

recent rate case, Case No. WR-2016-0267, RDE Water Company has failed to comply with multiple statutes, regulations, and orders from the Commission. Staff has filed multiple complaints against the Company,¹ to which it has not responded. The Commission has authorized its General Counsel's Office to seek penalties in circuit court for these violations, and the Company is now potentially subject to several thousands of dollars in penalties.² Further, RDE has failed to accomplish most of the conditions it agreed to as part of the Commission-approved settlement of its 2016 rate case, and has ceased some critical operational efforts for which it receives support in rates.

4. As such, Staff recommends the utility's assets be placed under the control and responsibility of a receiver pursuant to Section 393.145, RSMo, and that the Commission direct the receiver to transfer or sell the utility's assets to a company with the capability to operate the utility in compliance with Commission statutes and regulations.

WHEREFORE, Staff respectfully requests the Commission accept its Staff Report detailing the results of its investigation into RDE Water Company's compliance with the law regarding its provision of water service in Missouri; and grant such other and further relief as the Commission considers just in the circumstances.

¹ See Case Nos. WC-2017-0321, WC-2018-0352, WC-2019-0169, and WC-2020-0008.

² See Case Nos. 19CT-CC00032 and 19CT-CT-CC00096.

Respectfully submitted,

/s/ Mark Johnson

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was delivered to the parties and/or their counsel of record by U.S. Postal Service postage prepaid, or by hand, or served electronically, on this 30th day of August, 2019.

/s/ Mark Johnson

MEMORANDUM

TO: Missouri Public Service Commission Official Case File
Case No. WO-2019-0247

FROM: Curt B. Gateley – Water and Sewer Department
David A. Spratt – Water and Sewer Department
Deborah Ann Bernsen – Customer Experience Department
Kimberly K. Bolin – Auditing Department

/s/ Curt B. Gateley
Case Manager

August 30, 2019
Date

/s/ Casi Aslan
Staff Counsel

August 30, 2019
Date

SUBJECT: Staff’s Report on the Investigation into the Operations and Conditions of
Rex Deffenderfer Enterprises, Inc., d/b/a RDE Water Company

DATE: August 30, 2019

Summary

Rex Deffenderfer Enterprises, Inc., d/b/a RDE Water Company (Company or RDE) provides water service to approximately 1,138 customers in the Nixa, Missouri area. RDE received its Certificate of Convenience and Necessity (CCN) from the Missouri Public Service Commission (Commission or PSC) August 31, 1977, in case number WA-77-83. The Company remains in good standing with the Secretary of State.

On February 21, 2019, Staff filed a motion to open an investigatory docket into RDE’s compliance with the law regarding its provision of water service in Missouri. This investigative docket arose from the many Staff complaints and Commission orders regarding the Company in other dockets and circuit court cases.¹ On February 27, 2019, the Commission ordered Staff to file a Report of its investigation no later than August 30, 2019.

Staff filed 64 Data Requests in the course of its investigation to allow the Company to provide more information. After multiple offers of assistance, including telephone conversations, multiple emails and letters, and after a Commission Order compelling RDE to respond to Staff’s Data Requests, the Company continues to refuse to respond to those data requests, save for a brief written statement providing information that was partially responsive to a few of the data requests.

¹ Case Nos. WR-2016-0267, WC-2017-0321, 17CT-CC00980, WC-2018-0352, WO-2019-0043, WC-2019-0169, 19CT-CC00032, 19CT-00096. After the initiation of this investigation, Staff filed a subsequent complaint against RDE Water Company in Case No. WC-2020-0008.

Where this report lacks detail, the reader may conclude the refusal to comply with discovery efforts are directly responsible. In Staff's opinion, all pertinent information that can be gathered at this time has been obtained.

Since the Company's last rate case in 2016,² RDE has failed to comply with several Commission statutes, regulations, and orders. The Company has failed to accomplish most of the items it agreed to do as part of the Commission-approved settlement of its 2016 rate case, and has ceased some critical operational efforts for which it receives support in rates. The Company has failed to file annual reports, refuses to respond to Data Requests in this docket and others, has admitted to Staff in conversations that it does not open emails and letters from the Commission, and in most cases will not return phone calls. Due to the Company's refusal to respond to Staff Data Requests, Staff cannot confirm whether the Company is complying with its tariff, or all Commission Statutes and regulations, such as Chapter 13. Finally, the Company is delinquent in payment of its 4th quarter Commission assessment for Fiscal Year 2019, owing \$595.85.

In addition to ceasing operational efforts for which it receives support in rates, and refusing to comply with Commission orders, this Report demonstrates that the Company is unable or unwilling to meet even the minimum regulatory requirements imposed by the Commission. This fact leads Staff to seriously question RDE's ability and willingness to ensure the provision of safe and adequate service to its customers. It is the recommendation of Staff that appropriate legal action be taken to bring this Company into compliance, or to appoint a receiver that will have control and responsibility of the assets of the utility and will oversee the transfer or sale of the Company's assets to a responsible entity.

Inspection

Staff from the Water and Sewer Department and Customer Experience Department performed an inspection of RDE on May 2, 2019, in accordance with the Commission's order. Staff attempted to notify the Company in advance of its inspection via telephone and email, however, the Company failed to respond, or indicate receipt of Staff's notice. Therefore, Staff performed its inspection during normal business hours, but without confirmed notice. The Company's general manager and primary operator, Jim Deffenderfer, was present and allowed an inspection.

The source of water supply for the system consists of two wells, with individual storage structures, well houses, and pumps. The Company is operating Well #2 on a continual basis, with Well #1

² Case No. WR-2016-0267.

presently only operated as a backup well due to previous confirmation of E. coli contamination. This is discussed further in the Water Quality section below.

