

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

In the Matter of an Investigation)
into the Operations and Condition of)
Rex Deffenderfer Enterprises, Inc.,)
d/b/a RDE Water Company,)

Case No. WO-2019-0XXX

STAFF’S MOTION TO OPEN INVESTIGATORY DOCKET

COMES NOW the Staff of the Missouri Public Service Commission (“Staff”), by and through counsel, and hereby moves the Commission to open an investigatory docket concerning the current operations and condition of Rex Deffenderfer Enterprises, Inc., d/b/a RDE Water Company. In support of its *Motion*, Staff states:

1. The Missouri Public Service Commission is an agency of the State of Missouri charged with the general supervision of all non-governmental water utilities, § 386.250, RSMo., including the public safety aspects of their operation, § 386.310.1, RSMo. All such utilities must maintain safe and adequate facilities and charge only just and reasonable rates as authorized by the Commission, § 393.130.1, RSMo.

2. Rex Deffenderfer Enterprises, Inc., d/b/a RDE Water Company ("RDE"), is a Missouri general business corporation in good standing. Its principal place of business and registered office is located at 1770 N. Deffer Dr., Ste. 4, Nixa, Missouri 65714. Its registered agent is Lavada Deffenderfer Cottrill, 1770 N. Deffer Dr., Ste. 4, Nixa, Missouri 65714. This Commission granted RDE a Certificate of Convenience and Necessity (“CCN”) authorizing the Company to provide water service to the public for gain in Christian County on August 31, 1977, in Case No. WA-77-83. RDE provides water service to approximately 1,138 customers in the Nixa, Missouri area.

3. RDE is a water corporation and a public utility pursuant to § 386.020, RSMo, and is subject to the jurisdiction of this Commission.

4. To the best of Staff's knowledge and belief, RDE currently operates two wells, of which, Well #2 operates on a continual basis and produces approximately 675 gallons per minute (gpm) utilizing a 75-horsepower pump. Well #1 operates only as a backup, and activates automatically if Well #2 is out of service. Well #1 produces 220 gpm using a 30-horsepower pump. Well #1 does not have a permanent chlorinator. In the event that Well #1 goes into service automatically, the Company must manually connect a chlorinator and fill a tank with chlorine solution to prevent untreated water from entering the distribution system. RDE's distribution system consists of over 150,000 feet of PVC mains from 2 to 10 inches in diameter.

5. On November 2, 2016, the Commission approved a Disposition Agreement between RDE and Staff, filed in File No. WR-2016- 0267, which, among other items, recommended a revenue increase of \$20,801. Included in the Disposition Agreement was an agreement by RDE to implement several recommendations proposed by Staff.¹ Staff's operational recommendations included:

- a) Within 180 days of the effective date of the order approving the Company/Staff Disposition Agreement, the Company shall replace the screen at Well #1 with new 18-mesh screen; and

¹ See *In the Matter of Rex Deffenderfer Enterprises, Inc., d/b/a RDE Water Company's Request for Increase in Annual Water Operating Revenues*, File No. WR-2016-0267, Notice of Company/Staff Agreement Regarding Disposition of Small Company Rate Increase Request.

b) Within 180 days of the effective date of the order approving the Company/Staff Disposition Agreement, the Company shall prepare a report of estimated expenses of the following projects for future planning of its capital needs:

- i) Installation of permanent chlorination on Well #1;
- ii) Repairs of the well house structures as necessary to preserve the life of the structures;
- iii) Inspection of the standpipe and ground storage tank by a qualified inspector, along with cleaning and painting as necessary, to preserve and extend the life of the tanks.
- iv) Cleaning and painting of the piping and valves inside the high service pump building, to minimize further damage from corrosion;
- v) Installation of overflow and low level monitoring equipment on the standpipe at Well #1, and installation of an auto dialer that can notify the operator if there is an issue;
- vi) Reconfiguration of plumbing arrangements to allow Well #1 discharge to be pumped to waste;
- vii) Placement of splash blocks under both storage overflow drains; and
- viii) Installation of fencing around both of the well/tank facilities.

6. The Disposition Agreement further stated that the Company shall implement Staff's recommendations and provide proof of implementing the recommendations to the Manager of the Commission's Water & Sewer Department.²

7. Since the November 26, 2016, effective date of the Commission's order approving the Disposition Agreement, Staff has contacted the Company via email and telephone, and visited the system in person, to ascertain the Company's progress in

² *Id.* at p. 3 of 8.

meeting Staff's recommendations. While RDE has completed the installation of 18-mesh screen at Well #1, as of the time of this filing, the Manager of the Commission's Water & Sewer Department has not received any reports from RDE detailing estimated expenses for future necessary capital needs, or other proof that RDE has implemented the remainder of Staff's recommendations. Further, Staff has no knowledge concerning the progress RDE has made in completing any of the other agreed to projects.

