

The Staff of the Missouri Public Service Commission,

Complainant,

v.

Rex Deffenderfer Enterprises, Inc.,
d/b/a RDE Water Company,
Jim Deffenderfer, General Manager,
and LaVada Deffenderfer Cottrill, President,

Respondents.

Case No. WC-2020-0008

COMES NOW the Staff of the Missouri Public Service Commission, and for its *Complaint*, states as follows:

1. This matter concerns the failure of Rex Deffenderfer Enterprises d/b/a RDE Water Company, Mr. Jim Deffenderfer, General Manager, and Ms. LaVada Deffenderfer Cottrill, President, to timely file an Annual Report for 2018 as required by § 393.140(6), RSMo, and Commission Rule 20 CSR 4240-10.145(1), and to pay the Company's annual Public Service Commission Assessment.

2. Complainant is the Staff of the Missouri Public Service Commission, acting through the Staff Counsel's Office as authorized by Commission Rule 20 CSR 4240-2.070(1).

Respondents

3. Respondent RDE Water Company, a registered fictitious name owned by Rex Deffenderfer Enterprises, Inc., is a Missouri general business corporation in good standing. Its principal place of business and registered office is at 1770 N. Deffer Dr., Ste. 4, Nixa, Missouri, 65714. Its registered agent is Lavada Deffenderfer Cottrill, 1770 N. Deffer Dr., Ste. 4, Nixa, Missouri, 65714. On information and belief, RDE has more than 1,000 Missouri water service customers.

4. Respondent Mr. Jim Deffenderfer is the General Manager of RDE Water Company. Mr. Deffenderfer's business address is 1770 N. Deffer Dr., Ste. 4, Nixa, Missouri 65714.

5. Respondent Ms. Lavada Deffenderfer Cottrill is the President of RDE Water Company, and owns the entirety of the Company's common and preferred capital stock. Further, Ms. Cottrill is listed as the official representatives of Rex Deffenderfer Enterprises, Inc., with the office of the Missouri Secretary of State, and, as stated supra, serves as the Company's registered agent. Ms. Cottrill's business address is 1770 N. Deffer Dr., Ste. 4, Nixa, Missouri 65714.

6. For the purposes of this Complaint, Respondents RDE Water Company, Mr. Jim Deffenderfer, and Ms. Lavada Deffenderfer Cottrill will be known together as Respondents.

Jurisdiction

7. Respondents own, operate, control, or manage plant or property, or a dam or water supply, canal, or power station, and distributes or sells for distribution, or sells or supplies water for gain, within Christian County, MO.

8. Respondents are thus water corporations pursuant to § 386.020(59), RSMo, and public utilities pursuant to § 386.020(43).

9. As water corporations and public utilities, Respondents are subject to the jurisdiction, regulation and control of the Commission.

10. Section 386.390.1, RSMo, authorizes the Commission to entertain a complaint “setting forth any act or thing done or omitted to be done by any...public utility...in violation, or claimed to be in violation, of any provision of law, or of any rule, or order or decision of the commission.”

11. Section 386.600, RSMo, provides, “an action to recover a penalty...under this chapter or to enforce the powers of the commission under this or any other law may be brought in any circuit court in this state in the name of the state of Missouri and shall be commenced and prosecuted to final judgment by the general counsel to the commission.”

Count I: Respondents Failed to File a 2018 Annual Report

12. Section 393.140(6) RSMo, states:

Require every person and corporation under its supervision and it shall be the duty of every person and corporation to file with the commission an annual report, verified by the oath of the president, treasurer, general manager or receiver, if any, thereof. The verification shall be made by said official holding office at the time of the filing of said report, and if not made upon the knowledge of the person verifying the same, shall set forth the sources of his information and the grounds of his belief as to any matters not stated to be verified upon his knowledge. The report shall show in detail the amount of its authorized capital stock and the amount thereof issued and outstanding; the amount of its authorized bonded indebtedness and the amount of its bonds and other forms of evidence of indebtedness issued and outstanding; its receipts and expenditures during the preceding year; the amount paid as dividends upon its stock and as interest upon its bonds; the names of its officers and the aggregate amount paid as salaries to them and the amount paid as wages to its employees; the location of its plant or plants and system, with a full description of its property and franchises, stating in detail how each franchise stated to be owned was acquired; and such other facts pertaining to the operation

and maintenance of the plant and system, and the affairs of such person or corporation as may be required by the commission. Such reports shall be in the form, cover the period and be filed at the time prescribed by the commission. The commission may, from time to time, make changes and additions in such forms. When any such report is defective or believed to be erroneous, the commission shall notify the person or corporation making such report to amend the same within a time prescribed by the commission. Any such person or corporation which shall neglect to make any such report or which shall fail to correct any such report within the time prescribed by the commission shall be liable to a penalty of one hundred dollars and an additional penalty of one hundred dollars for each day after the prescribed time for which it shall neglect to file or correct the same, to be sued for in the name of the state of Missouri. The amount recovered in any such action shall be paid to the public school fund of the state. The commission may extend the time prescribed for cause shown.

