

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

The Staff of the Missouri Public Service Commission,)	
)	
)	
Complainant,)	
)	
vs.)	<u>Case No. WC-2019-</u>
)	
Rex Deffenderfer Enterprises, Inc., d/b/a)	
RDE Water Company,)	
)	
Respondent)	

STAFF'S COMPLAINT

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

Introduction:

1. This matter concerns the failure of Rex Deffenderfer Enterprises, Inc., d/b/a RDE Water Company, to timely file a statement confirming that it has established a qualification process for the competitive bidding of planned infrastructure projects on its distribution system, that such process conforms to the requirements of § 393.358, RSMo., and that such process is used for no less than ten percent of the corporation's external expenditures for planned infrastructure projects on its distribution system, pursuant to § 393.358.3, RSMo.

Complainant:

2. Complainant is the Staff of the Missouri Public Service Commission, acting through the Chief Staff Counsel, pursuant to order by the Commission, as authorized by Commission Rule 4 CSR 240-2.070(1).

Respondents:

3. Respondent is RDE Water Company, a registered fictitious name owned by Rex Deffenderfer Enterprises, Inc., which 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, MO 65714. Its registered agent is Lavada Deffenderfer Cottrill, 1770 N. Deffer Dr., Ste. 4, Nixa, MO 65714.

4. On information and belief, RDE has more than 1,000 Missouri water service customers.

Jurisdiction:

5. Rex Deffenderfer Enterprises, Inc., d/b/a RDE Water Company, owns, operates, controls, or manages plant or property, or a dam or a water supply, canal, or power station, and distributes or sells for distribution, or sells or supplies water for gain, within Christian County, State of Missouri.

6. Rex Deffenderfer Enterprises, Inc., d/b/a RDE Water Company, is thus a water corporation pursuant to § 386.020(59), RSMo., and a public utility pursuant to § 386.020(43), RSMo.

7. As a water corporation and a public utility, Rex Deffenderfer Enterprises, Inc., d/b/a RDE Water Company, is subject to the jurisdiction, regulation and control of this Commission. Section 386.250, RSMo., and Chapters 386 and 393, RSMo., the *Public Service Commission Law*.

8. Section 386.390.1, RSMo., authorizes the Commission to hear and determine complaints:

Complaint may be made by the commission of its own motion, or by the public counsel or any corporation or person, chamber of commerce, board of trade, or any civic, commercial, mercantile, traffic, agricultural or manufacturing association or organization, or any body politic or municipal corporation, by petition or complaint in writing, setting forth any act or thing done or omitted to be done by any corporation, person or public utility, including any rule, regulation or charge heretofore established or fixed by or for any corporation, person or 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

9. The Commission has by rule authorized the Staff Counsel's Office to bring complaints on behalf of the Staff: "A complaint may also be filed by . . . the commission staff through the staff counsel" Additionally, the Commission has the authority to bring a complaint on its own motion.¹

10. Section 393.358.2, RSMo., effective August 28, 2018, requires water corporations with more than 1,000 customers to develop a qualification process and make such process open to all contractors seeking to provide construction and construction-related services for projects on the water corporation's distribution system; the statute provides further that contractors that meet the eligibility requirements set by the water corporation shall be eligible to participate in a competitive bidding process for providing construction and construction-related services for distribution system projects, and the contractor making the lowest and best bid shall be awarded such contract. Additionally, the cited section further requires that, for contractors not qualifying through the competitive bid process, the water corporation, upon request from the contractor, shall provide information from the process in which the contractor can be informed as to how to be better positioned to qualify for such bid opportunities in the future.

¹ Rule 4 CSR 240-2.070(1).

11. Section 393.358.3, RSMo., requires that, within thirty days after August 28, 2018, water corporations shall file a statement with the Commission confirming that they have established a qualification process for the competitive bidding of planned infrastructure projects on the distribution system, that such process conforms to the requirements of this section, and that such process is used for no less than ten percent of the corporation's external expenditures for planned infrastructure projects on the water corporation's distribution system.

