

1/3/67

Second Supplement to Memorandum 67-3

Subject: Study 26 - Escheat (Utility Exemption)

At the last meeting, the Commission determined that:

(1) The utility exemption should be extended to include all utilities (including those engaged in the transportation or passage of persons or property).

(2) The exemption should be limited to utilities whose rates are fixed by the Public Utilities Commission of this state or by a similar public agency of another state or of the United States.

(3) The exemption should be recognized only to the extent that the property is considered as a part of the revenues of the utility in determining the rates to be charged by the utility.

We have incorporated this decision in the revised draft. See Section 1501(i)(page 17) and Section 1502(b)(page 19). We have made one clarifying addition: The exemption would not apply to property of the type described in Section 1514 which is held or owing by a utility. (Section 1514 deals with undistributed dividends and other sums held or owing by a business association for or to its shareholder, certificate holder, member, bondholder, or other security holder or to a participating patron of a co-operative.) Thus, the exemption would be limited to deposits, refunds, unclaimed wages, and the like. This limitation on the exemption has not been approved by the Commission.

In connection with the extension of the utility exemption to railroads, bus and airplane transportation, and similar utilities, it should be noted that it is estimated that the exemption would cost the state \$70,000 a year for railroads alone (95 percent of which is unclaimed wages). See Exhibit VIII attached. Note also that legislation that would have

extended the utility exemption to railroads and other common carriers engaged in interstate commerce was enacted at the 1965 session and pocket vetoed by the Governor. See Exhibit VIII and attached bills.

Exhibit IX attached indicates that it is likely that abandoned property held by utilities would actually accrue to the benefit of rate payers insofar as utilities regulated by the California Public Utilities Commission are concerned.

Respectfully submitted

John H. DeMouilly
Executive Secretary

Memo 67-3

EXHIBIT I

GENERAL TELEPHONE COMPANY
OF CALIFORNIA

EXECUTIVE OFFICES

2020 Santa Monica Boulevard - P.O. Box 889
Santa Monica, California 90406

AREA CODE 213
TELEPHONE 393-9311

October 27, 1966

IN REPLY REFER TO

1500
A7.4D1

Mr. John H. DeMouilly
Executive Secretary
California Law Revision Commission
School of Law
Stanford University
Stanford, California 94305

Dear Mr. DeMouilly

Thank you for furnishing this company a draft of tentative recommendations relating to the escheat laws.

We have no comments to offer, other than to say we completely approve proposed Section 1581(d) which exempts utilities (as previously) from the escheat laws and would ultimately accrue to the benefit of our ratepayers.

Very truly yours



A. G. COOLEY
Assistant to the President -
Governmental Affairs

ES	
AECS	
AC	
AA	

THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY

1414 K STREET • SACRAMENTO, CALIFORNIA 95807
AREA CODE 916 443-0941

W. J. MCLEAN
ASSISTANT VICE PRESIDENT

November 16, 1966

Mr. John H. DeMouilly, Executive Secretary
California Law Revision Commission
School of Law
Stanford University
Stanford, California 94305

Dear Mr. DeMouilly:

We have reviewed the Preliminary Staff Draft of the Commission's tentative recommendation to revise Chapter 7 of the Uniform Disposition of Unclaimed Property Act.

An important addition to the proposed Unclaimed Property Law in new C.C.P. Section 1581 reads:

" . . . This chapter does not apply to:

- (d) Any property paid or delivered to a utility as a deposit to guarantee payment for services or as payment for services, which the utility, in accordance with orders and regulations of the Public Utilities Commission of this State, is not entitled to retain in payment for the services provided by the utility."

We do not believe that this language completely recognizes the special situation of public utilities. For example, in addition to unclaimed deposits for service, the Telephone Company has problems with such things as credits due customers.

Mr. John H. DeMouilly

- 2 -

November 16, 1966

on final accounts for service not furnished and overpayments by customers at coin box telephones. The individual amounts are small but the volume is substantial. If detailed reporting were required, the accounting would be expensive for the Company and the State. The present law recognizes this fact. As a practical matter, all unclaimed amounts retained are in effect an offset against charges for service which the Company finds uncollectible.

Any unclaimed and outstanding amounts retained by a public utility have the effect of reducing the cost of service to customers. The converse of this is that funds which escheat to the state operate to reduce the funds available to the business and, thus, increase the cost of service to customers.

