

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

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
LaVade Deffenderfer Cottrill, President
1770 N. Deffer Dr. Ste. 4
Nixa, MO 65714
Respondent.

Case No. WC-2020-0008

**MOTION FOR DEFAULT JUDGMENT
AND FOR AUTHORITY TO SEEK PENALTIES**

COMES NOW the Staff of the Missouri Public Service Commission ("Staff"), through the undersigned counsel, and pursuant to 20 CSR 4240-2.070(10) moves for a default judgment in the above-referenced case and for authorization of the Commission's General Counsel to seek penalties in circuit court hereafter, and in support of this *Motion for Default Judgment and for Authority to Seek Penalties* hereby states:

1. On July 15, 2019, Staff filed a *Complaint* against Respondent Company for failing to file its 2018 annual report as required by Section 393.140(6), RSMo and Commission Rule 20 CSR 4240-10.145(1). Staff also alleged that Respondent Company failed to pay its Fourth Quarter 2019 assessment of \$595.85 as required by Section 386.370(2), RSMo.

2. On July 16, 2019, the Commission issued its *Order Giving Notice of Contested Case and Directing Respondent to File Answer*, ordering Respondent Company to file an answer to the *Complaint* no later than August 15, 2019.

3. Following Respondent Company's failure to answer the *Complaint*, Staff filed its first *Motion for Default Judgement and for Authority to Seek Penalties* on August 20, 2019.

4. On October 1, 2019, Staff filed its *Amended Complaint*, incorporating Jim Deffenderfer, General Manager of Respondent Company, and LaVada Deffenderfer Cottrill, President of Respondent Company, as Respondents.

5. The Commission ordered Respondents to answer Staff's *Amended Complaint* no later than October 31, 2019.

6. Commission Rule 20 CSR 4240-2.070(9) provides that "[t]he respondent shall file an answer to the complaint within the time provided. All grounds of defense, both of law and of fact, shall be raised in the answer. If the respondent has no information or belief upon the subject sufficient to enable the respondent to answer an allegation of the complaint, the respondent may so state in the answer and assert a denial upon that ground."

7. Commission Rule 20 CSR 4240-2.070(10) states that "[i]f the respondent in a complaint case fails to file a timely answer, the complainant's averments may be deemed admitted and an order granting default entered. The respondent has seven (7) days from the issue date of the order granting default to file a motion to set aside the order of default and extend the filing date of the answer. The commission may grant the motion to set aside the order of default and grant the respondent additional time to answer if it finds good cause."

8. As of the date of the filing of this motion, Respondents have failed to file an answer in this matter.

WHEREFORE, Staff moves that pursuant to 20 CSR 4240-2.070(9) and (10) the Commission deem admitted the averments originally raised in Staff's *Amended Complaint* and specifically find:

1. That Respondents violated Section 393.140(6), RSMo by failing to file a 2018 annual report.

2. That, by violating Section 393.140(6), RSMo, Respondents "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."

3. That, per Section 393.140(6), RSMo, "[t]he amount recovered in any such action shall be paid to the public school fund of the state."

4. That Respondents violated Section 386.370(2), RSMo by failing to pay the Fourth Quarter 2019 assessment of \$595.85.

5. That, by violating Section 386.370(2), RSMo, Complainant is statutorily entitled to prejudgment interest on Respondents delinquent assessment amount, per Section 408.020, RSMo.

6. That, by failing to comply with Section 386.370(2), RSMo, the "public utility, is subject to a penalty of not less than one hundred dollars nor more than two thousand dollars," per Section 386.570(1), RSMo.

7. Further, that "...in case of a continuing violation each day's continuance thereof shall be and be deemed to be a separate and distinct offense," per Section 386.570(2).

Staff further prays that the Commission authorize the General Counsel to proceed to Circuit Court to seek penalties against Respondents for these violations of Sections 393.140(6), 386.370(2), 386.570(1) and (2), and 408.020 RSMo, and the Commission's rules, and for such other relief as the Commission deems just and proper.

Respectfully submitted,

/s/ Travis J. Pringle

Missouri Bar No. 71128

Legal Counsel

Attorney for the Staff of the
Public Service Commission

P. O. Box 360

Jefferson City, MO 65102

(573) 751-4140 (Telephone)

(573) 751-9265 (Fax)

Travis.Pringle@psc.mo.gov

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 12th day of November, 2019.

/s/ Travis J. Pringle