

**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.)	

NOTICE OF COMPLAINT

Issue Date: April 7, 2008

The Empire District Electric Company
602 Joplin Street
P.O. Box 127
Joplin, Missouri 64802

CERTIFIED MAIL

On April 4, 2008, Complainants Michael and Paula Sexton filed a formal complaint with the Missouri Public Service Commission against Respondent The Empire District Electric Company ("Empire"), a copy of which is enclosed. Under Commission Rule 4 CSR 240-2.070(7), Respondent shall have 30 days from the date of this notice to file an answer or to file notice that the complaint has been satisfied. Since this notice is being issued on April 7, 2008, Empire's response is due no later than May 7, 2008.

In the alternative, the Respondent may file a written request that the complaint be referred to a neutral third-party mediator for **voluntary mediation** of the complaint. Upon receipt of a request for mediation, the 30-day time period shall be tolled while the Commission ascertains whether the Complainants are also willing to submit to voluntary mediation. If the Complainants agree to mediation, the time period within which an answer is due shall be suspended pending the resolution of the mediation process. Additional information regarding the mediation process is enclosed.

If the Complainants decline the opportunity to seek mediation, the Respondent will be notified in writing that the tolling period has ceased and will also be notified of the date by which an answer or notice of satisfaction must be filed. That period will usually be the remainder of the original 30-day period.

All pleadings (including the answer, the notice of satisfaction of complaint, or request for mediation) shall be mailed to:

Secretary of the Missouri Public Service Commission
P.O. Box 360
Jefferson City, Missouri 65102-0360

A copy of such pleadings shall be served upon the Complainants at their home address as listed within the enclosed complaint. A copy of this notice has been mailed to the Complainants.

BY THE COMMISSION

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

Colleen M. Dale
Secretary

(S E A L)

Dated at Jefferson City, Missouri,
on this 7th day of April, 2008.

Lane, Regulatory Law Judge

Copy to: Michael and Paula Sexton
3503 N. Bobolink
Ozark, Missouri 65721

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE
STATE OF MISSOURI

FILED
April 4, 2008
Data Center
Missouri Public
Service Commission

Name: MICHAEL & PAULA SEXTON
Complainant

VS.

Case No.

Company Name: Empire Distric Electric
Respondent

COMPLAINT

Complainant resides at 3503 N BOBOLINK
(address of complainant)

OZARK, MO. 65721

1. Respondent, Empire District Electric
(company name)
of 6025 Joplin Ave Joplin MO. 64801, is a public utility under the
(location of company)

jurisdiction of the Public Service Commission of the State of Missouri.

2. As the basis of this complaint, Complainant states the following facts:

one PLEASE SEE ATTACHED STATEMENT

3. The Complainant has taken the following steps to present this complaint to the Respondent:

WHEREFORE, Complainant now requests the following relief:

3-31-08
Date
March 31, 2008

Paula A. Syton
Signature of Complainant

Attach additional pages, as necessary.
Attach copies of any supporting documentation.

Statement Attachment to Formal Complaint filed with the Public Service Commission of the
State of Missouri:

Basis of Complaint

On or about February 12, 2008 at approximately 11:00 p.m. my wife and I became aware of the Wright Tree crew clearing trees from the right of way behind our house. This was day two of a power outage caused by an ice storm.

Initially, we were pleased to see the efforts being made to re-establish electric service. The electric right of way at the rear of our property is 30 feet or 15 feet on either side of the power pole at the corner of our property, as stated by Eric Ponder, Empire District employee, when I inquired about the property easement right of way on or about February 13, 2008.

To our dismay, the tree cutting crew was clear cutting trees in our back yard up to a distance of 35 feet from the right of way center line, on our private property, without permission. Approximately 20 trees outside the right of way were felled.

Eric Ponder additionally stated that Empire had two employees, John Donnelson and Scott Mackey, on site during the tree cutting. I spoke with both gentlemen and was advised that the trees were cut as the trees presented potential threat to the utility lines and they had the right to fell the timber. I have pictures which show the damage to the trees on our private property. Several of the taller trees were felled by the Wright crew towards the power lines and did not damage the lines. Apparently the crew was either unskilled or they purposely allowed the trees to fall towards the power lines as there was not much of a threat or concern. Many of the other trees were within a few feet of the back of our home and were part of our landscaping. These trees were small river birch, as identified by Scott Mackey, cedar trees which we have cultivated as wildlife habitat, and other decorative trees. None of the trees were taller than 15 feet and not a threat to the lines.

I was advised by Scott Mackey that the Public Service Commission permits Empire to fell trees in an effort to restore power, whether or not the trees are outside the right of way. He also stated that the damage and debris was the responsibility of the property owner to clean up. My complaint to this statement is that Empire and not the ice storm caused the damage. The trees felled were not a threat to the system as evidenced by the direction the cutting crew felled them as well as the height of the trees were not sufficient to cause damage. At the end of our initial conversation Scott Mackey stated that "in warmer weather we will clear cut the right of way and remove everything." As much of the right of way is directly behind our home within a few feet I took this as a threat that we had not seen anything yet.

During our initial confrontation with the cutting crew my wife and I repeatedly told the crew that they were on private property and not the right of way. We were told, "we were just told to cut everything in our way and that's what we're going to do." While I was at one end of our home screaming over the noise of my generator, four chain saws and the Wright Company truck, my wife was fearful that I would have a heart attack. She came out of the house to tell the crew who

were now within 15 feet of our back door that she had called the Christian County Sheriff Department. She further stated that she had a gun and wanted them to leave our property.