The present law recognizes that the rate payers and not the utility benefit from the retention of unclaimed funds. We believe that this concept should be retained. Due to time pressure, we are not now offering alternate language. But we hope that this matter can be resolved before the Commission's report is completed. Naturally, we are happy to offer our assistance.

Sincerely,

W. F. McLean
Assistant Vice President

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY
CALIFORNIA LAW DEPARTMENT

JOHN J. BALLUFF
GENERAL ATTORNEY, CALIFORNIA

ROBERT B. CURTISS
MATTHEW H. WITTEMAN
HENRY M. MOFFAT
GENERAL ATTORNEYS

NEAL W. McCORRY
THOMAS F. MORTIMER
AVERIL D. VALLIER
JOHN J. SCHIMMENTI
DONALD L. STONE
ATTORNEYS

121 EAST SIXTH STREET
LOS ANGELES, CALIFORNIA 90014
MADISON 6-0111

December 2, 1966

126-36 RBC

Mr. John H. DeMouilly, Executive Secretary
California Law Revision Commission
Stanford University School of Law
Stanford, California 94305

Re: California Uniform Disposition of Unclaimed Property
Act--CCP Sections 1500, et seq. and Related Statutes

Dear Mr. DeMouilly:

I refer to your letter of October 18, 1966, asking for comments regarding the suggested revision of the California Uniform Disposition of Unclaimed Property Act which was attached to your letter. The Atchison, Topeka and Santa Fe Railway Company joins in the views with respect to the suggested revision contained in the letter of November 3, 1966, to you from Robert L. Pierce of Southern Pacific Company. In particular we feel that the custodial features of the present law should be retained rather than substituting a true escheat statute. Most of the unclaimed property with respect to which the Santa Fe Railway has filed reports is in the nature of unclaimed wages. As in the case of Southern Pacific, Santa Fe has always paid such unclaimed wages when the owner makes a demand for them without regard to any lapse of time in the making of such demand. We feel that such wages, however old, should be paid to the wage earner if he shows up and properly identifies himself and see no sound reason why such wages should escheat to the State.

We also echo Southern Pacific's opposition to the elimination of the exemption of public utilities presently found in §1601 (g) and (h) of the Code of Civil Procedure and believe for the reasons stated by Southern Pacific that the exemption should in fact be expanded to cover railroads and other carriers.

Very truly yours,


Robert B. Curtiss

RBC mp
cc Messrs. Robert L. Pierce
E. C. Renwick
E. L. Van Dellen
LeRoy E. Lyon

EXHIBIT IV

Southern California Edison Company

P. O. BOX 351

LOS ANGELES, CALIFORNIA 90058

SCE

ROLLIN E. WOODBURY
GENERAL COUNSEL
HARRY W. STURGES, JR.
ROBERT J. CAHALL
ASSISTANT GENERAL COUNSEL

LAW DEPARTMENT

624-7111

November 4, 1966

DAVID N. BARRY, III
NORMAN E. CARROLL
JOHN R. BURY
H. CLINTON TINKER
KENNETH M. LEMON
WILLIAM E. MARX
H. ROBERT BARNES
TOM P. GILFOY
LOWELL T. ANDERSON
DAVID C. HENSLEY
ASSISTANT COUNSEL

File No.
A-4587-CDN

California Law Revision Commission
School of Law
Stanford University
Stanford, California 94305

Attention: Mr. John H. DeMouilly
Executive Secretary

Gentlemen:

Somewhat belatedly, we received a copy of your letter of October 18, 1966, with enclosures relating to tentative revisions of the laws of escheat of personal property. We do not favor the change which is proposed with reference to the exemption of public utilities from the applicability of these laws. It is our belief that because of the closely regulated nature of our industry and the manner in which abandoned funds are handled, it is unnecessary to apply the laws of escheat to local public utility corporations.

We have discussed this matter with Mr. Malcolm K. MacKillop of the Pacific Gas and Electric Company and he has forwarded to us a copy of his letter to you of November 2, 1966. We concur with his comments concerning this subject and would be pleased to discuss this matter with you if you should deem it desirable.

