

Decision 83 04 020 APR 6 1983**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

CENTER FOR PUBLIC INTEREST LAW)
and ROBERT L. SIMMONS,)

Complainants,)

vs.)

SAN DIEGO GAS & ELECTRIC CO.,)

Defendant.)
_____)Case 82-03-05
(Filed March 11, 1982)Robert C. Fellmeth, Attorney at Law, for
complainants.Randall W. Childress, Attorney at Law,
for defendant.Alberto Guerrero, Attorney at Law, for
the Commission staff.O P I N I O NSummary

By the following decision we grant in a modified form the proposal of complainants, the Center for Public Interest Law (Center) and Robert L. Simmons to allow access to San Diego Gas & Electric Company's (SDG&E) billing envelope extra space, on an interim basis, for two purposes: First, to allow for the solicitation of funds and members sufficient to permit holding an election by ratepayers of a consumer representative organization designated by complainants as the Utility Consumers Action Network (UCAN); and, second, to permit UCAN, once it is elected, to insert informative printed material. Both uses are restricted as described within. In addition we grant SDG&E continued access to the extra space.

Background

In December 1981, we issued Decision (D.) 93887 as a result of the general rate case filed by Pacific Gas and Electric Company (PG&E) early that year. After rehearing, the decision was modified by D.82-03-047 issued March 2, 1982. A petition for writ of review of these decisions was filed by Toward Utility Rate Normalization. This petition was denied by the California Supreme Court on August 13, 1982.

One of the issues in that case was the appropriate use of "extra space" in the utility's billing envelope. We defined extra space as that space remaining in the billing envelope, after inclusion of the monthly bill and any required legal notices, which can be used for added materials without incurring additional postage costs. In other words, the "space" is measured in terms of available weight.^{1/} Thus, whenever the bill and any necessary legal notices, if there are such, together weigh less than one or more full ounces, then there is "extra space" for added materials. At the time of the PG&E case, that company was including a newsletter in the extra space. The newsletter contained utility political advertising as well as information about conservation, cost-saving measures, Commission action, and the like.

We held that the extra space belongs to the ratepayer since the cost of envelopes and postage is included in the development of the utility's revenue requirement.

We also held that the extra space has economic value which belongs to the ratepayers. We found that when that space is used by the utility for its own advertising inserts instead of being used for some other purpose (such as selling it to

^{1/} The postage rate is charged for increments of one ounce, fractions of an ounce being charged at the next higher rate. (See Exhibit 31.)

advertisers or conservation information), the ratepayers forego savings from advertising revenue or savings generated by conservation information while the utility may capture the value of such savings thereby recovering an "opportunity cost" from the ratepayers. The minimum value of the opportunity cost recovered by the utility is the fourth class bulk mail rate that the utility would otherwise have to pay to send out such inserts.

We declined, however, to ban insertion of the newsletter, finding that it did have information from time to time that was useful to the ratepayers and that this benefit must be weighed against the opportunity cost borne by those ratepayers. We decided that before taking action we needed more information about how that balance should be struck and/or what permissible means of more efficiently using the extra space could be employed. After listing several possibilities and our concerns about each, we concluded by stating:

"We invite TURN [Toward Utility Rate Normalization, the protestant on this issue] or any other interested party to file a complaint with this Commission with a proposed solution to this 'extra' space problem. The complaint would seek an order from us to the utilities, such as PG&E, that they utilize the economic value of the 'extra space' more efficiently for ratepayers' benefit. We caution, however, that we will not lightly adopt such an order and that the considerable First Amendment problems must be fully addressed in such complaint." (D.82-03-047 at pg. 8.)

By the broad language of the above invitation we made it clear that our conclusion about billing envelope extra space applied to all utilities we regulate. Apparently, in response to that invitation, the Center and Simmons filed with the

Commission a document which they captioned "Petition to the Public Utilities Commission for Modification of San Diego Gas & Electric General Rate Decision". Our Docket Office recharacterized it as a complaint upon receiving it for filing. The document details a means of giving ratepayers use of the extra billing envelope space of SDG&E. The proposal advocates using the extra space to solicit funds and hold an election for the creation of a corporation called the San Diego Utility Consumers Action Network, Inc., or "UCAN", to represent SDG&E ratepayers before the Commission and elsewhere, and to provide the ratepayers with information concerning matters UCAN determines may affect their interests.

Following a period for public comment, hearings were held on the complaint in the Federal Building in San Diego on September 13 and in the Commission's Courtroom in Los Angeles on September 14 and 15, 1982 before Administrative Law Judge (ALJ) Colgan. The matter was submitted on September 15, 1982 pending receipt of certain late-filed exhibits and briefs. The last of these items was received in late February 1983, when a disputed discovery matter was finally resolved.

