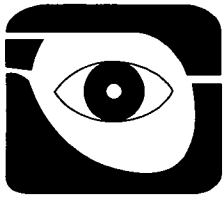


FEATURE ARTICLE



CITIZENS' UTILITY BOARDS (CUBs): BECAUSE UTILITIES BEAR WATCHING

Second in a Two-Part Series

by Beth Givens*

[EDITOR'S NOTE: Following is Part II of a two-part feature article on citizens' utility boards. Part I was the feature article in the Spring 1991 issue of the California Regulatory Law Reporter. Both parts are condensed from a longer report published by CPIL in 1991.]

Part I chronicled the early development of CUBs in the 1970s and profiled the four existing CUBs in Wisconsin, Illinois, Oregon and California.

Part II discusses CUB funding mechanisms, with emphasis on inserts in mass mailings and intervenor compensation. It also covers structural issues concerning governance and variations on the CUB concept. Part II concludes with a discussion of the future of the CUB concept.]

CUB FUNDING

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 section 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 for CUB enclosures. Each 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 function as a return envelope to CUB.

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 a newsletter from the utility, much less a

legal notice from the Public Service Commission.

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 protested the charge and suggested that phone customers write letters of protest to the Federal Communications Commission, the agency that ordered the access fee, as well as congressional representatives.

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

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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.³

UCAN. The enclosures of the Utility Consumers' Action Network (UCAN) followed a similar pattern. The local CUB, established in San Diego, California, 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 went on to describe the "landmark decision" of the state's Public Utilities Commission (PUC) that created UCAN and invited San Diegans to join the new organization.

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."⁴ 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."⁵ 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.

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 door-to-door 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."⁶

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.

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 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 Court⁷ and an Illinois U.S. District Court⁸ 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.⁹ 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, CUB 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."¹⁰ 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.

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."¹¹

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 flyers 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.

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."¹² 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.

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."¹³ 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."¹⁴ 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."¹⁵



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."¹⁶

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 bedfellows"—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.¹⁷

The Oregon CUB, on the other hand, actively seeks grant funds 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.¹⁸

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."¹⁹

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 (PUC) 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.²⁰

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.²¹ 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.

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.²² 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 1989.²³ 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.²⁴ 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 *PG&E 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 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 OII²⁵ 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 available entities representing their interests. Intervenors 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. At this writing, the PUC had not yet issued a ruling on further procedures to be followed in the investigation.

Intervenor Compensation for CUBs

The many advantages of enclosures in mass mailings have been discussed in Part I of this article.²⁶ 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.²⁷ 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 represent the interests of residential ratepayers in regulatory proceedings.²⁸ 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).²⁹ It requires that electric utilities involved in PURPA proceedings compensate individuals or groups who make a substan-

tial 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."³⁰ 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*.³¹ 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."³² 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.³³ 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 intervenor's "factual contentions, legal contentions, or specific policy or procedural recommendations."³⁴ 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.³⁵

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.³⁶ 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.³⁷ 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.³⁸ 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.³⁹

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.⁴⁰ 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 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 to fundraising, when you really need to be doing both."⁴¹

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.⁴² 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.

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.⁴³

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 duplicate 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 Public Service Commission.

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 programs⁴⁴ suggest a model for an "ideal" system. In short, the model program, as outlined below,⁴⁵ 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 pro-

cess eliminates intervenors who may not be qualified to participate or whose participation may be trivial or lacking in substance.

- 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, we assume 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 million⁴⁶ 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.

As Table 1 below illustrates, 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.

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.⁴⁷

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



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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 1 summarizes this section'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 1 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 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 1.

Table 1
CUB Membership and Funding Expectations for Different Population Bases

Table 1a: 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)
c) Direct mail, canvassing, fairs, etc.	14,000	10,400	6,000
Total members *	160,000	76,000	40,000

Table 1b: Hypothetical Funding Expectations

Annual Revenue Sources	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 compensation	\$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 1:

* 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 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.



