds, utility bill inserts—have continued to effectively represent residential utility customers in regulatory proceedings. A fifth CUB is expected to begin operating in New York in late 1991. The following Table 2.1 illustrates the key characteristics and major achievements of the existing CUBs.

Table 2.1
Summary: Characteristics of Existing CUBs

CUB	Origin	Scope	Current Memb./ Highest Memb.	Funding Source	Approx. Annual Budget	Estimated Savings to Ratepayers*
Wisconsin	1979 by state law	Statewide for residential, farm, and small business ratepayers	60,000/ 100,000	Memberships and intervenor compensation	\$250,000	\$100 saved for every \$1 spent on dues, 1983-1984, totaling \$81 million; \$29 saved for every \$1 in dues, 1988-1989
UCAN (San Diego, Calif.)	1983 by regulatory agency	Local/utility-specific for residential and small business ratepayers	24,000/ 70,000	Memberships and intervenor compensation	\$150,000	\$265 million estimated ratepayers savings, 1985-1988
Illinois	1983 by state law	Statewide for residential ratepayers	170,000/ 170,000	Memberships	\$ 1 . 7 million	\$100 to \$150 savings per ratepayer per year, 1984-1990, totaling over \$2 billion
Oregon	1984 by citizens initiative	Statewide for residential ratepayers	10,000/ 20,000	Memberships	\$150,000	\$318 saved per ratepayer for every \$1 spent on dues, 1984-1989, totaling \$124 million

* The figures presented in this chart and in the report are conservative estimates of the amounts saved by ratepayers through CUB intervention. As noted in this chapter, it is impossible to quantify the successful efforts of CUBs in areas such as holding company regulation and consumer education. Nor is it possible to present uniform comparable statistics on savings attributed to CUBs because such statistics have not been documented in a standardized manner over the past ten years.

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Chapter 3

CUB FUNDING METHODS

The ideal funding mechanism, not only for CUBs but for any consumer advocacy organization, ensures a stable, consistent and sufficient source of revenue, free from political and special interest influences. When CUBs were allowed to enclose their membership appeals in utility bills, they were able to approach that ideal, at least in the first years of operation.

Loss of enclosure privileges after the U.S. Supreme Court's 1986 ruling in *PG&E v. PUC*¹ forced CUBs to rely on other means of raising funds, primarily direct mail appeals and door-to-door canvassing. Not only are these methods less effective, they are also more costly, leaving CUBs with less revenue to carry out their advocacy work.

A creative solution to the curtailment of utility bill enclosures has emerged in Illinois. In 1987 the Illinois legislature passed a bill authorizing CUB to enclose its messages in the mass mailings of state agencies. This method passes constitutional muster and preserves CUB's low-cost means of communicating with virtually the same spectrum of Illinois residents as allowed by utility bill enclosures.

This chapter looks at the effectiveness of both utility bill enclosures and state agency inserts for CUB membership solicitations. It also discusses alternative forms of utility bill inserts to inform utility customers about consumer groups that intervene in regulatory proceedings. It closes with a discussion of the importance of "intervenor compensation" programs as an alternative or supplemental means of supporting the work of CUBs.

Utility Bill Inserts: How They Worked

Wisconsin CUB. The Wisconsin CUB, the nation's first, has the longest history of enclosing its messages in utility bills. It enclosed membership appeals in a total of 91 utility mailings from 1980 through 1985. CUB prepared 31 different enclosure texts during that time. As required by statute, the text for each insert was reviewed by the Public Service Commission (PSC) prior to mailing. In practice, the text was submitted simultaneously to the utility and the PSC approximately six weeks before its billing date. If the utility objected to the enclosure's content, the PSC then reviewed it to ensure that, as required by the statute, the CUB text was not "false or misleading."²

Because CUB was required to pay for all extra postage if its enclosure tipped the utility bill's scales over one ounce, weight was an important consideration. Each enclosure was designed to be a self-contained mailer weighing one-half ounce or less—one sheet of paper printed front and back that, when folded and glued shut, would serve as a return envelope.

Each insert was required to carry a prominently placed statement explaining that the insert was "not from your utility company." Even to the most absent-minded utility customer, however, there was probably no mistaking that the enclosure was neither the utility bill nor

¹ *Pacific Gas & Electric Co. v. Public Utilities Comm'n of California, et al.*, 475 U.S. 1 (1986).

² Wis. Stat. § 199.10(2m).

a newsletter from the utility, much less a legal notice from the PSC. CUB proclaimed its mission boldly. The first enclosure asked customers of Wisconsin Bell, “Are you mad as #!!# about your phone bills?” It invited ratepayers to join the new advocacy group and support it in fighting for lower rates and better policies. Another insert exhorted, “Please read this BEFORE you pay your bill!” It asked, “Do you wish you had a lawyer to fight high utility rates?!! YOU DO!!”

When CUB’s work contributed to lower rates, CUB communicated its successes to utility customers in its enclosures and urged them to support CUB through membership donations. “You be the judge...Does CUB save you money??? A million and a half dollars says we do.” The text described how the PSC decided that, based on information provided by CUB, a Wisconsin Power and Light rate reduction was in order. An insert to Wisconsin Bell customers described how the phone company obtained windfall profits following the break-up of AT&T. CUB alerted the PSC to the situation and the utility customers were subsequently awarded a \$14.65 refund. “Only tough legal and accounting experts working to protect ratepayers can create the legal record for another good decision. That’s what CUB is all about. Our staff will be there for you—if you help.”

CUB’s enclosures played an educational role as well. Beyond the headlines, the text explained some of the intricacies of ratemaking proceedings. One enclosure described how “construction allowances” and “phantom taxes” of Madison Gas and Electric were contributing to requests for higher rates. A phone bill enclosure explained why the one dollar “access fee” was tacked onto local phone bills as a result of divestiture. The enclosure suggested that phone customers write letters of protest to the Federal Communications Commission, the agency that ordered the access fee, as well as members of Congress.

CUB succeeded in keeping its enclosures to a minimum weight, thereby saving thousands of dollars on postage fees. CUB estimated that if it had to pay the cost of postage, labels, envelopes and staff time, the mailings to utility customers would cost nearly five times as much as they did. With utility bills as the vehicle to reach ratepayers, CUB’s primary cost was limited to designing and printing the enclosures.¹

UCAN. The enclosures of the Utility Consumers’ Action Network (UCAN) followed a similar pattern. The local CUB, established in San Diego in 1983, inserted its messages in the monthly bills of San Diego Gas and Electric Company (SDG&E) a total of eight times over a two-year period.

UCAN’s first enclosure, mailed in August 1983, asked utility customers, “Why do you think this bill is so high?...Because SDG&E has many lawyers, rate experts and accountants to influence the public utilities commission...and you do not. Now you have the chance to even the odds.” The enclosure described the PUC’s “landmark decision” that created UCAN and invited San Diegans to join the new organization.

¹ Telephone interview with Kathleen O’Reilly, former Executive Director of the Wisconsin Citizens’ Utility Board (Apr. 17, 1991).

Only once did a utility charge CUB for extra postage. CUB challenged the utility, asserting that it had added non-essential materials to the bill in order to cause CUB’s enclosure to exceed the one-ounce limit. CUB lost its challenge in court but succeeded in obtaining a legislative amendment to the CUB statute that more strictly defined what could be considered a “utility bill.” CUB was never able to take advantage of the amendment, however, because it had ceased inserting its messages in utility bills altogether in 1985.

A subsequent enclosure described how UCAN's representation would benefit ratepayers in an upcoming PUC proceeding to be held in San Francisco.

...The lead attorney for SDG&E rises from his chair in the large hearing room. He motions to a stack of hundreds of pages of utility documents on the table before him and introduces his co-counsel from SDG&E, all sitting in an impressive row behind counsel table. Then he introduces the expert witnesses...He makes an impressive opening statement, citing studies by SDG&E...He concludes by asking for an increase in rates for 1984.

Then a figure from the opposite side of the room rises, a person new to the five commissioners who must decide the issue. He is your attorney. He begins by introducing his co-counsel, his expert witnesses and his documents. He begins his opening statement with a critique of the rate increase request: "...We shall show that the rate base figures of SDG&E are inflated, that several categories of expense are not justified and that the increase would yield too high a return on equity to SDG&E stockholders...."

The five commissioners are about to balance, as they must, preventing excessive profits against a fair rate of return for SDG&E's stockholders. But now it's a fair contest. Your side is going to be heard....The cost to you? \$4.00. Can you find a better value in legal representation?

UCAN's enclosures were similar in format to Wisconsin's. They adhered to strict weight limitations and contained a disclosure that the message was not from SDG&E. UCAN did not have to submit its enclosure texts to the time-consuming review process that was required for all Wisconsin CUB messages, however. When the PUC authorized the formation of UCAN, it took a hands-off stance and did not specify a review process. In fact, it ordered that the enclosures must state that "their contents have neither been reviewed nor endorsed by this Commission."¹ The PUC said it was confident that UCAN and SDG&E could work together to "overcome any problems and permit the ratepayers the opportunity to experience the full implementation of UCAN."² Throughout the two-year time period that UCAN had access to billing envelopes, neither SDG&E nor UCAN filed any formal complaints with the PUC.

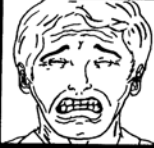
¹ Cal. P.U.C. Dec. No. 83-04-020 (Apr. 6, 1983).

² *Id.*, 8.

Illustration 3.1. Sample Utility Bill Enclosure: Wisconsin CUB
(front and back views)

CUB WARNS:
BEGINNING JUNE 1st
YOU'LL HAVE TO PAY
\$1 EACH MONTH
FOR NOTHING!

CUB SAYS: GET READY TO GRIT YOUR TEETH



Please read before you pay your bill!
Not from your Utility Co.

Place Stamp Here

CITIZENS' UTILITY BOARD
P.O. Box 1438
Madison, WI 53701

GET READY TO GRIT YOUR TEETH . . . AND PAY
\$1 EVERY MONTH FOR NOTHING!

Starting June 1, you will have to pay \$1 every month for a long distance "access fee." You'll be stuck with this monthly cost:

- WHETHER OR NOT you use AT&T, MCI, Sprint, etc. for long distance calls;
- WHETHER OR NOT you make 1 or 1,000 long distance calls per month; or
- EVEN IF YOU MAKE NO LONG DISTANCE TELEPHONE CALLS AT ALL!

WHO'S RESPONSIBLE FOR THIS OUTRAGE?
CUB says there is no economic or logical justification for a long distance access fee. But don't blame the Public Service Commission or GTE. The access fee order came down from the Federal Communications Commission in Washington, D.C. last December.

WHY IT'S UNJUSTIFIED
Supposedly the access fee is for the hypothetical privilege of making a long distance call. But it is local telephone customers who have already paid for the local phone system that make long distance possible. After all, a long distance call from Green Bay to Phoenix would not be possible without the local system in Green Bay for call "origination" and in Phoenix for call "termination." The long distance call would not be possible without systems in between which the long distance call "steals" from.

WHAT CAN YOU DO?
Write to your Representative in Congress. Only they can kill the access charge. CUB wants to join with other groups around the country in this grassroots campaign. But this and other CUB watchdog efforts cost money. Won't you become a CUB member so we can continue fighting for you?

RECENTLY, IN AN 18-MONTH PERIOD ALONE,
CUB'S ARGUMENTS RESULTED IN A
SAVINGS OF \$100 FOR EVERY DOLLAR
COLLECTED FROM MEMBERS!!
(...AND THAT'S A CONSERVATIVE FIGURE.)

Very truly yours,

Kathleen F. O'Reilly
Executive Director

YES I want to join CUB
(Please Print Clearly, list the name of everyone in your household over the age of 18 who wishes to join CUB)

Names: _____ City: _____ Zip: _____

Address: _____

Phone: _____

☐ New Member ☐ Renewal ☐ Contribution

☐ \$12.50 ☐ \$15 ☐ \$30 Sustainer ☐ \$50 Sponsor ☐ Other _____

Make Checks Payable to CUB
*\$1 is our minimum membership, but it barely covers costs. Please give more if you can. Contribute \$2 or more and we will send you "The Complete Guide to Lower Phone Costs," a 71-page consumer handbook published by a highly respected national research organization.

☐ Please consider me a CUB activist.

Citizens' Utility Board 225 W. Duane, Madison, WI 53703 (608) 255-2522

Illustration 3.2. Sample Utility Bill Enclosure: UCAN
(front and back views)

1982-83—SDG&E electric rates are the highest in the state, among the highest in the nation.

1983-84—UCAN Begins. 30,000 San Diegans join in unprecedented show of support.

JOIN UCAN BEFORE JANUARY 14
TO VOTE FOR THE
BOARD OF DIRECTORS IN FEBRUARY

UCAN
c/o Covell & Higgins, CPAs
P.O. Box 276
Escondido, CA 92026

READ THIS BEFORE YOU PAY YOUR BILL

DO YOU THINK THIS BILL IS TOO HIGH?

LOOK INSIDE TO DISCOVER YOU ARE NOT ALONE.

MOSTEN & FOLD LAST

Dear Fellow Ratepayer,

Picture the scene . . . You are at the state building in San Francisco. The Public Utilities Commission is meeting. The lead attorney for SDG&E rises from his chair in the large hearing room. He motions to a stack of hundreds of pages of utility documents on the table before him and introduces his co-counsel from SDG&E, all sitting in an impressive row behind counsel table. Then he introduces the expert witnesses the utility will be calling to justify the rate increase to be sought for 1984. He makes an impressive opening statement, citing studies by SDG&E and recounting a litany of unforeseen problems which require rate relief for the utility. He concludes by asking for an increase in rates for 1984.

Then a figure from the opposite side of the room rises, a person new to the five commissioners who must decide the issue. He is your attorney. He begins by introducing his co-counsel, his expert witnesses and his documents. He begins his opening statement with a critique of the rate increase request:

"Mr. President and Commissioners, we shall show that the rate base figures of SDG&E are inflated, that several categories of expense are not justified and that the increase would yield too high a return on equity to SDG&E stockholders."

"Mr. President, San Diegans now pay over 12¢ per kilowatt hour for electricity. No one in California pays over 70% of that amount. Only New Yorkers, in the entire nation, pay that much. Now SDG&E seeks a rate hike and a return of 16% for their stockholders. This is too high a return for a secure investment in a monopoly utility."

"Mr. President, we shall examine the debt-equity ratio, the purchases and management decisions of SDG&E. We shall compare their capital costs and performance with other utilities. The five commissioners are about to balance, as they must, preventing excessive profits against a fair rate of return for SDG&E's stockholders. But now it's a fair contest. Your side is going to be heard."

Your attorney, with your rate economists and your accountants will question the claims of SDG&E. They will put what otherwise might be an insulated monopoly to the test. And the PUC will see a balanced, adversary proceeding—information and advocacy competition. The cost to you? \$4.00. Can you find a better value in legal representation?

UCAN allows you to have your experts and lawyers work for lower bills. UCAN resolves no tax dollars. It is funded by your contributions. Isn't it time you join UCAN?

Sincerely,

Robert C. Pellmeth,
Interim Director
for UCAN

Interim Board of Directors:
Mayor of San Diego Roger Hedgecock, Chairman
California Western Law School Dean Ernest Pineson,
Vice-Chairman
State Senator William Cronin
San Diego County
1982-83 Grand Jury Foreperson General Joseph Pagan
S.D. Superior Court Judge Laurence
Executive Secretary-Treasurer Joseph Francis
County Supervisor Tim Wenzler
Assistant U.S. Attorney Warren Beane
Deputy District Attorney Anthony Bennett
Deputy City Attorney Susan Hagenson
Legal Aid Society Staff Attorney Jacqueline Valenzuela

This message was written and paid for by your fellow ratepayers, NOT SDG&E.

Yes I want to help challenge rate increases and join the effort for fair utility rates.
I want to join UCAN. (Please Print Clearly)

Name(s) _____

Address _____ City _____ Zip _____ Phone _____

☐ \$4 (minimum per adult member) ☐ \$10 ☐ \$25 more (make checks payable to UCAN)

☐ I'm already a member. Here's an extra contribution to help give us more clout.

As a UCAN member, you'll select a board of fellow ratepayers who will elect UCAN. You will also receive regular information on current rate proposals and tips on how you can save on your utility bills. And your contribution will work for fair utility rates all year round.

Neither SDG&E or the California Public Utilities Commission has reviewed or endorsed the contents of this notice.

FOLD FIRST

Enclosure Return Rates. The three CUBs that inserted their messages in utility bills—in Wisconsin, Illinois and California—drew a sufficient number of members within the first year to begin significant participation in the regulatory process on behalf of their constituency. They were able to attract a large enough membership base to reach the critical mass required to become fully operational in far less time than organizations which rely upon the more traditional fundraising methods of direct mail appeals and canvassing.

Enclosure return rates for both UCAN and Wisconsin CUB followed similar and predictable patterns. (Illinois' experience will be discussed below.) The first enclosure drew the largest number of members. The return rate on subsequent enclosures decreased by about half, stabilizing at about a 0.5% rate of return.

UCAN's first enclosure garnered a return of 35,000 members out of 850,000 ratepayer households in the San Diego service area, a phenomenal 4% rate of return. The second enclosure, three months later, attracted 15,000 new members, somewhat less than half the first return rate. Two years and eight enclosures after the formation of UCAN, it had attracted 70,000 members, about 8% of SDG&E's utility customers. UCAN executive director Michael Shames, at that time a law student at the University of San Diego who had been instrumental in getting UCAN off the ground, said, "We expected maybe six to ten thousand members total. The idea of 70,000 members was unthinkable."¹

The surprisingly large membership of UCAN allowed the new organization to operate with an annual budget of \$340,000 in 1984 and 1985. Although \$4 was the minimum amount required for membership, the average contribution was \$7. UCAN had a staff of three full-time professionals and contracted with a legal firm in San Francisco which specialized in utility matters. With the loss of the bill enclosure privilege, UCAN's annual budget has since dropped to approximately \$150,000.

The enclosure returns of the Wisconsin CUB started at approximately 2%, then steadily decreased to return rates of 0.2% to 0.6%. Unlike UCAN, the Wisconsin CUB is a statewide organization, able to enclose its membership appeals in all the major energy and telephone utilities billing envelopes. The cumulative returns drew 48,000 members to CUB in its first year. It quickly grew to a membership of 64,000 the next year. At CUB's peak of approximately 100,000 members, its membership encompassed 5% of Wisconsin's total households. CUB's minimum membership was set at \$3 by statute. However, the average donation was closer to \$10. CUB's annual budget was \$700,000 when membership was at its highest level.

Table 3.3 charts the typical return rates for utility bill enclosures, based on the experiences of UCAN and the Wisconsin CUB. Although UCAN's initial returns were twice the percentage of Wisconsin's, both stabilized at approximately the same rate of 0.5%.

Enclosures Today: Illinois' Experience

Return rates for Illinois CUB utility bill enclosures from 1984 to 1986 were similar to Wisconsin's. CUB membership grew quickly, from 50,000 the first year it inserted messages in utility bills to a high of 200,000, approximately 4% of Illinois utility households. Like

¹ Interview with Michael Shames, Executive Director of the Utility Consumers' Action Network, in San Diego (Mar. 1, 1990).

Wisconsin, Illinois CUB could enclose its mailers in all the major utilities' bills. And like Wisconsin and UCAN, membership returns leveled off at about 0.5%.

When bill insert privileges were curtailed after both the U.S. Supreme Court¹ and an Illinois U.S. District Court² ruled that CUB enclosures violated utilities' free speech rights, Illinois CUB membership and its budget both plummeted. CUB lost one-fourth of its 170,000 members in the following year. It no longer had the ability to replace the members lost through attrition with newcomers who in previous years had joined CUB after receiving its mailers in utility bills. As a consequence, CUB faced a serious budget deficit in 1987.

