

Memorandum 68-45

Subject: Study 26 - Escheat (Senate Bill No. 63)

We are hopeful that by the time of the meeting Senate Bill No. 63 (revision of unclaimed property act) will have passed the Senate.

On several occasions, Southern California Edison Company expressed concern with the revision of the existing law insofar as it pertains to the utility exemption. The pertinent provisions of Senate Bill No. 63 are:

1501. As used in this chapter, unless the context otherwise requires:

* * * * *

(j) "Utility" means any person who owns or operates, for public use, any plant, equipment, property, franchise, or license for the transmission of communications or the production, storage, transmission, sale, delivery, or furnishing of electricity, water, steam, or gas, whose rates are regulated by the Public Utilities Commission of this state or by a similar public agency of another state or of the United States.

1502. (a) (not pertinent)

(b) Except for sums payable on telegraphic money orders, this chapter does not apply to any property held by a utility which the Public Utilities Commission of this state or a similar public agency of another state or of the United States permits or requires to be, and which has been, used or applied directly or indirectly for the benefit of the ratepayers in determining the rates to be charged by the utility.

Note that subdivision (b) of Section 1502 requires that the public utility establish that the property has been used or applied directly or indirectly for the benefit of the ratepayers in determining the rates to be charged by the utility. Southern California Edison points out that rate cases are not likely to occur with great frequency (as far as that company is concerned) but that the rates are continuously under review in light of the conditions existing at any time. Hence, the company takes the position that, while it cannot be established that the property has been applied to reduce rates (since there has been no rate case), it should be sufficient to establish that the property is of a type that is taken into consideration in determining the rates to be charged by the utility.

For a discussion of this problem, see the Commission's Recommendation on Escheat--recommendation 5 at pages 1013-1014 and the second paragraph of the Comment on page 1023.

Southern California Edison suggests three alternative amendments to the bill. These are set out below.

Alternative No. 1

(b) Except for sums payable on telegraphic money orders, this chapter does not apply to any property held by a utility which the Public Utilities Commission of this state or a similar public agency of another state or of the United States permits or requires to be, and which has been, used or applied directly or indirectly for the benefit of the ratepayers in determining the rates to be charged by the utility .

Alternative No. 2

(b) Except for sums payable on telegraphic money orders, this chapter does not apply to any property held by a utility which the Public Utilities Commission of this state or a similar public agency of another state or of the United States permits or requires to be , ~~and-which-has-been,~~ used or applied directly or indirectly for the benefit of the ratepayers in determining the rates to be charged by the utility.

Alternative No. 3

(b) Except for sums payable on telegraphic money orders, this chapter does not apply to any property held by a utility which is of a type that the Public Utilities Commission of this state or a similar public agency of another state or of the United States ~~permits-or-requires-to-be,-and-which-has-been,-used-or-applied~~ directly or indirectly takes into consideration for-the-benefit-of the-ratepayers in determining the rates to be charged by the utility.

Southern California Edison prefers the first alternative. The staff believes that the third alternative would not be inconsistent with what we sought to accomplish in subdivision (b) although the revised language is not as precise. Under the circumstances, we suggest that the bill be amended to incorporate Alternative No. 3 into the bill. We would make no revision in the Comment to Section 1502.

Respectfully submitted,

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Re: Senate Bill 63

Dear Mr. DeMouilly:

This will confirm our telephone conversation of day before yesterday with respect to the subject bill. I had suggested for your consideration two alternative amendments of paragraph (b), Section 1502 of the Code of Civil Procedure, as proposed in the subject bill. These amendments were as follows:

Insert a period after the word "utility" in the second line of said paragraph and delete the remainder of the paragraph. Such an amendment would make this chapter inapplicable to all utilities whose rates are regulated by the Public Utilities Commission of this state or by a similar public agency of another state or of the United States. (See amended definition of "utility", Section 1501(j) CCP.)

The other suggestion was to delete the words "and it has been" and the commas preceding and following these words which appear in the next-to-the-last line of this paragraph, preceding the words, "used or applied".

The first proposed amendment seems to be preferable because it recognizes that all public utility properties are given consideration by regulatory agencies in fixing rates for such utilities. The second amendment, however, would meet our needs, as the principal difficulty, in the absence of a rate case where the specific funds were particularly referred to, would be to show that such funds, in fact, had been used in determining the rates to be charged by the utility. I mentioned to you that full-blown

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rate cases are not likely to occur with great frequency. The California Commission, however, continuously keeps under review the reasonableness of the rates of utilities subject to the jurisdiction of the Commission in the light of the conditions existing at the time, taking all factors into consideration.

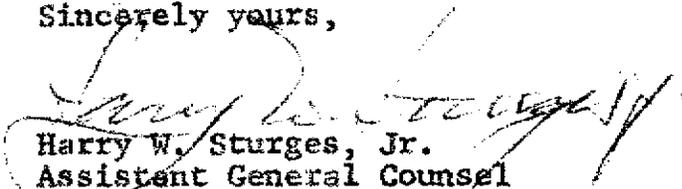
Perhaps another way of amending this paragraph (b) to meet our problem would be as follows:

Section 1502(b). "Except for sums payable on telegraphic money orders, this chapter does not apply to any property held by a utility which is of a type that the Public Utilities Commission of this state or a similar public agency of another state or of the United States permits or requires to be, and which has been, used or applied directly or indirectly takes into consideration for the benefit of the ratepayers in determining the rates to be charged by the utility."

In my opinion, it is doubtful that in the absence of some appropriate amendment of this bill that any language in the Commission's report could resolve the uncertainty that the bill now creates with respect to the property held by utilities.

I appreciate your consideration of this matter and will be pleased to have the opportunity of discussing this subject with you further if you desire.

Sincerely yours,


Harry W. Sturges, Jr.
Assistant General Counsel

HWS:cu