

**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,

Respondent

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Case No. WC-2019-0169

STAFF MOTION FOR DEFAULT DETERMINATION

COMES NOW the Staff of the Missouri Public Service Commission, through the undersigned counsel, and for its *Motion for Default Determination* pursuant to Commission Rule 4 CSR 240-2.070(10), states as follows:

Introduction

1. Staff filed its *Complaint* on December 6, 2018, asserting that Respondent Rex Deffenderfer Enterprises, Inc., d/b/a RDE Water Company (“Company” or “RDE”) violated Section 393.358.3, RSMo, the Commission’s August 28, 2018, *Order Opening and Directing Filings*, and the Commission’s October 31, 2018, *Order Directing RDE Water Company to Respond*. For relief, Staff prays that the Commission authorize the General Counsel’s Office to bring a penalty action against the Respondent in circuit court as provided in Sections 386.600, and 386.570, RSMo.

2. Respondent’s answer was due by January 7, 2019, but Respondent failed to answer.

General Allegations

3. Respondent is a “water corporation” as defined by Section 386.020(59), RSMo, and a “public utility” as defined by Section 386.020(43), RSMo, and thus is subject to the jurisdiction of this Commission pursuant to Section 386.250(3), RSMo.

4. 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.”

5. 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.”

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

7. Section 393.358.3, RSMo requires that, within thirty days after August 28, 2018, water corporations with more than 1,000 customers “...shall file a statement with the commission confirming it has established a qualification process meeting 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.”

8. The Commission’s August 28, 2018, *Order Opening Case and Directing Filings* in File No. WO-2019-0043 directed affected utilities to file statements required by

section 393.358.3, RSMo, no later than September 27, 2018, and to track work orders before and after August 28, 2018, to assess the impact of Section 393.358, RSMo, and provide that information to the Commission's Staff.

9. The Commission's October 31, 2018, *Order Directing RDE Water Company to Respond* in File No. WO-2019-0043 ordered RDE to file its statement confirming that they had set up a qualification process as required by Section 393.358.3, RSMo, no later than November 13, 2018.

10. As of the date of this filing, Respondent has failed, omitted, or neglected to file the notice required by section 393.358.3, RSMo, or to respond to the Commission's Orders listed above.

11. Section 386.570.1, RSMo, provides for a penalty between \$100.00 to \$2,000.00, per offense, for "[a]ny corporation, person or public utility which violates or fails to comply with any provision of the constitution of this state or of this or any other law, or which fails, omits or neglects to obey, observe or comply with any order, decision, decree, rule, direction, demand or requirement, or any part or provision thereof, of the commission . . ." Each day that a continuing violation persists is counted as a separate offense.¹ In the case of a public utility respondent, the acts and omission of its officers, agents and employees are deemed to be the acts and omission of the public utility.² All penalties are cumulative.³

¹ Section 386.570.2, RSMo.

² Section 386.570.3, RSMo.

³ Section 386.590, RSMo.

Standard for Entering Default Judgment

12. Commission Rule 4 CSR 240-2.070(10) provides, "If 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."

13. The Commission directed Respondent to answer Staff's *Complaint* by January 7, 2018, but Respondent failed to answer.

WHEREFORE, the Staff prays that the Commission will deem the averments of Staff's *Complaint* admitted, enter an order granting default determination against the Respondent, and authorize its General Counsel to bring a penalty action against the Respondent in circuit court as provided in Sections 386.600 and 386.570, RSMo; and grant such other and further relief as the Commission deems just in the circumstances.

Respectfully submitted,

/s/ Mark Johnson

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Attorney for the Staff of the
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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 8th day of January 2019.

/s/ Mark Johnson