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 CUBs—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."⁴⁸

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 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."⁴⁹

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."⁵⁰ 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."⁵¹

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. SDG&E 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."⁵² 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 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."⁵³

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."⁵⁴ 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."⁵⁵

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."⁵⁶

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."⁵⁷

Finally, a statewide CUB offers the benefit of providing a "more integrated and comprehensive approach to utility energy policy."⁵⁸ 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.⁵⁹ 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."⁶⁰

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.⁶¹ 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.⁶²

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.

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."⁶³

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 and serve on the board 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.⁶⁴ 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 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."⁶⁵

In Illinois, where there has been both a CUB and a governor-appointed Office of Consumer Services,⁶⁶ 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 government 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.⁶⁷ 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 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."⁶⁸

The most significant difference between the type of advocacy undertaken by CUBs and that of government proxy representation is mobilization of public support. CUBs can generate grassroots support for consumer-benefi-

cial 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 decision-makers to support consumer-oriented reforms.⁶⁹

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 access to the mass mailings of state agencies would be difficult if not impossible to pass.⁷⁰

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 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."⁷¹

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. 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.⁷² 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.⁷³

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 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.⁷⁴ 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.

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.⁷⁵ 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.

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.⁷⁶ 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.⁷⁷ 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.

Predictably, the FCA faces strong opposition from banking trade groups who claim that the financial services industry currently receives sufficient government oversight.⁷⁸ 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.⁷⁹ In Illinois, FCA legislation has been drafted by Pat Quinn, a long-time CUB activist elected to the office of state treasurer in 1990 on a pro-consumer banking agenda. His proposed legislation received strong public support in advisory referendum 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.⁸⁰ 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 policysetting 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,⁸¹ 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 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 *PG&E 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.⁸² At this writing, the Insurance Commissioner is examining a variety of methods to address consumers' grievances and involve consumers in the regulatory process.

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.⁸³ 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."⁸⁴ 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 become more evident, consumers and decisionmakers 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,⁸⁵ the introduction of local measured service⁸⁶ and Caller ID⁸⁷ 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 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,"⁸⁸ not only for utilities issues but other indus-

tries 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 *PG&E 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.⁸⁹ No CUB has come into being without a struggle; 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 a practical guide for those considering the establishment of consumer organizations based on the CUB model.

FOOTNOTES

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

2. Wis. Stat. § 199.10(2m).

3. 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 1984. See Part I of this article, 11:2 *Cal. Reg. L. Rep.* 1, 9 (Spring 1991).

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

5. *Id.* at 8.

6. Interview with Michael Shames, Executive Director of the Utility Consumers' Action Network, in San



Diego (Mar. 1, 1990).

7. *PG&E v. PUC*, *supra* note 1.

8. *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).

9. Pflaum, *Forced Dissemination of Information About Consumer Organizations: Lessons from Illinois' Experience*, 9:1 *Cal. Reg. L. Rep.* 8, 10 (Winter 1989). See also Part I of this article, 11:2 *Cal. Reg. L. Rep.* 1, 12 (Spring 1991).

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

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

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

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

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

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

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

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

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

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

20. Shapiro, *Utility "Free Speech" vs. Residential Ratepayer Participation: Steering a Constitutional Course to Promote Residential Ratepayer Representation*, California Senate Office of Research Issue Brief (Dec. 1986) at 2-3. See also Crowley, *Access to Public Utility Billing Envelopes: The Changing Fortunes of Consumer Representation in PUC Proceedings*, 8:3 *Cal. Reg. L. Rep.* 1 (Summer 1988).

21. 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*, *supra* note 1, at 15 n.12.

22. Feraru, *Report to the Commission on the Ratepayer Notice Program* (PUC Public Advisor's Office, July 6, 1989) at 4.

23. *Id.* at 5.

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

25. Intervenors 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.

26. See Part I of this article, 11:2 *Cal. Reg. L. Rep.* 1, 3-5 (Spring 1991).

27. *Id.* at 2-3.

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

29. 16 U.S.C. § 2601.

30. *Id.* at § 2632(a)(1).