CUB supporters drafted legislation in 1987 to amend the 1983 statute and allow CUB to enclose messages in mass mailings of state agencies that reach over 50,000 Illinois residents.³ The legislation was drafted by Steven Pflaum, who served as one of CUB's attorneys in the *Central Illinois Light* case. With successful passage of the amendment (the legislature overrode Governor Jim Thompson's veto), CUB was able to continue to reach a majority of Illinois households with its membership appeals. It retained an inexpensive means of communicating with ratepayers, while at the same time ensuring that, unlike "junk" mail, its membership appeals would reach ratepayers in envelopes that would be opened.

CUB chose to insert its messages in two state agencies mailings—motor vehicle registrations and income tax refunds. Vehicle registrations are mailed to approximately 7.5 million car owners per year, while income tax refunds are mailed to 2.5 million individuals annually, for a rough total of ten million inserts per year.

CUB chose these two agencies for specific reasons. Everyone who owns a car receives a vehicle registration once a year. According to CUB associate director Martin Cohen, "If you own a car, you probably tend to be a utility bill payer, and you might even tend to have the resources to make a contribution. We've made an assumption about people who own cars."⁴ CUB also chose income tax refunds "for obvious reasons," states Cohen. "People would have a little money in their pocket, and they tend to be heads of households who might be utility bill payers."

On the other hand, CUB decided not to use driver's license mailings because they are mailed only once every four years. Many who receive them are not car owners; nor are they necessarily heads of households since there are usually multiple drivers per household. Fishing and hunting licenses were also not chosen because they do not necessarily target utility bill payers or individuals who would be likely to support CUB.

The return rate for state agency inserts compares favorably to the returns from utility bill envelopes. Cohen states that the percentage varies from mailing to mailing, but generally falls between one-quarter and one-half percent, averaging about 4,000 new members per month. While this rate of return would be unacceptable in the world of targeted direct mail, Cohen points out that for nontargeted, "scattershot" mailings, one-half percent is a respectable return.

¹ *PG&E v. PUC*.

² *Central Illinois Light Co. v. Citizens' Utility Board*, 645 F.Supp. 1474 (N.D.Ill. 1986), *aff'd*, 827 F.2d 1169 (7th Cir. 1987).

³ Steven F. Pflaum, "Forced Dissemination of Information About Consumer Organizations: Lessons from Illinois' Experience," *California Regulatory Law Reporter* 9:1 (Winter 1989): 8-11.

⁴ Interview with Martin Cohen, Associate Director of the Illinois Citizens Utility Board, in Chicago (Oct. 2, 1990).

The number of new members drawn by state agency inserts keeps CUB's budget on an even keel by making up for those members who do not renew each year. CUB's annual renewal rate is 60-70%, which, according to Cohen, is "very good. It's a fairly high number because it is inexpensive to support CUB. And we have a high profile."

Explains Cohen, "We are reliant on the state inserts to maintain our membership base, and we don't need a very large rate of return to make the payoff." Furthermore, agency mailings are invaluable because they allow CUB to maintain a low membership fee. "We are, I think, unique in the mail-reliant end of the nonprofit world in that our average contribution is ten bucks," states Cohen. "I don't know who could possibly survive on that small a contribution without a program that allows you to get to people very cheaply. State agency mailings are the reason we're still here."

The "tone" for agency mailings differs considerably from the pre-1986 utility bill inserts. Because CUB enclosures are no longer read in conjunction with the utility bill, the text is not able to make direct references to the bill itself. According to executive director Susan Stewart, the wording of state agency inserts is considerably more conservative. "It's the difference between night and day."¹

A pre-1986 utility bill insert exclaimed in bold headlines, "This electric bill is TOO HIGH. What the utilities have done to your electric bill isn't just unfair, IT'S UNBELIEVABLE!" Another showed a boxing glove jumping out of a utility bill and flattening the customer's nose. It asked, "Is this how you feel when your utility bill arrives? Now you can fight back You can join CUB, a powerful new citizens organization that won't take rate increases lying down."

In contrast, an insert prepared for state agency mailings in 1990 shows a photograph of stacks of one hundred dollar bills with the headline, "In 1988 and 1989, the utility companies spent more than \$38 million to raise your rates." The next panel shows a ten dollar check written to CUB with the headline above it, "Here's all it takes to fight back." The inside of the mailer explains what CUB is and how it has fought for fair utility rates. Another recent mailer lists two ways to cut utility bills: "(1) Join 200,000 Illinois consumers who oppose higher utility rates and...(2) Receive a home energy saver kit free."

Despite the more reserved messages, the mailers are still colorful and eye-catching, highlighted with bold displays of dramatic headlines. According to Cohen, they are designed so the recipients of the envelopes are unlikely to throw CUB's message away without first looking at it.

Cohen reports that the state agencies whose envelopes carry the fliers have been very cooperative with CUB. The enclosures are easily handled by existing machinery and have caused virtually no extra work for state agency staffs. The CUB office has, however, received complaints from some recipients who wonder what gives CUB the right to put the enclosure in their income tax refunds. Cohen explains to such critics that the enclosures have been approved by state law and that they can contact their legislator if they disapprove. CUB has even received a protest in the form of an eleven-pound lead plate with CUB's business-reply postage-paid address pasted onto it. "Believe it or not, the post office delivered it to us and charged us twenty dollars' postage," said Cohen.

¹ Interview with Susan Stewart, Executive Director of the Illinois Citizens Utility Board, in Chicago (Oct. 2, 1990).

Like the pre-1986 inserts, the text for state agency mailings must be approved by the Illinois Commerce Commission (ICC). CUB must adhere to the standard of presenting information that is “not false or misleading.”¹ CUB works closely with ICC staff during the text approval process, answering questions about the text and if necessary revising it. To date, staff have not rejected any CUB enclosures and have passed them on to the ICC commissioners with the recommendation to approve the content. On two occasions, according to Cohen, commissioners have objected to the content, the most recent instance being a concern that a statement about high electricity rates might be bad for Illinois’ business climate. In both cases, however, the ICC voted to approve the enclosure texts on the basis that the wording met the criteria of being neither false nor misleading.

Illustrations 3.4 and 3.5 portray an Illinois CUB utility bill insert before the 1986 Supreme Court decision, and a more recent state agency mailing enclosure.

Supplemental Funding Methods

CUB leaders are the first to acknowledge that enclosures in mass mailings, whether utility bills or state agency mailings, are not the answer to funding their operations. While enclosures provide an inexpensive means to reach ratepayers, CUBs must supplement this method with other fundraising schemes, especially after the first two or three years of use.

Illinois CUB director Susan Stewart emphasizes, “If an organization tries to survive strictly on the state mailings as a source of funds, they are doomed to failure. At some point, they are not even going to be close.”² She adds, “The purpose of that enclosure is not to raise money to run the organization. The purpose is really to give us a list of names of people who are interested in becoming active members in the organization and donating additional funds.”

Stewart’s words are echoed by other CUB leaders. Referring to the pre-1986 utility bill enclosures, UCAN executive director Michael Shames notes, “I don’t think enclosures are an outstanding fundraising vehicle, but they do have the benefit of getting your name in front of lots of people.”³ Former Wisconsin CUB director Kathleen O’Reilly takes a similar tack. “Enclosures should only be seen as a vehicle to getting on the map. Even though they give you access to all those people, enclosures should only be seen as a start-up fundraising vehicle.”⁴

¹ Ill. Rev. Stat ch. 111 2/3 § 909.9(d)(i).

² Interview with Susan Stewart, Executive Director of the Illinois Citizens Utility Board, in Chicago (Oct. 2, 1990).

³ Interview with Michael Shames, Executive Director of the Utility Consumers’ Action Network, in San Diego (Mar. 1, 1990).

⁴ Interview with Kathleen O’Reilly, former Executive Director of the Wisconsin Citizens’ Utility Board, in San Diego (June 4, 1990).

Illustration 3.4. Illinois CUB Utility Bill Enclosure: Pre-1986
(front and back views)


**NOW YOU CAN
FIGHT BACK.
YOU CAN JOIN CUB—
A POWERFUL NEW CITIZENS
ORGANIZATION THAT
WON'T TAKE RATE INCREASES
LYING DOWN.**

CITIZENS UTILITY BOARD
P.O. Box 1104
Glenview, Illinois 60025

BUSINESS REPLY MAIL
FIRST CLASS PERMIT NO. 15934 CHICAGO, IL

**NO POSTAGE
NECESSARY
IF MAILED
IN THE
UNITED STATES**

**IS THIS HOW
YOU FEEL WHEN YOUR
UTILITY BILL ARRIVES?**



DEAR FRIEND,

With utility rates going up so fast, no wonder Illinois consumers feel like they're taking a beating.

Just look at these increases:
1982 - Commonwealth Edison up \$660 million
1982 - Northern Illinois Gas up \$114 million
1983 - Illinois Bell up \$92.7 million

Already in 1984, Interstate Power has raised its rates 14.4%. And Union Electric has filed for a whopping 59% increase!

The utility companies hire the best lawyers and experts to fight for higher rates. They can afford the best, because you and I pay for them. And they usually win.

Doesn't seem like a fair fight, does it?

But now there's a way to even things up. It's a new citizens organization called **CUB—the Citizens Utility Board**. We're not part of any utility company. We're not a government agency. But we have important powers. We can send our messages to you right in your utility bills. And we'll hire our own tough, smart experts to represent consumers when the utility companies want to raise their rates again.

With 38 major utility companies in Illinois, **CUB** has a big job to do. Because we receive no tax dollars, we need 100,000 members by the end of the year to meet our goals. And we can't do our best without you.

For a minimum contribution of \$5, you can become a full voting member of **CUB**. You'll help plan our strategy and receive the latest information on pending rate increases. You can vote for **CUB's** Board of Directors, or even run yourself. **CUB** elections will be held December 22, 1984.

Best of all, you'll have a stake in a powerful citizens organization that's working overtime to stop high utility rates.

Show the utilities that you want to fight back. Join the thousands of Illinois consumers who are already putting **CUB** to work for them. Join **CUB** today.

Sincerely,

Howard A. Learner, President
CUB Board of Directors

P.S. To help **CUB** do a better job, won't you consider a donation of \$10, \$15, or \$25? Thank You.

YES! I want to fight back with **CUB**. Sign me up as a full voting member (minimum contribution \$5 per member).

NAME (member #1) _____

(#2) _____

(#3) _____

ADDRESS _____

CITY, STATE, ZIP _____

CONGRESSIONAL DISTRICT (if known) _____

PHONE () _____

ENCLOSED IS: ☐ \$5 ☐ \$10 ☐ \$15 ☐ \$20 ☐ \$25 ☐ Other _____

I know of others who want to join **CUB**. Send information to: _____

Call **CUB** Toll-Free 1-800-222-2822

(Not paid for with tax dollars. Not paid for by any utility company. Written and paid for by CUB, a consumer organization.)

FOLD HERE

Illustration 3.5. Illinois CUB Enclosure in State Agency Mailing
(front and back views)

Here's all it takes to fight back!

No. 1088

Spring 1989

PAY TO THE ORDER OF: **CUB** \$ 10.00


Ten and 00/100 DOLLARS

CITIZENS UTILITY BOARD
P.O. Box 1104
Glenview, IL 60025-9937

BUSINESS REPLY MAIL
FIRST CLASS PERMIT NO. 15934 CHICAGO, IL

**NO POSTAGE
NECESSARY
IF MAILED
IN THE
UNITED STATES**

**In 1987 and 1988, the utility
companies spent more than
\$25 million to
raise your
rates.**



IMPORTANT MESSAGE FROM YOUR CITIZENS UTILITY BOARD

Dear Friend:

It's true. In 1987 and 1988 the big utilities companies spent more than \$25 million trying to increase the amount you pay for electricity, gas, and telephones.

And your contribution to the Citizens Utility Board is all it takes to help **CUB** fight back effectively on your behalf.

CUB was formed to give you a voice against unfair utility rates. With the support of over 200,000 Illinois citizens, **CUB** has achieved some dramatic victories:

- Helped oppose and block hundreds of millions of dollars in new rate increases.
- Worked with the Illinois legislature to win new laws giving consumers a stronger and more effective voice in setting rates.
- Brought legal action to secure refunds and rate reductions from utilities that have refused to pass on huge tax savings to consumers.

To continue our fight **CUB** needs your help. Our only source of income is the voluntary donations of citizens like you.

As a member of **CUB** you will receive a quarterly newsletter filled with the latest consumer information on utility rates, service, and issues, money-saving tips, your rights as a ratepayer and much more.

Most importantly you will be doing your part to stand up to the utilities and their endless requests for more of your money.

Please join the fight for fair utility rates by completing the form below and sending **CUB** a membership contribution of \$5, \$10, \$15 or even \$25. Thank you and we are counting on your help.

Sincerely,

Josh Hoyt
President

P.S. This message is not from the Office of the Comptroller. This notice is not paid for with tax dollars. Written and paid for by the Citizens Utility Board, a non-profit organization supported solely by concerned Illinois ratepayers. The State of Illinois has included this letter in this mailing to provide you with information about the Citizens Utility Board. **CUB** needs your help. Please join today.

YES! I want to join the battle against high utility rates. I want to begin my membership in **CUB** with a donation of:
☐ \$10 ☐ \$15 ☐ \$20 ☐ Other: \$ _____

*A contribution of \$15 really helps. Minimum donation: \$5.

PLEASE PRINT CLEARLY

Name _____

Address _____

City _____ State _____ Zip _____

Home Phone _____ ☐ Yes, I'll volunteer to help **CUB**

CITIZENS UTILITY BOARD
108 N. State, Chicago, IL 60602 • (312) 263-4282 • 1-800-222-2822
Please make checks payable to CUB. Your contribution is not tax deductible.

FOLD HERE TO FLAP UP FIRST

At the same time, CUB leaders stress the importance of enclosures as an extremely effective means to quickly raise start-up funds and develop a substantial membership base. In the long run, enclosures allow CUBs to continue to draw enough new members to compensate for those who do not renew their memberships. Robert Fellmeth, a founder of UCAN, emphasizes, "They give you entry, a stake. And they have importance beyond the 'kick-start.' Later years may see a declining rate of response, but inserts can still provide a vehicle for expanding the membership base to compensate for nonrenewals. Further, the written message on a policy issue or information on a CUB victory helps build name recognition and familiarity with utility issues—and to some extent even enhances loyalty to the CUB. Perhaps the number of inserts should decline after the first year, but ideally they should not stop."¹

Methods used by CUBs to raise additional funds in order to supplement enclosure revenues have included door-to-door canvassing and direct mail appeals. Both the Wisconsin CUB and UCAN discontinued canvassing because of high overhead costs and difficulty in finding reliable canvassers. But all CUBs have continued to use direct mail appeals, at the very least, to contact existing and past members for renewals and supplemental contributions.

The Illinois CUB uses the services of a direct mail firm and tests a variety of lists for targeted mailings. It has found that its message does well with what associate director Cohen calls "very strange bedfellow"—mailing lists on the political left as well as on the right, "People who are donors for any kind of causes tend to be sympathetic with what we are doing." CUB targets about one-half million membership appeals a year. It does not conduct direct mail prospecting campaigns unless it is certain it can at least break even on costs by obtaining at minimum a 2% return.

The Illinois CUB is somewhat restricted in the number of lists it can use because it will not trade its own list. According to Cohen, "There are many good lists out there that are only available in trade. They want your list if you get theirs for testing purposes." CUB does not trade its lists for "free" access to another organization's list because of its strict policy of protecting the privacy of its members.

CUBs have generally not found grants from charitable or corporate foundations to be a realistic or reliable source of supplemental funding. While a fledgling CUB may be successful in obtaining grant funding, this option is not considered to be a source of ongoing support because of many foundations' preference to award only "seed" grants. In addition, CUBs' advocacy stance rules out awards from many foundations. The Wisconsin CUB, for example, found that its requests for grant funds were thwarted by foundation board members who represented the energy and telephone utilities in the state.²

The Oregon CUB, on the other hand, actively seeks grants for specific consumer education and research projects rather than to fund its participation in utility proceedings. According to executive director Kimberly Moore Webster, CUB's current grant-seeking activities focus on funding for renewable energy resources projects.³

¹ Interview with Robert C. Fellmeth, Director of the Center for Public Interest Law, in San Diego (Mar. 15, 1991).

² Interview with Kathleen O'Reilly, former Executive Director of the Wisconsin Citizens' Utility Board, in San Diego (June 4, 1990).

³ Telephone interview with Kimberly Moore Webster, Executive Director of the Oregon Citizens' Utility Board (Mar. 13, 1991).

In summary, supplemental funding is necessary to shore up the revenue obtained from enclosures included in mass mailings. Reliance on enclosures alone will only support a CUB for the first year or two. Thereafter, the CUB must be in constant pursuit of other revenue sources to supplement enclosure income. In order to raise sufficient funds to support the organization over the long term, Illinois CUB director Susan Stewart recommends that CUBs establish “a good fundraising plan from the very start with whatever tools are available to them.”¹

Other Bill Insert Options

While Illinois’ response to the loss of utility bill enclosure privileges was to pass legislation allowing CUB access to state agency mailings, California took a different approach. The California Public Utilities Commission explored ways to continue to use the extra space in utility bills to further its goal of stimulating residential ratepayer participation in PUC proceedings. It sought enclosure uses which would pass constitutional muster in light of the PG&E case. In 1986 it considered several proposals to encourage the participation of organizations which represent residential ratepayer interests:

- Place PUC legal notices in utility billing envelopes informing ratepayers of the opportunity to support groups which represent their interests in PUC proceedings. Allow utility companies to enclose such materials as newsletters and commercial advertisements only if the utility reimburses ratepayers for the value of the insert space.
- Use the extra space for commercial advertising and apply the revenues to reduce utility rates.
- Earmark a portion of utility company and commercial advertising revenues generated by billing envelopes to provide up-front funding for consumer groups that are financially incapable of fully participating in PUC proceedings.²

In May 1987 the California PUC established the Ratepayer Notice Program (RNP), which it believed to be the least intrusive of the options and the most likely to avoid the first amendment issue addressed in the 1986 Supreme Court opinion in *PG&E v. PUC*. The PUC ordered regulated utilities to include “legal notice” inserts informing utility customers of the existence of various consumer groups (called intervenors) that represent residential ratepayers in rate proceedings.³ Rather than listing these groups on the insert, the PUC decided to serve as a clearinghouse for this information. It directed ratepayers to write to the PUC for the list, thereby avoiding the constitutional question raised by requiring the utility to carry the message of a third party.

¹ Telephone interview with Susan Stewart, Executive Director of the Illinois Citizens Utility Board (Mar. 29, 1990).

² Michael E. Shapiro, *Utility “Free Speech” vs. Residential Ratepayer Participation: Steering a Constitutional Course to Promote Residential Ratepayer Representation* (Sacramento: California Senate, Office of Research, 1986), 2-3. See also Kenneth C. Crowley, “Access to Public Utility Billing Envelopes: The Changing Fortunes of Consumer Representation in PUC Proceedings,” *California Regulatory Law Reporter* 8:3 (Summer 1988): 1-9.

³ Cal. P.U.C. Dec. No. 87-05-072 and Cal. P.U.C. Dec. No. 87-05-073 (May 1987). The Supreme Court included a footnote in its *PG&E v. PUC* decision indicating that content-neutral informational inserts would be acceptable as mandated bill enclosures. *PG&E v. PUC*, p. 15 n.12.

The PUC's notices were included in utility bill inserts from September 1987 to February 1989. A large-print headline announced, "Here's how you can have your say about the price you pay for gas and electricity." The text informed the reader about the existence of intervenors and how to write to the PUC to request the list. It also explained how ratepayers can participate directly in PUC proceedings.

