

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

Michael and Paula Sexton,)	
)	
Complainants,)	
)	
v.)	<u>Case No. EC-2008-0315</u>
)	
Empire District Electric Co.,)	
)	
Respondent.)	

ORDER DIRECTING FILING

Issue Date: May 30, 2008

Effective Date: May 30, 2008

Michael and Paula Sexton filed a formal complaint against The Empire District Electric Company ("Empire") on April 4, 2008.¹ They alleged that on February 12, while performing restoration activities a day or two after an ice storm caused a power outage in their Ozark, Missouri neighborhood, Empire or its contractors "clear cut" a number of trees located on the Sextons' private residential property (both inside and outside the utility right of way) over their strenuous objections, including a verbal warning that Paula Sexton had a gun and wanted them to leave the property immediately. The Sextons sought the following relief: (1) "[a]cknowledgment by Empire District that they do not have the right to destroy private property without permission"; and (2) "[c]ompensation for the damage to [their] property and the cost of cleaning up [their] property."

¹ Unless otherwise specified, all dates in this order refer to the calendar year 2008.

On April 7, the Commission notified Empire of the complaint and allowed it thirty days in which to answer as provided by 4 CSR 240-2.070(7). The same day, pursuant to 4 CSR 240-2.070(10), the Commission ordered its Staff to commence an investigation of the Sextons' formal complaint and to file a report concerning the results of its investigation no later than two weeks after Empire filed its answer to the complaint, which was due no later than May 7.

Empire timely filed its answer on May 6, and on May 20, Staff timely filed a verified report based on its investigation. Among many other things, in those pleadings, Empire and Staff both averred that the complaint should be dismissed because even if the Commission were to find all of the allegations made therein to be true, it lacks the legal authority to grant either of the two forms of relief sought by the Sextons. In particular, Staff cited *American Petroleum Exchange v. Public Service Commission*, 172 S.W.2d 952, 955 (Mo. 1943) (in which the Missouri Supreme Court held that the Commission lacks the authority to do equity or grant equitable relief and also has no authority to award pecuniary relief or consequential damages),² and one of the Commission's own past cases (in which the Commission stated that it is "purely a creature of statute and its powers are limited to those conferred by the [Missouri] statutes, either expressly, or by clear implication as necessary to carry out the powers specifically granted.")³ Accordingly, argues Staff, "both requests for relief by Complainants' are outside the Commission's authority to grant."

² Although not cited by the parties here, see also *May Dept. Stores Co. v. Union Elec. Light & Power Co.*, 107 S.W.2d 41, 58 (Mo. 1937) (Commission "cannot enter a money judgment for one party against another" and "cannot grant monetary relief for compensation for past overcharges or damages"); *Wilshire Constr. Co. v. Union Elec. Co.*, 463 S.W.2d 903, 905 (Mo. 1971) (Commission cannot enter a money judgment); *Gaines v. Gibbs*, 709 S.W.2d 541, 543 (Mo. App. S.D. 1986) (Commission "is not a court" and "does not exercise judicial power or authority"); *Soars v. Soars-Lovelace, Inc.*, 142 S.W.2d 866, 871 (Mo. 1940) (Commission cannot do equity).

³ Report & Order, *GS Technology Operating Co., Inc., d/b/a GST Steel Co. v. Kansas City Power & Light Co.*, Case No. EC-99-553 (July 13, 2000); see also *State ex rel. Utility Consumers Council of Missouri, Inc. v. Pub.*

Although a prehearing conference is typically the next procedural step in a complaint case such as this, the Commission sees no point in moving forward with the case unless: (1) the Sextons affirmatively demonstrate that the Commission has the legal authority to grant either of the two forms of relief sought by them in their complaint as originally filed; or (2) the Sextons amend their complaint to seek a form of relief the Commission is capable of granting. The Sextons will be given two weeks to file an appropriate pleading.

IT IS ORDERED THAT:

1. Michael and Paula Sexton shall, by no later than 5:00 p.m. on Friday, June 13, 2008: (1) file an appropriate pleading affirmatively demonstrating that the Commission has the legal authority to grant either of the two forms of relief sought by them in their complaint as originally filed; or (2) file a first amended complaint seeking a form of relief the Commission is capable of granting.

Serv. Comm'n, 585 S.W.2d 41, 47 (Mo. banc 1979) (same); *State ex rel. City of West Plains v. Pub. Serv. Comm'n*, 310 S.W.2d 925, 928 (Mo. banc 1958) (same).

2. This order shall become effective on May 30, 2008.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', written over a horizontal line.

Colleen M. Dale
Secretary

(S E A L)

Benjamin H. Lane, Regulatory Law
Judge, by delegation of authority
under Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,
on this 30th day of May, 2008.