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

32. 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. 93724 (Apr. 1983). See also California Public Utilities Commission, Public Advisor's Office, *Guide for PUC Intervenors* (1989) at 70-71.

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

34. 20 Cal. Code Regs. § 76.52(g).

35. See Wheaton, *Funding Consumer Representation: Failed Models and Fresh Approaches*, 10:1 *Cal. Reg. L. Rep.* 1 (Winter 1990) (hereinafter "Wheaton").

36. *Id.* at 3-6.

37. 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 47-49.

38. Interview with Robert C. Fellmeth, Director of the Center for Public Interest Law, in San Diego (Mar. 15, 1991). See also Wheaton, *supra* note 35.

39. California Public Utilities Commission, Public Advisor's Office, *California Public Utilities Commission Intervenor Compensation Decisions Annotated Bibliography, 1981-1989* (Jan. 1, 1990).

A 1991 bill pending in the California legislature would rectify many of the problems of the current intervenor compensation program. Under AB 1975 (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 Company.

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

41. Telephone interview with Christopher Blythe, Executive Director



of the Wisconsin Citizens' Utility Board (Apr. 24, 1991).

42. Gormley, Jr., *Statewide Remedies for Public Underrepresentation in Regulatory Proceedings*, **Pub. Ad. Rev.** (July/August 1981). The Michigan Utility Consumer Representation Fund is codified at Mich. Comp. Laws § 460.61.

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

44. 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. Intervenor in recent cases have included the City of Mullan, the Committee for Fair Rates, Industrial Customers of Idaho Power, and the Idaho Irrigation Pumps 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. § 40-6.5-105. 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).

45. Wheaton, *supra* note 35, at 6-8.

46. Seventeen states have populations under two million.

47. As noted above, the Wisconsin CUB may not use intervenor compensation awards to fund internal administra-

tive operations, only the costs of hiring outside expertise. *See supra* text at note 41.

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

49. L. 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) at 8.

50. R. 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).

51. Grimes, *supra* note 49.

52. 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.

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

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

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

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

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

58. 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, at 20.

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

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

61. 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).

62. *See Part I* of this article, 11:2 **Cal. Reg. L. Rep.** 1, 11-13 (Spring 1991).

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

64. *Futility Board*, New York Newsday (Jan. 7, 1991).

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

66. 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) at M8.

67. W. Gormley, Jr., *The Politics of Public Utility Regulation* 185 (1983).

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

69. Krieger, *An Advocacy Model for Representation of Low-Income Intervenor in State Public Utility Proceedings*, **Ariz. St. L. J.** 639, 676-78 (1990).

70. The full CUB report, available from the Center for Public Interest Law, includes model CUB legislation as proposed by the Center for Study of Responsive Law.

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

72. This approach has been considered in an Order Instituting Investigation of the California Public Utilities Commission, Cal. P.U.C. I.90-10-042 (Oct. 24, 1990).

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

74. W. Gormley, Jr., *The Politics of Public Utility Regulation* 64 (1983).

75. Nader, *Foreword to A. Sharpless & S. Gallup, Banding Together: How Check-Offs Will Revolutionize the*



Consumer Movement at ii (Center for Study of Responsive Law, 1981).

76. Discussion Draft of "Financial Consumers Association" Bill (March 1991) at 3. See also *Financial Consumers' Association [Model] Act of 1990*, Draft (Center for Study of Responsive Law, 1990).

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

78. Pethokoukis, *U.S. Consumer Group Proposed as Watchdog for Banking*, **Am. Banker**, Mar. 18, 1991, at 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.

79. 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).

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

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

82. *Calfarm Ins. Co., et al. v. Deukmejian*, 48 Cal. 3d 805 (1989).

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

84. *Id.* See also Nader, *Postal Service Is Failing Consumers*, **USA Today**, Feb. 2, 1990, at 10A.

85. In many states telephone utilities are engaged in regulatory proceedings to alter the way phone rates are structured. Traditionally, the amount paid by 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 effect will be higher prices for local phone rates and poorer service for residential phone customers as compared to the higher-volume business customers.

86. 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.

87. 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.

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

89. 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 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).

