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Report on

CREATES CITIZENS' UTILITY BOARD TO REPRESENT
INTERESTS OF UTILITY CONSUMERS
(State Measure No. 3)

Question: "Should a nonprofit public corporation funded by voluntary contributions be established to represent the interests of utility consumers?"

Explanation: "Creates Citizens' Utility Board to represent interests of electric, telephone, gas and heating utility consumers before legislative, administrative and judicial bodies, conduct research and investigations. Authorizes Oregon residents contributing \$5 minimum to board to vote for members of board. Establishes eligibility requirements and limits contributions and expenditures for board candidates. Authorizes board periodically to include certain materials with utility billings, subject to limited cost reimbursement to utility. Exempts municipalities, cooperatives and people's utility districts."

To the Board of Governors,
City Club of Portland:

I. INTRODUCTION

Measure No. 3 would establish a Citizens Utility Board (CUB) to represent utility consumers before the legislature, the Public Utility Commissioner, and other bodies. The measure states that consumers need an effective advocate to assure public decisions on cost, quality and quantity of utility service and to reflect consumer needs and interests. The CUB would be established as a non-profit public corporation governed by an elected 15-member board of governors. Funding for the board would come from voluntary contributions from utility consumers of at least \$5.00 and no more than \$100 annually per citizen. The CUB could solicit funds and inform utility consumers about utility matters through the insertion of materials in utility billings.

II. BACKGROUND

A. Utility Regulation

Investor-owned utilities in Oregon are licensed monopolies subject to regulation by the Oregon Public Utility Commissioner. These include utilities such as Pacific Power & Light Co. and Portland General Electric Co., but not cooperatives or people's utility districts which are governed by their own voters. Accordingly, regulations are imposed on utilities requiring them to provide adequate and safe service to consumers at reasonable rates. Virtually every state has a regulatory public utilities agency, usually in the form of a commission. Oregon is the only state in the nation with a single commissioner appointed by the governor.

In Oregon, the commissioner's role is to balance the interests of both

consumers and utility companies. ORS Chapters 756 through 772 direct the commissioner to protect the public from unjust practices and to provide them with service at fair rates. In exchange, the commissioner sets rates to assure investor-owned electric and natural gas utilities, larger water companies and telephone and transportation industries of a fair rate of return on their investment and protection of their monopoly position. With support of his own appointed professional staff, the commissioner is compelled to examine all research and background information on utility proposals, and take into account the needs of both sides before making a decision.

The process for rate decision-making involves both formal quasi-judicial/legislative hearings and informal interim rate adjustments, both granted by the commissioner. The formal rate hearings require submission of a rate request by a utility which is then reviewed by the commissioner's staff and other parties. After a complete examination backed by records and transcripts, a hearings officer submits a recommended decision to the commissioner. Then, he alone makes the final decision on the requested rate increase. However, the process may be expedited by informal rate increases, also initiated by the commissioner, which are designed for immediate rate relief to the utilities but are subject to review during the next rate proceeding.

B. Regulatory Environment

During the 1970's, an energy crisis occurred and was followed in the 1980's by the deregulation of the telecommunications industry. While telephone rates began to increase in Oregon, electric utility bill increases also prevailed with the addition of expensive thermal electric power to an existing low-cost hydroelectric base. The situation was further aggravated by an inflationary economy and the end result was a sudden and noticable increase in utility bills along with profound changes in the types of services provided by utilities.

After years of low rates and minimal rate increases, consumers nationwide in many states were faced with substantially higher telephone, gas and electric bills. In response, consumer groups sprung up to contest the higher costs. Soon public utility commissions nationwide were faced with angry consumers demanding explanations.

Since then, movements across the country have taken on various forms to organize and increase citizen participation in PUC proceedings. Some states authorize the intervention by the state attorney general in rate proceedings on behalf of consumers and the creation of special consumer counsels with a statutory duty to advocate consumer interests in regulatory proceedings. The most recent movement has been the formation of Citizen Utility Boards (CUBs) which are funded by and for residential consumer interests.