In all, 54,000 people contacted the Public Advisor's Office of the PUC to obtain the list of intervenors.¹ The list included UCAN as well as nearly two dozen other organizations in California that regularly or occasionally participate in PUC ratemaking proceedings on behalf of a variety of ratepayer interests. Despite the number of inquiries for the PUC's list, however, very few of the ratepayers who received the list actually contacted the intervenors directly in order to support their work with donations or membership contributions. UCAN reported that out of 400 San Diego Gas and Electric Company customers who requested the list, only three contacted UCAN. Michael Shames contrasted that with the 70,000 who joined UCAN in response to inserts in SDG&E's monthly bills. After 18 months, the Ratepayer Notice Program was deemed a failure by the PUC and was discontinued in 1989.² It did not achieve the goal of increasing residential ratepayer participation in PUC proceedings through support of intervenor groups.

In October 1990 the PUC issued an Order Instituting Investigation (OII) to explore other ways to use the extra space in utility bills to increase residential ratepayer participation in regulatory proceedings.³ Among the alternatives that utilities and intervenor groups have been asked to discuss are these:

- The status quo position: Rely on the existing support mechanism provided by the PUC's intervenor compensation program and its Public Advisor's Office; do not establish any kind of bill insert program.
- Continue the Ratepayer Notice Program in which ratepayers write to the PUC for a list of intervenors.
- Provide a PUC-sponsored bill insert which describes the intervenors and lists their addresses.
- Use state agency mass mailings to carry messages either from the PUC Public Advisor's Office or the intervenors themselves.
- Charge utilities for their use of the empty space and use the funds to support independent mailings to utility customers of intervenor information; or require utilities to sell the extra space to commercial advertisers and use the revenues to fund intervenor programs.

In formal responses to the OII, the utilities have objected to all uses of the bill envelopes except the Ratepayer Notice Program. They argue that providing a list of the names and addresses of intervenors would violate their first amendment rights as recognized by the plurality in *PGE v. PUC*, because it would force them to associate with messages with which they disagree. Because the intervenors identified on the notice are likely to advocate in opposition to the utilities, the utilities argue that the notice would not be content-neutral.

The utilities also object to any program which would directly or indirectly solicit financial support for intervenors—for example, selling the extra space to commercial advertisers or

¹ Robert Feraru, *Report to the Commission on the Ratepayer Notice Program* (San Francisco: California Public Utilities Commission, Public Advisor's Office, 1989), 4.

² *Id.*, 5.

³ Cal. P.U.C. Order Instituting Investigation 90-10-042 (Oct. 24, 1990).

to the utilities themselves. They contend that this too would violate their free speech rights by indirectly forcing utilities to finance the informational dissemination of opposing groups.

On the other hand, the public interest organizations which responded to the OII¹ do not believe that a notice containing the names and addresses of consumer groups would violate utilities' free speech rights. They claim that such a PUC-sponsored notice would be neither ideologically based nor advocacy in nature. Rather, it would notify ratepayers of entities representing their interests. Intervenor also favor the sale of the extra space for the benefit of groups that represent residential ratepayers in PUC proceedings. They recommend that the proceeds could fund both independent mailings containing intervenor information as well as a compensation program that would provide up-front financial support for intervenors who participate in PUC proceedings.²

Intervenor Compensation for CUBs

The many advantages of enclosures in mass mailings have been discussed above. To summarize, enclosures provide an efficient and inexpensive means of communicating with consumers. They promote widespread awareness of utility issues. And they inform large numbers of utility customers of the presence of CUBs at the same time that they solicit membership contributions from them.

However, fundraising via the vehicle of inserts in mass mailings is not the whole story. The legislative climate in many states may not be conducive to passing a bill establishing a CUB and authorizing it to enclose its messages in state agency mailings. Even in states that may pass CUB legislation, the amount of money obtained through enclosures cannot be expected to be sufficient to fund a viable organization over the long term. And if the state's population is small, revenue from enclosure returns may never be sufficient to comprise the total annual operating budget unless, like UCAN's experience, the CUB receives phenomenal public support.

Although not central to the CUB concept as originally conceived, intervenor compensation deserves some discussion here as a supplemental source of revenue to support CUB advocacy. But first, a brief digression is in order to place intervenor compensation in context with other methods of encouraging ratepayer representation.

Background. The value of representing diverse points of view in utility regulatory proceedings has been acknowledged in a number of different ways by state governments. Most states have established some form of ratepayer representation as an arm of government—an office of consumer counsel, a division of the attorney general's office charged with representing utility ratepayers or a department within the commission itself.³ But such offices often face staffing and budget constraints and, more significantly, political pressures that limit the number and kinds of cases they can pursue.

Regulatory commissions and state legislatures in a handful of states have established compensation programs for nongovernment intervenors and consumer groups that

¹ Intervenor in the PUC's OII include Toward Utility Rate Normalization (TURN), Consumer Action, UCAN, the California Association for the Deaf and the Center for Public Interest Law.

² At this writing, the PUC has not yet issued a ruling on further procedures to be followed in the investigation.

³ See Chapter 1 for more information on state government ratepayer representation programs.

represent the interests of residential ratepayers in regulatory proceedings.¹ Although intervenor compensation programs operate differently in each state, their overall purpose is to bring the viewpoints of traditionally underrepresented groups into regulatory proceedings in order to balance the information provided by the utilities on behalf of their stockholders.

The precedent for intervenor compensation programs was established in 1978 by the federal Public Utilities Regulatory Policies Act (PURPA).² It requires that electric utilities involved in PURPA proceedings compensate individuals or groups who make a substantial contribution to the proceedings for “reasonable attorneys’ fees, expert witness fees, and other reasonable costs.” PURPA waives the requirement if the state provides an “alternative means for assuring representation of electric consumers.”³ The act also authorized funding for grants to state consumer counsel offices to assist consumers in participating in the development of innovative rate structures to encourage energy conservation.

California’s Intervenor Compensation Program. In California the concept that consumer participation in utility proceedings is an “inherent good” that deserves to be nurtured by the state was established in a landmark 1979 California Supreme Court case, *Consumers Lobby Against Monopolies (CLAM) v. Public Utilities Commission*.⁴ The court held that the PUC has jurisdiction in certain cases to award attorneys’ fees and related costs to consumers who have made a substantial contribution to the outcome of the case.

As a result of the CLAM case, the PUC established the Advocates Trust Fund in 1981 to defray the expenses of intervenors where no other means of funding is available. In 1983 the PUC adopted rules to award compensation to individuals or groups for “reasonable” fees associated with their “intervention in any hearing or proceeding of the commission for the purpose of modifying a rate or establishing a fact or rule that may influence a rate.”⁵ When several utility companies challenged the PUC’s authority to award intervenor fees, the legislature passed a bill which expressly authorized the PUC to do so.⁶ Intervenor awards for a particular proceeding are assessed against the relevant utility, which passes that cost on to ratepayers in its rate structure.

The California intervenor compensation program is administered by the PUC Public Advisor’s Office. A consumer group must file an application for a “finding of eligibility” in order to be considered for compensation in an upcoming proceeding. If it meets the PUC’s qualifications—that is, shows that it represents an interest not otherwise represented and demonstrates financial hardship—it is generally granted eligibility to participate in a proceeding.

When the proceeding is completed and the PUC’s final order has been given, the intervenor may apply for compensation. The consumer group must prove that it has made a “substantial contribution,” such that the PUC’s final order adopts at least one of the

¹ This report has identified intervenor compensation programs in California, Wisconsin, Colorado, Michigan and Idaho.

² 16 U.S.C. § 2601.

³ *Id.* at § 2632(a)(1).

⁴ *Consumers Lobby Against Monopolies (CLAM) v. Public Utilities Comm’n*, 25 Cal. 3d 891 (1979).

⁵ Cal. P.U.C. Rules of Practice and Procedure, California Code of Regulations, Title 20, Article 18.6, adopted in Cal. P.U.C. Dec. No. 9372A (Apr. 1983). See also California Public Utilities Commission, Public Advisor’s Office, *Guide for PUC Intervenor*. (San Francisco: California Public Utilities Commission, 1989), 70-71.

⁶ Chapter 297, Statutes of 1984, codified at Cal. Pub. Util. Code §§ 1801-08.

intervenor's "factual contentions, legal contentions, or specific policy or procedural recommendations."¹ The intervenor must also show that its contribution did not duplicate the contribution of any other party.

While the PUC's compensation program has encouraged the participation of California consumer groups in its proceedings, many critics contend that the system is seriously flawed. The intervenor is not eligible to receive an award until after the proceeding is completed. It must fund its participation with its own scarce resources for the many months, and sometimes years, that the proceeding is in progress. Even when completed, the PUC often delays the award for many months or years more while it deliberates on the value of the intervenor's contribution to the proceeding.²

Intervenors are critical not only of the delays, but also of the way in which their contributions to proceedings are assessed. That a contribution is beneficial to the overall give-and-take of the proceeding is of no significance if that contribution is not expressly recognized in the PUC's final order. Intervenors also charge that the awards are generally one-half or less of what they have expended. If, for example, five major contentions are advanced by the intervenor and two are adopted with substantial ratepayer savings, the PUC will commonly award only 40% of the requested costs and expenses.³ However, utilities are able to assess ratepayers for the full costs of their legal advocacy.

In contrast, attorneys' fees under the "private attorney general" doctrine in court proceedings are awarded in full if any significant contributions are made, and there is often a "multiplier" above market levels where risk is taken by the prevailing party.⁴ The PUC's use of a "divider" rather than a multiplier means the intervenor's participation in regulatory proceedings is undercompensated *vis-a-vis* participation in civil litigation or in other fee-generating activities.⁵ The cumulative impact of the program's roadblocks is that only a few intervenors participate in regulatory proceedings on a consistent basis. In fact, one intervenor, TURN, has received half of all awards, according to PUC records.⁶

¹ 20 Cal. Code Regs. § 76.52(g).

² James R. Wheaton, "Funding Consumer Representation: Failed Models and Fresh Approaches," *California Regulatory Law Reporter* 10:1 (Winter 1990): 1-11.

³ *Id.*, 3-6.

⁴ California law allows courts to award "private attorney general" fees to a prevailing party in a case "which has resulted in the enforcement of an important right affecting the public interest if: (a) a significant benefit, whether pecuniary or nonpecuniary has been conferred on...a large class of persons, (b) the necessity and financial burden of private enforcement are such as to make the award appropriate, and (c) such fees should not...be paid out of the recovery, if any." Cal. Civ. Proc. Code § 1021.5.

Additionally, in *Serrano v. Priest*, 20 Cal. 3d 25, 141 Cal. Rptr. 315 (1977), the California Supreme Court established a common law basis for such awards independent from statutory authority on a "private attorney general" basis. *Serrano* also authorized the use of a "multiplier" of the actual market value of claimed fees. That is, where certain conditions exist, the hours expended times market rate for legal services may be multiplied or "augmented" in order to reward counsel beyond alternative market recompense for particularly valuable advocacy. Historically, that augmentation has increased attorneys' fees claims by 1.2 to 3.2 times market value. The "multiplier" criteria set forth in *Serrano* include the following: (a) the novelty and difficulty of the questions involved and the skill displayed in presenting them; (b) the extent to which the litigation precluded alternative legal work for involved counsel; (c) the contingent nature of the award; and d) the fact that monies would inure not to the individual benefit of the attorneys involved but the organization by which they are employed. See *Serrano*, 25 Cal. 3d at 4749.

⁵ Interview with Robert C. Fellmeth, Director of the Center for Public Interest Law, in San Diego (Mar. 15, 1991). See also Wheaton, "Funding Consumer Representation."

⁶ California Public Utilities Commission, Public Advisor's Office, California Public Utilities Commission Intervenor Compensation Decisions Annotated Bibliography, 1981-1989 (San Francisco: California Public Utilities Commission, 1990.)

Intervenor Compensation in Wisconsin. The Wisconsin intervenor compensation program, unlike the California system, awards compensation to participants during the course of the proceeding. The fund, administered by the PSC, has been available since 1983. CUB and a handful of other citizens groups have received compensation for their advocacy before the Commission.

An organization which plans to participate in a PSC proceeding files an application which estimates its total budget for legal and other consulting expenses. When the application is approved by the PSC, it establishes a contract with the organization via a purchase order. Program administrator Gordon Grant explains that groups can then submit invoices for their advocacy expenses throughout the proceeding.¹ Payments are made approximately 30 days from the date of the invoice, and approximately 90% of all invoices are approved.

The minimum annual amount set by the legislature for the fund is \$200,000, although, according to Grant, the total applications by Wisconsin citizens groups have yet to exceed this amount. If applications were to exhaust the \$200,000 fund, the legislature has established a process whereby additional funds could be awarded. In addition, if an individual applicant exceeds its requested amount, it can submit an amended application at any time during the proceeding.

CUB and the Wisconsin Environmental Decade are the predominant applicants for intervenor compensation. Grant explains that some “home-grown” groups which are organized around specific issues have also applied for funds. Examples are Power Incorporated, concerned about stray voltage from high-power transmission lines, and the Southeast Property Owners Association, which has opposed a pipeline extension.

Grant states that although the program has its limitations, it has improved the regulatory process by allowing intervenors to participate in PSC proceedings. “Sometimes just knowing that a body [an intervenor] is out there causes a reversal of action [by the utility],” explains Grant. “For example, when CUB intervened in a Wisconsin Gas case, this caused the utility to reconsider the case.”

The major drawback of the program is that intervenors cannot use funds for internal organizational expenses, like employee salaries and office overhead. Guidelines specify that funds are restricted to hiring outside expertise. Wisconsin CUB director Christopher Blythe explains that “you need that kind of program to be effective and compete on a level playing field [with the utilities]. But at the same time, it doesn’t provide CUB with any kind of direct financial support.” According to Blythe, the current guidelines do not provide organizational stability to groups like CUB. During times when membership is low and

A 1991 bill pending in the California legislature would rectify many of the problems of the current intervenor compensation program. Under AB 2975 (Moore), as amended May 23, once an intervenor’s eligibility is established, the organization does not have to refile for eligibility for two years. The bill permits intervenors to request compensation before the PUC reaches a final decision and requires that the award be made at market rates within 75 days of the request. It essentially removes the “nonduplication” standard and permits compensation for any substantial contribution on behalf of ratepayers. The bill expands the types of proceedings for which intervenors may request compensation, now limited to formal proceedings directly related to rates. Under AB 1975, intervenors would also be able to request compensation for their participation in such informal proceedings as workshops and settlement discussions. The bill has received the support of California’s major intervenors, although it is opposed by the PUC and by Pacific Gas and Electric Co.

¹ Telephone interview with Gordon Grant, Director of Fiscal Operations, Wisconsin Public Service Commission (Apr. 30, 1991).

revenue has declined, a skeletal staff working with limited funds is hard-pressed to take an active role in PSC proceedings at the same time that it conducts an ambitious fundraising campaign. "If you get an intervenor compensation grant to hire outside expertise, it almost works against you," states Blythe. "You spend a lot of time on the rate case to the exclusion of fundraising, when you really need to be doing both."¹

At this writing, the PSC has convened a task force of Commission staff and intervenor representatives to review the guidelines of the compensation program. CUB and other intervenor groups have recommended that they be allowed to fund internal operations with program funds.

Michigan's Grant Program. The Michigan Utility Consumer Representation Fund embodies what political scientist William Gormley considers to be an "ideal" intervenor compensation program.² Compensation is awarded up front in the form of grants. Intervenors are not required to prove after the fact that they made substantial or unique contributions to the proceeding. The grant process encourages the participation of many intervenors, at least in theory, in order to bring different types of ratepayer interests before the state's Public Service Commission (PSC).

Once a year intervenors submit grant proposals to the Utility Consumer Participation Board in which they project their activities and expenses for the coming year. The five-member board, established by the legislature in 1982, is appointed by the governor and administered by the Department of Management and Budget, an executive branch agency.³

Utilities fund the program with a combined annual assessment of approximately \$600,000. One-half of that amount is appropriated to the Attorney General's Office for ratepayer representation. The remaining \$300,000 is awarded to intervenors who apply for the funds.

Although the competitive grant process is meant to encourage several intervenors to participate in regulatory proceedings, in practice only two organizations have consistently applied for the funds. The Residential Ratepayer Consortium is comprised of a dozen public interest groups, including the Michigan Citizens Lobby and the American Association of Retired Persons (AARP), who have joined forces to hire attorneys and consultants to represent their interests. The Michigan Community Action Agency Association (MCAAA) represents community action programs on behalf of low-income ratepayers. Both organizations work closely with the Attorney General's Office to coordinate the hiring of expert witnesses and to divide the workload between them in order to avoid duplicative expenses.

Michigan's grant program offers several advantages over intervenor compensation programs in other states. Funds are awarded prior to an organization's participation in a proceeding, allowing it to plan its level of involvement accordingly. And the program is administered by an office of the executive branch of government, not the PSC.

¹ Telephone interview with Christopher Blythe, Executive Director of the Wisconsin Citizens' Utility Board (Apr. 26, 1991).

² William T. Gormley, Jr., "Statewide Remedies for Public Underrepresentation in Regulatory Proceedings," *Public Administration Review* (July/August 1981).

The Michigan Utility Consumer Representation Fund is codified at Mich. Comp. Laws § 460.61.

³ Telephone interview with Don Erickson, Assistant Attorney General, State of Michigan (Feb. 11, 1991).

Nonetheless, the program is limited in scope and funding. Advocacy is restricted to energy utilities only, not to telephone regulation. The program does not support legislative advocacy. In addition, the grant amounts received by each intervenor are relatively small. If the intervenors were to participate in all cases considered by the Public Service Commission, they would only be able to receive about \$30,000 for each case per year.

Model Intervenor Compensation Program. The shortcomings of existing intervenor compensation programs¹ suggest a model for an “ideal” system. In short, the model program, as outlined below,² promotes two goals: (1) participation by intervenors who represent a variety of consumers’ interests; and (2) minimum barriers to participation for qualified intervenors:

- Some funds are awarded to qualified intervenors while the proceeding is in progress, rather than a system which compensates intervenors only after the fact. Final awards which fully compensate the intervenor (at market rates) for the time expended are made, and funds are provided within 90 days of the commission’s final ruling. Interest on the award accrues from the date of the commission’s decision.
- Awards are based on an intervenor’s contribution whether or not the substance of that contribution is adopted entirely in the final decision. The intervenor is not required to have contributed to the specific arguments cited by the commission in its final opinion in order to receive compensation, so long as the intervenor made a material contribution to the outcome or to the process.
- Intervenors are not penalized for presenting information which duplicates the contribution of others so long as it beneficially contributes to the outcome and is not copied from any other source. A “nonduplication” standard only serves to discourage intervenors from sharing information and working cooperatively with each other and with commission staff.
- Criteria for qualification are clearly defined. Intervenors apply for eligibility for the first case in which they participate. In additional cases, eligibility is assumed. Repetitive eligibility filings are not required. The qualification process eliminates intervenors who may not be qualified to participate or whose participation may be trivial or lacking in substance.

¹ Intervenor compensation programs in Idaho and Colorado are even more limited than those in California, Wisconsin and Michigan:

Idaho’s intervenor compensation program, established in 1985 (Id. Code. § 61-617A), is funded with assessments from the energy, telephone and water utilities and is administered by the Public Utilities Commission. An intervenor files a petition for an award with the PUC’s legal department, which presents the petition to the Commission. Funds are awarded after the final ruling has been made. Intervenors in recent cases have included the City of Mullan, the Committee for Fair Rates, Industrial Customers of Idaho Power, and the Idaho Irrigation Pumpers Association. Awards are limited to \$20,000 per case for all parties combined. Telephone interview with Brad Purdy, Deputy Attorney for the Legal Division, Idaho Public Utilities Commission (Apr. 26, 1991).

