

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

Michael and Paula Sexton,	)	
	)	
Complainant,	)	
	)	
v.	)	Case No. EC-2008-0315
	)	
The Empire District Electric Company,	)	
	)	
Respondent.	)	

**EMPIRE’S ANSWER TO COMPLAINT**

COMES NOW The Empire District Electric Company (“Empire” or “Respondent”), by and through its counsel, and, pursuant to 4 CSR 240-2.070, respectfully states the following to the Missouri Public Service Commission (“Commission”) as its answer and affirmative defenses to the Complaint filed by Michael and Paula Sexton (“Complainants”):

1. Empire admits that it is a public utility subject to the jurisdiction of the Commission, as provided by law.
2. Correspondence, communications, orders and decisions regarding this matter should be addressed to the undersigned counsel and:

Mr. Michael Palmer  
The Empire District Electric Company  
602 Joplin Street  
Joplin, MO 64802  
(417) 625-4250  
[mpalmer@empiredistrict.com](mailto:mpalmer@empiredistrict.com)

### **COMPLAINT AND RELIEF SOUGHT**

3. Complainants allege that during the February 12, 2008, ice-storm recovery effort, Empire and/or its contractor cut trees on Complainants' property outside the right of way or trees that Complainants did not believe to be a threat to the electric lines. Complainants seek a statement by Empire that the Company does not have the right to destroy property without permission and compensation for the alleged damage to their property and for the cost of cleaning up Complainants' property.

### **ANSWER**

4. As stated in the Complainants' "Basis of Complaint," the subject incident took place on the second day of a very significant ice storm. The ice made it very difficult to even travel on many of the roads, much less to travel off-road for line clearing efforts.

5. Empire crews were in the process of removing trees from a disabled power line near the Sexton's home when the Sextons' challenged the crews' right to cut the trees outside the right of way as well as the necessity of cutting trees in the right of way.

6. When the crews continued to work to clear the line, Paula Sexton came outside with a firearm and indicated that she would shoot the crew members if they did not stop cutting trees and leave her property. The crews retreated to a safer location and called the Sheriff's Department. Ms. Sexton was ultimately arrested and the Empire-contracted crews resumed their efforts to restore service.

7. Empire holds a twenty foot wide easement across the Sexton's property that was granted in 1989. The easement grants Empire:

a permanent right-of-way to construct, repair, replace, inspect operate and

maintain lines for the transmission and distribution of electrical energy and joint communication lines, including the necessary poles, crossarms, wires, guy wires, anchors, markers, aerial and underground cable, conduits, vaults, equipment foundations and pad mount transformers, and all appurtenances thereto as may in the opinion of the Company be required from time to time upon, over and under land.

8. The easement further provides that Empire is:

Granted the right and permission to clear, remove and keep cleared of trees, limbs, roots and other obstructions which in the opinion of the Company might damage, endanger, or interfere with the operation or safety of said lines for a distance of 10 feet on each side of centerline of said lines, and to enter upon said land and right-of-way for the purpose of repairing and replacing said lines and keeping same in order, and in making examination thereof at any time so long as such lines shall be maintained and operated.

9. Further, Empire's tariffs provide that "In order to permit proper operation of Company's service lines and feeder lines serving the customer, the Company shall have the right, when and as necessary, to trim and keep trimmed any trees located upon the customer's premises which may interfere with service to customer or service to any other customer." Sheet No. 17c, Sec. 5.

10. The Complainants' house was built very close to Empire's line (See **Appendix A** attached hereto). In fact, it appears that a portion of the soffit actually encroaches upon the easement. Accordingly, any work performed along this line will necessarily be in close

proximity to Complainants' house.

11. Empire admits that it did cut trees in this situation that were outside the twenty foot easement. However, Empire had the right to do so because the ice load caused several trees to bend over, into and beneath the line such that when melting occurred they would spring back up into the line, likely causing another outage. Trees were also cut in some instances to provide the crews with access to the "offending" trees and to ensure crew safety as they performed the necessary work.

12. Except as expressly admitted in this answer, Empire denies each and every allegation contained in the Complaint.

#### **AFFIRMATIVE DEFENSES**

13. Further answering, Empire states that it acted in accordance with its tariffs and easement when it cut trees on the Complainants' property on February 12, 2008.

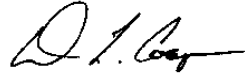
14. Further answering and for its second affirmative defense, Empire states that the Complaint fails to state a claim upon which the requested relief may be granted.

15. Further answering and for its third affirmative defense, Empire states that the Commission does not have the authority or jurisdiction necessary to grant the relief requested by the Complainant.

WHEREFORE, having fully answered and set forth its affirmative defenses, Respondent Empire prays the Commission dismiss the Complaint and grant such other relief as the

Commission deems reasonable and just.

Respectfully submitted,



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ATTORNEYS FOR THE EMPIRE DISTRICT  
ELECTRIC COMPANY

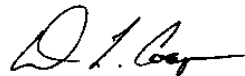
### **CERTIFICATE OF SERVICE**

The undersigned certifies that a true and correct copy of the foregoing document was sent by electronic mail or by U.S. Mail, postage prepaid, on May 6, 2008, to the following:

Office of the General Counsel  
Governor Office Building  
Jefferson City, MO 65101  
[gencounsel@psc.mo.gov](mailto:gencounsel@psc.mo.gov)

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