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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 13th
day of August, 1997.

Richard Sauerwein,)	
)	
Complainant,)	
)	
v.)	<u>Case No. GC-97-481</u>
)	
Laclede Gas Company,)	
)	
Respondent.)	
)	

ORDER DISMISSING COMPLAINT AND CLOSING CASE

Richard Sauerwein (Complainant) filed a complaint with the Commission against Laclede Gas Company (Laclede) on May 1, 1997, Complainant alleged that an error was made by a physician during drug testing apparently requested by Laclede. The error ultimately resulted in the entry of a "refusal to test" and imputation of a positive test result in Complainant's personnel records. Complainant asked the Commission to remove these entries from his record.

The Commission issued a Notice of Complaint on May 9, giving Laclede thirty days to resolve the complaint or file an answer. Laclede filed an Answer and Motion to Dismiss on May 29, admitting some allegations and denying others. Laclede argued that the Complainant works as a vehicle mechanic and is subject to drug and alcohol testing under Federal Highway Administration regulations, citing 49 C.F.R. § 391.81, et. seq. Complainant does not work on Laclede's pipelines and, therefore, he is not subject to the drug and alcohol testing procedures found in the federal pipeline

safety regulations as adopted in Commission rules at 4 CSR 240-40.080. Laclede requested that the complaint be dismissed with prejudice for lack of Commission jurisdiction.

The Staff of the Missouri Public Service Commission (Staff) filed a Motion to Dismiss Complaint and Close Docket accompanied by a Memorandum in Support on July 7. Staff pointed out that the Commission rules regarding pipeline safety and drug and alcohol testing, 4 CSR 240-40, which were established by adopting the federal pipeline safety regulations for drug and alcohol testing found in 49 C.F.R. § 199, do not apply to Complainant.

The rules regarding drug and alcohol testing define an "employee" as a person who performs an operating, maintenance, or emergency-response function on a pipeline or at an LNG (liquefied natural gas) facility. A covered function is one that is regulated by 49 C.F.R. §§ 192, 193, or 195, i.e., involving the transportation of natural gas by pipeline, the construction of liquefied natural gas facilities, or the transportation of hazardous liquids by pipeline. Specifically excluded from the coverage of the testing rule are employees performing clerical, truck driving, accounting, or other functions not related to Parts 192, 193, or 195 activities.

Staff stated that Complainant is employed as a vehicle mechanic and performs no functions which are covered under the pipeline safety drug and alcohol testing rules. Therefore, the complaint should be dismissed for lack of Commission jurisdiction and the case closed.

The Commission has reviewed the complaint, Staff's pleadings, and the governing state and federal rules, and concludes that Staff's motion to dismiss should be granted. Regardless of whether the Complainant's

allegations are true, the Commission has no jurisdiction to proceed. Therefore, as a matter of law, the Complainant has failed to state a claim upon which the Commission may grant relief. Commission rule 4 CSR 240-2.070(6) permits the Commission to dismiss a complaint without argument or hearing where the complaint fails to state facts upon which relief may be granted. In this case, the Complaint has requested relief which is beyond the Commission's power to grant.

IT IS THEREFORE ORDERED:

1. That the Complaint filed by Richard Sauerwein against Laclede Gas Company on May 1, 1997 is dismissed for failure to state a claim upon which relief may be granted.
2. That this case shall be closed as of August 26, 1997.
3. That this order shall become effective on August 26, 1997.

BY THE COMMISSION



**Cecil I. Wright
Executive Secretary**

(S E A L)

Zobrist, Chm., Crumpton,
Drainer, Murray and Lumpe,
CC., concur.

ALJ: Wickliffe