Very truly yours,


Assistant General Counsel

HWS:db

EXHIBIT V

PACIFIC GAS AND ELECTRIC COMPANY

PG&E + 245 MARKET STREET • SAN FRANCISCO, CALIFORNIA 94106 • TELEPHONE 781-4211

RICHARD H. PETERSON
SENIOR VICE PRESIDENT
AND GENERAL COUNSEL

FREDERICK T. SEARLS
GENERAL ATTORNEY

WILLIAM B. KUBER WILLIAM E. JOHNS MALCOLM H. FURBUSH JOHN A. SPENCER PHILIP A. CRANE, JR. HENRY J. LAPLANTE EDWARD J. MCGANNETT JOHN R. DIBSON ANTHONY L. HULMAN, JR. ROBERT M. DELLAVALLE RICHARD J. KOHLMAN SANFORD M. BEAGLES	JOHN C. MORRISSEY RICHARD A. RAFFERTY CHARLES T. VAN DEUSEN MALCOLM A. MACKILLIP NORRIS KELLY GILBERT L. HARRICK JOHN B. COOPER GLENN WEST, JR. CHARLES W. THIBBELL ROBERT WORKMAN ROBERT DOLBACH STANLEY T. SKINNER
---	---

ATTORNEYS

November 2, 1966

California Law Revision Commission
School of Law
Stanford University
Stanford, California

Attn: Mr. John H. DeMouilly

Gentlemen:

In reply to your letter of October 18, 1966, enclosing proposed revision of the California Uniform Disposition of Unclaimed Property Act, we wish to go on record as opposed to the suggested change in the utility exemption.

Extensive hearings were held by legislative committees prior to the adoption of the act at which hearings various utility companies made detailed presentations explaining, to the apparent satisfaction of the legislature, that because of the regulated nature of our industry and the strict requirements as to how abandoned funds were to be accounted for, utility companies should not be subjected to the act's provisions. I believe it was demonstrated that in general the rate payer and not the utility company was the beneficiary of such money as might be abandoned to it, thus putting utilities in a different category. We hope that you will reconsider your recommendation in that light and background.

Even assuming that the utility exemption were to be restricted to the general type of funds suggested by your new section 1581 (old section 1526), we do not believe that the language proposed is adequate for the purpose. However, we have not had time to adequately consider or recommend alternate language which would cover the problem effectively for

California Law Revision Commission
Attn: Mr. John H. DeMouilly

Page 2
November 2, 1966

all utilities, nor do we think it appropriate at this time to make a proposal regarding alternate language as we believe the deletion of the utility exemption as it now stands is inappropriate and should first be reconsidered in its entirety. It would seem that the objective of bringing the law into harmony with Texas v. New Jersey can be accomplished without this change.

Thank you for your consideration and for the opportunity to comment. We will be pleased to discuss the matter with you further should you so desire.

Very truly yours,


MALCOLM A. MacKILLOP

MAM:blw

EXHIBIT VI

Southern Pacific Company

65 Market St., San Francisco, California 94105

THORMUND A. MILLER
HERBERT A. WATERMAN
SENIOR GENERAL ATTORNEYS

LAWRENCE L. HOWE
WALDRON A. GREGORY
JOHN MACDONALD SMITH
ALBERT T. SUTER
RICHARD J. LATHROP
WILLIAM R. DENTON
W. HARNEY WILSON
ARNOLD I. WEBER
GENERAL ATTORNEYS

ALAN C. FURTH
GENERAL COUNSEL

CHARLES W. BURKETT
ROBERT L. PIERCE
GENERAL SOLICITORS

November 3, 1966

ROY JEROME
FREDERICK E. FUHRMAN
HAROLD S. LENTZ
JOHN J. CORRIGAN
JAMES J. TRABUCCO
ASSISTANT GENERAL ATTORNEYS
DONALD O. ROY
EDWARD J. SHARON
FRANK S. HILLS
GERRIT VAN BENSCHOTEN
THOMAS P. KELLY, JR.
GARY S. ANDERSON
THOMAS H. GONSER
ROBERT W. TAGGART
ATTORNEYS

File: G-4561-374

Mr. John H. DeMouilly,
Executive Secretary,
California Law Revision Commission,
School of Law,
Stanford University,
Stanford, California 94305

SUBJECT: California Uniform Disposition of Unclaimed Property
Act - C.C.P. Sections 1500, et seq. and related
statutes

Dear Mr. DeMouilly:

Your letter of October 18, 1966, asked for comments from those interested in the above law concerning the suggested revision of the law attached to your October 18, 1966 letter.