In April 1982, SDG&E filed a motion to dismiss the complaint. We will deny the motion^{2/} on each ground cited. First, since this is not a complaint as to the reasonableness of

^{2/} We will also deny SDG&E's motion, filed January 10, 1983, to strike various parts of complainants' Reply Brief which SDG&E claims constitute improper argument and misconduct. This decision gives no weight to unsubstantiated arguments or unsupported claims. It relies only on evidence properly before the Commission. We will leave the record as it stands.

rates or charges, SDG&E's claim regarding insufficiency on that ground is without merit. Second, the claim that allegations in the complaint are vague and ambiguous is also without merit. The complaint is quite specific. Third, contrary to SDG&E's claim, the complaint does set forth an act or thing not being done in violation or claimed to be in violation of an order of the Commission as required by Public Utilities (PU) Code Section 1702. The complaint alleges a failure to afford SDG&E ratepayers access to the extra space which we found to belong to them in D.82-03-047. Finally, there is no question that the Center and Simmons have standing to bring this action. They are SDG&E ratepayers; nothing further need be shown.

The Proposal

The complainants in this matter are an individual SDG&E ratepayer, Simmons, and the Center, which describes itself as "an active member of the San Diego community, composed primarily of San Diego residents". The Center also states that it is a part of the University of San Diego composed of five staff members and about 50 graduate and law students which monitors "the activities of 60 [California] boards, commissions, and departments with entry control, rate regulation, or related regulatory powers over business and trades".^{3/} It also publishes the "California Regulatory Law Reporter".

^{3/} Complaint, page 22.

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The proposal the Center and Simmons advocate is set forth in detail as Exhibit 14, which is a modified version of Appendix A of the complaint.^{4/} In brief, it calls for the creation of a voluntarily funded nonprofit corporation with a board of directors. Each director represents a district^{5/} within SDG&E's service area and is to be elected by UCAN members from the appropriate district. Any SDG&E customer of 16 years of age or older^{6/} who has contributed \$4 to UCAN may vote for the district director. Once the board is established, it is to hire, direct, and supervise an executive director who will employ a staff.

The stated purpose of UCAN is to represent the interests of SDG&E's residential and small business customers before regulatory agencies such as the Commission, to educate the rate-payers, and to assist them in resolving individual complaints. Neither Simmons nor the Center propose any role for themselves in any phase of this proposal beyond their advocacy in the present proceeding.

4/ Both Exhibit 14 and Appendix A appear to be closely patterned after California Assembly Bill (AB) 2931 (which was unsuccessfully introduced during the 1982 session) and the Wisconsin Citizens Utility Board (CUB) statutes (see hearing Exhibit 25). These measures and at least three bills of similar intent pending before the current session of the Legislature (AB 45, Chacon; SB 340, Greene; and SB 399, Rosenthal) differ from the UCAN proposal primarily in their statewide scope.

5/ The boundaries of these districts are not specified by Exhibit 14.

6/ A small business corporation may also be a member.

The enumerated functions appear to parallel the functions of the Commission staff. However, the Center offered witness testimony showing that UCAN would not duplicate staff's function. Further, as we elaborate below we continue to believe that consumer advocacy is useful to the development of a full record.

Need for Consumer Advocates
in SDG&E Proceedings

Both parties have addressed the issue of need in some detail in their post-hearing briefs. Neither contends that consumer advocates have no place in SDG&E's proceedings. Simmons and the Center identify various problems which they claim are not resolved by the current system. SDG&E points to the Commission's present complaint procedure, the work of our Consumer Affairs Branch, and our intervention procedures (which include a possibility for compensation) as adequate to meet consumer's needs.

There is no question that participation by representatives of consumer groups tends to enhance the record in our proceedings. The California Supreme Court reminded us of that in deciding Consumers' Lobby Against Monopolies (CLAM) v Public Utilities Commission (1979) 25 C 3d 891 which found that the Commission has jurisdiction to award attorneys' fees and costs to consumer representatives under certain circumstances. In reaching this conclusion the Court noted:

"[T]he staff is subject to institutional pressures that can create conflicts of interest; and it is circumscribed by significant statutory limitations, such as lack of standing to seek either rehearing (Pub. Util. Code, §1731) or judicial review (Id., §1756) of Commission decisions." (25 C 3d 891, 908.)

We hasten to add that our staff is a dedicated, professional, highly competent one. The observation of the Court merely points out an inevitable facet of the unique position of our staff. There can be no denying that the principal representative of the residential and small business ratepayer is in fact the staff, whose job it is to challenge a utility's showing and recommend the minimum rates necessary to ensure adequate service and provide a reasonable return to the utility. The staff, however, may not pursue appeals. Thus, if residential and small business ratepayers are to be fully protected, it is necessary that they be represented in our proceedings. The Legal Division agrees with us, since its post-hearing brief supports the UCAN concept.