When the Colorado Office of Consumer Counsel was established in 1984, the intervenor compensation statute was amended to reflect the presence of a state government proxy advocate. Colo. Rev. Stat. § 40-6.5105. If the Consumer Counsel intervenes in a regulatory proceeding and there are other intervenors, the Commission must consider whether or not those intervenors contributed materially to the case in order for them to receive funding. As a result, the number of outside intervenors has been substantially reduced. Groups that have received some compensation include the Colorado Municipal League, Colorado Public Interest Research Group and Legal Aid. The Office of the Consumer Counsel is part of the Office of the Attorney General. Telephone interview with Dian Callaghan, Administrative Director, Colorado Office of Consumer Counsel (Apr. 26, 1991).

² Wheaton, “Funding Consumer Representation,” 6-8.

- Intervenors are compensated for their full participation at reasonable and full market rates. They are eligible for multipliers analogous to “private attorney general” enhancement awards.

The program is adequately funded through utility assessments or legislative appropriation to support active participation by a number of intervenors.

The process by which awards are granted is insulated from pressures exerted by commissioners, political parties and special interests in order to avoid situations in which intervenors are prevented from receiving awards because their particular positions are at odds with individuals and/or political parties in power. Ideally, the intervenor compensation program is administered by an agency other than the public utilities commission.

Applicability for CUB Funding. Intervenor compensation programs, at least those which approach the “ideal” model suggested above, hold the promise of providing a modicum of budgetary stability for CUBs in at least two scenarios—states with small populations where state agency mailing inserts would draw insufficient revenue, and states which do not pass legislation authorizing a CUB’s access to state agency mass mailings.

In this discussion, it is assumed that a viable CUB requires an annual operating budget of at least \$250,000 to \$500,000. The lower amount would allow for the establishment of an office and payment of overhead costs associated with its maintenance, the salaries for a full-time staff of one or two professionals and minimum support staff, the expenses associated with communications such as newsletters and membership mailings, and some funds to support advocacy. The higher amount would support somewhat more active participation in regulatory proceedings.

The costs of participating in rate cases tend to vary little whether a CUB is in a small or large state, whether the case involves a small utility or a large one. When considering the need for expert witnesses and specialized legal expertise, the expenses of participating in regulatory proceedings can amount to as much as \$100,000 per case. As such, intervenor compensation would be of particular value for CUBs in smaller states. States with populations under two million¹ would not have a sufficient population base to attract enough members through inserts in state agency mailings to fund a substantial portion of the organization’s budget past the first two or three years of usage.

A state such as Oregon with a population of nearly three million could expect about \$100,000 per year in revenue from membership donations obtained via state agency mass mailings, and another \$240,000 from renewals. To reach an annual budget of \$500,000, the CUB would need additional revenue of \$160,000. This could be obtained in part through direct mail campaigns, door-to-door canvassing and appeals to existing members for supplementary contributions. However, these methods are costly and not always reliable. Payment of CUB for its participation in regulatory proceedings through an intervenor compensation program would not only supplement the budget but also provide a source of income that could be relied upon from year to year to support the organization’s advocacy. If the intervenor compensation program were the “ideal” model as recommended above, it would serve to stabilize the organization even when its membership base decreases, as often happens in citizens groups on a cyclical basis.

¹ Seventeen states have populations under two million.

Another scenario in which intervenor compensation would play a vital funding role is in states where CUBs are established without the benefit of state agency mass mailings as the vehicle for soliciting members. In such a situation, a program of intervenor compensation is virtually a necessity to fund CUB's participation in regulatory proceedings. Indeed, since the loss of the utility bill enclosure privilege, the Wisconsin CUB and UCAN in San Diego have both obtained a portion of their funding from the compensation programs of their respective regulatory commissions.¹

When discussing intervenor compensation as a source of funding for CUBs, it is important that the mission of CUBs not be forgotten. CUBs are by definition membership-based grassroots organizations, representative of and answerable to the members. This report does not suggest that intervenor compensation be viewed as the sole or even primary source of revenue for CUBs, thereby overtaking membership contributions as the funding base. However, the importance of intervenor compensation as a stabilizing source of revenue should not be overlooked—to enable the organization to continue its advocacy work when membership-based revenues reach a plateau or decline.

In summary, an effective intervenor compensation program can be the difference between a viable organization, one that aggressively represents residential ratepayers in a broad range of utility proceedings, and an organization that can participate only minimally and intermittently in utility proceedings. With the availability of adequate compensation for participation in regulatory proceedings, a CUB can conceivably afford to develop full-time expertise within the organization rather than relying on outside consultants who are hired for specific cases. In-house expertise would enable the CUB to develop continuity from one case to another, much like the legal staffs maintained by the utilities, albeit on a considerably smaller scale. Intervenor compensation would be of particular value to CUBs that do not have access to mass mailings as well as CUBs in smaller states where revenue from agency mailings would not be sufficient to support CUB operations.

The CUB Funding Mix: A Summary

Table 3.6 summarizes this chapter's analysis of the various fundraising schemes available to CUBs. It is, by necessity, an oversimplification of the funding options. As such, it is meant to serve only as a framework for consideration by those who may be planning to establish a CUB.

A careful analysis of the hypothetical situations illustrated in Table 3.6 demonstrates the importance of having either state agency mass mailing privileges or intervenor compensation in order to maintain the CUB organization at a viable level of operation. However, relying on intervenor compensation to stabilize the budget does nothing to maintain the membership base from year to year. If a CUB were to receive a substantial portion of its budget from intervenor compensation and did not have state agency mailing privileges, it would need to increase its supplemental fundraising efforts in future years—such as direct mail appeals and canvassing—in order to replenish the members lost each year through attrition.

Some words of caution are in order. The table is based loosely on actual membership patterns of the four existing CUBs. Since the Illinois CUB is the only one so far to insert its

¹ As noted above, the Wisconsin CUB may not use intervenor compensation awards to fund internal administrative operations, only the costs of hiring outside expertise.

membership appeals in state agency mailings, the membership and budget estimates extrapolated for the other states can only be seen for what they are—estimates.

Best-case scenarios have generally been used to derive the table's estimates. For example, the return rate for state agency inserts is figured at 0.5%, whereas in practice, the Illinois CUB has found that returns fluctuate from 0.3% to 0.5%. The expected membership range of 3-5% of ratepayer households may be somewhat underinflated, however, thereby offsetting the higher return rate figures. Actual memberships for the Wisconsin and UCAN CUBs at their heights exceeded the projections offered in Table 3.6.

Table 3.6
CUB Membership and Funding Expectations for Different Population Bases

Table 3.6a: Hypothetical Membership Expectations

	Large State	Medium State	Small State or Large Locality
Model	Illinois CUB	Wisconsin CUB	Oregon CUB / UCAN
Population (1989 estim.)	11.7 million	4.9 million	2.8 million / 2.3 million
No. of Households (2.6 persons per HH)	4.5 million	1.9 million	1.1 million / 900,000
Expected membership range @ 3-5% of HH	135,000 – 225,000	57,000 – 95,000	30,000 – 50,000
Source of members:			
a) State agency inserts @ 0.5% response rate	50,000 (from 10 million pieces)	20,000 (from 4 million pieces)	10,000 (from 2 million pieces)
b) Membership renewals @ 60% renewal rate	96,000 (from 160,000 members)	45,600 (from 76,000 members)	24,000 (from 40,000 members)
b) Direct mail, canvassing, fairs, etc.	14,000	10,400	6,000
Total Members*	160,000	76,000	40,000

Table 3.6b: Hypothetical Funding Expectations

	Large State	Medium State	Small State or Large Locality
a) State agency inserts @ 0.5% response rate, \$10 contribution	\$500,000 (from 10 million pieces)	\$200,000 (from 4 million pieces)	\$100,000 (from 2 million pieces)
b) Membership renewals @ 60% renewal rate, \$10 contribution	\$960,000 (from 160,000 members)	\$456,000 (from 76,000 members)	\$240,000 (from 40,000 members)
c) Direct mail, canvassing, fairs, etc.	\$140,000	\$104,000	\$60,000
d) Intervenor comp.	\$200,000	\$150,000	\$100,000
Total a, b, c **	\$1.6 million	\$760,000	\$400,000
Total b, c, d ***	\$1.3 million	\$710,000	\$400,000
Total a, b, c, d ****	\$1.8 million	\$864,000	\$500,000

Notes to Table 3.6:

- * Actual memberships and budgets for existing CUBs, at their highest, are as follows: Illinois – 200,000 members, \$1.7 million budget; Wisconsin – 100,000 members, \$700,000 budget; UCAN – 70,000 members, \$340,000 budget; Oregon – 20,000 members, \$250,000 budget (without enclosure privileges).
- ** These hypothetical budget totals assume that the CUB is 100% funded by memberships at an average annual contribution of \$10.
- *** Without state agency mailing access, the CUB would have to drastically increase its supplemental fundraising efforts (such as direct mail) and/or increase the minimum requirement for membership contribution in order to maintain this budget level in further years.
- **** A state which provides state agency insert privileges may not be likely to have an intervenor compensation program and vice versa. However, this scenario does show how CUBs, especially those in states with small populations, could benefit from both.

Chapter 4

STRUCTURAL ISSUES

Architects are well-grounded in the meaning of the old adage, “form follows function.” The early organizational architects of CUBs likewise proposed a structure that would support the mission of CUBs. They designed both a funding mechanism and a form of governance that would best ensure that CUBs effectively represent and are accountable to residential ratepayers.

The funding mechanism—inserting CUB messages in mass mailings of utilities, and more recently, state agencies—not only allows CUBs to reach a majority of ratepayers, but also gives CUBs an inexpensive means to draw members from a broad spectrum of the population. The form of governance—democratic elections of representatives to a board of directors—provides a strong measure of accountability by ensuring that CUBs remain responsive to members’ concerns.

CUBs are not monolithic institutions, however. As they have developed, they have explored alternative structures from those proposed by the CUB pioneers. These variations on the theme include how best to organize—by utility, by region, by state—as well as alternative governance and funding models.

Statewide versus Local Scope

CUBs were originally envisioned as statewide consumer organizations, representing the interests of all residential ratepayers in the state and covering all the regulated utilities. In virtually all of the dozen states that were considering CUBs prior to the 1986 *PG&E v. PUC* decision, consumer activists promoted legislation based on the single-organization statewide model. Three of the four existing CUB—Wisconsin, Illinois and Oregon—were established through legislation mandating statewide scope. Only one CUB, UCAN, has pursued the local model.

The Case for Local CUBs. The formation of UCAN, a local CUB established in San Diego in 1983, opened up the debate regarding which type of organization best serves ratepayers’ interests—one with a statewide scope or one which serves the local consumers of one utility.

The founders of UCAN were strong proponents of a local approach. Executive director Michael Shames, who at the time UCAN was established was a law student instrumental in creating the organization, believes a local single-utility CUB can be more responsive to the ratepayers in the utility service area. According to Shames, “Ratepayers are best off having an advocate who is representative of a clearly-defined customer base. While it’s important for a utility to be responsive to its customers, it’s just as important for a utility watchdog to be responsive to the community. Further, there is a great deal of institutional acceptance to having a local watchdog group.”¹

Leonard Grimes, president of the California Public Utilities Commission at the time UCAN was formed, also favored local CUBs because of improved ratepayer representation. “I think that ratepayers will enjoy better representation under a utility-specific approach. A

¹ Interview with Michael Shames, Executive Director of the Utility Consumers’ Action Network, in San Diego (Mar. 13, 1991).

consumer group charged with statewide ratepayer representation will have to prioritize and may be forced to ignore issues which are of vital importance to ratepayers of smaller utilities. It might also focus on issues of concern to urban ratepayers and give insufficient attention to the needs of those living in rural areas.”¹

A second reason some prefer the local approach is grassroots support. UCAN founder Robert Fellmeth of the Center for Public Interest Law stresses that “the ratepayer is more likely to respond to an organization directed narrowly at a particular utility.”² Grimes echoed Fellmeth’s assertion. “Ratepayers are more likely to support an organization if they know that organization is designed to work on matters involving their utility.”³

UCAN’s phenomenal membership growth is testimonial to the benefits of the local utility-specific structure. In two years’ time, UCAN attracted 8% of San Diego households, a percentage twice as high as statewide CUBs in Illinois and Wisconsin reached. Members have responded enthusiastically to letter-writing campaigns and participation in hearings. A hearing in 1988 drew 1,000 members who crowded the meeting room to express their disapproval of SDG&E’s proposed \$4.80 per month flat fee customer service charge. The utility subsequently withdrew its proposal. Over 1,600 San Diegans responded to a UCAN letter-writing campaign in March 1991 to protest the proposed merger of SDG&E and Los Angeles-based Southern California Edison. That merger has been rejected by the PUC.

Similar issues of representation and membership support emerged when the New York Public Service Commission (PSC) held hearings on the formation of a CUB in 1984. Those who favored the development of local utility-specific CUBs argued that a single statewide CUB would be an impractical approach for a state with such a diverse population and geographic make-up. They asserted that a single CUB in a state the size of New York would have difficulty reaching consensus on issues, thereby impeding its effectiveness as a consumer organization. Further, proponents of local CUBs felt fundraising would be easier “since solicitation efforts would be targeted to the consumers served by a particular utility.”⁴ They cited as supporting evidence UCAN’s success in attracting members.

Supporters of multiple local CUBs for New York state were not of one mind as to how they should be structured. Some favored regional CUBs to represent the service territories of New York’s major power companies. Others suggested that CUBs be organized along industry lines, citing the advantage that staff would be able to develop the expertise necessary to intervene in proceedings of the particular industries. A third suggestion was to split the state geographically and form one all-purpose CUB for upstate New York and another CUB for downstate New York.

It is noteworthy that the proponents of utility-specific CUBs hail from California and New York—states with large and diverse populations as well as marked geographic differences. Despite the advantages that local and regional CUBs may offer for large states, some very

¹ Leonard Grimes, President of the California Public Utilities Commission, Testimony before the New York Public Service Commission in Case No. 28655, Proceeding on Motion of the Commission to Examine Ratepayer Access to Utility Billing Envelopes and the Concept of a Citizens’ Utility Board (Jan. 26, 1984), 8.

² Robert C. Fellmeth, Director of the Center for Public Interest Law, Testimony before the California Public Utilities Commission, Case 83-08-04, *California Public Interest Research Group, et al. v. Pacific Telephone and Telegraph Co.* (1983).

³ Grimes, Testimony.

⁴ New York Public Service Commission, *Statement of Policy Governing the Access of Intervenor Organizations to the Extra Space in the Utilities’ Billing Envelopes*, No. 28655 (May 14, 1984), *reh’g denied*, Nov. 14, 1984.

practical limitations appear to rule out their widespread development. The overriding drawback to local CUBs, and perhaps the reason there is only one to date, is resources. Few local CUBs would be able to attract a sufficient number of members to sustain a viable long-term organization. Even Michael Shames, director of a successful local CUB, concedes that “without pooling of resources, it is unlikely for a local group to effectively take on the utility.”

Benefits of a Statewide Organization. CUB leaders, both past and present, concur that economies of scale virtually demand a statewide approach to structuring CUBs. Susan Stewart, director of the Illinois CUB, points out that “there are some economies to be achieved by using the same witnesses, the same attorneys and the same arguments in two cases rather than one. You don’t have to reinvent the wheel every time you hire a witness....There are precedents that get set in one case, which, if you are a statewide organization, you know and can apply to other cases. But if you are operating in isolation and are not in tune with the precedents being set in other cases, and aren’t aware of the nuances and discussions that went on in those cases, you lose the benefit of that knowledge. It’s more efficient to run it as a statewide organization.”¹

In a similar vein, Tom Lonsway, president of the board of directors of the Wisconsin CUB, states, “Single-utility CUBs would diffuse the resources. The issues we tend to pick are the precedent-setting issues. The utilities may differ but the issues are the same, like the holding company issue.”² Former Wisconsin CUB director Kathleen O’Reilly adds, “To limit your jurisdiction to a region would be a very limited and false economy because the expertise you have to develop is so extensive.”³

Fundraising and membership development are perhaps the most compelling reasons for establishing statewide CUBs. A statewide organization assures a large population base from which to solicit enough members and funds to establish a viable organization. Issues that a statewide CUB would encounter would be more likely to maintain the interest of a critical mass of members over time rather than those encountered by a local, utility-specific CUB. Former Oregon CUB director Barbara Head explains that local/regional CUBs would not be feasible in a state as small as Oregon. “Regulatory actions take so long that it would be hard to sustain members’ interest around one utility. By covering both telecommunications and energy [statewide], there is always something happening.”⁴

A statewide CUB also prevents both the consumer confusion and diffusion of membership dollars that could occur if there were more than one CUB to join. In order to ensure their representation in all utility matters—telephone, electricity and gas—consumers are more likely to join one all-purpose CUB than several CUBs.

Robert Fellmeth, founder of a successful local CUB (UCAN), points out an additional advantage of a statewide CUB. “A statewide organization may be better able to develop strong ties with the state legislative and executive branches, which can enhance its influence in government decisionmaking.”⁵

¹ Telephone interview with Susan Stewart, Executive Director of the Illinois Citizens Utility Board (Mar. 29, 1990).

² Telephone interview with Tom Lonsway, President, Board of Directors of the Wisconsin Citizens’ Utility Board (Apr. 3, 1990).

³ Interview with Kathleen O’Reilly, former Executive Director of the Wisconsin Citizens’ Utility Board, in San Diego (June 4, 1990).

⁴ Telephone interview with Barbara Head, former Director of the Oregon Citizens’ Utility Board (Mar 5, 1990).

⁵ Interview with Robert C. Fellmeth, Director of the Center for Public Interest Law, in San Diego (Mar. 15, 1991).

Finally, a statewide CUB offers the benefit of providing a “more integrated and comprehensive approach to utility energy policy.”¹ Local and regional CUBs would not be able to foster a coordinated energy policy for the entire state. According to John Richard, an early CUB organizer with Ralph Nader’s Center for Study of Responsive Law, regionalism can create factionalism, with the various regions working at cross-purposes to one another.² Kathleen O’Reilly points out a related drawback. “Political influence is very weakened by being a regional CUB. You always have to deal with a legislative body where the trade-off between urban and rural votes is very important.”³

CUB leaders believe that many of the benefits of a local CUB can be structured into a statewide CUB. In the larger states like California and New York, regional offices could be established to develop stronger grassroots support by specializing in utility-specific issues and pursuing aggressive organizing on the local level.⁴ Even without regional offices, the Illinois CUB, which operates in a state of nearly 12 million people, has succeeded in developing active grassroots support for a variety of utility issues through the combination of ambitious organizing on the district level and the sophisticated use of targeted mailings.⁵

Challenges to the CUB Concept

The CUB concept, whether structured on a local or statewide basis, is not without its difficulties. CUBs face the problem of finding willing and able volunteers who will commit time to the organization, especially those who will run for elected office and serve on the board of directors. Another potential difficulty confronting CUBs is one of identity. In states where administrative offices of state government also advocate for utility ratepayers, and/or where other citizens groups intervene in utility proceedings on behalf of their members, CUBs may need to carve out areas of specialization or otherwise determine in which cases and in which capacity they can best carry out their work.

Maintaining a Democratic Structure. Perhaps the most vexing organizational problem which CUBs face is maintaining a truly democratic structure. As the existing CUBs have experienced, brand new CUBs have little difficulty finding individuals willing to circulate nominating petitions, gather the requisite number of CUB members’ signatures and run for office. But as time goes on, CUBs have found it difficult to attract new activists to carry on when the original “hard core” board members’ terms have expired and they are no longer willing to run for office. It is common for board members to serve more than one term unopposed for election. When board members are not willing to serve an additional term, or are precluded from doing so by the by-laws, some CUBs have experienced board seats remaining vacant for a period of time. Oregon CUB director Kimberly Moore Webster reports that it has sometimes been difficult to find candidates to run for office in the state’s smaller rural districts.

