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Missouri Public
Service Commission

Missouri Public Service Commission
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Ray Freeman III
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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held at its office in Jefferson City on the 1st day of April, 2009.

Raymond Joseph Freeman, III,	)	
	)	
Complainant,	)	
	)	
v.	)	**File No. GC-2009-0047**
	)	
Laclede Gas Company,	)	
	)	
Respondent.	)	

ORDER DISMISSING COMPLAINT

Issue Date: April 1, 2009 Effective Date: April 11, 2009

On August 15, 2008, Raymond Joseph Freeman, III, filed a complaint with the Missouri Public Service Commission against Laclede Gas Company. In his complaint, Mr. Freeman alleged that:

1. Laclede disconnected his service for failure to pay bills based on estimated readings;
2. The amount owed at disconnection was less than $150;
3. Laclede charges a minimum amount each month even though there is no usage;
4. A $62 disconnection fee is too much;
5. Laclede issued a new account number when his service was restored; and

6. Laclede should have a separate rate for the months April, May, October, and November.

For relief Mr. Freeman requested that Laclede not be allowed to disconnect a customer for an estimated billing; that Laclede not be allowed to disconnect a customer unless that customer owes a set amount (e.g., $150 to $300); that there be no minimum billing without usage; that the disconnection fee be lowered to $25 - $35; and that Laclede not change an account number upon reconnection.

The Commission issued notice of the complaint on August 19, 2008, directing Laclede to respond and the Commission's Staff to investigate and file a report.

Laclede filed its Answer and Motion to Dismiss on September 18, 2008. Laclede submitted that it has, at all times, acted appropriately and in accordance with its Commission-approved tariff. Laclede requested that the Commission issue an order dismissing this complaint for failure to state a claim upon which relief may be granted. Laclede argued that, even taking everything stated in the complaint to be true, the Commission has no legal reason or authority to grant Mr. Freeman the relief he asks for.

Staff conducted an investigation of the complaint and filed its verified report on October 7, 2008. Staff reported that Mr. Freeman has not alleged any violations of Missouri statute, Commission rules, or Laclede's tariff, and that Staff did not find any such violations. Staff recommended that the case be dismissed.

On January 23, 2009, the Commission issued an order directing Mr. Freemen to state whether he has any additional facts or legal allegations that would be a claim for which the Commission could grant him relief. The Commission advised Mr. Freeman that at this stage of the case, he has not stated any facts upon which the Commission could

conclude that Laclede has violated its approved tariff, applicable Commission rules, or Missouri statutes. Mr. Freeman was allowed until February 13, 2009, to file a statement setting forth the legal or factual reasons why he believes Laclede has acted in violation of some tariff, rule or other Missouri law. The Commission further notified Mr. Freeman that if the Commission did not receive a response from him, it would make its decision based on the current documents and recommendations before it and that his complaint could be dismissed. No response was filed.

Dismissal is generally appropriate when a tribunal is "unable to grant the type of relief requested" by the complainant.[1] The Commission's rule, 4 CSR 240-2.070(6), also provides for dismissal of complaints for failure to state a claim upon which relief may be granted. The standard for review for consideration of a motion to dismiss for failure to state a claim upon which relief can be granted has been clearly established by Missouri's courts as follows:

> A motion to dismiss for failure to state a cause of action is solely a test of the adequacy of the plaintiff's petition. It assumes that all of plaintiff's averments are true, and liberally grants to plaintiff all reasonable inferences therefrom. No attempt is made to weigh any facts alleged as to whether they are credible or persuasive. Instead, the petition is reviewed in an almost academic manner to determine if the facts alleged meet the elements of a recognized cause of action, or of a cause that might be adopted in that case.[2]

After considering the complaint, assuming that all the averments are true, the Commission finds that Mr. Freeman has not alleged any violation of Laclede's tariff, a statute, or a rule. Therefore, Mr. Freeman has not stated a claim upon which the

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[1] *State ex rel. Royce-St. Louis Ltd. Partnership v. Kraiberg*, 864 S.W.2d 409, 411 (Mo. App. E.D. 1993). *See also State ex rel. Adam Roth Grocery Co. v. Reynolds*, 196 S.W. 1136, 1137 (Mo. 1917) (dismissal appropriate where court is "unable to grant the relief prayed.")

[2] *Eastwood v. North Central Missouri Drug Task Force*, 15 S.W.3d 65, 67 (Mo. App. W.D. 2000).

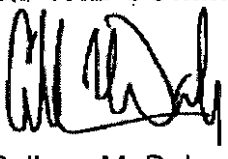
Commission can grant relief and the complaint will be dismissed for failure to state a claim upon which relief may be granted.

THE COMMISSION ORDERS THAT:

1. The complaint of Raymond Joseph Freeman, III, against Laclede Gas Company is dismissed for failure to state a claim upon which relief may be granted.

2. This order shall become effective on April 11, 2009.

BY THE COMMISSION



Colleen M. Dale
Secretary

(S E A L)

Clayton, Chm., Murray, Davis,
Jarrett, and Gunn, CC., concur.

Dippell, Interim Chief Regulatory Law Judge

STATE OF MISSOURI

OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson City, Missouri, this 1st day of April 2009.

Colleen M. Dale
Secretary

MISSOURI PUBLIC SERVICE COMMISSION

April 01, 2009

File No. GC-2009-0047

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Enclosed find a certified copy of an ORDER in the above-numbered matter(s).

Sincerely,

Colleen M. Dale
Secretary