Furthermore, while we believe that the opportunities for compensation for participation in our proceedings help assure the development of a full and fair record, we recognize the merit of the Center and Simmons' contention that such opportunity may seem illusory to an individual ratepayer. What the complainants propose is another alternative, which relies neither upon increased funding through rates nor necessarily upon compensation under one of our present procedures. It appears that there are many ratepayers in SDG&E's service area who would relish the opportunity of belonging to an organization which could afford to hire people with technical expertise to represent their particular interests in proceedings as technical as most of our major cases are. In fact, many of these ratepayers have written to us to express their support of this UCAN proposal.

The real question is not whether a need for consumer advocacy exists or whether the UCAN proposal is a good idea, but whether use of extra space in the billing envelope represents

an efficient use of the extra space^{7/} which benefits SDG&E ratepayers. In addition, we must determine if there are any legal or policy considerations which forbid its implementation.

Scope of this Case

During the hearing representatives of Southern California Gas Company and Southern California Edison Company lodged written motions to intervene (RT Vol. 1, pg. 2) on the ground that the resultant decision might affect all utilities within the State, including them. For the same reason, counsel for SDG&E argued that this complaint should be consolidated with a statewide Order Instituting Investigation (OII) (Rt Vol. 1, pg. 8). ✓

The motions were properly denied (RT Vol. 2, pg. 145). This complaint only involves SDG&E and its ratepayers and in no way affects the rights or duties of other utilities. We also reject SDG&E's position for the similar reason that no statewide remedy is proposed and none is implicit or necessary to the disposition of this complaint.

Merit of the Proposal

We find complainants' proposal appealing. One of our primary concerns in determining how to best give the ratepayers the benefit of extra billing envelope space is assurance that it can benefit the greatest number of ratepayers and not just certain individuals or interest groups. The best way this society has devised for arriving at such a result is the democratic election process. This proposal limits voting to "members"; ✓

^{7/} There is no question that "extra space" does exist in SDG&E's billing envelopes. SDG&E regularly includes an insert called "Lite Lines" along with its bills. A witness testified (RT 279-282) that she took a recent billing envelope which included a bill, a return envelope, a 2-page Lite Lines, and another insert on energy saving to the U.S. Post Office and added to it a mock-up UCAN insert. The post office weighed the entire packet and charged 20c for a stamp--the present minimum first class rate. Furthermore, the record shows that SDG&E has the capacity to insert at least six items into its billing envelope (See Exhibit 9).

however, membership requires only three things: (a) at least 16 years of age, (b) status as an SDG&E residential or small business consumer (which includes persons in master-metered buildings), and (c) a contribution of at least \$4 in the preceding or current fiscal year (Exhibit 14, Section 7022). While we may not have selected these precise criteria ourselves, they appear to be nondiscriminatory and reasonably related to the fair representation of SDG&E ratepayers. ✓

We find the method of starting up to be of some concern. Contrary to the opinions expressed by some witnesses and by SDG&E, this proposal would not give the Center any role in UCAN. Rather, the proposal would have each Public Utilities Commission commissioner appoint one director to the first corporate board (Exhibit 14, Section 7072(a)). The function of this initial board of directors is to set in motion those things necessary to holding an election of a new board. As a precaution, these initial appointees are ineligible to be elected to such positions for three years (Exhibit 14, Sections 7081(a) and 7072(b) (6)). While the apparent intent of the proposed selection process is to assure fairness, we believe it inappropriate for the Commission to select the interim board, and we decline to do so. The proponents might wish to select some other person or entity to make the selections. ✓

The proposal contemplates election by district. Exhibit 14, Section 7083, and other sections refer to State senatorial districts. This reference is not appropriate to this proposal, but the district concept is a good one. The initial board ought to select boundaries which encompass all SDG&E consumers and which create districts of approximately equal populations. ✓

An appealing aspect of the present proposal is that it is supported by voluntary contributions. Both the costs of operation of the UCAN corporation and any costs incidental to adding UCAN-printed matter to the billing envelope are to come from this source (Exhibit 14, Sections 7061 and 7062).

In addition to the attributes described above, we note that UCAN's duties are restricted to nonpartisan, utility-related endeavors (Exhibit 14, Section 7037); it is required to make all its records, books or other data available to any member (Exhibit 14, Section 7040); its board is bound by strict conflict of interest provisions (Exhibit 14, Section 7071), and campaign contribution restrictions (Exhibit 14, Section 7086).

We greatly appreciate the testimony of Michele Radosevich, former state senator from Wisconsin and present public information director for its statewide CUB. Her testimony (RT Vol. 3, pgs. 300-346) reassured us that most of the problems which usually come to mind, such as extra cost of utility insertion of materials, can be and generally are resolved without undue conflict. The "wording" conflict Radosevich described (RT Vol. 3, pg. 318 et seq.) seems to us to imply some First Amendment problems. We think they would be avoided if the content of messages of UCAN or the utility were simply left up to each proponent.

