

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

Dione C. Joyner,)	
)	
Complainant)	
)	
v.)	<u>Case No. WC-2006-0345</u>
)	
Missouri-American Water Company)	
)	
Respondent)	

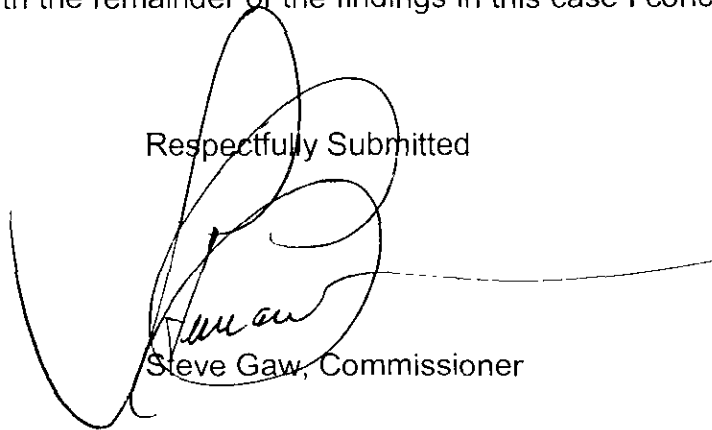
Concurring Opinion of Commissioner Steve Gaw

While I agree with the result in this case, I am reluctant to endorse the retrospective waiver of an administrative rule. There are times when a company may apply for the waiver of an administrative rule prospectively. It is appropriate for the Commission to grant such a waiver in limited circumstances upon the finding of good cause. The failure of a company to abide by a rule should generally not result in a retrospective waiver unless the Commission itself has created an appearance that the rule was not being followed or enforced. Otherwise, administrative rules enacted for the protection of consumers or for public safety may appear to be something less than a requirement.

The question that should be answered by the Commission is whether the failure of the company to follow the rule should result in the pursuit of penalties against it. There was significant testimony and exhibits entered into evidence that the company provided numerous notices of disconnection prior to the time of the actual act. However, it appears that the notice for disconnection that applied here

was not timely. It would be appropriate to determine under these circumstances whether the failure to follow the rule should result in further action by the Commission. Since I agree with the remainder of the findings in this case I concur in the Report and Order.

Respectfully Submitted

A large, stylized handwritten signature in black ink, appearing to read "Gaw", is written over the typed name. The signature is composed of several overlapping loops and a long horizontal stroke extending to the right.

Steve Gaw, Commissioner

Dated at Jefferson City, Missouri,
on this 17th day of November, 2006.