¹ New York Public Service Commission, *Statement*, 20.

² Telephone interview with John Richard, Center for Study of Responsive Law (Mar. 1, 1990).

³ Interview with Kathleen O’Reilly, former Executive Director of the Wisconsin Citizens’ Utility Board, in San Diego (June 4, 1990).

⁴ Professor Fellmeth of the Center for Public Interest Law suggests a statewide CUB with regional subsidiaries or “DBAs” (“doing business as”) which have their own name and identity and which focus on local, utility-specific issues. Interview with Robert C. Fellmeth, Director of the Center for Public Interest Law, in San Diego (Mar. 15, 1991).

⁵ See Chapter 2 for more information on the Illinois CUB.

Potential candidates may find it daunting to circulate nominating petitions to the CUB members in their district to gather the 30 signatures needed to qualify for the ballot. UCAN director Michael Shames says he has no trouble finding people who are willing to serve on the board, but he does have a hard time finding members who will run for election. As a result, UCAN has not held elections since 1988. The UCAN board, according to Shames, is now “representative, but not elected.”¹

Illinois CUB director Susan Stewart calls the process of gathering signatures on a nominating petition “a pain.” But she is quick to point out that the requirement has its purpose. Board members must have some organizing skills if they are to be effective. If they cannot obtain support from at least 30 CUB members in their district, they might not be appropriate to serve on the board. Stewart characterizes the Illinois CUB’s board of directors as a working board. It meets six times a year with subcommittee meetings scheduled at other times. Board members hold district meetings with CUB members to discuss pending legislation and regulatory proceedings and to recommend actions which CUB members can take. Directors are also frequently called upon to make speeches and be interviewed by the media.

Both the Illinois and Oregon CUBs have maintained democratic elections of board members, although both CUBs have experienced times when there are one or more vacancies. As many as 40% of Illinois CUB members vote in its elections. In recent elections, the Oregon CUB has averaged about 10% of its members voting.

A necessary part of maintaining a democratic governance structure is funding the elections. As CUBs have learned, democracy costs money; the expenses for mailing informational fliers and ballots is substantial. In order to streamline the election process and reduce expenses, CUBs have learned to cut corners. The Illinois CUB, for example, has minimized the number of mailings it sends to recruit candidates. In addition, it does not mail ballots to members if there is an uncontested race in a particular district.

CUB leaders do not have any easy answers to the dilemma of democratic governance. Perhaps the answers lie, at least in part, in relentless organizing and media exposure. For those CUBs with an adequate budget to hire a full-time organizer and carry out an active public relations program, the ability to continue to attract activists willing to run for office may be made somewhat easier because of the high visibility of the CUB.

In general, and where there is an adequate critical mass of resources, democratic elections serve very important and basic purposes. They (1) legitimize the governing body; (2) publicize the governance structure and its leaders; (3) provide a check on leadership abuse within the organization; (4) periodically focus the attention of the CUB directors on those whom they seek to represent; and (5) give the members a proper stake and role in the organization which they fund and which claims to represent them.

Competing Domains—The Turf Myth. A citizens’ “futility board,” trumpets a January 1991 editorial headline in a New York newspaper opposed to the formation of a CUB there.² The argument posited by the editorial, and heard in every state where a CUB has been proposed, is that another agency is not needed to represent ratepayers in regulatory

¹ Interview with Michael Shames, Executive Director of the Utility Consumers’ Action Network, in San Diego (Mar. 1, 1990).

² “Futility Board,” *New York Newsday* (Jan. 7, 1991).

proceedings. If the regulatory commission is doing its job, another organization is only redundant. Besides, say CUB's detractors, the state already has a Consumer Protection Board, and the Attorney General's Office also represents consumers on occasion. A CUB, they argue, is just another layer of bureaucracy.

Depending on a state's advocacy environment, a CUB in the beginning stages of development may have to battle for its identity in much the same way that the New York CUB is having to justify its existence in its current bid for legitimacy. Bureaucratic redundancy is an easy argument for CUB opponents to make, and one that can be effective. CUB supporters counter the criticism by pointing out that CUBs are voluntary organizations that require no taxpayer dollars. Furthermore, the budgets of existing government agencies are generally insufficient to intervene consistently, and government advocates are often limited by financial and political constraints.

In reality, CUBs have not found that their efforts duplicate those of government organizations charged with representing ratepayers. On the contrary, CUBs' efforts are often complementary, contributing a unique perspective to regulatory proceedings that the government proxy may be unable to offer because of political, jurisdictional or budgetary limitations. In California, for example, when the Public Utilities Commission created the Division of Ratepayer Advocates to represent consumer interests in utility proceedings, the Commission itself noted that "the participation by consumer groups tends to enhance the record in our proceedings and complement the efforts of our Commission staff."¹

In Illinois, where there has been both a CUB and a governor-appointed Office of Consumer Services,² CUB director Susan Stewart reports that the two organizations have usually taken the same positions on issues under consideration by the Illinois Commerce Commission. Their advocacy is complementary in that they can, along with other intervenors, divide the issues between them, co-sponsor and jointly fund expert witnesses, and even file joint briefs when appropriate. This allows maximum utilization of scarce resources, especially in proceedings that are phenomenally expensive where, according to Stewart, "the combined efforts of all consumer and governmental intervenors may be outspent 10-1 by the utility."

CUBs can take positions that a government agency would be unlikely to advocate. For example, the issue of "lifeline" rates for low-income consumers is more apt to be spearheaded by a CUB than by the state's consumer counsel. A state agency tends to be charged with broadly representing all consumers' interests—both business and residential—whereas issues like lifeline and winter disconnection policies affect a subset of residential ratepayers, low-income households.

Further, government agencies do not tend to intervene in issues that pit one class of ratepayers against another.³ While a CUB might intervene in a rate design case in which it opposes rate relief for a utility's business customers at the expense of residential

¹ Cal. P.U.C. Dec. No. 83-12-047 (Dec. 20, 1983), 22.

² Illinois Governor Jim Edgar eliminated the Office of Consumer Services in 1991, citing as reasons the state's budget crisis and the presence of other state agencies that represent consumer interests. Consumer groups, including CUB, decried the decision, arguing the inadequacy of the financial resources of consumer groups vis-a-vis the utilities in representing their respective interests before the regulatory commission. See "State to Drop Consumer Office," Chicago Tribune (Feb. 1, 1991): M8.

³ William T. Gormley, Jr., *The Politics of Public Utility Regulation* (Pittsburgh: University of Pittsburgh Press, 1983), 185.

ratepayers, a government office might choose to take no position on that issue. A CUB is also able to intervene in proceedings which are so highly politicized that the administration may effectively restrict the position which can be taken by the state's consumer counsel.

CUBs' interaction with government advocates is complementary in another, albeit more subtle, way. According to political scientist William Gormley, CUBs "play a catalytic role in prodding bureaucracies. Theirs is a constructive role because they generate bureaucratic responsiveness without a lot of the dysfunctionality that comes with control from above. Their presence can give bureaucracies enough discretion to make decisions on their own."¹

The most significant difference between the type of advocacy undertaken by CUBs and that of government proxies is mobilization of public support. CUBs can generate grassroots support for consumer-beneficial policies through letter-writing, testimony at hearings, petitions and rallies. In addition, CUB staff can actively lobby for legislation, activity which is forbidden of government proxies except when requested by the legislature to testify at formal hearings. The mobilization of members' support is often the crucial element needed to convince decisionmakers to support consumer-oriented reforms.²

In summary, the argument that a CUB only duplicates the work already done by offices within state government is more a "red herring" intended to thwart the formation of a CUB than a legitimate criticism. The types of cases which CUBs can promote as well as the positions they can advocate are significantly different from, yet complementary of, the ratepayer representation offered by state government offices. Indeed, it is highly likely that the most significant difference between CUBs and government proxies—the ability to marshal grassroots support—is what CUB detractors, especially the utilities and their shareholders associations, are truly attempting to thwart.

Variations on the CUB Structure

While CUBs have proven to be effective watchdogs of ratepayers' interests in four states, the CUB concept as originally proposed may not be appropriate or even practical in all situations. There will be some states in which CUB legislation authorizing mass mailings of state agencies would be difficult if not impossible to pass.³

This report suggests that a CUB is not necessarily dependent on the funding mechanism of enclosures to be considered a CUB. As long as it is democratically governed and represents residential ratepayers, a consumer organization can function as a citizens' utility board. Several alternatives are considered here. Each scenario is based on a funding source which provides a modicum of financial stability for the organization.

One quasi-CUB scenario would be an organization that is funded in part from a state government appropriation obtained through utility assessments and in part from membership contributions. This formula would ensure ongoing financial stability at a minimum level of operation as well as a degree of residential ratepayer representation. The statute or administrative ruling which authorizes the organization could include provisions

¹ Telephone interview with William T. Gormley, Jr., Professor of Political Science at the University of Wisconsin (Mar. 1, 1990).

² Stefan H. Krieger, "An Advocacy Model for Representation of Low-Income Intervenor in State Public Utility Proceedings," *Arizona State Law Journal* 22 (1990): 676-78.

³ See model CUB legislation in Appendix B.

for democratic representation. It could also require a minimum membership level in order to retain funding from the state-authorized appropriation.

Members of the board of directors would be elected by the membership in each of the districts created throughout the state. Like existing CUBs, these could be congressional districts, combinations of such districts or state senate districts. The key criteria for the formation of districts would be that they are somewhat similar in population and that the number of districts created would not be so numerous as to make board deliberations awkward, perhaps not to exceed a board of fifteen members.

A second alternative is similar to the first in both funding and governance. But the scope of the organization would be broadened to include advocacy in the regulatory proceedings of financial and insurance institutions in addition to those of utilities. These are industries where consumer representation is weak and the stakes for consumers are high. Because the controversial issues which confront these industries are likely to peak at different times, a multi-industry organization may be more successful in maintaining a stable membership base than a citizens group focused solely on utility issues.

Susan Stewart of the Illinois CUB thinks that as time goes on, it might be worthwhile for a CUB to explore branching into other areas like finance and insurance. "Obviously utilities are very timely issues, but it doesn't make sense to pigeonhole yourself into utility issues forever if in fact those tend not to be the pressing issues of the moment....I suspect that consumers who are interested in utility issues probably are the same class of consumers interested in insurance and banking." She cautions any organization that might take a multi-industry approach not to abandon the utility issues, however. "During the period when people fall asleep and are ignoring the issue is when the greatest damage gets done. Then you spend the next decade or two trying to undo that damage."¹

A third alternative returns to utility industry issues but departs somewhat from the democratic governance requirement and opens up the funding to any number of consumer organizations interested in intervening in utility proceedings. Borrowing the concept from Michigan's Utility Consumer Representation Fund, a state could establish a grant fund available to intervenors on a competitive basis. The grant program would be funded by assessments on utilities. Consumer groups would apply annually for funds to support what they foresee to be their caseload for the coming year.

The advantage of such a program is that consumer groups would be awarded funds in advance, enabling them to plan and administer their advocacy work accordingly. The board which oversees the fund would be appointed in such a way as to avoid both political favoritism and attempts to blackball grantees who take "unpopular" positions. Some board members could be appointed by the governor and others by legislative leaders on both sides of the aisle. In addition, one or more board members could be appointed by prominent statewide consumer organizations in order to ensure that grassroots interests are represented. Not all consumer organizations that apply to the grant fund would necessarily be democratically governed. But this alternative does offer the potential advantage of bringing a variety of residential ratepayer viewpoints into regulatory proceedings.

A variation on this approach which departs from the competitive grant process would be to establish an intervenor compensation fund that is available to all qualified intervenors.

¹ Telephone interview with Susan Stewart, Executive Director of the Illinois Citizens Utility Board (Mar. 29, 1990).

Organizations that intervene in regulatory proceedings on behalf of residential ratepayers would be reimbursed for their contributions. The ideal program would compensate participants throughout the regulatory process rather than after the fact. It would honor marketplace rates as well as the full extent of intervenors' participation rather than compensating intervenors at lower than market rates for only a portion of their involvement, as does the current California system.

In each of these scenarios the utility assessments that create the intervenor compensation program could be obtained in a number of ways. Consumer representation could be funded by a straight assessment on the major energy and telephone utilities, similar to the Michigan program. A second funding strategy would permit the state's regulatory commission to assess a value on the extra space in utility billing envelopes. The utilities would be required to "sell" the space either to themselves or to commercial advertisers and contribute the revenues to the state's intervenor compensation program.¹ A third approach would be to require the utilities to contribute a percentage of whatever they spend to advocate their own interests in regulatory proceedings to an intervenor compensation fund. Former Wisconsin CUB director Kathleen O'Reilly calls this the "three percent solution." She points out that this approach also poses the advantage of providing an incentive for utilities to minimize their own advocacy expenditures.²

These suggested departures from the traditional CUB funding scheme are not meant to lose sight of the "citizens" in the citizens' utility board concept. If an intervenor compensation program were to serve as a major source of a CUB's revenue, the organization must remain grounded in the key points central to the CUB concept: it must be membership-based, obtaining a substantial portion of its revenue from members' contributions; and it must be structured democratically or, at the very least, in such a way that the governing body is representative of and accountable to the members. These measures would ensure that the organization continues to focus on the concerns of residential ratepayers. In addition, the administrative body that oversees the intervenor compensation fund should be separate from the regulatory commission. Structural separation is necessary to ensure that the award process is not subject to bias based on the positions taken by intervenors in regulatory proceedings.

Fitting Form to Circumstances

Population size will dictate to some extent the method of funding and form of governance most appropriate to CUBs in different states. For a state with a small or even medium population, total reliance upon state agency mass mailings is not likely to attract a sufficient membership base to raise enough money for the organization to intervene in the full gamut of regulatory, court and legislative proceedings of the state's energy and telephone utilities. In a "best-case scenario," both state agency inserts and intervenor compensation would be available to CUBs, especially those in states with smaller populations. The CUB would take advantage of state agency mass mailings to insert membership solicitations during a start-up period of at least three years in order to establish a sizable membership base. In the ensuing years, the CUB could renew its use of state agency inserts on an infrequent basis in order to reach utility consumers who have more recently been added to the mailing list. At the same time, the CUB would receive intervenor

¹ This approach has been considered in an Ordez Instituting Investigation of the California Public Utilities Commission, Cal. P.U.C. 190-10-042 (Oct. 24, 1990).

² Interview with Kathleen O'Reilly, former Executive Director of the Wisconsin Citizens' Utility Board, in San Diego (June 4, 1990).

compensation for its participation in regulatory proceedings, an important stabilizing element when membership revenue reaches a plateau or declines. A state with a large population appears to have a sufficient critical mass to sustain a viable CUB on an ongoing basis by relying on state agency mass mailings and aggressive direct mail campaigns to draw sufficient contributions to pursue an active caseload, as the Illinois CUB demonstrates.

Political climate and regulatory environment will ultimately dictate whether or not a state legislature or regulatory commission is likely to authorize a CUB's use of state agency mailings and/or establish an intervenor funding program. At present, only two states—Illinois and New York—have authorized CUBs to insert messages in state agency mailings. And only a handful of states support active intervenor compensation programs.

Political scientist William Gormley's analysis of the varying levels of public advocacy among the states may shed some light on which states could be expected to authorize funding support for CUBs.¹ He indicates that states with high utility rates and appointed public utility commissioners are more likely to support a high level of public advocacy, either by proxy advocates or grassroots organizations or both. On the other hand, states with lower rates and elected commissioners tend to show lower levels of public advocacy on behalf of residential ratepayers.

Extrapolation of his model to CUBs would suggest that states with controversial utility rates and/or policies and where the regulatory commission is appointed would be more conducive to generating the necessary popular support to establish funding mechanisms for CUBs. Such public pressure could lead to legislative action as in Wisconsin and Illinois, citizens initiative as in Oregon, a ruling by the regulatory commission as occurred in California, or even executive order by the governor, New York's experience.

If form is to truly follow function, it is imperative that the method of funding and form of governance that are adopted lend themselves to supporting the mission of CUBs—by fostering an organization that is representative of and accountable to the broad spectrum of residential ratepayers, that provides members with a vehicle for organizing themselves and for participating in the regulatory process, and that is sufficiently funded to hire the expertise necessary to advocate on behalf of residential ratepayers.

¹ Gormley, *The Politics of Public Utility Regulation*, 64.

Chapter 5

CONCLUSIONS: THE FUTURE OF CUBS

This report has examined the evolution of CUBs from Ralph Nader's proposal in the 1970s to the formation of CUBs in Wisconsin, Illinois, California, Oregon and now New York. It tracks the effects of the utilities' challenges to bill inserts and the difficulties CUBs faced after the loss of enclosure privileges in the 1986 Supreme Court case, *PGE v. PUC*. And it discusses alternative methods of funding CUBs, with emphasis on intervenor compensation.

The relevance of CUBs is as strong today as it was in the 1970s when Nader first proposed that messages inserted in utility bills be used to organize consumers into voluntary nonprofit consumer organizations. The need for a means to organize and empower consumers may be even more compelling now than it was then. Real income has dropped for most Americans since the 1970s. The gap between the rich and poor has widened dramatically. Corporate mergers have created multinational conglomerates that control an ever-broadening array of consumer goods and services. In short, consumers face even stiffer challenges in attempting to shape the market to their real needs and in building effective mechanisms to redress their grievances.

The early promise of the CUB concept and the very real successes demonstrated by the existing CUBs on behalf of residential ratepayers leads to a consideration of the future of CUBs. Where do CUBs go from here? What are the major issues facing utility consumers in the 1990s and beyond, and what role can CUBs play in addressing them? Does the CUB concept have relevance beyond the energy and telephone utilities?

Applicability of the CUB Concept to Other Forums

When Ralph Nader advocated that informational inserts placed in the regular mailings of certain industries be used to organize consumers into associations, his proposal extended to far more arenas than the public utilities. He envisioned that, in addition to legal monopolies, a notice inviting customers to join a consumer organization be included in the mailings of all companies that use pre-printed contracts, called contracts of adhesion. Such contracts include insurance policies, landlord leases, installment loan arrangements and warranties.¹ Three industries in particular have since been singled out by consumer activists for the formation of CUB-like organizations—financial institutions, the insurance industry and the postal service.

Financial Services. The past decade has witnessed the deregulation of the financial services industry and, with it, the most serious financial crisis since the Depression of the 1930s. The power of the savings and loan (S&L) and banking industries to promote legislation and regulations that serve their own interests has far outweighed governmental consideration of consumers' interests. Even though consumers support the federal depository insurance system (and now the bailout of the S&L industry) with tax dollars, their interests have been accorded little weight before Congress, state legislatures, state and federal regulatory agencies and the courts.

¹ Ralph Nader, "Foreword" to Andrew Sharpless and Sarah Ganup, *Banding Together: How Check-Offs Will Revolutionize the Consumer Movement* (Washington D.C.: Center for Study of Responsive Law, 1981).

Consumer advocates propose the formation of consumer organizations at the national and/or state levels that would give consumers a much-needed voice in the regulation of this most powerful industry. Such organizations would also provide information to consumers to help them navigate the increasingly complex maze of choices facing them in a deregulated environment.

At the national level, the U.S. Public Interest Research Group (U.S. PIRG), the Center for Study of Responsive Law (CSRL), and Public Citizen have proposed the formation of a nationwide Financial Consumers' Association (FCA) based on the CUB concept. U.S. Representatives Charles Schumer and Joe Kennedy introduced FCA legislation in 1991 as an amendment to H.R. 1505, a package of broad banking reforms under consideration in Congress.

