

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

The Staff of the Missouri Public	)	
Service Commission,	)	
	)	
Complainant,	)	
	)	
v.	)	<u>Case No. EC-2009-0078</u>
	)	
The Empire District Electric Company,	)	
	)	
Respondent.	)	

NOTICE OF COMPLAINT

Issue Date: September 9, 2008

The Empire District Electric Company
602 South Joplin Avenue
P. O. Box 127
Joplin, MO 64802-0127

CERTIFIED MAIL

On September 2, 2008, the Staff of the Missouri Public Service Commission filed a complaint with the Missouri Public Service Commission against The Empire District Electric Company. A copy of that complaint is enclosed. Pursuant to 4 CSR 240-2.070, Empire has 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 September 9, Empire's answer is due 30 days later on October 9.

All pleadings, including the answer, shall be mailed to:

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

A copy shall be served upon the Complainant at the Complainant's address as listed within the enclosed complaint. A copy of this notice has been mailed to the Complainant.

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)

Dated at Jefferson City, Missouri,
on this 9th day of September, 2008.

Woodruff, Deputy Chief Regulatory Law Judge

Copy to: Staff of the Missouri Public Service Commission
 P.O. Box 360
 Jefferson City, Missouri 65102

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

The Staff of the Missouri Public Service Commission,	)	
	)	
	)	
Complainant,	)	
	)	
v.	)	Case No. EC-2009-_____
	)	
The Empire District Electric Company,	)	
	)	
Respondent.	)	

COMPLAINT

COMES NOW the Staff of the Missouri Public Service Commission (“Staff”) and initiates its complaint pursuant to Section 386.390, RSMo (2000) and 4 CSR 240-2.070, against The Empire District Electric Company (“Empire” or “Company”) for violation of the company’s tariffs relating to line extensions and decorative street lighting; for violation of the Commission’s rules relating to promotional practices; and for violation of Missouri statute relating to discriminatory pricing. In support of its complaint, Staff respectfully states as follows:

GENERAL ALLEGATIONS

1. Empire is engaged in the business of providing electrical utility services in Missouri.
2. Respondent Empire is an “electrical corporation” and a “public utility” as defined in Section 386.020 RSMo.¹ and is subject to the jurisdiction of the Missouri Public Service Commission pursuant to Section 386.250 RSMo.
3. Empire is a Kansas corporation and the Missouri Secretary of State website indicates that the company is in good standing.

¹ All statutory citations are to RSMo 2000, unless otherwise noted.

4. The registered agent for Empire in Missouri is:

Janet S. Watson
602 Joplin Street
Joplin, Missouri 64801

5. The Lakes at Shuyler Ridge is a platted residential subdivision adjoining the City of Republic.

6. Empire both acquired and installed facilities within The Lakes at Shuyler Ridge to provide electrical service to customers within that subdivision.

7. Empire's electric rules and regulations (PSC Mo. No. 5, Sec. 5, Sheets 17c and 17d) and rate schedules (SPL and PL)² require developers of subdivisions to pay an estimate of the cost of underground facilities to be used to serve customers before Empire installs them. Under Empire's tariff the developer may recoup from Empire within sixty (60) months up to the estimated cost of above ground facilities that would have been installed if the developer had not requested underground facilities. The timing and total amount of the recoupment is based on when new Empire begins to provide electric service to new customers over the installed facilities.

8. Empire's electric rules and regulations (PSC Mo. No. 5, Sec. 5, Sheets 17c and 17d) and rate schedules (SPL and PL) require developers of subdivisions to prepay an estimate of the differential in cost of decorative street lighting facilities versus standard street lighting facilities before Empire installs the decorative street lighting facilities. That prepayment is not refundable.

² Since the filing of Empire's Application filed in Case No. EE-2007-0030, Empire has completed two rate cases, Case Nos. ER-2006-0315, and ER-2008-0093. While the language contained in the Company's tariffs here-referenced has remained largely unchanged, the tariff numbers differ from those in effect at the time of the filing of the EE-2007-0030 Application. For simplicity, for purposes of this pleading only, the tariffs will be referred to by the numbers in effect at the time of the filing of the Application in Case No. EE-2007-0030.

9. The Staff is informed and believes that when the developer requested that underground facilities and decorative street lighting facilities be installed in The Lakes at Shuyler Ridge the developer was developing The Lakes at Shuyler Ridge as a residential subdivision.

10. The Staff is informed and believes that when Empire installed underground facilities and decorative street lighting facilities in The Lakes at Shuyler Ridge the developer was developing The Lakes at Shuyler Ridge as a residential subdivision.