From Radosevich's testimony and the Wisconsin CUB statute (Exhibit 25), we note that the UCAN proposal is somewhat different from the CUB in Wisconsin. The Wisconsin CUB, which serves all public utility ratepayers in proceedings involving all public utility companies participates primarily in major rate cases and in some cases involving policies of statewide significance analogous to our OII cases.

The UCAN proposal contemplates detailed attention to a single utility, including intercession in consumer complaint issues. We do not know if this consumer complaint aspect is necessary. We believe UCAN can best decide this issue for itself based on its own experience. UCAN can also decide for itself whether and how to devote its resources to rulemaking or other proceedings where the interests of SDG&E ratepayers may be at stake.

Radosevich also testified that CUB did not increase the length of rate case hearings, did not act as an obstructionist (RT Vol. 3, pg. 311), did not cause a great deal of extra cost for the utilities (RT Vol. 3, pg. 314), has been praised by the state's Public Service Commissioners for its beneficial work (RT Vol. 3, pg. 315), and has been able to successfully explain the legitimacy of a utility's action to consumers when consumers were skeptical of the utility's explanation. The last factor is of no small consequence. Consumer skepticism is extremely high among SDG&E ratepayers. This skepticism has been exacerbated by sharp increases in SDG&E's rates. Accordingly, UCAN might well improve the public's view of SDG&E.

For these reasons, we will adopt an order requiring SDG&E to permit UCAN access under conditions we will describe. UCAN can only be fully functional after an elected board is in place. However, access should also be granted to the appointed board for a reasonable time so that it may solicit start-up funds and hold an election. We believe twelve months is sufficient for this phase. We also believe the baseline criteria established by this proposal for triggering an election--3,500 members and \$15,000 in contributions--assure adequate consumer interest.

If the criteria are met and a board is elected, eligibility for access shall continue until two years from the effective date of this order unless we determine otherwise. ✓

The purpose of such limitation is to permit us to monitor the use of the extra space in SDG&E's billing envelopes. We must be certain that the extra space is used in a manner which clearly benefits ratepayers. Although only the UCAN proposal is before us now, it certainly does not represent the only possibility for effective use of that space. For instance, the check-off proposal suggested by Commissioner Gravelle in his concurrence to the TURN attorneys' fee case in D.88532 (1978), 83 CPUC 471, might be equally or more effective. That proposal would have the Department of Consumer Affairs certify, under legislative guidelines, a list of consumer organizations which would appear on utility bills. The customer would then have the opportunity to pledge and pay any voluntary contribution to one of those organizations along with his or her utility bill payment. Should this proposal or other proposals be brought before us, we will examine the feasibility and benefits of each at that time.

The UCAN proposal probably does not cover every possible contingency and our criteria for access may require future changes. We are willing to institute this experiment because we are convinced that this use of the extra envelope space is a basically sound, reasonable, and useful one that offers SDG&E's consumers an opportunity for more direct participation in our proceedings than they have had in the past. Beyond that, we believe this proposal will improve the relationship between the utility and the community by providing another source of information to the ratepayers. We are confident that SDG&E and UCAN will work

together in good faith to overcome any problems and permit the ratepayers the opportunity to experience the full implementation of UCAN.

If insurmountable problems arise, we may have to issue further clarifying orders. We hope this will not be the case. We want the program to work and we want the parties to make it work. We believe they will.

The Nature of the Ratepayers' Right

We have stated that the extra space belongs to the ratepayers. In so doing, we are not so much describing a traditional property right as an equity right. We are not saying that everything paid for with ratepayer money is the sole property of the ratepayer. Rather, we are saying that the reason the ratepayers pay for the billing envelopes and postage is that those costs are an expense necessary to the operation of the utility. So, what the ratepayers are legitimately paying for is the conveyance of their bills and occasional legally mandated notices. Since these documents together do not generally add up to one ounce and the postage rate is calculated in increments of one ounce, the ratepayer has paid for some empty space (or, more exactly, some unused weight^{8/}).

It is the structure of postal rates that allows this issue to exist. If the rates were structured so that SDG&E only paid for weight actually used, then we would probably not permit the utility to add any inserts which would increase the cost of postage, and thus ratepayer cost.

However, extra space (unused weight) does exist in SDG&E's ✓
billing envelopes and SDG&E uses it. This Commission believes that equity

8/ It may have occurred to the reader that the utility could moot this issue by substantially increasing the weight of its bills; however, we do not expect such an occurrence nor would we find it acceptable.

requires that the extra space be used in the manner most beneficial to the ratepayers who have paid for it. We are certain that SDG&E's use of the extra space is often useful to its ratepayers and we think it reasonable for SDG&E to have continued access to that space. However, we do not believe that access only by SDG&E to this space assures the most ratepayer benefit. Nor do we believe that totally banning any access to the extra space would be the most beneficial use. Rather, it appears that the most beneficial use of this space is one which provides the ratepayers with information.