Southern Pacific Company is opposed to some of the changes suggested. As a multi-state entity, the unclaimed property statutes have been exceedingly burdensome from an administrative standpoint and confusing in their application. In 1959, when the law was enacted, we regarded it as of limited reach in its application and did not seek an exemption from the law as did other public utilities. We complied by reporting our unclaimed dividends.

Subsequently the Controller claimed that items such as unpaid wages and salaries must also be reported, and originally we contested this assertion on the basis that wages were not included in the language of the law as enacted and they were not mentioned in the January 1959 Report of the Escheat subcommittee of the Assembly of the Committee on Judiciary dealing with the bill which, as amended, became the above statutes. However, we ultimately acceded to the Controller's views and have been reporting to him unclaimed wages and salaries, but only to the limited extent permitted under Texas v. New Jersey, (i.e., where the address of the claimant was known to be in California). Sections 2 and 3 of Article III of the Unclaimed Property Compact, which you propose to have enacted, would, in effect, result in escheat to California in addition of our unclaimed wages where the address of the claimant was unknown or in a state not claiming escheat on such wages. Thus, section 2 gives priority in such cases

Mr. John H. DeMouilly . . . #2

to the state of corporate domicile, but section 3 indicates that if the state of domicile does not claim (which is true of our state of domicile, Delaware) then the state where the office of the holder from which the largest total disbursements are made (California, in our case) may claim. We do not think, in fairness, that California has any just claim to these amounts and therefore are opposed to the enactment of section 3 of Article III.

We are also opposed to the proposed elimination in section 5 of the present complete exemption for public utilities, other than carriers, found in section 1501(g) and (h) C.C.P., and ask that instead it be expanded to cover railroads and other carriers. When the legislature originally enacted this law in 1959 it had good reasons for affording complete exemption to public utilities, which complete exemption is not found in the uniform law, presumably because it felt that application to these multi-state regulated industries presented peculiar administrative difficulties. As the purpose of the existing law is, in large part, to protect unknown owners by locating their property for them and to give the state rather than the holders of such items the benefit of the use of it, there is no rational difference between common carriers and the present exempt utilities which would justify exemption of the latter but not the former. Under the California Constitution, railroads and other common carriers are specifically included in the definition of "public utilities". As a matter of fact, the exemption of public utilities without including railroads and carriers is probably unconstitutional. In 1965 the legislature in fact passed a law to add railroads to this exemption, but it was pocket vetoed by the Governor, apparently because of pending litigation involving other unrelated matters under the law.

Southern Pacific, in the past, has been willing to pay unclaimed obligations upon demand of the owner without regard to when this demand is made. Both the uniform law and the existing California statutes recognize the right of the owner, at any time in the future after the property has been transferred to the state, to obtain his property if he makes a proper claim. There is no time limitation on his right to do so. The proposed revision abandons the custodial features of existing law and, when five years have elapsed after property has been delivered to the Controller, there is a complete escheat to the state and the owner's property right is gone. As the California Legislature initially recognized this as a custodial statute, as does the uniform law, I submit there is no good reason at this time to abandon the custodial features of the law.

Very truly yours,

Robert L. Pierce

EXHIBIT **W**
LAW OFFICES OF

CHICKERING & GREGORY

CODE ADDRESS
"CHICGREG"

ONE ELEVEN SUTTER STREET
SAN FRANCISCO 94104

TELEPHONE
421-3430
AREA CODE 415

November 7, 1966

California Law Revision Commission
School of Law
Stanford University
Stanford, California 94305

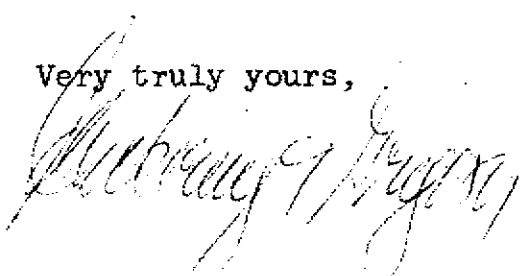
Attention: Mr. John H. DeMouilly,
Executive Secretary

Gentlemen:

Under date of October 25, 1966, you issued a memorandum to persons interested in the California Uniform Disposition of Unclaimed Property Act and related statutes, with a request for comments.