11. Empire has knowingly charged the developer of The Lakes at Shuyler Ridge less than the applicable prepayment amounts due under Empire's tariff for underground facilities and for decorative street lighting before installing those facilities in The Lakes at Shuyler Ridge.

12. The Staff is informed and believes Empire still has not collected from the developer of The Lakes at Shuyler Ridge the applicable prepayment amounts due under Empire's tariff for underground facilities and for decorative street lighting that Empire has installed in The Lakes at Shuyler Ridge.

13. The Staff has apprised Empire of its belief that Empire has operated in violation of its tariff.

COUNT ONE

Failure to Charge for Underground Line Extensions Pursuant to Applicable Company Tariffs

14. Complainant hereby adopts by reference and re-alleges the allegations set forth in Paragraphs 1 through 13, above.

15. Empire's tariff sheets MoPSC No. 5, Sec. 5, 3rd revised Sheet No. 14, and MoPSC No. 5, Sec. 5, Original Sheet No. 17c to Original Sheet no. 17d specified the manner in which

underground primary and secondary distribution facilities are extended to and within residential subdivisions.

16. The above-referenced tariff sheets include a requirement that the developer of a residential subdivision electing to utilize underground facilities prepay an estimate of the cost of the underground facilities before Empire installs them.

17. Empire has installed underground electrical facilities in The Lakes at Shuyler Ridge subdivision.

18. The developer of The Lakes at Shuyler Ridge did not prepay for the installation of the underground facilities, as specified in Empire's tariff.

19. An Ozark Electrical Cooperative invoice to Empire in the amount of \$177,921.74 which is dated May 18, 2006 indicates Empire's purchased facilities installed by Ozark at The Lakes at Shuyler Ridge.

20. As an electrical corporation subject to the jurisdiction of the Missouri Public Service Commission, Empire is required to abide by its tariffs filed with, and approved by, the Commission.

21. Empire has violated its tariff by not charging the developer of The Lakes at Shuyler Ridge the amounts required by Empire's tariff for Empire's installation of underground facilities in The Lakes at Shuyler Ridge before Empire installed them.

COUNT ONE (A)

Failure to Collect Underground Line Extension Charges Pursuant to Applicable Company Tariffs

22. Complainant hereby adopts by reference and re-alleges the allegations set forth in Paragraphs 1 through 21, above.

23. Empire has violated its tariff by not requiring the developer of The Lakes at Shuyler Ridge to pay to Empire the amounts required by Empire's tariff for Empire's installation of underground facilities in The Lakes at Shuyler Ridge before Empire began providing electrical service to residential customers in The Lakes at Shuyler Ridge.

COUNT TWO

Failure to Charge for Underground Line Extensions Pursuant to Applicable Commission

Rules

24. Complainant hereby adopts by reference and re-alleges the allegations set forth in Paragraphs 1 through 23, above.

25. Chapter 14 of the Commission's Rules proscribes certain promotional practices, including 4 CSR 240-14.020, "Prohibited Promotional Practices," and 4 CSR 240-14.030, "Promotional Practices Standards."

26. Empire has not abided by its tariff provisions governing the manner in which underground primary and secondary distribution facilities are extended to and within residential subdivisions, with regard to The Lakes at Shuyler Ridge.

27. Empire's extension of facilities and electrical service in The Lakes at Shuyler Ridge occurred in a manner not consistent with the rates and rules of Empire's tariff pursuant to which service is ordinarily rendered.

28. Without Commission relief from compliance with Commission rules 4 CSR 240-14.020 – 030, Empire has charged for the installation of underground distribution facilities in The Lakes at Shuyler Ridge in a manner violates Chapter 14 of the Commission's Rules.

COUNT TWO (A)

Failure to Collect Underground Line Extension Charges Pursuant to Applicable Commission

Rules

29. Complainant hereby adopts by reference and re-alleges the allegations set forth in Paragraphs 1 through 28, above.

30. By not requiring the developer of The Lakes at Shuyler Ridge to pay to Empire the amounts required by Empire's tariff for Empire's installation of underground distribution facilities in The Lakes at Shuyler Ridge before Empire began providing electrical service in The Lakes at Shuyler Ridge, Empire has violated Chapter 14 of the Commission's Rules.

COUNT THREE

Failure to Charge for Underground Line Extensions Pursuant to Applicable Missouri Statute

31. Complainant hereby adopts by reference and re-alleges the allegations set forth in Paragraphs 1 through 30, above.

32. Missouri Statute Section 393.130 requires utilities not extend undue preferences in the provision of service.

33. The rates in Empire's tariff are presumptively just and reasonable.

34. With reference to The Lakes at Shuyler Ridge, Empire has violated its tariff provisions governing the manner in which underground primary and secondary distribution facilities are extended to and within residential subdivisions.

