

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 17th day of August, 2022.

In the Matter of the Application of Rex)	
Deffenderfer Enterprises, Inc. d/b/a RDE)	
Water Company for Authority to Sell)	<u>File No. WM-2022-0246</u>
Certain Water Assets to the City of Nixa,)	
Missouri, and in Connection Therewith,)	
Certain Other Related Transactions)	

ORDER GRANTING APPLICATION TO SELL ASSETS

Issue Date: August 17, 2022

Effective Date: September 16, 2022

On March 14, 2022, Rex Deffenderfer Enterprises, Inc. d/b/a RDE Water Company (RDE) filed an application for an order authorizing the sale of its water system assets to the City of Nixa (Nixa) pursuant to an Asset Purchase Agreement filed with the application. RDE holds a Certificate of Convenience and Necessity (CCN) to provide water service in Christian County, Missouri, issued by the Commission in File No. WA-77-83. With approval of the sale, RDE is requesting cancellation of its CCN and its tariff, as it would no longer be providing water service in the state. RDE is also requesting waiver of the 60-day notice requirement under Commission Rule 20 CSR 4240-4.017.

On March 16, 2022, the Commission issued an order and notice giving interested parties until April 15, 2022, to intervene. No parties requested intervention.

On April 25, 2022, the Staff of the Commission (Staff) filed its Recommendation. Staff recommends that the Commission approve the sale, subject to five conditions. No responses or objections to Staff's recommendation were filed.

On May 2, 2022, the Office of Public Counsel (OPC) requested the Commission hold a local public hearing. The Commission granted the request and a local public hearing was held in Nixa on July 26, 2022. No one testified in opposition to the sale. On August 3, 2022, OPC filed *Public Counsel's Response to Application* (Response), in which it did not oppose the sale from RDE to Nixa.

No party requested an evidentiary hearing and the requirement for a hearing is met when the opportunity for a hearing has been provided.¹ Accordingly, the Commission will rule on the application.

RDE is a "public utility" and a "water corporation," as those terms are defined by Section 386.020, RSMo (2016), and is, therefore, subject to regulation by the Commission. RDE provides water service to approximately 1,300 customers in a service area outside of, but adjacent to, Nixa's service area. Nixa currently owns, operates, and maintains a municipal water system serving approximately 9,490 customers; however, Nixa is not generally subject to the jurisdiction of the Commission.

In their recommendation, Staff concluded that Nixa will be capable of providing service to the existing RDE customers and that the sale and transfer of assets will be beneficial to the customers. Although rates will increase, the existing RDE customers will receive additional benefits as Nixa customers. First, Nixa will provide an increase in staffing and full-time operations personnel, compared to RDE's current staffing. Second, Nixa has more technical capacity to perform the normal business tasks of the water systems. Third, Nixa has the financial ability to perform routine maintenance and make necessary upgrades to the water system, including adding chlorination to a well that has

¹ State ex rel. Rex Deffenderfer Ent., Inc. v. Public Serv. Comm'n, 776 S.W.2d 494, 496 (Mo. App., W.D. 1989).

had positive bacteria tests. It appears Nixa is large enough and financially stable enough to handle the addition of the customers from RDE.

Staff's position is that the transaction will not be detrimental to the public interest.

Section 393.190.1, RSMo (2016), requires a water corporation to obtain Commission approval before selling its assets. The Commission may not withhold approval of the sale unless the sale would be detrimental to the public interest.²

The Commission has reviewed RDE's application, Staff's recommendation, and OPC's Response. Based upon those pleadings, the Commission finds that the proposed transaction is not detrimental to the public interest and will be approved.

RDE also requested a waiver of Commission Rule 20 CSR 4240-4.017(1) requiring notice with the Commission of intent to file an application 60 days before filing the application. RDE requests such a waiver under Commission Rule 20 CSR 4240-4.017(1)(D). RDE stated that it did not have a fully executed agreement sixty days prior to the filing. The Commission finds good cause for the waiver of the 60-day notice requirement, that circumstances prevented filing, and delaying the filing for 60 days would cause harm.

THE COMMISSION ORDERS THAT:

1. RDE is granted a waiver of the 60-day notice requirement of Commission Rule 20 CSR 4240-4.017(1).

² See *State ex rel. Fee Fee Trunk Sewer, Inc. v. Litz*, 596 S.W.2d 466, 468 (Mo. App. E.D. 1980).

2. The Commission grants the application of RDE filed on March 14, 2022, for authority to sell its water utility assets to the City of Nixa, as described in the Asset Purchase Agreement filed with the application, subject to the following conditions:

a. RDE shall notify the Commission of closing on the water assets with Nixa within five (5) days after such closing;

b. RDE shall be authorized to cease providing service immediately after closing on the assets;

c. If closing on RDE's assets does not take place within thirty (30) days following the effective date of the Commission's order, RDE shall submit a status report within five (5) days after this thirty (30) day period regarding the status of closing, and additional status reports within five (5) days after each additional thirty (30) day period, until closing takes place, or until RDE determines that the transfer of the assets will not occur;

d. If RDE determines that a transfer of the assets will not occur, RDE shall notify the Commission of such;

e. After receiving notice of closing, the Commission will cancel the respective CCN and tariff authorizing RDE to provide water service.

3. This order shall be effective on September 16, 2022.



BY THE COMMISSION

A handwritten signature in black ink that reads "Morris L. Woodruff".

Morris L. Woodruff
Secretary

Silvey, Chm., Rupp, Coleman, Holsman, and
Kolkmeier CC., concur.

Seyer, Regulatory Law Judge


STATE OF MISSOURI

OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson City, Missouri, this 17th day of August, 2022.





Morris L. Woodruff
Secretary

MISSOURI PUBLIC SERVICE COMMISSION

August 17, 2022

File/Case No. WM-2022-0246

**Missouri Public Service
Commission**

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Enclosed find a certified copy of an Order or Notice issued in the above-referenced matter(s).

Sincerely,



**Morris L. Woodruff
Secretary**

Recipients listed above with a valid e-mail address will receive electronic service. Recipients without a valid e-mail address will receive paper service.