We conclude, for the reasons described above, that it is appropriate for UCAN to have limited access to the extra space in the SDG&E billing envelope. Actual insertion of material in the envelope will commence only after we have received notice that an organization which conforms to the terms of this decision has been established and selection of an interim board has been completed. Copies of the articles of incorporation, bylaws, and list of interim board members and method by which they were selected should accompany this notice. The articles and bylaws should adhere to the following principles included in the UCAN proposal:

- a. Nondiscriminatory membership criteria reasonably related to the fair representation of residential and small business ratepayers of SDG&E.
- b. Democratically selected board members.
- c. Representation on a basis of districts of equal population to assure community ties and proportionate representation.
- d. Representation of residential and small business ratepayers meeting membership criteria.
- e. A policy of open records and accountability to the membership via annual reports, meetings, and similar activities.

- f. Strict conflict of interest regulation and campaign contribution restrictions for board members.

Once UCAN is established, the organization will be allowed prompt access to the extra space 4 times a year for the next 2 years. In the notice described above, UCAN should identify the months during which it plans to insert its material in the billing envelope. SDG&E should accomodate UCAN's schedule. We expect that any practical problem will be solved through good faith negotiations between the parties.

This limitation should in no way frustrate UCAN's objectives since it is free to supplement its bill inserts with other means of communicating with ratepayers--e.g., media, meetings, membership newsletters, etc. Since one function of UCAN is to present ratepayers with its view of SDG&E's operations, we think SDG&E should continue to have an opportunity to provide ratepayers with information it deems appropriate.

Departing from the proposal in Exhibit 14, we will not undertake to control the content of the matter inserted in any way. The only restrictions shall be that priority must be given to the billing and any legally mandated notices to customers, that UCAN shall reimburse SDG&E for any handling costs SDG&E incurs beyond its usual costs of billing as a result of adding UCAN's inserts, and that each party's inserts shall clearly identify their source. Further, all inserts should clearly state that the contents have neither been reviewed nor endorsed by this Commission.

We must add that our support of this UCAN proposal has considered the legality (constitutional and statutory) of such action and the implications of such action in light of the various pending and past bills to create a statewide CUB. Our conclusions regarding these matters are set out below.

Legality of Commission Action

The leading U.S. Supreme Court cases on the constitutionality of bill insert regulation are Consolidated Edison Co. of New York v Public Service Commission of New York (1980) 447 US 530 (Con Ed) and Central Hudson Gas & Elec. Corp. v Public Service Commission of New York (1980) 447 US 557 (Central Hudson). These companion cases concern attempts by the New York Public Services Commission (PSC) to prevent utilities from including certain kinds of inserts in their billing envelopes. The former case involved political advertising in support of nuclear power and the latter involved advertising promoting the use of electricity. The Supreme Court found that the First Amendment to the U.S. Constitution protected each of these types of expression.

The issues are not, as SDG&E urges, analogous to the one before us here. Adoption of complainants' proposal does not deny SDG&E the right to free speech. At most, it is a "time, place, or manner restriction" which the Court specifically found to be acceptable if there is a showing of compelling state interest and the restriction is not based (as it was in Con Ed and Central Hudson) on the content or subject matter of the speech. The State interest, of course, is the assurance of the fullest possible consumer participation in CPUC proceedings and the most complete consumer understanding possible of energy-related issues. Furthermore, our action is distinguishable from the cited cases in that we do not intend to bar or regulate SDG&E's use of its portion of the extra space. Indeed, adoption of the UCAN proposal should promote First Amendment values by expanding the views offered to SDG&E ratepayers.

SDG&E also suggests that Con Ed stands for the proposition that billing envelopes are the property of the utility and not the ratepayers. Our reading of that case reveals nothing to indicate that that view is accurate. The issue is only addressed, in fact, in Justice Blackmun's dissent where he suggests that if such a property right argument were made in the future, it might achieve the end New York's PSC was seeking. In any case, as we explained above, we do not rely on a traditional property right analysis to reach our conclusion. We base it on equitable considerations.

SDG&E also claims that the Commission's allowing access as proposed might be construed as constitutionally impermissible "government favoritism for certain political speech over another". We reiterate that we simply are granting ratepayers access to the billing envelope for communication with other ratepayers and in so doing we are neither favoring nor regulating any form of political speech. Our action grants access to both SDG&E and UCAN, an organization run by a democratically elected board of directors.^{9/} All qualified consumers willing to pay the nominal fee of \$4 may participate^{10/} in choosing these directors and may,

^{9/} There is also access for a limited time by the interim board of directors. As explained above, however, this appointed board's functions are both temporary and restricted.

^{10/} In addition to individual consumers, the proposal also includes representation of small business consumers. While the term "small business consumers" has not been defined in the present rules, we expect that UCAN's board of directors will define it so as to include all businesses which are small enough so that it could reasonably be expected that it would not be economically feasible for them to represent themselves in CPUC proceedings. Such definition will assure the widest reasonable representation.

likewise, oust the directors following democratic procedures, if the directors fail to represent them. By allowing both SDG&E and UCAN access, we clearly avoid "government favoritism".