The proposed FCA is described as "a public purpose, democratically controlled, self-funded, nationwide membership association of financial service consumers" charged with educating consumers and representing them in financial service matters.¹ Four times per year, all federally insured banks, credit unions and savings and loans would be required to include inserts in their mailings that describe the purpose of the association and invite customers to join the organization. Compliance with the enclosure requirement would be a condition for receiving federal deposit insurance. Like CUBs, the membership fee would be kept low—a proposed \$10 per year—to attract a broad cross-section of consumers, particularly low- and moderate-income households.

The quarterly inserts, prepared by the FCA, would adhere to strict weight limitations; inserts weighing less than .35 ounce would incur no mailing charges for the FCA. The FCA would be required to certify that the insert text is neither false nor misleading. Banks that object to the content of inserts would have the right to appeal to the Federal Deposit Insurance Corporation (FDIC).

The FCA would establish regional and local offices in order to foster grassroots participation in association matters. Representatives would be elected to a policymaking board by members from each congressional district. A smaller board of directors charged with managing the association would be elected from these delegates. The proposed legislation mandates that the board be composed of individuals outside the financial services industry, and that campaign contributions be limited in order to avoid control by special interests.

According to U.S. PIRG, the FCA would function as a combination watchdog-educator. Its staff of experts would monitor legislative and regulatory activities and lobby for consumer-beneficial reforms, thereby countervailing the powerful influences of the financial services industry.² The FCA would publish localized shopping guides for its members, explaining the more complex products and services of the financial industry, alerting consumers to unfair practices and providing comparative information on fees and services.

¹ Discussion Draft Of "Financial Consumers Association" Bill (Mar. 1991), 3. See also *Financial Consumers' Association [Model] Act of 1990, Draft* (Washington, D.C: Center for Study of Responsive Law, 1990).

² U.S. Public Interest Research Group, "Questions and Answers About the Financial Consumers Association: FCA" (flier, date unknown).

Predictably, the FCA faces strong opposition from banking trade groups who claim that the financial services industry currently receives sufficient government oversight.¹ Further, they argue, financial services are dissimilar to public utilities in that they are private enterprises, not regulated monopoly service providers. Unlike the utilities, they do not have a guaranteed rate of return. And when they fail, as the S&L crisis has demonstrated, financial institutions can be liquidated. FCA proponents counter these arguments by citing the importance of the financial industry to the overall health of the economy and noting the vested interest of taxpayers because of their support of the deposit insurance system.

Similar measures have recently been introduced via state legislation in Illinois, New York and California.² In Illinois, FCA legislation has been drafted by Pat Quinn, a longtime CUB activist elected to the office of state treasurer in 1990 on a proconsumer banking agenda. His proposed legislation received strong public support in advisory referenda held in five counties in the November 1990 general election. However, popular support did not translate into legislative victory. H.1515 was defeated in the 1991 general assembly due to strong lobbying by the banking and insurance industries.³ The Illinois FCA bill differed from federal legislation in that it sought state agency envelope access rather than enclosures in the mailings of financial services. FCA backers in Illinois hoped to avoid the first amendment challenges expected from a proposal mandating direct industry enclosures.

Insurance Industry. To most consumers, insurance payments are virtually as inescapable as utility bills. In the past decade, insurance rates have risen dramatically at the same time that coverage has been reduced. Health and automobile insurance policies have become unaffordable for a substantial number of households. Disastrous consequences have befallen many who are unable to acquire adequate insurance or are uninsured altogether, such as denial of health care, loss of life savings and foreclosure on the family home. While public opinion is highly critical of the insurance industry, consumers have had little voice in ratemaking and policymaking proceedings because they have not been able to organize their efforts effectively.

Public Citizen, a Washington D.C.-based consumer organization, recommends the formation of CUB-like organizations at the state and federal levels to function as watchdogs over the insurance industry, similar in operation to the FCA discussed above. In a 1990 report,⁴ Public Citizen proposed sweeping reforms to the insurance industry, including the establishment of "citizens' insurance boards," to avert the kind of insolvency crisis experienced by the S&L industry. Such boards would participate in regulatory proceedings on behalf of consumers to ensure that consumer interests receive the same kind of representation currently afforded the insurance industry.

In California the concept of a state citizens' insurance board received strong public support as part of a package of insurance reforms placed on the November 1988 ballot as

¹ James M. Pethokoukis, "U.S. Consumer Group Proposed as Watchdog for Banking." *American Banker* (Mar. 18, 1991): 8. Financial institutions are also expected to raise the first amendment issues addressed by the PG&E v. PUC plurality. However, FCA proponents believe that FCA bill inserts will fit within the "legal notice" exception recognized in footnote 12 of the decision.

² California Senate Bill 893, introduced by Sen. Lockyer (Mar. 7, 1991); Illinois H.1515, introduced by Rep. Curran (1991); New York Assembly Bill 5145, introduced by Assemblymembers Nadler, Farrell, Clark, Sanders(1991).

³ Telephone interview with Claude Walker, Special Assistant for Consumer Affairs, Office of the Illinois State Treasurer (June 3, 1991).

⁴ Carolyn Smith DeWaal. *Insurance: The Next Industry in Crisis? A Report on the Financial Solvency of America's Top 20 Property and Casualty Insurers (1969-1988)* (Washington, D.C.: Public Citizen, 1990).

Proposition 103. The successful initiative, drafted by the consumer group Voter Revolt, mandated major reforms that included rate rollbacks, discounts for good drivers, public disclosure of industry operations, an intervenor compensation program and the formation of a nonprofit corporation to represent consumers in insurance proceedings.

The initiative required insurers to enclose notices in each annual policy or renewal premium informing policyholders of the opportunity to join an independent nonprofit corporation. The insurance commissioner, an elected position as established by Proposition 103, would determine the content of the enclosures. The purpose of the organization would be to advocate the interests of insurance consumers before proceedings of the Department of Insurance, courts and the legislature. The organization would be funded solely by membership contributions and would receive no legislative appropriation. Members would elect a board of directors to govern the organization.

While there was some question as to the constitutionality of the provision in light of *PGE v. PUC*, the clause was struck down for an unrelated reason. The California Supreme Court ruled that the California Constitution prohibits a citizens initiative from establishing a private corporation and empowering it to perform prescribed functions.¹

The Postal Service. Under the Postal Reorganization Act of 1971, the U.S. Postal Service came under the corporate-style direction of a Board of Governors comprised primarily of business executives. The oversight that had once been a function of Congress was largely eliminated, and with it went the mechanism that allowed individual postal customers to influence postal policy through their elected representatives. In the ensuing two decades, postal customers have experienced dramatically increased rates—from 6¢ to 29¢ for a first-class stamp—and, at the same time, significant reductions in service.

To return a measure of accountability to the postal service, Ralph Nader has advocated the establishment of a nonprofit Post Office Consumer Action Group (POCAG), modeled on the CUB concept.² Pursuant to congressional authority, the postal service would be required to deliver POCAG mailings twice a year free of charge to all residential postal addresses. The mailings would solicit membership in POCAG through voluntary contributions of \$10 a year. POCAG staff would be authorized to represent individual postal customers before the Postal Rate Commission, Congress and the courts.

Among the policies advocated by Nader would be “affordable first-class postage, the prompt delivery of mail, broader use for post offices, and...[challenges to] other cutbacks in services.”³ POCAG’s mission, in short, would be to prevent the postal service from becoming a system available only to those who can afford it.

In summary, CUB-like organizations for the financial services and insurance industries as well as the postal service offer the promise of increasing their accountability to consumers who at present are held captive to services and rates over which they have little control. While such organizations have yet to be established, interest in pro-consumer legislation is growing at the state and national levels. As the harmful impacts of deregulation

¹ *Calfarm Ins. Co. et al. v. Deukmejian*, 48 Cal. 3d 805 (1989). At this writing, the Insurance Commissioner is examining a variety of methods to address consumers’ grievances and involve consumers in the regulatory process.

² Center for Study of Responsive Law, “Nader Group Launches Nationwide Campaign to Stop Postal Rate Increase” (news release, Mar. 6, 1990).

³ *Id.* See also Ralph Nader, “Postal Service Is Failing Consumers,” *USA Today* (Feb. 2, 1990): 10A.

become more evident, consumer advocates and policymakers are likely to look more seriously at the benefits of consumer associations modeled on the CUB concept.

CUBs in the 1990s

Issues Facing CUBs. CUBs and consumer organizations modeled on the CUB concept face a tall order in the 1990s. The deregulation of some of the country's largest industries means that consumers are required to make crucial decisions in an increasingly complex and confusing marketplace. Consumers need reliable sources of information as well as mechanisms for joining forces in order to advocate their interests before regulatory and legislative bodies.

Telephone services are at the top of every CUB's advocacy agenda. Issues such as rate restructuring,¹ the introduction of local measured service² and Caller ID³ are but a few proposals that will have major impacts on rates paid by consumers and the ways consumers use the telephone network. Since the divestiture of AT&T in 1984, consumers have been faced with an almost overwhelming array of decisions regarding services and new technologies. With the process of deregulation continuing at both the state and federal levels, regulators will be deciding upon public policy issues that have the potential to revolutionize the structure of the telephone industry. Depending on the ability of CUBs and other consumer advocates to argue for policies that benefit residential ratepayers, consumers may face the prospect of a telephone system that is increasingly complex and less accessible to low and moderate-income customers.

The energy utilities are restructuring in much the same way as has the telephone system since the divestiture of AT&T. Even though the rate shocks of the 1970s and early 1980s have largely subsided, important electricity and gas decisions are being made that will have ramifications ten to fifteen years from now. Merger proposals, the formation of unregulated holding companies, the creation of a power grid that would be structured as a common carrier (similar to the telephone system)—all are complex and vitally important issues that are likely to escape the attention of residential ratepayers unless their interests

¹ In many states telephone utilities are engaged in regulatory proceedings to alter the way phone rates are structured. Traditionally, the amount paid by the phone customers has been determined by the phone company's actual costs of doing business plus a fixed rate of return, called "cost of service regulation" or "rate-of-return regulation." In its place, regulators in some states are adopting "incentive regulation" which would establish a benchmark rate of return determined by the regulator in advance. Profits achieved over the benchmark would be shared with customers. The new regulatory framework is intended to allow phone companies some flexibility in responding more quickly to competition in the marketplace and in developing innovative services. Consumer advocates are concerned that the long-range effects will be higher prices for local phone rates and poorer service for residential phone customers as compared to the higher-volume business customers.

² Local measured service (LMS) is a method of charging phone customers according to the time and distance of each call, as opposed to the "flat rate" method of allowing an unlimited number of calls for a given cost. Consumer advocates opposed to LMS characterize it as having a pay phone in your living room. Local telephone utilities claim that for a majority of customers, monthly phone bills will be significantly reduced.

³ Part of a package of new telephone technologies, Caller ID allows the customer to attach a device to the phone which flashes the number of the incoming call on a display screen and even records the number of the call in a memory bank so it can be retrieved later. Consumer advocates are wary of the device's impact on personal privacy and want customers to be able to block the transmission of their phone number information on outgoing calls. They warn against abuses by telemarketers who gather phone number information for direct marketing. In addition, they fear that persons for whom privacy is crucial—such as undercover investigators, individuals calling crisis hotlines, persons in battered women's shelters and other types of "safe houses," and mental health professionals—are likely to be at risk if their phone numbers are revealed. Phone companies, on the other hand, cite the value to phone customers of Caller ID in warding off harassing callers and in thwarting other types of unwanted calls.

are represented by professionals with sufficient expertise to understand the issues and argue their case effectively in regulatory proceedings.

Model for the 1990s. CUBs offer a compelling “model for the 1990s,”¹ not only for utilities issues but other industries such as insurance and finance where consumers have traditionally had little power to affect the outcome of regulatory proceedings. They provide a unique combination of characteristics not found in government offices charged with representing ratepayers. CUBs not only advocate for consumers, but also give their members a platform on which to participate in the regulatory process. On the one hand, they empower individuals by providing information and instructions on how to participate through such actions as letter-writing and testifying at hearings. On the other hand, they employ the technical expertise necessary to act on members’ behalf in regulatory proceedings. Both sides of the equation—empowerment and advocacy—are required for effective representation of consumers’ interests.

While CUBs offer an ideal model for mobilizing and representing consumers, a further factor enters into the equation—funding. Without a stable ongoing source of funding, CUBs are ill-equipped to meet the rigors of participating in the regulatory process—analyzing the issues, hiring attorneys and expert witnesses when necessary, communicating with members on a regular basis and organizing members to take collective action.

The early CUB architects proposed that membership contributions obtained through solicitations inserted in utility billing envelopes provide that funding source. The method proved to be successful in three CUBs until the utilities challenged the practice in *PGE v. PUC*. The Illinois CUB’s subsequent use of state agency mailings promises to be a communications and fundraising vehicle virtually as effective as utility bill inserts. States that pursue the formation of CUBs, as New York has recently done, are likely to adopt the Illinois practice.

But states with small populations may need to look beyond the vehicle of state agency mass mailings for a stable funding source. With populations of two million and less, membership appeals inserted in state mass mailings are not likely to generate sufficient revenue beyond the first few years of use to fund a viable CUB, not when participation in a single regulatory proceeding can cost tens of thousands of dollars. And those states where the political climate is inhospitable to CUB legislation modeled on the Illinois statute will also need to look elsewhere for a source of funding that can keep the CUB operating on an even keel when membership contributions fluctuate.

This report advocates intervenor compensation programs as a supplement and even an alternative to the funding vehicle of membership enclosures in state agency mass mailings. If the program is adequately funded and compensates qualified intervenors when the proceeding are in progress rather than after the fact, intervenor compensation can provide a reliable funding base for ongoing CUB support.

However funded, the continued establishment of CUBs is not expected to occur without considerable opposition from the utilities.² No CUB has come into being without a struggle;

¹ Phrase suggested by Seamus Glynn, Organizing Coordinator of the Illinois Citizens Utility Board, interviewed in Chicago (Oct 2, 1990).

² As a case in point, the pro-industry Atlantic Legal Foundation filed a court challenge in May 1991 to Governor Mario Cuomo’s executive order authorizing the establishment of a New York CUB. The complaint charges, among other things, that the Governor may not open up state agency mailings to a private organization without

and once established, none has experienced easy sailing. Nonetheless, the case for CUBs is strong and, as the four existing CUBs have demonstrated, strong enough to prevail against the formidable barriers erected by the utilities,

The messages of consumer empowerment by banding together in democratic organizations, and of self-help rather than tax-supported government intervention, deserve a broad hearing. As such, this report is meant to serve as a testimony to the viability of the CUB concept and as a practical guide for those considering the establishment of consumer organizations based on the CUB model.

legislative approval, that the authorization violates the free speech of other private organizations by limiting access to CUB, and that the rights of taxpayers have been infringed upon because a gift of money (*i.e.*, the dollar value of agency envelope access) has been awarded to a private organization in violation of the state constitution. The case is expected to be heard in August 1991. Telephone interview with Jonathan Feinberg, Assistant Counsel of the New York Department of Public Service (June 21, 1991).

APPENDICES

- A. Directory of Citizens' Utility Board
- B. A Model Act to Create a Citizens' Utility Board
- C. Advice from CUB Leaders
- D. References
 - Interviews
 - Bibliography
 - Legal Authority

Appendix A

DIRECTORY OF CITIZENS' UTILITY BOARDS

San Diego, California
Utility Consumers' Action Network
4901 Morena Blvd., Suite 128
San Diego, CA 92117
Michael Shames, Executive Director
619-270-7880

Illinois
Citizens Utility Board of Illinois
208 S. LaSalle, Rm. 584
Chicago, IL 60604
Susan Stewart, Executive Director
312-263-4282

Oregon
Citizens' Utility Board of Oregon
P.O. Box 6345
Portland, OR 97228
Kimberly Moore Webster, Executive Director
503-227-1984

Wisconsin
Citizens' Utility Board of Wisconsin
P.O. Box 1438
Madison, WI 53701
Christopher Blythe, Executive Director
608-251-3322

New York
[CUB is in the planning stages and is expected to be operational late 1991.]
New York Public Interest Research Group (NYPIRG)
184 Washington Ave.
Albany, NY 12210
Blair Horner, Legislative Director
518-436-0876

Appendix B

A MODEL ACT TO CREATE A CITIZENS' UTILITY BOARD¹

- SEC. 1. SHORT TITLE
- SEC. 2. FINDINGS AND PURPOSES
- SEC. 3. DEFINITIONS
- SEC. 4. CREATION OF CORPORATION; MEMBERSHIP
- SEC. 5. DUTIES, RIGHTS AND POWERS OF THE CORPORATION
- SEC. 6. NOTIFICATION OF IMPENDING PROCEEDINGS
- SEC. 7. JUDICIAL REVIEW OF REGULATORY AGENCY DECISIONS;
ENFORCEMENT ACTIONS
- SEC. 8. STATE-ASSISTED FUNDRAISING BY THE CORPORATION
- SEC. 9. PROHIBITED ACTS
- SEC. 10. BOARD OF DIRECTORS
- SEC. 11. DUTIES OF THE BOARD OF DIRECTORS
- SEC. 12. APPOINTMENT OF INTERIM BOARD OF DIRECTORS
- SEC. 13. ELECTION OF DIRECTORS
- SEC. 14. QUALIFICATIONS OF CANDIDATES
- SEC. 15. NOMINATION
- SEC. 16. STATEMENT OF FINANCIAL INTERESTS
- SEC. 17. STATEMENT OF PERSONAL BACKGROUND AND POSITIONS
- SEC. 18. RESTRICTIONS ON AND REPORTING OF CAMPAIGN
CONTRIBUTIONS AND EXPENDITURES
- SEC. 19. ELECTION PROCEDURES
- SEC. 20. INSTALLATION OF ELECTED CANDIDATES
- SEC. 21. RECALL OF DIRECTORS
- SEC. 22. VACANCIES
- SEC. 23. OFFICERS
- SEC. 24. EXECUTIVE DIRECTOR; QUALIFICATIONS; APPOINTMENTS; DUTIES
- SEC. 25. ANNUAL MEMBERSHIP MEETING
- SEC. 26. RELATIONSHLP TO EXISTING LAW AND POLICY
- SEC. 27. CORRUPT PRACTICES AND CONFLICTS OF INTEREST
- SEC. 28. PENALTIES
- SEC. 29. CONSTRUCITION
- SEC. 30. SEVERABILITY
- SEC. 31. EFFECTIVE DATE

¹ Compiled by: Seyoum A. Haregot, Center for Study of Responsive Law. P.O. Box 19312, Washington D.C. 20036. The Model Act is based on a New York bill of 1989, but also takes into consideration certain provisions of the CUB Model Act prepared by Robert Leflar and Martin Rogol, as well as the Illinois and Wisconsin CUB laws. [Leflar, Robert B., and Martin H. Rogol. "Consumer Participation in the Regulation of Public Utilities: A Model Act." Harvard Journal of Legislation 13 (Feb. 1976) 235-97.] Adaptations of the Center for Public Interest Law are noted with an asterisk (*).

SEC. 1. SHORT TITLE—This Act may be cited as the “Citizens’ Utility Board Incorporation Act of [date].”

SEC. 2. FINDINGS AND PURPOSES—

(a) **FINDINGS.**—The legislature finds that:

(1) Individual action by residential consumers for the purposes of participating in utility matters and communicating their views is rendered impracticable by reason of the disproportionate expense of taking such action.

(2) Such participation and representation can be best secured by the creation of a permanent, not-for-profit organization which is under the democratic control of its membership, solely responsive to that membership’s goals, and which is funded by voluntary contributions.

(3) The formation of such an entity by consumers acting voluntarily is impeded because consumers have neither the resources nor an efficient mechanism to contact all residential utility customers, raise initial funds and join such an entity.