On behalf of our client, San Diego Gas & Electric Company, we concur in the objections to the proposed revision set forth in the letter to you of November 2, 1966, of Pacific Gas & Electric Company.

Very truly yours,



SC:eh

ALAN CRANSTON
CONTROLLER

EXHIBIT VIII



Controller of the State of California

SACRAMENTO

December 9, 1966

California Law Revision Commission
Room 30, Crothers Hall
Stanford University
Stanford, California 94305

Attention Mr. John H. DeMouilly, Executive Secretary

Gentlemen:

In reply to your letter of December 8, we have no statistical data showing the amount received annually from common carriers under the Unclaimed Property Act. At the 1965 session of the Legislature, AB 2895 was introduced by Assemblyman Thelin (copy enclosed), which would have extended the utility exemption to railroads and other common carriers engaged in interstate commerce. The bill was pocket-vetoed by the Governor.


I attended a meeting of the Assembly Public Utilities Committee at which the bill was first discussed and before which Mr. Fuhrman, Counsel for the Southern Pacific Railroad, appeared in support of the bill. Among his comments he stated that the railroads had believed the Unclaimed Property Act applied only to unclaimed dividends and did not apply to unclaimed wages insofar as railroads were concerned. Our records show that the Southern Pacific Company had been reporting unclaimed dividends to us, but nothing else. Mr. Fuhrman went on to state that if the Act applied to unclaimed wages, Southern Pacific Company would report approximately \$48,000 in its first report which, of course, would cover several years.

At that time we checked our records to see what other railroads were reporting to us and found that most of them were reporting unclaimed wages as well as other items. Based on our survey at that time, we estimated that income from railroads alone would approximate \$70,000 a year, of which about 95% would represent unclaimed wages.

In addition to the railroads, of course, the exemption would have applied to other common carriers such as bus lines, air lines, and steamship lines.

Very truly yours,

ALAN CRANSTON, STATE CONTROLLER

By 
S. J. Cord, Chief
Division of Accounting

Encls

AMENDED IN ASSEMBLY MAY 31, 1965

CALIFORNIA LEGISLATURE—1965 REGULAR (GENERAL) SESSION

ASSEMBLY BILL

No. 2895

Introduced by Assemblyman Thelin

April 22, 1965

REFERRED TO COMMITTEE ON PUBLIC UTILITIES AND CORPORATIONS

*An act to amend Section 1501 of the Code of Civil Procedure,
relating to disposition of unclaimed property.*

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1501 of the Code of Civil Procedure
2 is amended to read:
3 1501. As used in this chapter, unless the context other-
4 wise requires:
5 (a) "Banking organization" means any bank, trust com-
6 pany, savings bank, safe deposit company, or a private banker
7 engaged in business in this state.
8 (b) "Business association" means any corporation (other
9 than a public corporation, including railroads and other com-
10 mon carriers engaged in interstate commerce, or utility), joint
11 stock company, business trust, partnership, or any association
12 for business purposes of two or more individuals.
13 (c) "Financial organization" means any savings and loan
14 association, building and loan association, credit union, or
15 investment company engaged in business in this state.
16 (d) "Holder" means any person in possession of property
17 subject to this chapter belonging to another, or who is trustee
18 in case of a trust, or is indebted to another on an obligation
19 subject to this chapter.
20 (e) "Life insurance corporation" means any association or
21 corporation transacting within this state the business of in-
22 surance on the lives of persons or insurance appertaining
23 thereto, including, but not by way of limitation, endowments
24 and annuities.
25 (f) "Owner" means a depositor in case of a deposit, a
26 beneficiary in case of a trust, or creditor, claimant, or payee
27 in case of other choses in action, or any person having a

1 legal or equitable interest in property subject to this chapter,
2 or his legal representative.

3 (g) "Person" means any individual, business association,
4 government or political subdivision, public authority, estate,
5 trust, two or more persons having a joint or common interest,
6 or any other legal or commercial entity other than any public
7 corporation, including railroads and other common carriers
8 engaged in interstate commerce, or utility.

9 (h) "Utility" means any person who owns or operates
10 within this state, for public use, any plant, equipment, prop-
11 erty, franchise, or license for the transmission of communica-
12 tions or the production, storage, transmission, sale, delivery,
13 or furnishing of electricity, water, steam, or gas.