A CUB is a nonprofit, nongovernment organization governed by an elected board chosen from statewide Congressional districts. It is a citizens' action group designed to represent residential ratepayers in hearings before PUCs and other legislative bodies. Any citizen can join the CUB for annual dues of between \$5.00 and \$100.00. Any member can run (excluding

public officials and utility employees) and vote for the board of governors within his/her Congressional district. Funded solely by contributions, the CUB has the right to enclose, at its own expense, solicitations in billing envelopes of each investor-owned utility six times a year.

The CUB board may hire professional staff necessary to represent the ratepayers' interests before legislative, administrative, and judicial bodies. In addition, it may educate its membership with regard to public utility actions through notices inserted in utility billings. Ultimately, the CUB has the authority to represent the interests of residential utility consumers in all proceedings involving investor-owned electric and gas, telephone and the larger water companies, that might affect them directly.

C. History

The concept of a CUB was developed in the early 1970's, and in 1980 a CUB was established in Wisconsin by the legislature. Since then the Wisconsin CUB has grown to 100,000 members and an annual budget of \$700,000. The minimum contribution is \$3 and the maximum is \$100 a year. Recently other states have undertaken similar legislation to form voluntary citizen boards.

In 1983, the California Public Utility Commission granted two CUBs the right to solicit funds and memberships through utility mailings.

At the request of the Governor in 1983, the New York Public Service Commission opened administrative proceedings to determine if a CUB should be created. Although the New York State Assembly passed CUB legislation in the last session, the Senate failed to act on the Assembly proposal; however, the issue is still very active.

Other states have also considered CUBs. In Illinois, the legislature has enacted CUB legislation and an interim board for the CUB will be elected by December 31, 1984. In Rhode Island, Massachusetts, Kentucky, Kansas, Montana and Florida, movements have taken place to establish CUBs.

In Oregon, the CUB issue arose out of several citizen concerns. As the economy became depressed and began to fluctuate, utility rate increases became more and more a sensitive point. In 1983, legislation was introduced to change Oregon's system from a single utility commissioner to a multiple-commissioner format, but it did not pass. Much of the dissatisfaction culminated over the five nuclear power plants begun by the Washington Public Power Supply System in 1977. To date, only one plant out of the five planned has been completed, and construction for the rest has been suspended or scrapped entirely. Currently, several ratepayer groups have taken action against the office of the Oregon commissioner for letting billions of dollars in failed construction costs and debts be passed on to the rate payers due to the investments of the involved investor-owned utilities.

In 1983, a bill supported by the Oregon State Public Interest Research Group (OSPIRG) was introduced by Oregon House Speaker Grattan Kerans to create a CUB based on the Wisconsin model. The bill's defeat was followed quickly by an initiative campaign, which put Measure 3 on the November

ballot.

D. Major Features of the Oregon CUB

The Oregon CUB would be a nonprofit organization with the ability to intervene in utility proceedings on behalf of consumers. Other major features would be:

- * The CUB would be run by an elected 15-member board of governors, made up of three members from each of Oregon's five Congressional districts. The term of office for a board member would be four years and no person could serve more than two consecutive terms. The board members would be elected to staggered two, three and four-year terms, based on the number of votes received by the member, i.e., the member who receives the most votes would serve the longest term and the member with the fewest votes would serve the shortest term.
- * The CUB would establish eligibility requirements and limit contributions and expenditures for board candidates. No candidate or board member could own more than \$3,000 in utility stocks or bonds. Candidates and board members could not receive or spend more than \$250 from any one contributor, nor could they receive contribution from any utility.
- * The CUB could insert printed material in monthly utility billings up to six times a year, provided it paid a portion of the mailing costs if the insert weighs over four-tenths of an ounce. The CUB would have to pay handling costs of the utility regardless of the weight of the CUB insert.
- * The measure would impose criminal penalties on any utility or any of its employees who interfere with, hamper, or harass the CUB or any consumer who joins the CUB.
- * The board must establish a method to allow low-income Oregonians to become members without a full contribution. The CUB's financial affairs would be audited annually by a certified public accountant.