This was a mistake on my wife's part but one made out of frustration and fear for my safety. The crew left our property at that time. Soon several Sheriff Deputies presented to our home and arrested my wife for displaying a weapon. She has not been charged, but we are still frustrated that we felt such drastic action was necessary to protect our property.

After my wife's arrest the cutting crew returned to complete their job. I find it interesting that the trees which were subsequently cut were appropriately trimmed under the power lines and not clear cut as they had been when confronted by myself and my wife.

My formal complaint is that I do not believe that a utility company has the right to destroy private property without permission. Exacerbating the situation is that I further feel the same utility does not have the right to require the property owner to restore their own property and clean up the damage.

Steps Taken to Present Complaint to Empire District Electric:

I spoke with several employees of Empire District Electric as the appropriate contacts. I filed an informal complaint with the PSC.

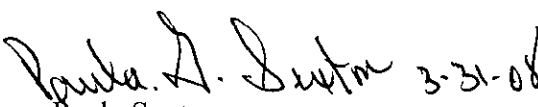
Requested Relief:

1. Acknowledgment by Empire District that they do not have the right to destroy private property without permission.
2. Compensation for the damage to my property and the cost of cleaning up my property.

Respectfully,


Mike Sexton

March 31, 2008


Paula Sexton



Commissioners

JEFF DAVIS
Chairman

CONNIE MURRAY

ROBERT M. CLAYTON III

LINWARD "LIN" APPLING

TERRY JARRETT

Missouri Public Service Commission

POST OFFICE BOX 360
JEFFERSON CITY, MISSOURI 65102
573-751-3234
573-751-1847 (Fax Number)
<http://www.psc.mo.gov>

WESS A. HENDERSON
Executive Director

DANA K. JOYCE
Director, Administration

ROBERT SCHALLENBERG
Director, Utility Services

NATELLE DIETRICH
Director, Utility Operations

COLLEEN M. DALE
Secretary/Chief Regulatory Law Judge

KEVIN A. THOMPSON
General Counsel

Information Sheet Regarding Mediation of Commission Formal Complaint Cases

Mediation is a process whereby the parties themselves work to resolve their dispute with the aid of a neutral third-party mediator. This process is sometimes referred to as "facilitated negotiation." The mediator's role is advisory and although the mediator may offer suggestions, the mediator has no authority to impose a solution nor will the mediator determine who "wins." Instead, the mediator simply works with both parties to facilitate communications and to attempt to enable the parties to reach an agreement which is mutually agreeable to both the complainant and the respondent.

The mediation process is explicitly a problem-solving one in which neither the parties nor the mediator are bound by the usual constraints such as the rules of evidence or the other formal procedures required in hearings before the Missouri Public Service Commission. Although many private mediators charge as much as \$250 per hour, the University of Missouri-Columbia School of Law has agreed to provide this service to parties who have formal complaints pending before the Public Service Commission at no charge. Not only is the service provided free of charge, but mediation is also less expensive than the formal complaint process because the assistance of an attorney is not necessary for mediation. In fact, the parties are encouraged not to bring an attorney to the mediation meeting.

The formal complaint process before the Commission invariably results in a determination by which there is a "winner" and a "loser" although the value of winning may well be offset by the cost of attorneys fees and the delays of protracted litigation. Mediation is not only a much quicker process but it also offers the unique opportunity for informal, direct communication between the two parties to the complaint and mediation is far more likely to result in a settlement which, because it was mutually agreed to, pleases both parties. This is traditionally referred to as "win-win" agreement.

The traditional mediator's role is to (1) help the participants understand the mediation process, (2) facilitate their ability to speak directly to each other, (3) maintain order, (4) clarify misunderstandings, (5) assist in identifying issues, (6) diffuse unrealistic expectations, (7) assist in translating one participant's perspective or proposal into a form that is more understandable and acceptable to the other participant, (8) assist the participants with the actual negotiation process, (9) occasionally a mediator may propose a possible solution, and (10) on rare occasions a mediator may encourage a participant to accept a particular solution. The mediator will not possess any specialized knowledge of the utility industry or of utility law.

In order for the Commission to refer a complaint case to mediation, the parties must both agree to mediate their conflict in good faith. The party filing the complaint must agree to appear and to make a good faith effort to mediate and the utility company against which the complaint has been filed must send a representative who has full authority to settle the complaint case. The essence of mediation stems from the fact that the participants are both genuinely interested in resolving the complaint.

Because mediation thrives in an atmosphere of free and open discussion, all settlement offers and other information which is revealed during mediation is shielded against subsequent disclosure in front of the Missouri Public Service Commission and is considered to be privileged information. The only information which must be disclosed to the Public Service Commission is (a) whether the case has been settled and (b) whether, irrespective of the outcome, the mediation effort was considered to be a worthwhile endeavor. The Commission will not ask what took place during the mediation.

If the dispute is settled at the mediation, the Commission will require a signed release from the complainant in order for the Commission to dismiss the formal complaint case.

If the dispute is not resolved through the mediation process, neither party will be prejudiced for having taken part in the mediation and, at that point, the formal complaint case will simply resume its normal course.

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', with a stylized, cursive script.

Colleen M. Dale
Secretary