8. Additionally, since the filing of the Company's last rate case, RDE has been the subject of multiple complaints filed by the Commission's Staff:

a. On June 5, 2017, Staff filed a complaint against RDE for failure to file its 2016 Annual Report, alleging a violation of the Commission's statutes and rules relating to the filing of annual reports.³ Although the complaint was properly served upon RDE's registered agent, RDE failed to file an Answer in response to Staff's *Complaint*. On August 3, 2017, the Commission issued its *Order Granting Default Determination*, granting Staff's July 20, 2017, *Motion for Default Determination* and authorizing its General Counsel to bring an action in circuit court to seek penalties.

On September 15, 2017, the Commission's General Counsel brought an action in circuit court for penalties against RDE for failing to file its 2016 Annual Report,⁴ due to the Commission on April 15, 2017. However, the General Counsel dismissed that case on May 3, 2018, after RDE submitted its 2016 Annual Report.

³ See *The Staff of the Missouri Public Service Commission, Complainant v. Rex Deffenderfer Enterprises, Inc., d/b/a RDE Water Company, Respondent*, File No. WC-2017-0321.

⁴ See *State of Missouri, ex rel. Public Service Commission of the State of Missouri v. Rex Deffenderfer Enterprises, Inc., d/b/a RDE Water Company*, Case No. 17CT-CC00980.

b. On May 25, 2018, Staff filed a second complaint against RDE for violation of the Commission's statutes and rules relating to the filing of annual reports,⁵ alleging that RDE failed to file its 2017 Annual Report. Again, while the complaint was properly served upon the Company's registered agent, RDE failed to file an Answer to Staff's complaint. On December 5, 2018, the Commission issued its *Order Granting Default Determination*, granting Staff's November 2, 2018, *Motion for Default Determination* and authorizing its General Counsel to bring an action in circuit court for penalties.

c. On December 8, 2018, Staff filed yet another complaint against RDE. This third complaint arose out of legislation passed during the 2018 Legislative Session, SB 705. That bill included § 393.358, RSMo, which 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.⁶ Further, this section 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

⁵ See *The Staff of the Missouri Public Service Commission, Complainant v. Rex Deffenderfer Enterprises, Inc., d/b/a RDE Water Company, Respondent*, File No. WC-2018-0352.

⁶ § 393.358.2, RSMo.

expenditures for planned infrastructure projects on the water corporation's distribution system.⁷

On August 16, 2018, Staff requested 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. 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., and directed the utilities file their respective statements confirming they had a Bidding Process in place by September 27, 2018. As of this date, RDE has not responded to the Commission's August 28 Order, or filed the notice required by § 393.358.3, RSMo.

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 § 393.358.3, RSMo. As of the date of this filing, RDE has neither filed the required notice nor requested an extension of the November 13, 2018, date.

On November 28, 2018, the Commission 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 Order again directing RDE to file the

⁷ § 393.358.3, RSMo.

required statement, and Staff did so on December 8, 2018. Yet again, while the complaint was properly served upon the company's registered agent, RDE failed to file an Answer to Staff's complaint. On January 30, 2019, the Commission issued its *Order Granting Default Determination*, granting Staff's January 7, 2019, *Motion for Default Determination* and authorizing its General Counsel to bring an action in circuit court for penalties.

9. In each of the instances detailed above, members of Staff reached out to representatives of RDE via email and telephone to inquire as to the status of RDE's compliance with Commission rules and statutes, and to answer any questions RDE may have. Despite Staff's inquiries, RDE failed to respond adequately, in a timely manner, or at all to any of Staff's complaints or the Commission's orders.

10. Section 393.140.1 RSMo grants the Commission general supervision of regulated utilities, and 393.140.2 RSMo authorizes the Commission to "examine or investigate the methods employed by such persons and corporations . . . in supplying and distributing water for any purpose whatsoever."

11. RDE's repeated failure to comply with Commission statutes and regulations, and its inability or unwillingness to respond to orders issued by the Commission, raises significant concerns that the public interest requires be fully investigated. RDE's apparent sustained indifference to Commission jurisdiction is at best an inability to properly function as a utility subject to regulation by this Commission, and at worst a willful disregard of the Commission's statutory obligation to ensure Missourians receive safe and adequate utility service at just and reasonable rates.

12. A formal investigation will allow Staff to ascertain the status of RDE's ability or willingness to provide safe and adequate service, and comply with Commission Rules and orders.

WHEREFORE, Staff prays that the Commission will open an investigatory docket into the operations and condition of RDE, and upon the conclusion of its investigation, Staff will submit a report of its findings to the Commission and shall recommend any necessary and desirable improvements in the operation of the utility; or take such other and further action as may be just in the circumstances.

Respectfully submitted,

/s/ Mark Johnson

Mark Johnson
Deputy Counsel
Missouri Bar No. 64940
Attorney for the Staff of the
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65012
(573) 751-7431 (Telephone)
(573) 751-9285 (Fax)
Mark.johnson@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 21st day of February 2019.

/s/ Mark Johnson