Finally, in response to SDG&E's claims that the UCAN proposal violates Public Utilities Code Section 532, we disagree. We are not favoring one group over another in allowing access to the extra space in SDG&E's billing envelope. The "privilege" of access under the proposal is uniformly extended to all SDG&E ratepayers, consistent with Section 532.

The federal Public Utilities Regulatory Policies Act of 1978 (P.L. 95-617, 16 U.S.C. Section 2601 et seq.) (PURPA) is a clear expression of the federal government's concern that consumers' interests be adequately represented in state rate proceedings involving electric utilities. Toward that end PURPA sets forth certain requirements for compensation of consumer participants. We enacted Commission Rules of Practice and Procedure 76.01 et seq. in compliance with these PURPA requirements. ✓

PURPA, however, is not the only legal basis upon which we may act in extending participatory opportunities to consumers.

This Commission, unlike those of states such as Wisconsin, derives its authority directly from the State Constitution, See California Constitution, Article XII. Section 6 of Article XII broadly grants the Commission power to "establish rules...for all public utilities subject to its jurisdiction." Our adoption of rules under which SDG&E must permit billing envelope access is certainly within the scope of that constitutional authority.

In addition, the Legislature has enacted three statutes in the PU Code which bear directly upon the propriety of our action here.

The first, Section 701, confers upon this Commission the right to "do all things, whether specifically designated in [The Public Utilities Act] or in addition thereto, which are necessary and convenient" in the supervision and regulation of every public utility in California. This grant of authority has traditionally been liberally construed by the State Supreme Court. These additional powers exercised by this Commission simply "must be cognate and germane to the regulation of public utilities" Southern California Gas v PUC (1979) 24 C 3d 653, 656. ✓

The second relevant section of the PU Code is Section 770(a) which permits this Commission, after hearing, to "[a]scertain and fix just and reasonable...regulations... to be...observed, and followed by all electrical, gas, water, and heat corporations."

The final pertinent section is Section 761 which states: "Whenever the commission, after a hearing, finds that the...practices...of any public utility...are unjust, unreasonable, unsafe, improper, inadequate or insufficient, the Commission shall determine and, by order or rule, fix the rules...to be observed."

We believe the present practice of SDG&E with respect to its billing envelope extra space is inadequate. Therefore, an order to change this practice is appropriate under Section 761.

The background of constitutional, statutory, and case law described above illustrates, beyond question, that this Commission may legally act in the manner proposed in the complaint before us.

Effect of Legislature's Action

Finally, we address the issue of the effect of our taking such legally permissible action when the Legislature failed to pass CUB legislation during the last session and has similar legislation presently pending before it. We conclude our action here is distinct from all legislative proposals to date. ✓

It must be remembered that the precipitating factor in the present proceeding was this Commission's December 1981 invitation to interested parties to file a complaint with us with a "proposed solution to the 'extra' space problem".

(D.93887 as modified by D.82-03-047.) We believe that the proposed use of SDG&E's extra space offers more benefit to SDG&E's ratepayers than the present use. ✓

Legislation to date has called for statewide implementation of the CUB concept. These bills cover every electricity, water, natural gas, and telephone public utility in the State. The narrowness of the complaint before us removes it from legislative contemplation since it is not of statewide consequence. At this time, we cannot predict what actions this legislature or future legislatures might take with respect to CUBs. Until such a time as CUB legislation may be enacted, we cannot assess how the UCAN proposal might integrate or conflict with a legislatively-established organization. If and when that event occurs, we would expect the parties to this proceeding to notify us of any modifications to this decision which may be necessary. ✓

Findings of Fact

1. Extra space exists in SDG&E's monthly billing packets.
2. SDG&E is presently the only user of its billing envelope extra space.

3. This complaint proposes the formation of UCAN as a nonprofit corporation made up of SDG&E residential and small business ratepayers using SDG&E billing envelope space to communicate with ratepayers about issues related to SDG&E. ✓

4. This extra space represents economic value that is lost to SDG&E ratepayers when not used to their benefit.

5. Access to the extra space by UCAN would benefit SDG&E's ratepayers.

6. Continued access by SDG&E would also benefit SDG&E's ratepayers.

7. SDG&E has the mechanical equipment necessary to include a UCAN insert in its billing packets.

8. The past and pending CUB legislation contemplates a program with statewide implications.

9. Unlike legislative proposals to date, UCAN would focus its efforts exclusively on matters related to SDG&E.

10. UCAN is constituted to assure nonpartisan solicitation and to represent the views and concerns of San Diego ratepayers.