35. Empire's failure to abide by its tariff constitutes a preference to the developer of The Lakes at Shuyler Ridge.

36. Empire's failure to charge for the installation of underground distribution facilities and provided electrical service in The Lakes at Shuyler Ridge in the same manner that it charges other similarly situated customers is a violation of Section 393.130 RSMo.

COUNT THREE (A)

Failure to Collect Underground Line Extension Charges Pursuant to Applicable Missouri Statute

37. Complainant hereby adopts by reference and re-alleges by reference the allegations set forth in Paragraphs 1 through 36, above.

38. By not requiring the developer of The Lakes at Shuyler Ridge to pay to Empire the amounts required by Empire's tariff for Empire's installation of underground distribution facilities in The Lakes at Shuyler Ridge before Empire began providing electrical service in The Lakes at Shuyler Ridge, Empire has violated Section 393.130 RSMo.

COUNT FOUR

Failure to Charge for Installation of Decorative Street Lighting Pursuant to Applicable Company Tariffs

39. Complainant hereby adopts by reference and re-alleges the allegations set forth in Paragraphs 1 through 38, above.

40. Empire's tariffs MoPSC No. 5, Sec. 3, 5th Rev. Sheet No. 1a, MoPSC No. 5, Sec. 3, 16th Rev. Sheet No. 2 to 7th Rev. Sheet no. 2a specified the charges, availability, and construction components, for the provision of street lights and outdoor lighting service.

41. The above-referenced tariffs include a requirement that a developer electing to utilize non-standard street lighting prepay an estimate of the differential in cost of the non-standard facilities versus standard facilities, prior to the installation of the non-standard facilities.

42. The developer of The Lakes at Shuyler Ridge elected to utilize non-standard street lighting in The Lakes at Shuyler Ridge.

43. Empire has installed non-standard street lighting facilities in The Lakes at Shuyler Ridge subdivision.

44. The developer of The Lakes at Shuyler Ridge did not prepay for the installation of the non-standard street lighting facilities, as specified in Empire's tariffs.

45. An Empire "Construction Request and Contract" with The Lakes at Shuyler Ridge Property Owner's Association, Inc., dated June 12, 2006, obligates Empire to "Supply and install 38 - 150 watt hps cobra street lights on 30' black fiberglass poles. All remaining costs currently [sic] waived by M. Palmer / R. Caruthers pending PSC approval on SA-76 # 10552[.]" The Contract further specifies January 10, 2006, as the "date service wanted," and \$3,800.00 as the amount due Empire.

46. An Empire "Construction Request and Contract" with Missouri Partners Incorporated, dated June 15, 2006, obligates Empire to "[s]upply and install 8 - 150 watt hps cobra street lights on fiberglass poles. All remaining costs currently waived by M. Palmer / R. Caruthers pending PSC approval on SA-76#10596." The Contract does not specify a "date service wanted." The amount due Empire is specified as \$800.

47. Empire has charged for the installation of non-standard street lighting in The Lakes at Shuyler Ridge in a manner inconsistent with its tariff.

COUNT FOUR (A)

Failure to Collect Charges for Installation of Decorative Street Lighting Pursuant to Applicable Company Tariffs

48. Complainant hereby adopts by reference and re-alleges the allegations set forth in Paragraphs 1 through 47, above.

49. By operating non-standard street lighting where Empire did not require the developer of The Lakes at Shuyler Ridge to pay to Empire the amounts required by Empire's tariff for Empire's installation of non-standard street lighting in The Lakes at Shuyler Ridge, Empire has violated its tariff.

COUNT FIVE

Failure to Collect for Installation of Decorative Street Lighting Pursuant to Applicable Commission Rules

50. Complainant hereby adopts by reference and re-alleges the allegations set forth in Paragraphs 1 through 49 above.

51. Empire has not abided by its tariffs governing the charges, availability, and construction components, for the provision of street lights and outdoor lighting service, relative to The Lakes at Shuyler Ridge.

52. Empire's provision of street lights and outdoor lighting service in The Lakes at Shuyler Ridge occurred in a manner inconsistent with Empire's tariff rates and rules pursuant to which Empire renders service.

53. Without Commission relief from compliance with Commission rules 4 CSR 240-14.020 – 030, Empire has installed non-standard street lighting in The Lakes at Shuyler Ridge in a manner that violates Chapter 14 of the Commission’s Rules.