III. ARGUMENTS ADVANCED IN FAVOR OF THE MEASURE

1. Consumers are not adequately represented in rate proceedings and other utility matters because they are not organized nor do they have the financial resources or expertise necessary to effectively represent their interests in complex proceedings, like the utilities do.
2. While other states have multi-member public utility commissions, since 1931 Oregon has had a system of a one-person appointed Public Utility Commissioner. This structure limits the diversity of opinion available from most commissions and further minimizes consumer participation in the decision-making process.
3. Several factors in the organization of the commissioner's office limit his staff from effectively advocating consumer interests. Generally the department is understaffed, ill-funded and unable to devote the

necessary time needed to research the needs of all parties involved. The staff also lacks independence from a single, politically appointed commissioner. The commissioner himself often performs a contradictory role of both decision-maker and consumer advocate.

4. Oregon lacks any other dedicated state organization to represent consumer utility interests.
5. The CUB would be a voluntary, democratically elected organization accountable to the public. Its ability to provide effective representation would ultimately determine its success or failure.
6. The CUB would serve an important role in educating the public on utility issues and the commissioner's decisions. The CUB enclosures would provide direct contact, an opportunity to appeal for support and involvement, and a vehicle for accountability. Accordingly, the public would feel less alienated from the process of rate decisions and it would cost them and the utilities nothing.
7. An effective consumer intervener will make the commission staff and commissioner more accountable and more diligent in reviewing rate increase requests. The CUB would be a helpful implement in sensitizing the commissioner and his staff to consumer opinions and make the overall process a healthier one.
8. The CUB funding would come from voluntary contributions and would not require public taxes or expenditures.
9. The CUB might expedite rate proceedings by integrating various consumer groups and individuals into its own organization.
10. The Wisconsin CUB claims to have saved its ratepayers millions of dollars in rate increases.

IV. ARGUMENTS ADVANCED IN OPPOSITION TO THE MEASURE

1. The CUB would duplicate an existing staff function of the commissioner's office, which currently is charged with representing consumer interests.
2. The insertion of information in utility bill mailings might be unconstitutional because it would violate the utilities' free speech rights and require them to advance positions they might not agree with.
3. Utility bills are private property and, as such, utility companies should have the authority to manage and control their contents.
4. The CUB would have little impact on the outcome of rate decisions. CUB-sponsored testimony would be of limited value to the record.
5. Consumers already have sufficient access to the public utility commissioner's proceedings and an adequate role in the decision making.
6. CUB intervention in rate cases would result in higher utility rates

because the rate proceedings would become more adversarial, last longer, and require utility companies to spend more to advocate their positions.

7. The long-term best interests of consumers and utilities would not be met because the CUB would focus on short-term consumer needs.
8. The CUB would not be accountable to a higher body and could make irresponsible claims and misinform the public of the facts.
9. The CUB simply would not work; it would not be able to generate enough interest or raise enough money to do anybody any good.
10. The Wisconsin CUB's claims are unfounded. It has no firm numbers to measure its effects, good or bad, since it started.

V. DISCUSSION

The fundamental issue underlying the proposed creation of a Citizens Utility Board is the extent to which consumer issues are adequately represented before the public utility commissioner and other bodies dealing with utility regulation matters. Supporters of the measure believe that utility consumers, particularly residential consumers, lack the resources, expertise and unified organization to make effective presentations in complex, quasi-judicial hearings. Opponents argue that consumers already receive effective representation from the commissioner's staff, pointing out that the commissioner is specifically charged by state law to protect the public from unjust and unreasonable utility practices. A CUB is seen by some as a wasteful duplication of an existing function.

Your Committee believes that the current structure of the Oregon commissioner's office is a major obstacle to effective consumer representation. Concentrating decision-making power in the hands of a single, appointed commissioner limits the diversity of opinion needed to make balanced decisions and could result in rate decisions that reflect the particular political philosophy of the appointed commissioner. While his staff work may be excellent and carried out in the consumer interests, one person has the final decision on rate increases and that decision may not reflect the recommended staff position. The staff also cannot fully represent consumer interests because it lacks legal standing to pursue judicial review of the commissioner's decisions. The ability of the staff to remain independent and provide impartial analysis is, in our view, restricted because of the strong influence of the single commissioner. Your Committee also does not believe a CUB would be wasteful because it would be supported by voluntary contributions rather than tax dollars.