12. Section 393.140(6), RSMo., further provides for a penalty of \$100.00 plus \$100.00, “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.”

Facts and Cause of Action:

13. On August 16, 2018, Staff filed its *Motion to Open Docket*, requesting that the Commission establish a docket for the purposes of serving as a repository for the statement required by § 393.358.3, RSMo., and for any proceedings related to such statements.

14. On August 28, 2018, the Commission issued its *Order Opening a Case and Directing Filings* (“August 28 Order”). The August 28 Order granted Staff’s motion, provided notice to the six water and sewer utilities affected by § 393.358 RSMo.,² and directed the utilities file their respective statements confirming they had a Bidding Process in place by September 27, 2018. It also directed the affected utilities to track

² The affected utilities as identified by Staff are Missouri-American Water Company; The Empire District Electric Company; Liberty Utilities (Missouri Water) LLC; Raytown Water Company; RDE Water Company; and Terre Du Lac Utilities Corporation.

work orders before and after August 28, 2018, to assess the impact of § 393.358 RSMo., and provide that information to the Commission's Staff.

15. Staff filed its *Status Report* on October 31, 2018, indicating that five of the six regulated water corporation with more than 1,000 customers in the state of Missouri filed had filed notice with the Commission that they had established the procedures required by § 393.358 RSMo. RDE was the only affected water utility that had not filed the notice required by § 393.358.3, RSMo., at that time. Staff further recommended in its *Status Report*, in regard to RDE, that the Commission open a new docket and issue a *Show Cause Order* directing RDE to show cause as to why it should not be considered in violation of both the requirements of § 393.358.3, RSMo., and the Commission's August 28, 2018, Order.

16. Later on October 31, 2018, the Commission issued its *Order Directing RDE Water Company to Respond* ("October 31 Order"), ordering RDE to file its statement no later than November 13, 2018, confirming that it had established the qualification process required by Subsection 393.358.3, RSMo.; RDE neither filed the required notice nor requested an extension of that date.

17. On November 28, 2018, the Commission issued its *Order Directing Staff to File a Complaint*, stating that § 386.390, RSMo., authorizes the Commission to make a complaint on its own motion alleging violation of any provision of law subject to the Commission's authority, and as such, further directed Staff to file a complaint alleging a violation of § 393.358.3, RSMo., the Commission's August 28, 2018, order directing RDE to file the statement required to comply with the statute, and the Commission's October 31, 2018, order again directing RDE to file the required statement.

18. Pursuant to the Commission's November 28, 2018, *Order Directing Staff to File a Complaint*, Staff states as follows:

a) Although RDE was required to file a notice with the Commission by September 27, 2018,³ pursuant to § 393.358.3, RSMo., was specifically directed to file notice with the Commission pursuant to the Commission's August 28 Order, and yet again directed to file the required notice pursuant to the Commission's October 31 Order, Rex Deffenderfer Enterprises, Inc., d/b/a RDE Water Company, has neither filed the required notice nor requested an extension of any associated due date.

b) Rex Deffenderfer Enterprises, Inc., d/b/a RDE Water Company, is therefore in violation of § 393.358.3, RSMo., the Commission's August 28, 2018, Order, and the Commission's October 31, 2018, Order.

WHEREFORE, Staff prays that the Commission will give due notice to the Respondent and, after hearing, determine that Respondent has violated § 393.358.3, RSMo., the Commission's August 28 Order, and the Commission's October 31 Order as set out above, and thereupon authorize its General Counsel to seek in Circuit Court the penalties allowed by law; and grant such other and further relief as is just in the circumstances.

³ 30 days after the effective date of SB 705.

Respectfully submitted,

/s/ Mark Johnson

Mark Johnson

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Attorney for the Staff of the
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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile, or electronically mailed to all parties and or counsel of record on this 6th day of December, 2018.

/s/ Mark Johnson