CALIFORNIA LEGISLATURE—1965 REGULAR (GENERAL) SESSION
ASSEMBLY BILL **No. 2895**

Introduced by Assemblyman Thelin

April 22, 1965

REFERRED TO COMMITTEE ON PUBLIC UTILITIES AND CORPORATIONS

*An act to amend Section 1501 of the Code of Civil Procedure,
relating to disposition of unclaimed property.*

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1501 of the Code of Civil Procedure
2 is amended to read:
3 1501. As used in this chapter, unless the context other-
4 wise requires:
5 (a) "Banking organization" means any bank, trust com-
6 pany, savings bank, safe deposit company, or a private banker
7 engaged in business in this state.
8 (b) "Business association" means any corporation (other
9 than a public corporation, including railroads and other com-
10 mon carriers engaged in interstate commerce, or utility), joint
11 stock company, business trust, partnership, or any association
12 for business purposes of two or more individuals.
13 (c) "Financial organization" means any savings and loan
14 association, building and loan association, credit union, or
15 investment company engaged in business in this state.
16 (d) "Holder" means any person in possession of property
17 subject to this chapter belonging to another, or who is trustee
18 in case of a trust, or is indebted to another on an obligation
19 subject to this chapter.
20 (e) "Life insurance corporation" means any association or
21 corporation transacting within this state the business of in-
22 surance on the lives of persons or insurance appertaining
23 thereto, including, but not by way of limitation, endowments
24 and annuities.

LEGISLATIVE COUNSEL'S DIGEST

AB 2895, as introduced, Thelin (P.U. & C.). Disposition of unclaimed property.
Amends Sec. 1501, C.C.P.
Modifies the definitions of "business association" and "person" to explicitly
exclude railroads and other common carriers engaged in interstate commerce, for
the purposes of the law relating to the disposition of unclaimed property.

1 (f) "Owner" means a depositor in case of a deposit, a
2 beneficiary in case of a trust, or creditor, claimant, or payee
3 in case of other choses in action, or any person having a
4 legal or equitable interest in property subject to this chapter,
5 or his legal representative.

6 (g) "Person" means any individual, business association,
7 government or political subdivision, public authority, estate,
8 trust, two or more persons having a joint or common interest,
9 or any other legal or commercial entity other than any public
10 corporation, *including railroads and other common carriers*
11 *engaged in interstate commerce*, or utility.

12 (h) "Utility" means any person who owns or operates
13 within this state, for public use, any plant, equipment, prop-
14 erty, franchise, or license for the transmission of communica-
15 tions or the production, storage, transmission, sale, delivery,
16 or furnishing of electricity, water, steam, or gas.

EXHIBIT IX



COMMISSIONERS
PETER E. MITCHELL, PRESIDENT
GEORGE S. GROVER
FREDERICK S. HOLOSOFF
WILLIAM M. BENNETT
A. W. SATOV

ADDRESS ALL COMMUNICATIONS
TO THE COMMISSION

CALIFORNIA STATE BUILDING
SAN FRANCISCO, CALIF. 94102

Public Utilities Commission

STATE OF CALIFORNIA

FILE NO.

28 December 1966

Joseph B. Harvey
Assistant Executive Secretary
California Law Revision Commission
School of Law
Stanford University
Stanford, California 94305

Dear Sir:

This will serve to reply to your letter of November 8, 1966 relating to exclusion of utilities from the existing California statute concerning the escheat of abandoned property.

You are correct in your recollection of our conversation that I indicated to you that excessive payments for service or service deposits have been refunded by utilities to the customers pursuant to orders of this Commission.

My research has indicated no specific instance where the Commission has specifically determined how abandoned property rights are to be treated in the determination of a utility's results of operation or cost to provide utility service. However, on principle, in the absence of statutory prohibition it would be my view that if abandoned property rights were of a magnitude which would have a meaningful effect upon a utility's operating expenses or rate base, then the benefits of such an effect should be passed on to all the consumers of utility service by appropriate adjustments to the results of operation.

From an accounting standpoint the Commission's various prescribed systems of accounts for utilities provide that unclaimed deposits shall be credited to "Uncollectables" and other abandoned property rights shall be credited to "Miscellaneous Credits To Surplus."

If I may provide any further information, I will be pleased to do so on request.

Very truly yours,

Mary Moran Pajalich
Mary Moran Pajalich
Chief Counsel