

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

Frances Langerud,	)	
	)	
Complainant,	)	
	)	
v.	)	<u>Case No. TC-2002-349</u>
	)	
CenturyTel,	)	
	)	
Respondent.	)	

CONCURRING OPINION OF CHAIRMAN STEVE GAW

I am writing this separate concurrence to express my concern in this matter. Although transferring funds collected in error to the Public School Fund as agreed to by Staff, the company, and the Office of the Public Counsel is a good result, I question whether the agreement is supported by the law.

The parties agree that the Commission may treat the sums owed to customers they cannot locate as a "penalty or forfeiture" under §386.600. This, they argue, would allow the Commission to order monies paid into the Public School Fund. The first problem I have with this argument is that penalties are ordered by a proceeding in Circuit Court, which this is not. Neither have the parties explained how this matter could be interpreted as a forfeiture case.

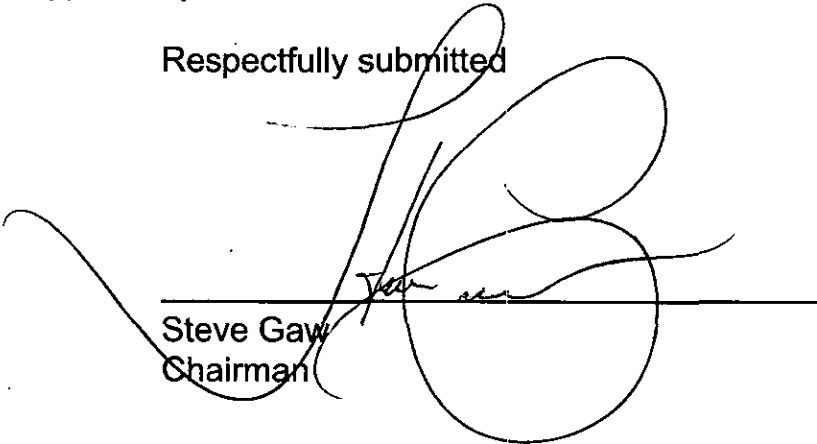
It seems more likely that the proper interpretation places this under §447.517, which states how unclaimed property held by a utility should be handled after 5 years. It should be a given that customers have a right to recover their money from the company

prior to that time, unless the assertion of the Commission's jurisdiction somehow bars a suit for recovery of the overpayment to the utility. I have significant doubts that this is the case. Furthermore, no one has argued that any party to this case has the authority to act on behalf of any potential claimants in entering this settlement so as to foreclose such potential claimants right to recover their overpayment.

The answer proposed by the parties represents a good use of the funds. The money, if held, would very likely have insignificant claims¹ against it and cause administrative costs in the process. That would not be a good result.

I will not stand in the way of this particular stipulation. However, the parties should not take this approval to indicate that the parties interpretation of the law in this case have been given carte blanche approval by the entire Commission.

Respectfully submitted



Steve Gaw
Chairman

Dated at Jefferson City, Missouri,
on this 4th day of December, 2003.

¹The \$46,768.40 refund amount is spread over 14,733 customers for an average refund of \$3.17 plus interest.