Opponents contend that a legislative solution would be a more appropriate remedy than a CUB to the single commissioner problem. However, a CUB likely would be of value to consumers even if there were a multi-commissioner system in Oregon. Moreover, utility companies and their large customers presently have resources to develop and argue their positions much greater than the resources available to residential customers. A CUB would help remedy this imbalance.

Opponents also point to other "watchdog" groups, such as the Grey Panthers, Oregon Fair Share, and Oregon State Public Interest Research Group, that represent consumer interests at utility hearings. However, your Committee believes that Oregon consumers could benefit from a CUB because it could provide professional representation on issues often beyond the technical expertise of most consumer organizations. Effective representation requires competent legal and technical assistance in order to make convincing arguments on complex topics such as rate design strategies and rate-of-return calculations, and the CUB's specific focus would be on representation in utility hearings. Consumer groups, unlike well-funded and well-staffed industry and utility groups, do not have these resources available to them. The Center for Study of Responsive Law in Washington, D.C. reports that a major rate increase request can cost an intervenor as much as \$100,000 in expert witnesses, attorneys fees and transcript costs. Moreover, Oregon (unlike many other states) does not have other state organizations that represent consumers interests before the utility commissioner. Oregonians for CUB point out that 30 other states have an Office of Public Counsel to represent consumers and other states use a special unit within the Attorney General's office to represent utility consumers.

Opponents of the measure contend that active intervention in rate cases by a consumer advocate group would result in higher utility rates for all because cases would take longer to hear and utility companies would expend more resources to ensure their positions were adequately presented. Because the costs of rate hearings are a part of utility expenses, additional costs would be passed on to consumers in the form of higher rates. More representation by residential users would mean additional burdens on small businesses because they are unable to adequately represent themselves and, therefore, would shoulder more than their share of rate increases.

Your Committee found little evidence to support the contention that a CUB would delay rate proceedings and increase the costs of rate hearings. A CUB, in fact, might have the opposite effect because it would consolidate consumer group advocacy into a single organization, thereby reducing the number of potential intervenors in rate cases. It is also unlikely that a CUB would result in more costs to small businesses. Rate design formulas ensure that the costs of utility service are born proportionately by users. These formulas are not usually argued in rate hearings. A CUB would be established to ensure fair rates and to seek balanced distribution of utility costs.

One of the principal concerns of the opponents of Measure 3 is the opportunity for a CUB to insert information and funding solicitations in utility billing mailers. This is viewed by utilities as an unconstitutional violation of their free speech rights primarily because it forces a utility to appear to sponsor views in its mailings it may disagree with. Many utilities believe the mailings are private property and should not be used to express views that they do not support. They say that the mailings should come under the management control of utilities and having to insert CUB materials would reduce their ability to develop more efficient billing techniques. Your Committee was unable to resolve the question of constitutionality of the mailers. The constitutionality issue

was debated in Wisconsin, New York and California but no court case has addressed this issue to date. However, the argument that utility mailings are private property is questionable because several court cases have ruled that utility billing mechanisms are not the private property of utilities.

(1) Billing and mailing costs are paid for by consumers through rates. Several public utility commissions in other states have issued decisions that control the content, nature and use of utility billing systems. (2)

The argument that a CUB would not be accountable to a higher regulatory organization and, consequently, could act irresponsibly is a concern to this Committee. However, we believe the measure provides adequate safeguards because the CUB board and staff would be directly responsible to the public through elections. Like other elected officials, CUB officers and staff could be replaced by a vote of utility consumers. Moreover, the measure calls for annual audits of CUB financial affairs by a certified public accountant to ensure proper accounting of funding. Because a CUB would be supported by voluntary contributions, it would survive or fail on its ability to provide effective, responsible service to consumers.