COUNT FIVE (A)

Failure to Collect Charges for Installation of Decorative Street Lighting Pursuant to Applicable Commission Rules

54. Complainant hereby adopts by reference and re-alleges the allegations set forth in Paragraphs 1 through 53, above.

55. By operating non-standard street lighting where Empire did not require the developer of The Lakes at Shuyler Ridge to pay to Empire the amounts required by Empire’s tariff for Empire’s installation of non-standard street lighting in The Lakes at Shuyler Ridge, Empire has violated Chapter 14 of the Commission’s Rules.

COUNT SIX

Failure to Collect for Installation of Decorative Street Lighting Pursuant to Applicable Missouri Statute

56. Complainant hereby adopts by reference and re-alleges the allegations set forth in Paragraphs 1 through 55, above.

57. Empire has not abided by its tariffs governing the charges, availability, and construction components, for the provision of street light and outdoor lighting service, relative to The Lakes at Shuyler Ridge.

58. Empire’s failure to abide by its tariff constitutes a preference to the developer of The Lakes at Shuyler Ridge.

59. Empire has installed non-standard street lighting in The Lakes at Shuyler Ridge in a manner that violates Section 393.130 RSMo.

COUNT SIX (A)

Failure to Collect Charges for Installation of Decorative Street Lighting Pursuant to Applicable Missouri Statute

60. Complainant hereby adopts by reference and re-alleges the allegations set forth in Paragraphs 1 through 59, above.

61. By operating non-standard street lighting where Empire did not require the developer of The Lakes at Shuyler Ridge to pay to Empire the amounts required by Empire's tariff for Empire's installation of non-standard street lighting in The Lakes at Shuyler Ridge, Empire has violated Section 393.130 RSMo.

PENALTIES

62. Each lot to which service has been extended in violation of Empire's tariff, Commission rule, or Missouri Statute, constitutes a separate and distinct violation, under Counts I, II, and III, per §§ 386.570 and 386.590.

63. Each day elapsed since the service has been extended to each lot to which service has been extended in violation of Empire's tariff, Commission rule, or Missouri Statute, constitutes a separate and distinct violation as of the date that service was extended, in that service has been continually provided since such date, under Counts I(A), II(A), and III(A), per §§ 386.570 and 386.590.

64. Each non-standard street lamp supplied and installed, in violation of Empire's tariff, Commission rule, or Missouri Statute, constitutes a separate and distinct violation, under Counts IV, V, and VI, per §§ 386.570 and 386.590.

65. Each day elapsed since the installation of each non-standard street lamp supplied and installed, in violation of Empire's tariff, Commission rule, or Missouri Statute, constitutes a separate and distinct violation, as of the date that service was extended, in that such lamps have been continually operated since such date, under Counts IV(A), V(A), and VI(A), per §§ 386.570 and 386.590.

66. The date of the installation and placement in-service of each underground service extension and non-standard street lamp through October 7, 2007 is included as Appendix 1,³ and incorporated herein by reference.

67. Regarding those known installations made prior to October 7, 2007, Empire is liable for the following instances of violations, through March 14, 2008, the effective date of the Commission's Report and Order in Case No. EO-2008-0043:

Count I: 36 Violations.

Count I(A): 10,366 Days in Violation, each constituting a separate Violation.

Count II: 36 Violations

Count II(A): 10,366 Days in Violation, each constituting a separate Violation.

Count III: 36 Violations

Count III(A): 10,366 Days in Violation, each constituting a separate Violation.

Count IV: 46 Violations

Count IV(A): 17,070 Days in Violation, each constituting a separate Violation.

Count V: 46 Violations

Count V(A): 17,070 Days in Violation, each constituting a separate Violation.

Count VI: 46 Violations

Count VI(A): 17,070 Days in Violation, each constituting a separate Violation.

³ This information was provided pursuant to a Staff Data Request to Empire in Case No. EO-2008-0043. Confidential and customer-specific information has been redacted.

68. Section 386.570 establishes a per-violation range of \$100 through \$2000 as the penalty for violations of Commission law.

PRAYER FOR RELIEF

WHEREFORE, Staff now requests that the Commission, after hearing, (1) Find that Empire discriminated to the detriment of its ratepayers in the manner in which it knowingly did not Charge and Collect Line Extension Charges Pursuant to Applicable Company Tariffs, knowingly did not Charge and Collect Line Extension Charges Pursuant to Applicable Commission Rules, knowingly did not Charge and Collect Line Extension Charges Pursuant to Applicable Missouri Statute, knowingly did not Charge and Collect for Installation of Decorative Street Lighting Pursuant to Applicable Company Tariffs, Declined to Charge and Collect for Installation of Decorative Street Lighting Pursuant to Applicable Commission Rules, and knowingly did not Charge and Collect for Installation of Decorative Street Lighting Pursuant to Applicable Missouri Statute; and (2) Authorize its General Counsel to bring a penalty action against the Company in the circuit court as provided in Section 386.600, RSMo (2000), for such amount as the Commission finds just.

