

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

Daniel E. Brown,	)	
	)	
Complainant,	)	
	)	
v.	)	Case No. EC-2008-0384
	)	
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 Daniel E. Brown (“Complainant”):

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. Complainant alleges that during the 2007 ice-storms, Empire's recovery efforts should have been conducted in a different matter. Mr. Brown provides lists of losses related to these storms. The losses total \$583.67. Complainant appears to seek reimbursement for his identified losses.

### **ANSWER**

4. Empire would initially note that its response to the December 2007 ice storm has recently been the subject of a Staff investigation in Case No. EO-2008-0215. The Staff's report of investigation in Case No. EO-2008-0215 was filed with the Commission on June 17, 2008. Issues concerning Empire's response would be most appropriately addressed in this comprehensive investigation, not on a case by case basis.

5. Empire recognizes the inconveniences the 2007 ice storms caused Mr. Brown and its other customers. However, Empire has two general points of disagreement with the Complaint.

6. First, as Mr. Brown is likely aware, there is much more to utility operations than merely closing switches for connectivity purposes. Specific knowledge of load levels, voltage regulating capabilities, protective device information, etc. is vital. Mr. Brown would have no way to know this information. Additionally, in the specific situations at hand, there was very significant and widespread damage to a variety of line facilities. This additional damage was not recognized in the solution proposed by Mr. Brown.

7. Second, it must be emphasized that during major emergencies, priorities must be followed that provide for what is perceived to be in the interest of the system as a whole. During

each of these storms, Empire had many tens of thousands of customers without electricity and hundreds of reports of dangerous situations such as wires down, structure fires, etc. Empire's priorities must always be: 1) to make the various situations safe; 2) to then restore critical loads such as hospitals, shelters, water and sewage plants, television and radio stations, etc.; and, 3) then to begin restoring service in such a way that restores service in the order that actions will bring service to the greatest number of customers (restore primary laterals and then repair and/or replace services and secondary and re-energize distribution transformers).

8. Finally, Chapter II (General Conditions), Section D (Service Policy), Rule 5 (Continuity of Service) of Empire's Rules and Regulations (P.S.C. Mo. No. 5, Sec. 5, 5<sup>th</sup> Revised Sheet No. 9, Canceling P.S.C. Mo. No. 5, Sec. 5, 4<sup>th</sup> Revised Sheet No. 9) states in part as follows:

The Company will exercise reasonable diligence and care in providing a regular and uninterrupted supply of service to Customer. Whenever the Company finds it necessary, in order to repair or improve its system facilities, the Company shall have the right to temporarily suspend service to Customer. *It is understood that agreed that hazards to continuity of service are recognized by the Customer before utilizing service. The Company will not be liable for any interruption, fluctuation, shortage or insufficiency of supply of service, or for any loss or damage occasioned thereby, if same is caused by strike, riot, civil commotion, hostile attack, storm, fire, accident, breakdown, unexpected or prolonged increase in usage of electricity, act of God, legal process, governmental interference, or any cause beyond its control.*

(emphasis added).

9. Empire has no liability for interruptions caused by storm damage.

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

#### **AFFIRMATIVE DEFENSES**

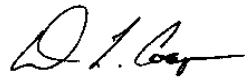
11. Further answering, Empire states that it acted in accordance with its tariffs during the subject time period.

12. 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.

13. 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

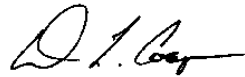
## CERTIFICATE OF SERVICE

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 July 7, 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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Jefferson City, MO 65101  
[opcservice@ded.mo.gov](mailto:opcservice@ded.mo.gov)

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