

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

In the Matter of Rex Deffenderfer Enterprises, Inc. )	
Request for an Increase in Annual Water System )	<b><u>Case No. WR-2011-0056</u></b>
Operating Revenues. )	

**THE OFFICE OF THE PUBLIC COUNSEL'S RESPONSE TO  
STAFF'S REQUEST FOR WAIVER**

COMES NOW the Office of the Public Counsel (Public Counsel) and for its Response to Staff's Request for Waiver states as follows:

1. On August 26, 2010, Rex Deffenderfer Enterprises, Inc. (RDE) initiated a small company rate increase proceeding with the Missouri Public Service Commission (Commission) requesting an increase in its water rates of \$79,821 (approx. 35.10%) per year.
2. On January 24, 2011, the Staff of the Missouri Public Service Commission (Staff) filed a Notice of Company/Staff Partial Agreement Regarding Disposition of Small Water Company Revenue Increase Request (Company/Staff Partial Agreement) indicating partial agreement between Staff and RDE regarding resolution of the revenue increase request. The Company/Staff Partial agreement stated that Staff and RDE have been unable to reach an agreement on payroll, payroll taxes, employee benefits and the effect of these items on income tax. Staff and RDE requested that the regulatory law judge initiate an arbitration procedure regarding these unresolved issues pursuant to 4 CSR 240-3.050(11). Public Counsel did not join in the partial agreement.
3. On January 28, 2011, Staff filed a Notice of Amended Company/Staff Partial Agreement Regarding Disposition of Small Water Company Revenue Increase Request (Amended

Company/Staff Partial Agreement) which corrected a miscalculation in the agreed-upon total annualized operating revenue on the settled issues in the Company/Staff Partial Agreement.

4. On February 3, 2011, Staff filed a request to waive Commission Rule 4 CSR 240-3.050 (16) due to the fact that unresolved issues in the Amended Company/Staff Partial Agreement directly affect the calculation of the utility's revenue requirement and therefore it is impossible for the utility to file new and/or revised tariff sheets and the notice would not be necessary or informative to the customers at this time.

5. On February 4, 2011, the Commission issued an order establishing February 11, 2011 as a date by which Public Counsel is to respond to Staff's request to waive 4 CSR 240-3.050 (16). The order also stated that if all parties agree to arbitration, then no later than February 14, 2011, the parties shall jointly file a procedural schedule for arbitration, including a deadline to submit position statements to the arbitrator prior to the date suggested for the arbitration.

6. 4 CSR 240-3.050 (16) applies when there is a partial resolution between the Company and Staff and an arbitration request has been made. The Rule requires the following actions by the Company:

- Company files tariff with effective date at least 45 days
- Company files position on issues to be arbitrated
- Customer notice of partial agreement to be mailed no later than 5 working days after tariff filing

7. Public Counsel now states that it is not opposed Staff's request that the requirement for the tariff and customer notice be waived given the fact that, if all parties agree to arbitration, the Commission has ordered the parties to jointly file a procedural schedule including a deadline for all parties to submit position statements to the arbitrator.

**WHEREFORE**, Public Counsel respectfully submits its response.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

**/s/ Christina L. Baker**

By:\_\_\_\_\_

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**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to the following this 8<sup>th</sup> day of February 2011:

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