Respectfully submitted,

/s/ Sarah Kliethermes
Sarah L. Kliethermes
Legal Counsel
Missouri Bar No. 60024
Attorney for the Staff of the
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102
(573) 751-6726 (Telephone)
(573) 751-9285 (Fax)
sarah.kliethermes@psc.mo.gov

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, hand-delivered, or transmitted by facsimile or electronic mail to all counsel of record this 2nd day of September, 2008.

Brydon, Swearengen, England
P.O. Box 456
Jefferson City, MO 65102-0456

Office of Public Counsel
P.O. Box 2230
Jefferson City, MO 65102-2230

Janet S. Watson
Registered Agent for Empire Electric
602 Joplin Street
Joplin, MO 64801

The Empire District Electric Co.
602 S Joplin Ave
P.O. Box 127
Joplin, MO 64802-0127

/s/ Sarah Kliethermes

DR5 Response Oct 07.xls

Empire District Electric Customers at Shuyler Ridge

Current as of October 30, 2007

Appendix A

Occupant	Meter #	Address	Temp Date	Perm Date	Service Date	Structure Type	Rate
	29403242		NA	08/16/07	08/16/07	Pool House	CB
	A0623153		NA	07/02/07	07/02/07	Residence	RG
	A0622773		03/07/07	07/02/07	03/07/07	Residence	RG
	28501555		NA	07/23/07	07/23/07	Residence	RG
	A0622760		03/13/07	NA	03/13/07	Residence	RG
	90500390		05/31/07	09/27/07	05/31/07	Residence	RG
	90500420		05/31/07	10/16/07	05/31/07	Residence	RG
	A0722147		NA	10/16/07	10/16/07	Residence	RG
	90701359		09/27/07	NA	09/27/07	Residence	RG
	70321618		NA	07/02/07	07/02/07	Residence	RG
	A0622737		03/07/07	07/27/07	03/07/07	Residence	RG
	70421484		NA	07/02/07	07/02/07	Residence	RG
	29802776		NA	08/02/07	08/02/07	Residence	RG
	A0622740		03/07/07	06/28/07	03/07/07	Residence	RG
	A0622885		01/03/07	03/22/07	01/03/07	Residence	RG
	90602114		NA	06/01/07	06/01/07	Residence	RG
	A0622747		NA	04/17/07	04/17/07	Residence	RG
	A0622888		01/03/07	04/17/07	01/03/07	Residence	RG
	90602113		NA	05/18/07	05/18/07	Residence	RG
	A0622886		01/03/07	05/04/07	01/03/07	Residence	RG
	90602120		05/18/07	NA	05/18/07	Residence	RG
	A0622881		NA	02/27/07	02/27/07	Residence	RG
	90602115		NA	06/28/07	06/28/07	Residence	RG
	A0622779		02/26/07	06/15/07	02/26/07	Residence	RG
	90500534		04/11/07	08/16/07	04/11/07	Residence	RG
	A0622770		03/14/07	08/16/07	03/14/07	Residence	RG
	70422605		06/29/07	09/14/07	06/29/07	Residence	RG
	50100959		06/12/07	NA	06/12/07	Residence	RG
	A0721701		08/02/07	NA	08/02/07	Residence	RG
	90700592		07/09/07	10/02/07	07/09/07	Residence	RG

Shuyler Ridge Data Request Resonse
DR 0005 Spreadsheet

	60720046 No Meter		NA	04/26/07	04/26/07	Flag Pole Lights CB 8 HPS Cobra Lts PL
	A0622769 No Meter		NA	02/28/07	02/28/07	Common Area CB 38 HPS Cobra Lts PL
	90601505		NA	12/21/06	12/21/06	Circulating Pump CB
	79903277		08/21/07	NA	08/21/07	Residence RG
	A0622908		02/09/07	04/20/07	10/18/07	Residence RG
	A0622775		03/07/07	06/15/07	09/14/07	Residence RG
	A0622890		02/09/07	03/30/07	10/16/07	Residence RG
	20720057		NA	04/19/07	09/28/07	Residence RG

Appendix A

/s/Martin Penning
October 31, 2007