Opponents also argue that a CUB would have little impact on the commissioner's decisions and rate increases because these issues already are thoroughly analyzed by his staff. They contend that the public would be frustrated and disappointed if a CUB could not deliver lower rates. While there is no guarantee that a CUB would achieve dramatic "savings" on utility bills, the current structure of the single-commissioner system and the influence this commissioner can have on rate decisions is a strong argument in favor of more representation. Your Committee also determined that a competent intervener can have an influence on rate decisions. Utility companies and industry groups have recognized the value and benefits of intervention as illustrated by their ongoing participation in rate hearings. In addition, a CUB might help consumers feel less alienated from the process and more knowledgeable about utility economics and management. Utilities, in fact, could be viewed in a more favorable light if objective information about how they operate were available to consumers. A professional, competent consumer advocate organization would provide the commissioner's office with a more complete record on a variety of positions and help consumers and utilities alike solve issues of mutual concern. While we were unable to verify the reported success of the Wisconsin CUB, we believe an Oregon CUB would provide added credibility and accountability to a process that recently has been viewed by consumers as arbitrary and biased.

(1) Consolidated Edison Co. of New York vs. Public Service Commission of New York, 1980, 447 US 530 (Con Ed). Central Hudson Gas & Electric Corp. vs. Public Service Commission of New York, 1980, 447 US 557 (Central Hudson).

(2) Simmons vs. San Diego Gas & Electric Co., Case 82-03-05-05, Public Utility Commission, CA, Center for Public Interest Law, March 11, 1982.

VI. CONCLUSIONS

1. Increasing public concern over utility rates requires that consumers be more adequately represented before the public utility commissioner.
2. The Commissioner's staff cannot adequately represent consumer interests because it performs a contradictory role of both advocate and decision-maker. The staff also cannot fully advocate for consumers because it cannot pursue judicial review.
3. A CUB could be an organized, professional and more effective voice for consumers in the rate-setting process.
4. Concentrating rate-making power with a single commissioner limits staff independence and restricts the diversity of opinion needed to make balanced decisions on rate increases.
5. The CUB proposed in Measure 3 would be accountable to the public as a democratic organization, funded by voluntary contributions and audited by certified public accountants.
6. Measure 3 would seem likely to provide consumers with more information about utility rate-setting and would lend credibility to the process.
7. Any public decision-making body, such as the public utility commissioner's office, can benefit from hearing responsible, expert research and opinions from all sides.

VI. RECOMMENDATION

Your committee recommends a "YES" vote on Measure 3 in the November 6, 1984 general election.

Respectfully submitted,

Deborah J. Barry
Elizabeth Geiger
Kathy Oxborrow
Jim Ferris
Richard Tracy
Ann Hoffstetter, Chairman

Approved by the Research Board September 27, 1984 for transmittal to the Board of Governors. Received by the Board of Governors on October 1, 1983 and ordered published and distributed to the membership for discussion and action on October 19, 1984.

APPENDIX A

Persons Interviewed*

Charles Davis, former Oregon Public Utility Commissioner
 Allan Hart, Attorney, Law offices of Lindsay, Hart, Neil & Weigler
 Roy Hemmingway, Northwest Regional Planning Council
 Grattan Kerans, Oregon Speaker of the House of Representatives
 Frank Taussig, Assistant Public Utility Commissioner
 Dennis Tooley, Pacific Northwest Bell
 Eric Stachon, Utility Program Director, OSPIRG (representing the petitioners)

Telephone Interviews:

Tom Tobin, National Coordinator for CUB
 Eric Gorham, Wisconsin CUB
 Nan Hein, "No on 3" Committee (representing Pacific Power and Light and Portland General Electric)

* Portland General Electric and Pacific Power and Light representatives were not available for comment at the time requested for interview.

APPENDIX B

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Simmons vs. San Diego Gas and Electric Co., Case 82-03-05-05, Public Utility Commission, CA, Center for Public Interest Law, March 11, 1982

State of New York, Public Service Commission, Case 28655, October 14, 1983.

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NOTES