11. The complaint did state a cause of action under PU Code Section 1702.

12. The relief requested would have benefit to this Commission in the conduct of proceedings affecting SDG&E ratepayers.

13. Use of the extra billing envelope space by UCAN is a more effective use of the benefit of economic value of that space for SDG&E's ratepayers than not doing so.

Conclusions of Law

1. The California Constitution has endowed this Commission with broad rulemaking power.

2. The Legislature has granted this Commission broad statutory authority to regulate public utilities.

3. The Center's and Simmons' relief is specifically related to improvement of the operations of SDG&E and is within the constitutional and statutory jurisdiction of this Commission.

4. This Commission possesses the authority to grant the relief requested.

5. SDG&E's constitutional rights are not impeded by UCAN access to billing envelopes.

6. The motion of SDG&E to dismiss this complaint should be denied.

7. The motions of Southern California Gas Company and Southern California Edison Company to intervene were properly denied.

8. The motion of SDG&E to strike certain parts of complainants' reply brief should be denied.

9. This proposal does not affect the operations or interests of Southern California Gas Company or Southern California Edison Company.

O R D E R

IT IS ORDERED that:

1. The motion of San Diego Gas & Electric Company (SDG&E) to dismiss Case 82-03-05 is denied.

2. The Administrative Law Judge's Ruling denying the motions to intervene filed by Southern California Gas Company and Southern California Edison Company is affirmed.

3. The motion of SDG&E to strike portions of complainants' reply brief is denied.

4. SDG&E will make available to the Utility Consumers Action Network (UCAN) access to extra space in SDG&E's billing envelopes as described in this decision.

5. Access shall be provided once UCAN files a notice with this Commission indicating that an organization which conforms to the terms of this decision has been established and selection of an interim board has been completed. The notice should include copies of UCAN's articles of incorporation, bylaws, list of interim directors, and a description of the method by which such directors were selected.

6. Access shall be provided to the appointed board for a period of up to twelve months. This access shall be provided four times during the twelve month period. Such times shall be selected by UCAN and identified in the notice described above. This appointed body's use of the extra space shall be limited to the inclusion of information aimed at soliciting members and funds sufficient to permit the holding of an election, and then information about the election.

7. Upon election of a board of directors, or upon the expiration of one year from the effective date of this order, whichever is first, access by the appointed board shall cease. If a board has been elected it shall then be provided with access to the extra space four times a year. UCAN shall provide SDG&E with reasonable notice of the months during which it desires access.

8. SDG&E shall continue to provide UCAN with access until two years from the effective date of this order unless otherwise extended or terminated by order of this Commission

9. All extra space inserts shall clearly identify their source and indicate that their contents have neither been reviewed nor endorsed by this Commission.

This order becomes effective 30 days from today.

Dated APR 6 1983, at San Francisco, California.

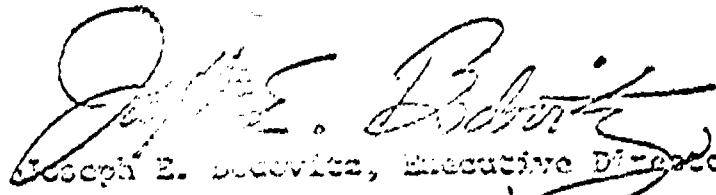
I will file a concurring opinion.

/s/ LEONARD M. GRIMES, JR.
President

LEONARD M. GRIMES, JR.
President

VICTOR CALVO
PRISCILLA C. GREW
DONALD VIAL
Commissioners

I CERTIFY THAT THIS DECISION
WAS APPROVED BY THE ABOVE
COMMISSIONERS TODAY.


Joseph E. Deodovitz, Executive Director

COMMISSIONER LEONARD M. GRIMES, JR., Concurring:

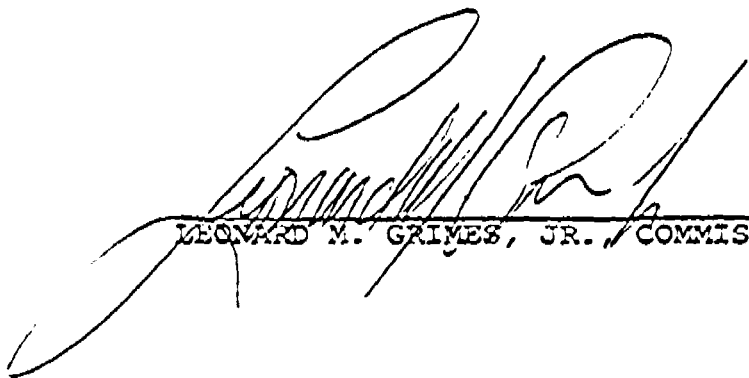
I concur. I believe that today's decision has great promise for both SDG&E and its ratepayers. If UCAN succeeds, San Diego ratepayers will have an additional means of participating in our decision-making process. To be effective, however, intervenor groups like UCAN must do more than make passionate or inflammatory pleas to the Commission. They must play the game effectively by supporting their views with hard facts, expert analysis, and realistic solutions. Meeting this challenge will not be easy, but, as demonstrated by the Center's efforts in this proceeding, it can be done.