(4) In order to create such an entity, it is necessary to establish a democratically structured organization and to provide for the dissemination to all customers of information as to the formation and purposes of such organization and to provide an efficient means for joining and contributing to such organization.

(b) **PURPOSES.**—It is the purpose of this Act—

(1) To assist in establishing adequate and affordable utility service to all residential customers in order to preserve the health and general welfare of the citizens of this state.

(2) To foster and encourage active citizen participation in utility matters and to facilitate effective representation and advocacy of the interests of residential utility consumers before regulatory agencies, the legislature, the courts and other bodies; and for these purposes to create a permanent not-for-profit organization.

(3) To create an efficient funding mechanism for the organization, involving no compulsory burden whatsoever on the taxpayers of this State, whereby residential utility consumers and others may voluntarily contribute to the organization.

(4) To ensure that public policies affecting the provision, quality and cost of utility services fairly reflect the needs and concerns of those consumers.

For these reasons there shall be established a not-for-profit Corporation known as the “Citizens Utility Board, Inc.” with the responsibility to promote adequate representation of residential utility consumers; to collect operating funds; to assist in the redress of residential utility consumer complaints; and to provide for residential utility consumer membership in such Corporation and residential utility consumer direction of the actions of such Corporation.

SEC. 3. DEFINITIONS—As used in this Act:

(a) “Utility company”, “public utility company”, “utility corporation” and “public utility corporation” mean a corporation or other entity engaged in the business of supplying utility services to persons within this State if rates or charges for such utility services have been established or are subject to approval by a local, state or federal authority.

(b) “Utility services” means electricity, water, natural gas, steam and telephone services supplied by a public utility.

(c) “Residential utility consumer” means any person in this State whose residence is furnished with a utility service by a public utility company.

(d) “Regulatory agency” means any local, state, or federal department, commission, office, authority or other public body with the legal authority:

(1) To establish or alter rates or charges for the provision or sale of utility services within this state.

(2) To plan or approve, reject, or modify plans for the construction of facilities for the production or provision of utility services within this State.

(3) To formulate or review energy policies affecting this state.

(4) To otherwise regulate the activities of utility companies doing business within this State; provided that local, state and federal courts and legislative bodies shall not be deemed to be "regulatory agencies" for the purposed of this Act.

(e) "Formal proceeding" means any formal meeting of a regulatory agency or subdivision thereof, including a meeting conducted by an administrative law judge or other agent of the regulatory agency, regarding:

(1) The establishment or alteration of rates or charges for the provision or sale of utility services within this State.

(2) The establishment, abrogation, or amendment of rules or regulations, or the investigation of or inquiry into activities and procedures of utility companies, concerning residential utility consumers, public utility companies, or energy policies affecting this State, or concerning the conduct of regulatory agency proceedings themselves.

(3) Adjudication of the claims or petitions of residential utility consumers, public utility companies, or other persons or groups of persons. Certification of the construction or operation of utility plants, including pipelines and transmission lines.

(f) "State agency" means any department, board, bureau, commission, division, office, council, committee, officer, public benefit corporation or authority, institution or entity of the executive branch of state government.

(g) "Corporation" means the Citizens' Utility Board, Inc.

(h) "Member" means any person who meets the requirements for membership in the Corporation set forth in section four of this Act.

(i) "Director" means any member of the Corporation duly elected or appointed to the board of directors of the Corporation.

(j) "Utility district" or "district" means an area comprised of [*define as necessary to fit the geographic and demographic factors of the constituency of the citizens' utility board].¹ The board of directors shall certify the boundaries of each utility district no less than sixty days prior to the Corporation's first general election. [In the event that an odd number of congressional districts are created within the State, the board of directors shall have the authority to determine how the additional congressional district shall be represented. In the event that the boundaries or number of congressional districts are adjusted, the board of directors shall recertify the boundaries of each utility district no less than four months after such adjustment. The board member representing any utility district whose boundaries are changed in such recertification, shall resign within thirty days of such recertification and the vacancy shall be filled pursuant to section twenty-one of this Act.]

(k) "Campaign expenditure" means a purchase, payment, distribution, loan, advance, deposit or gift of money or anything of value, made for the purpose of electing a candidate to the board of directors, or a contract, promise, or agreement therefore.

(l) "Campaign contribution" means money, goods, services, or other benefits paid, made, loaned, given, conferred, or promised, including but not limited to, use of office space, telephones, equipment, staff services and provisions of meals, drinks, entertainment,

¹ All districts should be similar in population. They may be determined by congressional districts, contiguous state senate districts or contiguous postal zip code areas such that all districts are similar in population and the total number of districts is not too large or too small to convene a workable number of board members. For a large state, the total number of districts might be limited to 11, for a smaller state, perhaps seven districts.

services or transportation made for the purpose of electing a candidate to the board of directors.

(m) The “immediate family” of a person means the person and his or her spouse and their dependents.

(n) “Enclosure” means a card, leaflet, envelope or combination thereof furnished by the Corporation under this section.

(o) “Mailing” means any communication by a state agency that is sent through the United States Postal Service to more than [fifty thousand persons¹] within a twelve-month period.

SEC. 4. CREATION OF CORPORATION; MEMBERSHIP.—

(a) There is hereby created a not-for-profit membership corporation to be known as the “Citizens’ Utility Board, Inc.” herein referred to as the Corporation.

(b) The membership of the Corporation shall consist of all residential utility consumers sixteen years of age or older who have contributed to the Corporation an annual membership fee at such times as shall be set by the board of directors, provided, that any person may resign from membership.

SEC. 5. DUTIES, RIGHTS AND POWERS OF THE CORPORATION.—

(a) The Corporation shall:

(1) Represent and promote the interests of the residential utility consumers of this State. All actions by the Corporation under this Act shall be directed toward such duty.

(2) Inform, insofar as possible, all residential utility consumers about the Corporation, including the procedure for obtaining membership in the Corporation.

(3) Establish annual membership fee which shall be set at a level that provides sufficient funding for the Corporation to effectively perform its powers and duties, and is affordable for as many utility consumers as is possible, but nevertheless not less than five dollars.

(4) Have all rights and powers accorded generally to, and be subject to all duties imposed generally upon, not-for-profit membership corporations under the laws of this State.

β (b) In addition, the Corporation shall have the following rights and powers:

(1) To solicit and accept gifts, loans, grants or other aid, [*including intervenor compensation,] in order to support activities concerning the interests of residential utility consumers, except that the Corporation may not accept gifts, loans or other aid from any public utility or from any director, employee or agent or member of the immediate family of a director, employee or agent of any public utility [*excluding intervenor compensation or other funds established by the state which may be funded by utility assessments²].

(2) To seek tax-exempt status under state and federal law.

(3) To conduct, support, and assist research, surveys, investigations, planning activities, conferences, demonstration projects, and public information activities concerning the interests of residential utility consumers. The Corporation may accept grants, contributions and legislative appropriations for such activities.

¹ The states of Illinois and New York have specified the minimum amount of 50,000 pieces of mail to be sufficient for the insertion of materials provided by the citizens’ utility board. States with smaller populations may want to reduce this number.

² Intervenor compensation, for those states that offer it, is an invaluable source of revenue for citizens’ utility boards after contributions through state agency enclosures begin to decline, and in smaller states where the critical mass from contributions may not be large.

(4) To contract for services which cannot reasonably be performed by its employees.

(5) To represent the interests of residential utility consumers before regulatory agencies, legislative bodies and other public bodies.

(6) To initiate, to intervene as a party, to maintain, or to otherwise participate on behalf of residential utility consumers in any proceeding which affects the interests of residential utility consumers.

(7) To support or oppose ballot propositions concerning matters which it determines may affect the interests of residential utility consumers.

(c) The Corporation shall have, in addition to the rights and powers enumerated in this Act, such other incidental rights and powers as are reasonably necessary for the effective representation and protection of the interests of residential utility consumers.

(d) The Corporation shall not sponsor, endorse, or otherwise support, nor shall it oppose, any political party or the candidacy of any person for public office.

SEC. 6. NOTIFICATION OF IMPENDING PROCEEDINGS.—

Each regulatory agency of this State as defined in subdivision (d) of section three of this Act shall notify or cause notice to be given in the state register, in advance of the time, place, and subject of each formal proceeding of the regulatory agency, in which the Corporation may be eligible to participate. The agency shall so notify or cause notice to be given to the Corporation at least thirty days before the scheduled date of such proceeding or within five days after the date and calendar for such proceeding is fixed, whichever, is later. In addition, the agency shall give notice or cause notice to be given within five days to the Corporation of any filed statement proposing to modify or increase rates, services, schedule of rates or any other rating rule or to adopt or amend any rate or service rule or regulations.

SEC. 7. JUDICIAL REVIEW OF REGULATORY AGENCY DECISIONS; ENFORCEMENT ACTIONS.

The Corporation shall be deemed to have an interest sufficient to maintain, intervene as of right in, or otherwise participate in any civil action, proceeding or appeal for the review of enforcement of any regulatory agency decision or action, or refusal to act, which the Corporation determines may substantially affect the interests of residential utility consumers provided that the Corporation participated at the regulatory agency decision level. If the Corporation did not participate in the regulatory agency decision or action at the agency level, the court may grant the Corporation the right to participate in any civil action, proceeding or appeal if the interest of the residential utility consumers is significantly affected.

SEC. 8. STATE-ASSISTED FUNDRAISING BY THE CORPORATION.—

(a) The Corporation shall have the authority to prepare and furnish to any state agency an enclosure which the state agency shall include within any mailing designated by the Corporation. The Corporation shall provide the agency with any such enclosure at a time reasonably in advance of the mailing. The Corporation may not require any state agency to mail an enclosure more than [four times] in any calendar year.

(b) Enclosures furnished by the Corporation under this section shall be limited to soliciting information and money from consumers and explaining:

- (1) The purpose, history, nature, activities and achievements of the corporation.
- (2) That the Corporation is open to membership by residential consumers.
- (3) That the Corporation is not connected to any utility company or governmental agency.
- (4) That the Corporation is a not-for-profit corporation directed by its consumer members.
- (5) The procedure for contributing to or becoming a member of the Corporation.
- (6) The yearly membership fee.

(c) Prior to furnishing an enclosure to a state agency for mailing, the Corporation shall seek and obtain the approval of the [Public Service Commission] of the content of the enclosure. The Commission shall approve the enclosure if it determines that the enclosure (a) is not false or misleading, and (b) contains and is limited to the information permitted by this section. The Commission shall be deemed to have approved the enclosure unless it disapproves the enclosure within fourteen days of receipt.

(d) The Corporation shall reimburse each state agency for all reasonable incremental costs incurred by the state agency in complying with this section above the agency's normal mailing and handling costs, provided that:

(1) The state agency shall first furnish the Corporation with an itemized accounting of such additional costs.

(2) The Corporation shall not be required to reimburse the state agency for postage costs if the weight of the Corporation's enclosure does not increase the cost of the state agency mailing. If the Corporation's enclosure increases the cost of the state agency mailing, then it will be required to reimburse the state agency for postage cost over and above what the agency's postage cost would have been without the Corporation's enclosure.¹

SEC. 9. PROHIBITED ACTS.—

(a) No public utility company or officer, employee, or agent of the public utility company may interfere or threaten to interfere with or cause any interference with the utility service of, or penalize or threaten to penalize or cause to be penalized, any person who contributes to the Corporation or participates in any of its activities, in retribution for such contribution or participation.

(b) No person may act with intent to prevent, interfere with or hinder the activities permitted under this Act.

(c) No person shall use any list of contributors to the Corporation, nor any part of such list, for purposes other than the conduct of business² of the Corporation as prescribed in this Act. No person shall disclose any such list or part thereof to an other person unless there

¹ A further provision may be advisable to prohibit any attempts by agencies to gratuitously fill mailing envelopes with additional materials, thereby causing the citizens' utility board to pay additional postage over the one ounce limit.

² This provision would not allow persons running for the board of directors to receive a copy of the membership list in order to acquire the names of members to solicit for the nominating petition.

is substantial reason to believe that such list or part thereof is intended to be used for the lawful purposes described in this Act. Any person who violates this subdivision shall be subject to a civil penalty of not more than ten thousand dollars.

SEC. 10. BOARD OF DIRECTORS.—

(a) The affairs of the Corporation shall be managed by a board of directors consisting of one member from each utility district.

(b) The directors shall serve without salary, but each director may be entitled to reimbursement for actual and necessary expenses. The board of directors shall establish standard allowances for mileage, room and meals and the purposes for which such allowances may be made and shall determine the reasonableness and necessity for such reimbursements.

(c) The term of office for members of the board of directors shall be three years and no member shall serve more than two consecutive terms. One third of the directors first elected shall serve for a one-year term; one-third of such directors shall serve a two-year term; and one-third of such directors shall serve a full three-year term.

(d) No director nor members of his or her immediate family shall, either directly or indirectly, be employed for compensation as a staff member or consultant of the Corporation.

(e) Any director who shall handle, disburse, or receive money on behalf of the Corporation shall be bonded. Such bond shall be a cost to the Corporation.

SEC. 11. DUTIES OF THE BOARD OF DIRECTORS—

The board of directors shall have the following duties:

(a) To establish the policies of the Corporation regarding appearances before the [Public Service Department], other regulatory agencies, the courts, and other public bodies, and regarding other activities which the Corporation has the authority to perform under this Act.

(b) To maintain up-to-date membership rolls, and to keep them in confidence to the extent required by the provisions of section nine of this Act.

(c) To keep minutes, books and records which shall reflect all the acts and transactions of the board of directors which shall be open to examination by any member during regular business hours.

(d) To make all reports, studies and other information compiled by the Corporation pursuant to paragraph (3) of subdivision (b) of section five of this Act, and all data pertaining to the finances of the Corporation, available for public inspection during regular business hours.

(e) To maintain for inspection by the membership quarterly statements of the financial and substantive operations of the Corporation, as prepared in accordance with paragraph (5) of subdivision (c) of section twenty-four of this Act.

(f) To cause the Corporation's books to be audited by a certified public accountant at least once each fiscal year, and to make the audit available to the general public.

(g) To prepare, as soon as practicable after the close of the Corporation's fiscal year, an annual report of the Corporation's financial and substantive operations to be made available for public inspection.

(h) To report to the membership at the annual membership meeting on the past and projected activities and policies of the corporation. In addition, the corporation shall sponsor on behalf of each director at least one meeting per year in such director's utility district.

(i) To employ an executive director and to direct and supervise his or her activities.

(j) To hold regular meetings, including meetings by telephone conference, at least once every three months on such dates and at such places as it may determine. Special meetings may be called by the president of the board or by at least one quarter of the

directors upon at least five days' notice. One-half of the directors plus one shall constitute a quorum. All meetings of the board of directors and of its committees and subcommittees shall be open to the public. Complete minutes of the meetings shall be kept.

(k) To carry out all other duties and responsibilities imposed upon the Corporation and the board of directors by this Act.

SEC. 12. APPOINTMENT OF INTERIM BOARD OF DIRECTORS.—

(a) Within ninety days after the effective date of this Act, an interim board of directors shall be appointed by the governor, to serve until a board of directors is first elected. If the number of members of the Corporation fails to reach the level required by section thirteen of this Act within two years of the appointment of the complete interim board of directors, the Corporation shall be dissolved after having satisfied its debts, liabilities and obligations to the extent possible from funds made available to the Corporation.

(b) The method of appointment of interim directors shall be as follows: three shall be appointed by the governor, three shall be appointed by the governor from a list containing no less than five names submitted by the president Pro Tempore of the senate; three shall be appointed by the governor from a list containing no less than five names submitted by the speaker of the assembly; one shall be appointed by the governor from a list of not less than five names submitted by the speaker of the assembly; one shall be appointed by the governor from a list of not less than five names submitted by the minority leader of the assembly. Individuals considered for appointment to the interim board shall have the same qualifications as candidates for the board of directors pursuant to section fourteen of this Act, and shall, to the extent possible, represent each region of the State.

(c) The interim board of directors shall:

(1) As soon as possible after appointment, organize for the transaction of business.

(2) Inform the residential utility consumers of this State of the existence, nature and purpose of the Corporation, and encourage residential utility consumers to join the Corporation, to participate in the Corporation's activities and to contribute to the Corporation.

(3) Elect officers.

(4) Employ such staff as the directors deem necessary to carry out the purposes of this Act.

(5) Make all necessary preparations for the first election of directors, oversee the election campaign and tally the votes.

(6) Solicit funds for the Corporation.

(7) Designate by a random method the length of the term of office of each director position to be filled after the first election of directors.

(8) Carry out all other duties and exercise all other power accorded to the board of directors under this Act.

SEC. 13. ELECTION OF DIRECTORS.—

(a) Not more than sixty days after the membership of the Corporation reaches [twenty-five thousand persons] with at least [*one hundred¹] members in each district, the interim board of directors shall set a date for the first general election of directors and shall so notify every member. The date set for elections

¹ These figures should be adjusted to fit the situation of the particular citizens' utility board. Smaller states may require smaller numbers. It may be preferable to specify a percent of the population as determined in the last census, not to exceed specified limits.

shall be not less than four months nor more than eight months after such notification.

(b) Each general election of directors other than the first election of directors shall be held not less than eleven months and not more than thirteen months after the last preceding general election. The date of such elections shall be fixed by the board of directors at least four months in advance of the date chosen for the election.

SEC. 14. QUALIFICATIONS OF CANDIDATES.

(a) No present employee, director, consultant, attorney, accountant, real estate agent, shareholder, bondholder of any public utility doing business in this State and no employee of the [Public Service Commission] shall be eligible to be a director. No director nor any candidate for the board of directors may hold an elective public office or be a candidate for an elective public office or be appointed to hold state office. These qualifications shall also apply to immediate family members of persons enumerated above.

(b) To be eligible for election to the board of directors a candidate must:

- (1) Meet the qualifications for candidates.
- (2) Be a member of the Corporation and a resident of the district which he or she seeks to represent.
- (3) Submit a petition for nomination.
- (4) Submit a statement of financial interest and a statement of person background and position.
- (5) Affirm, under penalty of perjury, that the information contained in the statement of financial interest and personal background and position is true and complete.

SEC. 15. NOMINATION.—

(a) The interim board of directors and every subsequent board shall make available for inspection by any member, upon request, a list of the current members in that member's district.

(b) A candidate for election to the board of directors shall circulate a petition for nomination no sooner than one hundred twenty days preceding the election and shall file the petition with the corporation no later than sixty days prior to the election. The petition for nomination shall be signed by at least [*one hundred¹] of the corporation's current members residing in the candidate's district. Upon receipt of a member's nominating petition and confirmation of the current membership of the candidate and confirmation of the current membership of the individuals who signed such petition, the board of directors shall certify that such member is a nominated candidate for the board of directors.

SEC. 16. STATEMENT OF FINANCIAL INTERESTS.—

A candidate for election to the board of directors whose nomination is certified shall submit to the board of directors, not later than sixty days prior to the election, a statement of financial interests upon a form provided by the board of directors. The statement of financial interests, which shall be open for public inspection, shall include the following information:

(a) The occupation, employer and position at place of employment of the candidate and of his or her immediate family members.

¹ This figure should be adjusted to fit the situation of the particular citizens' utility board. Smaller states may call for a smaller number of signatures to be obtained for the nominating petition.

(b) A list of all corporate and organizational directorships or other offices, and of fiduciary relationships, held in the past three years by the candidate and by his or her immediate family members.

(c) Such other information as the board of directors shall require candidates to disclose, which disclosure required of other public officials at the time and shall be in the judgment of the board of directors in the best interests of the Corporation.

(d) An affirmation, subject to penalty of perjury, that the information contained in the statement of financial interests is true and complete.