13. Commission Rule 20 CSR 4240-10.145(1) provides in pertinent part:

All electric, gas, water, sewer, and steam heating utilities shall submit an annual report to the commission on or before April 15 of each year, except as otherwise provided in this rule.

14. Respondents' 2018 Annual Report was due on April 15, 2019.

Respondents neither filed the required report nor requested an extension of the due date.

15. Respondents are therefore in violation of § 393.140(6) RSMo and Commission Rule 20 CSR 4240-10.145(1).

WHEREFORE, Staff respectfully requests the Commission give notice to the Respondents as required by law and, after the opportunity for hearing, issue an order that finds the Respondents have violated § 393.140(6), RSMo and Commission Rule 20 CSR 4240-10.145(1), as set out above, and thereupon authorize its General Counsel to seek in Circuit Court the penalties allowed by law; and grant such further relief as is just under the circumstances.

Count II: Respondents Failed to Pay Fourth Quarter Commission

Assessment

16. Section 386.370(2) RSMo states:

The commission shall allocate to each such group of public utilities the estimated expenses directly attributable to the regulation of such group and an amount equal to such proportion of the estimated expenses not directly attributable to any group as the gross intrastate operating revenues of such group during the preceding calendar year bears to the total gross intrastate operating revenues of all public utilities subject to the jurisdiction of the commission, as aforesaid, during such calendar year. The commission shall then assess the amount so allocated to each group of public utilities, subject to reduction as herein provided, to the public utilities in such group in proportion to their respective gross intrastate operating revenues during the preceding calendar year, except that the total amount so assessed to all such public utilities shall not exceed one-fourth of one percent of the total gross intrastate operating revenues of all utilities subject to the jurisdiction of the commission.

17. On June 20, 2018, the Commission, in Case No. AO-2018-0379, issued its *Assessment Order for Fiscal Year 2019* pursuant to § 386.370 RSMo. The Assessment Order fixed the amount allocated to water and sewer service providers at \$3,074,056.

18. Section 408.020 RSMo allows “creditors to receive interest at the rate of nine percent per annum, when no other rate is agreed upon...on accounts after they become due and demand of payment is made[,]” and Complainant is statutorily entitled to prejudgment interest on Respondent Company’s delinquent assessment amount.

19. On June 21, 2018, the Commission’s Budget and Fiscal Services sent Respondents notice stating that \$2,383.42 was due no later than July 15, 2018, to keep Company’s account in good standing;¹ in the alternative, Respondents could choose to pay the assessment in four equal installments.²

20. Respondents chose to pay the assessment in four equal installments.

¹ Appendix A, pg. 1.

² 386.370(3) RSMo.

21. Payments in the amount of \$595.86, \$585.85, and \$595.86 were received on July 23, 2018, October 19, 2018, and February 5, 2019, respectively.

22. The final payment of \$595.85 was due on April 15, 2019; Respondents failed to make that payment.

23. On April 29, 2019, Staff emailed Respondents, asking for payment to be made by June 30, 2019, to keep the account in good standing.³ Respondents failed to do so.

24. As of the date of this filing, Respondents have failed, omitted, or neglected to pay the final installment payment of \$595.85, which was due on April 15, 2019.

25. Section 386.570.1 RSMo provides that,

Any...public utility which violates or fails to comply with any...law, or which fails to comply with any order, decision, decree, rule direction, demand or requirement, or any part or provision thereof, of the commission in a case in which a penalty has not herein been provided for such...public utility, is subject to a penalty of not less than one hundred dollars nor more than two thousand dollars for each offense.

26. Section 386.570.2 RSMo, provides that "...in case of a continuing violation each day's continuance thereof shall be and be deemed to be a separate and distinct offense.

WHEREFORE, the Staff respectfully requests the Commission give notice to the Respondents as required by law and, after the opportunity for hearing, issue an order that finds the Respondents have failed to pay the fiscal year 2019 assessment and authorizes the General Counsel's Office to bring a penalty action against the

³ Appendix A, pg. 2.

Respondent in circuit court as provided in §§ 386.600, 386.370, 386.570, and 408.020 RSMo., for the collection of the assessment, penalties, and interest on the assessment amount.

Respectfully submitted,

/s/ Travis J. Pringle

Missouri Bar No. 71128

Legal Counsel

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CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing were mailed, electronically mailed, or hand-delivered to all counsel of record this 1st day of October, 2019.

/s/ Travis J. Pringle