For SDG&E, this order could represent another opportunity to solve problems in cooperation with ratepayers. UCAN, for example, could help alert SDG&E to ratepayer problems before they reach the crisis stage and thereby allow the company to take responsive action. In addition, SDG&E could work closely with UCAN on issues such as the Federal Natural Gas Policy Act where both the company and its ratepayers have a strong interest in keeping gas costs at affordable levels.

To make the most of this opportunity, the management of SDG&E should assume an attitude which is flexible and cooperative toward UCAN. It should recognize that, today, ratepayers must be involved in the regulatory process and any effort real or perceived to obstruct such involvement can only increase the level of frustration among them. SDG&E can play a leadership role in reducing this frustration.

Finally, even with expert intervenor participation, the Commission Staff will continue to be the indispensable part of our state regulatory process. For all practical purposes, intervenors will serve to only compliment the work of our professional staff; they cannot replace it.

15a


LEONARD M. GRIMES, JR., COMMISSIONER



The UCAN proposal contemplates detailed attention to a single utility, including intercession in consumer complaint issues. We do not know if this consumer complaint aspect is necessary. We believe UCAN can best decide this issue for itself based on its own experience. UCAN can also decide for itself whether and how to devote its resources to rulemaking or other proceedings where the interests of SDG&E ratepayers may be at stake.

Radosevich also testified that CUB did not increase the length of rate case hearings, did not act as an obstructionist (RT Vol. 3, pg. 311), did not cause a great deal of extra cost for the utilities (RT Vol. 3, pg. 314), has been praised by the state's Public Service Commissioners for its beneficial work (RT Vol. 3, pg. 315), and has been able to successfully explain the legitimacy of a utility's action to consumers when consumers were skeptical of the utility's explanation. The last factor is of no small consequence. Consumer skepticism is extremely high among SDG&E ratepayers. This skepticism has been exacerbated by sharp increases in SDG&E's rates. Accordingly, UCAN might well improve the public's view of SDG&E.

For these reasons, we will adopt an order requiring SDG&E to permit UCAN access under conditions we will describe. UCAN can only be fully functional after an elected board is in place. However, access should also be granted to the appointed board for a reasonable time so that it may solicit start-up funds and hold an election. We believe twelve months is sufficient for this phase. We also believe the baseline criteria established by this proposal for triggering an election--3,500 members and \$15,000 in contributions--assure adequate consumer interest.

57 2. The Legislature ^{has} granted this Commission broad statutory authority to regulate public utilities.

3. The Center's and Simmons' relief is specifically related to improvement of the operations of SDG&E and is within the constitutional and statutory jurisdiction of this Commission.

4. This Commission possesses the authority to grant the relief requested.

5. SDG&E's constitutional rights are not impeded by UCAN access to billing envelopes.

6. The motion of SDG&E to dismiss this complaint should be denied.

7. The motions of Southern California Gas Company and Southern California Edison Company to intervene were properly denied.

8. The motion of SDG&E to strike certain parts of complainants' reply brief should be denied.

9. This proposal does not affect the operations or interests of Southern California Gas Company or Southern California Edison Company. *ICM*

O R D E R

IT IS ORDERED that:

1. The motion of San Diego Gas & Electric Company (SDG&E) to dismiss Case 82-03-05 is denied.

2. The Administrative Law Judge's Ruling denying the motions to intervene filed by Southern California Gas Company and Southern California Edison Company is affirmed.

3. The motion of SDG&E to strike portions of complainants' reply brief is denied.

COMMISSIONER LEONARD M. GRIMES, JR., Concurring:

I concur. I believe that today's decision has great promise for both SDG&E and its ratepayers. If UCAN succeeds, San Diego ratepayers will have an additional means of participating in our decision-making process. To be effective, however, intervenor groups like UCAN must do more than make passionate or inflammatory pleas to the Commission. They must play the game effectively by supporting their views with hard facts, expert analysis, and realistic solutions. Meeting this challenge will not be easy, but, as demonstrated by the Center's efforts in this proceeding, it can be done.

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To make the most of this opportunity, the management of SDG&E should assume an attitude which is flexible and cooperative toward UCAN. It should recognize that, today, ratepayers must be involved in the regulatory process and any effort real or perceived to obstruct such involvement can only increase the level of frustration among them. SDG&E can play a leadership role in reducing this frustration.

Finally, even with expert intervenor participation, the Commission Staff will continue to be the indispensable part of our state regulatory process. For all practical purposes, intervenors will serve to only complement the work of our professional staff; they cannot replace it.

Corrected

/s/ LEONARD M. GRIMES, JR.
LEONARD M. GRIMES, JR., COMMISSIONER

San Francisco, California
April 6, 1983