SEC. 17. STATEMENT OF PERSONAL BACKGROUND AND POSITIONS.—

A candidate for election to the board of directors shall submit to the board of directors, not later than sixty days prior to the election, or a form to be provided by the board of directors, a statement concerning his or her personal background and positions on issues relating to regulated public utilities or the operations of the Corporation. The statement shall contain an affirmation, subject to penalty of perjury, that the information contained in the statement of personal background is true and complete and that the candidate meets the qualifications prescribed for directors.

SEC. 18. ESTRICCTIONS ON AND REPORTING OF Campaign CONTRIBUTIONS AND EXPENDITURES.—

(a) No candidate may incur more than [*two thousand dollars¹] to campaign expenditures from the time he or she commences circulation of petitions for nomination or from four months prior to the election whichever is earlier, through the date of the election.

(b) No candidate may accept more than two hundred fifty dollars in campaign contributions from any one contributor during the year preceding the date of the election.

(c) No candidate shall accept campaign contributions from a utility company, public utility company, utility corporation, public utility corporation or any organization supported with public funds.

(d) Each candidate for election to the board of directors shall keep complete records of all contributions to his or her campaign of fifty dollars or more made during the year preceding the date of the election. Such records shall be available for inspection by the public.

(e) No earlier than the next day succeeding the election and no later than thirty days after the election, each candidate shall submit to the board of directors, on a form provided by the board of directors, an accurate statement of his or her campaign contributions accepted and campaign expenses incurred, and shall affirm to the board of directors, subject to penalty of perjury, that he or she has fully complied with the requirements of this subdivision.

(f) If the board of directors determines that the candidate's campaign expenses have exceeded the limits contained in this section, the candidate shall be disqualified and may be required to pay the expenses incurred by the Corporation in mailing that candidate's statement of personal background and position. The Corporation may pursue all civil remedies to recover the cost of mailing that candidate's statement of personal background and position. In the event of disqualification, the board of directors shall call a special

¹ The amount of \$2,000 may not be sufficient for campaign expenditures in larger states, where the candidate must communicate with a large number of citizens' utility board members. An alternative may be to specify "two thousand dollars or five cents per member of the organization, whichever amount is greater."

election to be held not fewer than four months and not more than six months after the determination of disqualification.

(g) No candidate may use any campaign contribution for any purpose except for campaign expenditures.

19. ELECTION PROCEDURES.—

(a) The board of directors shall send or have sent to each member, to be postmarked no later than twenty days before the date fixed for a special or general election, the following:

- (1) An official ballot listing all candidates for the board of directors from their district who have complied with the requirements of this Act.
- (2) Each such candidate's statement of financial interests.
- (3) Each such candidate's statement of personal background and position.

(b) Each residential utility consumer who is a member of the Corporation on the thirtieth day preceding a special or general election may cast a vote in such election by returning his or her official ballot, properly marked, to the principal office of the Corporation by eight p.m. of the date fixed for the election. Voting shall be by secret ballot. The candidate receiving the greatest number of votes in each district shall be declared elected.

(c) The board of directors may prescribe rules for the conduct of elections and election campaigns not inconsistent with this Act.

20. INSTALLATION OF ELECTED CANDIDATES.—

The president of the board of directors shall install in office within thirty days after the election all elected candidates who meet the qualifications prescribed in this Act.

21. RECALL OF DIRECTORS.—

Upon receipt by the president of the board of directors of a petition to recall any director, with the valid signatures of at least forty percent of the members of the utility district the director represents, the board of directors shall call a special election to be held not fewer than four months and not more than six months after receipt of the petition, for the purpose of electing a director to serve out the term of the recalled director; provided, that no director may be recalled within six months of his or her election. A director may become a candidate in an election following his or her own recall. A director recalled shall continue to serve until the installation in office of his or her successor.

22. VACANCIES.—

When a director dies, resigns, is disqualified, or otherwise vacates his or her office, except as provided in section twenty-one of this Act, the board of directors shall select, within three months, a successor from the same district as such director for the remainder of the director's term of office. Any director may nominate any qualified person as successor. The board of directors shall select the successor from among those nominated, by a two-thirds majority of the remaining directors present and voting. The successor shall be installed in office by the president of the board of directors.

SEC. 23 OFFICERS.—

(a) At the first regular meeting of the board of directors at which a quorum is present and subsequent to the initial appointments of directors, and at the first regular meeting of the board of directors at which a quorum is present subsequent to the installation of new directors following each annual election, the board shall elect by majority vote of members present and voting from among the directors a president, a vice-president, a secretary, and a treasurer. The board shall also have the power to elect a comptroller and such other officers as it deems necessary.

(b) Officers shall be installed by the president immediately upon their election. The term of office for officers shall be one year; provided that an officer may resign, or may be removed from office by a two-thirds vote of all the directors. After an officer's term of office has expired, the officer shall continue to serve until his or her successor is installed.

(c) When an officer dies, resigns, is removed, or otherwise vacates his or her office, the board of directors shall elect a successor to serve out such officer's term of office.

(d) The officers shall exercise such powers and perform such duties as are prescribed by this Act or are delegated to them by the board of directors.

SEC. 24. EXECUTIVE DIRECTOR; QUALIFICATIONS; APPOINTMENTS; DUTIES.—

(a) The executive director hired by the board of directors shall have the same qualifications as a candidate. The executive director may not be a candidate for the board of directors while serving as executive director. The by-laws of the Corporation shall provide a method for discharging the executive director, but in no event shall such discharge occur unless one-half of the directors plus one shall have consented to such discharge.

(b) The board of directors shall require all applicants for the position of executive director of the Corporation to file a financial statement. The board of directors shall require the executive director to file a financial statement annually.

(d) The Executive director shall have the following duties:

(1) To implement the policies established by the board of directors.

(2) To employ and discharge employees of the Corporation.

(3) To supervise the offices, facilities and work of the employees of the Corporation.

(4) To have custody of and maintain the books, records and membership rolls of the Corporation.

(5) To prepare and submit to the board of directors annual and quarterly statements of the financial and substantive operations of the Corporation, and financial estimates for the operations of the Corporation.

(6) To attend and participate in meetings of the board of directors as a non-voting director.

(7) To exercise such other powers and perform such other duties as the board of directors delegates.

SEC. 25 ANNUAL MEMBERSHIP MEETING.—

An annual meeting of the membership shall be held on a date and at a place within the state to be determined by the board of directors. All members shall be eligible to attend, participate in and vote at the annual membership meeting. The meeting shall be open to the public.

SEC. 26. RELATIONSHIP TO EXISTING LAW AND POLICY.—

(a) The not-for-profit corporation law applies to the Corporation; provided, that if any provision of the not-for-profit corporation law conflicts with any provision of this Act, the conflicting provision of the not-for-profit corporation law shall not apply in

such case. If any provision of this Act relates to a matter embraced in the not-for-profit Corporation law but is not in conflict therewith, both provisions shall apply.

(b) Nothing in this Act shall be construed to limit the right of any individual or group or class of individuals to initiate, intervene in, or otherwise participate in any proceeding before any regulatory agency or court; nor to require any petition or notification to the Corporation as a condition precedent to such right, nor to relieve any utility agency, court or other public body of any obligation, or affect its discretion to permit intervention or participation by a consumer or group or class of consumers in any proceeding or activity, nor to limit the right of any individual or individuals to obtain administrative or judicial review.

(c) The intervention or participation of the Corporation in a proceeding or activity shall not affect the obligation of any regulatory agency or other public body to operate in the public interest.

27. CORRUPT PRACTICES AND CONFLICTS OF INTEREST.—

(a) No person may offer or give anything of monetary value to any director, employee or agent of the Corporation if the offer or gift influences, or is intended to influence, the action or judgment of the director, employee or agent of the Corporation in his or her capacity as director, employee or agent of the Corporation.

(b) No director, employee or agent of the Corporation may solicit or accept anything of monetary value from any person if their solicitation or acceptance influences, or is intended to influence, the official action or judgment of the director, employee or agent in his or her capacity as director, employee or agent of the Corporation.

(c) Any person who knowingly and willfully violates this section shall be subject to a civil penalty of not more than ten thousand dollars.

(d) The board shall remove from office any director, employee or agent violating the provision of this section.

28. PENALTIES.—

A violation of any provision of this Act pertaining to conduct by a utility or officers or employees thereof shall be subject to a civil penalty of no more than ten thousand dollars for each violation.

29. CONSTRUCTION.—

This Act, being necessary for the welfare of the state and its inhabitants, shall be liberally construed to effect its purposes.

30. SEVERABILITY. —

If any clause, sentence, paragraph or part of this Act or the application thereof be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder, and the application thereof, but shall be confined in its operation to the clause, sentence, paragraph or part thereof directly involved in the controversy in which such judgment shall have been rendered.

31. EFFECTIVE DATE.—

This Act shall become effective on the date of its enactment.

Appendix C

ADVICE FROM CUB LEADERS

Interviews with CUB pioneers, conducted during the process of researching this report, garnered more than the analyses of funding patterns and governance structures. CUB directors and others involved in establishing and running CUBs had a great deal to say about the keys to success and the pitfalls to avoid when running a CUB. While their collective advice holds true for nearly all grassroots consumer groups, we believe it is of particular value in this report because of the unique position CUBs hold within the realm of consumer advocacy.¹

Getting the Word Out. When asked, “What advice would you give to the staff of a CUB that is just getting off the ground,” the directors of the existing CUBs stressed the importance of establishing a strong presence early in the game. Susan Stewart, director of the Illinois CUB since 1985, advises that the new CUB hire someone who can “establish you as *the* organization that is talked to about rate issues, someone who knows what they are doing, either in the legislature or before the commission, so you can immediately establish yourself on the case and establish your presence. In other words, establish a track record that you know what you are talking about.”

The strategy has paid off for the Illinois CUB. According to Stewart, “If there is anything remotely resembling a utility issue, we get a call. In addition, on a weekly basis, we are releasing various press releases and having press events on all the cases we’re involved in. We are constantly nurturing our image.”

Organizing. Tom Lonsway, president of the Wisconsin CUB and long-time CUB activist, recommends that a new CUB put all its emphasis on organizing at first. “You have to get the word out. People need to understand what you’re trying to do. Once they do understand, you don’t have a problem. No one argues with the concept once they understand it. But it’s hard to get that point across.” Along similar lines, former executive director of the Wisconsin CUB Kathleen O’Reilly advises a new CUB to “build a coalition on some issue fast that would include small business, senior citizens and labor.”

Fundraising Plan. Money is the lifeblood of any grassroots advocacy organization. Without sufficient funding from reliable sources, the organization is prevented from carrying out its mission and ultimately closes its doors. According to Susan Stewart, the “biggest mistake that most organizations make is not establishing a good fundraising plan from the very start with whatever tools are available to them.”

The Illinois CUB relies heavily on direct mail to raise money. It has hired an outside firm to handle its direct mail campaigns. Stewart does not believe that a mailing operation of the sophistication required to direct tens of thousands of messages to households several times a year can be handled in-house. As expensive as it is to hire specialists on contract, she emphasizes that it is very important that the CUB find someone who knows what he or she is doing.

¹ Information in this section is based on interviews with: Susan Stewart, Executive Director, Illinois CUB; Patricia Martin, Public Relations Coordinator, Illinois CUB; Michael Shames, Executive Director, UCAN; Kathleen O’Reilly, former Executive Director, Wisconsin CUB; Tom Lonsway, President, Wisconsin CUB Board of Directors; and Kimberly Moore Webster, Executive Director, Oregon CUB.

Stewart explains that direct mail is very counter-intuitive. “Things that you think turn people off or things that you would never dream of saying are, in fact, proven techniques for raising funds. The quality of direct mail specialists varies tremendously. We were fortunate to hook up with someone who is very good....Getting someone to help set up [a sophisticated direct mail operation] really makes the difference between having a simple membership list and having a fundraising base that you can use effectively. My overall advice is that you sometimes have to spend money to make money.”

The Limitations of Enclosures. Those CUB directors who have had experience with mailing enclosures agree that CUBs cannot rely solely on inserts as a consistent source of funds. As Chapter 3 illustrates, enclosures are most useful when a CUB is just starting its membership campaign as a mechanism to build a strong membership base in a short period of time. For continued membership development, enclosures can help replace those members who discontinue their contributions. But ongoing membership development must be supplemented with other means of attracting new members, such as direct mail, canvassing and media exposure.

Attracting New Members and Keeping Their Interest. The “number one tactic for starting up a new CUB,” according to Kathleen O’Reilly, is to identify a major issue on the magnitude of a crisis in order to attract members to the new organization. “Look at the lay of the land and the issues. Don’t come up for air until you find an issue that is important to people. Let them know what’s going to happen in a few years if no action is taken.” She also advises that it is important to “make sure you get some victory early in the game.”

In addition, O’Reilly suggests choosing some issues that people can relate to and that are relatively “unthreatening,” like consumer education programs on energy conservation. “Don’t pick out issues just on how much money you can raise or how much media you can attract. Take on some issues for moral purposes as well, even though you won’t make any money or attract very many new members.” An example she offered was the winter utility disconnection policies of the energy utilities, an issue affecting low-income households.

CUBs face a formidable challenge in maintaining a strong membership base when there are no controversial issues on the docket, or when the issues are so complex that they are difficult for the general public to understand. Kimberly Moore Webster, director of the Oregon CUB, advises that, in addition to the more esoteric cases, CUBs pursue issues that are both controversial in the eyes of residential ratepayers and relatively easy to grasp. The Oregon CUB, for example, has pushed the PSC to require the telephone companies to provide libraries with free phone directories. And it plans to pursue rulemaking that will limit the amount of money utilities can spend in rate cases. “Our members will understand this readily and will support the case.”

Oregon’s strategy is functional for another reason. CUBs in small states may not have sufficient budgets to intervene in all of the major utility proceedings. The expertise needed to address controversial issues that are not highly technical or complex is often readily available in-house and through volunteers, whereas the attorneys and expert witnesses who must be hired for rate proceedings are often beyond the means of organizations with limited budgets. By choosing a few issues with grassroots appeal and which do not require the hiring of costly expertise, CUBs not only remain visible to the general public but also conserve the budget to participate in costlier and more complex proceedings.

in-house Expertise. Two CUB directors, both attorneys, suggest that as much expertise as possible be cultivated within the CUB staff and the organization’s volunteers.

Kathleen O'Reilly, warns, "Be a healthy skeptic about shoving out lots of money to attorneys and consultants. And don't turn the policy setting over to them. The case will take five years and you will never win. Very few lawyers except those in the public interest movement have the ability to think like a grassroots organization has to. They tend to go for issues that may be relevant to lawyers but are irrelevant to grassroots organizing."

In a similar vein, UCAN director Michael Shames recommends that, whenever possible, a CUB should develop expertise in-house, if nothing else to control the expenses associated with participation in regulatory proceedings. He also cites continuity as an important reason to cultivate in-house expertise. "When you have an in-house lawyer who focuses on an area of cases, that attorney will be able to comprehensively understand the particular case under consideration and how it relates to previous cases. In policymaking if you don't understand the history behind a case, you won't understand the policy issues that the regulators are grappling with."

Cultivating the Media. A hallmark of the Illinois CUB's operation is statewide media exposure. In any given week at least one press release is distributed to the major daily newspapers as well as the weekly newspapers in the smaller communities. Public relations director Patricia Martin stresses the importance of keeping utility issues in the public view by making effective use of the media. She recommends that CUBs always try to "humanize the issues"—to make the issues political in order to have a better chance reaching the public through media exposure.

Kathleen O'Reilly is also a strong proponent of maximizing media exposure. During her tenure as Wisconsin CUB director, 1983 through 1989, she spent a great deal of it cultivating the media, both the major outlets as well as the newspapers and radio stations in rural areas. Says O'Reilly, "There's an awful lot you can do with the media if you're willing to take the time....I went to radio stations that had never been visited by anyone else. I went to see editors of newspapers that nobody had ever stopped by. I developed an op-ed piece that was sufficiently neutral that an editor wouldn't be scared of it, called the 'CUB Corner.' And I always included some practical and folksy tips that would appeal to nearly all readers. That kind of cultivation can pay off."

Simplifying Complex Issues. Similar to Patricia Martin's advice to "humanize" utility issues, O'Reilly suggests that "you develop a story you can tell" in order to translate complex issues into understandable terms for utility consumers. She created the Lake Michigan analogy of the "beach monopolist" to explain how the regulated and unregulated services of the local phone company can interact to potentially control the marketplace.

Networking. The world of utility consumer advocates is small. O'Reilly stresses the importance of getting together with other consumer advocates and reinforcing each other. "It's lonely out there. When you get beat up over and over, you start feeling like you're stupid. But when you sit down over coffee and learn that others have experienced the same thing, you feel better. It's an emotional necessity....You can't know everything. Avoid false pride. It's better to pick up the phone and admit that you don't know what to do in X situation." She recommends that the best opportunity for CUB leaders to network with like-minded activists is through NASUCA, the National Association of State Utility Consumer Advocates.

Taking the long-range View. Michael Shames, executive director of UCAN, points out a problem that may not have an easy solution. "CUBs are always formed too late. And once formed, they often act too late. They are reactive organizations. It's better for

consumer groups to take proactive action than always responding after the problem has surfaced.” In short, CUB activists must have a sense of vision, and long-range vision at that, to be able to identify the issues that, while obscured now, will become important to consumers in the future.

Appendix D

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The CUB Concept

... An independent voice for consumers in the regulatory process:

CUBs offer consumers a nongovernmental mechanism to redress the imbalance of power between utilities and consumers without imposing additional costs on those who wish not to participate. —Ralph Nader (1974)¹

Our greatest strength is our independence--the fact that we are not beholden to any politicians or any corporations for our money. I think that gives us the ability to speak out on any issues....Our other strength is a membership base which gives us influence that backs up our technical proficiency. —Kathleen O'Reilly, former executive director of the Wisconsin CUB (1985)²

... Experts advocating on behalf of ratepayers:

The best antidote to private expertise is public expertise. Without it, public advocates are unlikely to be taken seriously in a complex policy area. —Political scientist William T. Gormley, Jr. (1981)³

... Direct communication with those who pay the bills:

The most appropriate mechanism for communicating with ratepayers is the utility bill. When people are looking at their utility bill, they're thinking about it. —Rachel Shimshak, former MassPIRG CUB coordinator (1985)⁴

The billing envelope is the sidewalk of public debate in public utility regulation...Opening the billing envelope to competing messages fosters, not frustrates, free speech. —from the *amicus curiae* brief of the State of California, *et. al.*, filed in *Pacific Gas & Electric v. the California Public Utilities Commission* (U.S. Supreme Court, 1986)⁵

... Organizing and empowering consumers:

There are only two types of power in this world—organized money and organized people. —Josh Hoyt, president of the Illinois CUB (1988)⁶

CUBs not only give people the tools for justice, [they put] the tool kits on their backs. —Ralph Nader (1983)⁷

¹ Ralph Nader, "A Utility Reform Plan," *Washington Star-News* (Oct. 27, 1974).

² 2. "Interview with Kathleen O'Reilly," *CUB Notes* 1:2 (Winter 1985): 3.

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⁶ Josh Hoyt, "From the President," *CUB News* 5:1 (Fall 1988): 2.

⁷ Mark Green and Michael Waldman, "CUB Comes to New York: Finally, Power to the People," *Village Voice* 28:38 (Sept. 20, 1983).

The CUB model is an allegory for what ails the body politic in general. And it is also the antidote—an elixir of citizen energy, based on three age-old repositories of American value: fair play, balance, and the right of all of us to be heard—even the majority. —Robert C. Fellmeth, director of the Center for Public Interest Law (1991)¹

¹ Robert C. Fellmeth, "Foreword" to Beth Givens, *Citizens' Utility Boards: Because Utilities Bear Watching* (San Diego: Center for Public Interest Law, 1991), xii.