

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 30th day of January, 2019.

Staff of the Missouri Public Service Commission,

Complainant,

v.

Rex Deffenderfer Enterprises, Inc. d/b/a RDE Water Company

Respondent.

File No. WC-2019-0169

ORDER GRANTING MOTION FOR DEFAULT DETERMINATION

Issue Date: January 30, 2019

Effective Date: March 1, 2019

On December 6, 2018, the Staff of the Commission filed a complaint against Rex Deffenderfer Enterprises, Inc. d/b/a RDE Water Company (RDE) alleging that RDE has failed to file a timely statement confirming that it has established a qualification process conforming to the requirements of section 393.358, RSMo (2016), for the competitive bidding of planned infrastructure projects on its distribution system, and that such process is used for no less than ten percent of RDE's external expenditures for planned infrastructure projects on its distribution system as it is required to do by section 393.358.3, RSMo (2016). A copy of the complaint was served on the agent for RDE, by registered mail on December 10, 2018. RDE's answer to Staff's complaint was due on January 7, 2019, but no answer or other response has been filed. On January 8, 2019, Staff filed a Motion for Default Determination, asking the Commission to make a finding of default.

Commission Rule 4 CSR 240-2.070(10) provides that if a respondent in a complaint case fails to file a timely answer, the Commission may find the respondent to be in default, and may deem the truth of all averments in the complaint to be admitted by the respondent.

Staff's complaint alleges section 393.358.2, RSMo (2016), requires water corporations with more than 1,000 customer, including RDE, 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 further requires that contractors that meet the eligibility requirements set by the water corporation be eligible to participate in a competitive bidding process for providing construction and construction-related services for distribution projects, and that the contractor making the lowest and best bid be awarded such contract. In addition, the statute requires that, at the request of a contractor not qualifying through the competitive bidding process, the water corporation must 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. Section 393.358.3, RSMo (2016), requires the affected water corporation, again including RDE, to file a statement within thirty days after August 28, 2018, confirming that it has established a qualification process meeting the requirements of the statute, and confirming that its process is used for no less than ten percent of its external expenditures for planned infrastructure projects on its distribution system. Staff's complaint alleges RDE has not filed the statement required by law.

In addition, Staff alleges the Commission issued an order on August 28, 2018, explicitly requiring RDE to file the report required by the statute by September 27, 2018. RDE did not do so. On October 31, 2018, the Commission again ordered RDE to file the report required by the statute. Staff's complaint alleges that RDE has failed to comply with the Commission's orders.

Staff asks the Commission to direct its General Counsel to proceed to circuit court to seek the imposition of civil penalties against RDE for those violations of Missouri law and of the Commission's orders. The Commission's rules allow RDE an opportunity to contest Staff's allegations before the Commission and RDE has chosen not to respond.

Based on RDE's default, the Commission finds that the averments in Staff's Complaint are established. The Commission further finds that RDE is subject to penalties and authorizes the General Counsel to proceed to circuit court to seek penalties for each and every day's violation of law.

By rule,¹ the RDE has seven days from the issue date of this order to file a motion to set aside this order of default. Because this order is being given a thirty-day effective date of March 1, 2019, RDE will have until February 28, 2019, to request rehearing of this order.²

THE COMMISSION ORDERS THAT:

1. Staff's Motion for Default Determination is granted.
2. A default determination is entered against Rex Deffenderfer Enterprises, Inc. d/b/a RDE Water Company.
3. The facts alleged in Staff's Complaint are found to be established.
4. The Commission's General Counsel is authorized to file an action in the circuit court of its choosing to seek penalties against Rex Deffenderfer Enterprises, Inc. d/b/a RDE Water Company, as allowed by Sections 386.570 and 386.600, RSMo (2016).
5. Rex Deffenderfer Enterprises, Inc. d/b/a RDE Water Company is allowed until February 6, 2019, to move to set aside this order of default.

¹ Commission Rule 4 CSR 240-2.070(10).

² Section 386.500, RSMo (2016)

6. This order shall be effective March 1, 2019.

BY THE COMMISSION



A handwritten signature in black ink that reads "Morris L. Woodruff". The signature is written in a cursive, flowing style.

Morris L. Woodruff
Secretary

Silvey, Chm., Kenney, Hall, Rupp, and
Coleman, CC., concur.

Woodruff, Chief Regulatory Law Judge