Well #1 is an eight-inch diameter well that was drilled in 1971. The well contains a 30 horsepower pump which can produce approximately 220 gallons of water per minute (gpm). Water is stored in a nine foot diameter standpipe that is 100 feet tall and located next to the well house. Besides holding water available for storage, the height of the water in the standpipe is used to maintain water pressure in the distribution system. The standpipe is able to store approximately 48,000 gallons of water, but only about 25,000 gallons of that is usable storage because water below the 46 foot water level would not allow the system to provide the minimum required water pressure of 20 pounds per square inch (psi).

In the event that Well #2 goes out of service Well #1 is designed to go into service automatically; however, when this happens, the Company must go to Well #2 to remove the chlorinator and take it to Well #1 to manually connect it. The Company must also fill a tank with chlorine solution from which the chlorinator can pump to prevent untreated water from entering the distribution system. Staff is unsure how long this task takes to perform, as RDE failed to respond to Staff's Data Request asking for this information.³

Well #2 is a 10-inch well which was drilled in 1988 and produces approximately 675 gpm using a 75-horsepower pump. The water is disinfected using chlorine, and stored in a 250,000 gallon ground storage tank. Water is pumped from the ground storage tank to the distribution system by two high service pumps, each with a 30-horsepower motor. Along with delivering water to the distribution system, the high service pumps also fill the standpipe at Well #1 to maintain pressure during the intermittent operation of the high service pumps.

The pump in Well #2 was removed by Flynn Well Drilling in December of 2015 to replace the motor after it burned up. Both of the high service pump motors were replaced at the end of 2015 due to mechanical failure. One of the pump motors that failed was rebuilt and will be kept on hand as a spare. Staff observed that piping inside the high service building is showing corrosion. These pipes should be cleaned and painted to prevent further corrosion. Staff also observed the cooling water hoses leaking. The Company stated the new lines installed by the pump company are of an inferior quality and require regular replacement. Braided, flexible stainless hoses are being used as an alternative.

³ Staff Data Request No. 0033.

At the time of Staff's inspection it was noted that paint chipping has occurred and rust spots were visible on the exteriors of both storage structures. The Company stated to Staff the interior of each tank has been inspected "recently," but the exterior of each has not been painted in approximately 15 years. A recommendation was made by Staff that tanks should be cleaned and painted to maximize their useful lives.

Both of the well houses are block and mortar buildings that are in need of repairs. Well #2 shows more wear than Well #1. Mortar between some of the blocks is deteriorating, the metal door and frame are corroding, the wood structure components are rotting, and the roof shingles are deteriorating. The Company should address these issues to preserve the integrity of the building.

The distribution system consists of over 150,000 feet of PVC mains from 2-inch to 10-inch in diameter. Staff has received some customer complaints about leaks that have taken several weeks to repair. Staff worked one customer complaint (C201801214) which took two months to repair. This complaint was investigated by Staff of the PSC and the Department of Natural Resources (DNR) in February 2018, and this particular leak resulted in water pressure falling below 20 psi. Water leaks may be a nuisance for customers; however, water pressure falling below 20 psi can allow unsafe drinking water to backflow into the distribution system which can then be dispensed to customers unknowingly.

All customers are metered. Staff noted during its inspection that the Company had not been changing meters out as required by 20 CSR 4240-10.030(38).

The Company does not have a standby replacement chief operator to be available at all times in violation of 10 CSR 60-14.010(4)(A)6. Both Staff and DNR have recommended hiring a backup operator, or at least employing the services of someone who can fill in. The Company has stated to Staff it is unable to afford one at this time, despite employing a back-up operator before the previous rate case, and receiving an 8.11% increase in revenue from that case. The Company had previously employed the services of an outside contract company called 'CCUS'⁴ which performed some of the operations and maintenance tasks but the Company indicated that it has severed its business relationship with CCUS and is performing all operations and small maintenance on its own. Large maintenance jobs are contracted out. Staff has submitted a Data Request asking about outside service providers but RDE failed to provide a response⁵.

⁴ Staff was unable to identify this company or what the acronym stands for.

⁵ Staff Data Request No. 0015.

For security reasons, the well houses and storage facilities should be fenced. During Staff's inspection it was mentioned by the Company that the property at Well #2 frequently has cars parked around it when a building on an adjacent lot hosts gymnastics events. Staff recommends that the Company, as a future project, install fencing around the well house and storage tanks.

Water Quality Issues

Well #1 is presently only used as an emergency backup well because the drinking water tested positive for E. coli in 2011. It engages automatically when Well #2 goes out of service but is not chlorinated. This means that until the operator arrives on scene, manually removes the chlorination pump and tank from Well #2, and reinstalls it on Well #1; therefore, the water entering the distribution system would not be disinfected. Because the Company has decided not to employ a back-up operator, if the primary operator is unable to complete the manual reinstallation, untreated water would be distributed to the Company's customers, potentially for days. If the primary operator is indisposed, it is unclear whether anyone else at the Company would even be aware of a problem.

According to Drinking Water Watch, a website maintained by DNR, positive samples of E. coli were found from routine samples taken from the same address on August 10, 2011, and again from the follow up samples taken on August 17, 2011. No other positive E. coli samples have been recorded since then but the positive tests demonstrate that Well #1 is capable of being contaminated by surface water sources, and therefore must be disinfected.

According to a May 2, 2016, DNR inspection report, RDE signed a bilateral compliance agreement (BCA) on December 17, 2001, with which the Company has not fully complied. The BCA required the Company to add permanent chlorination facilities to Well #1. PSC Staff has also recommended the Company install permanent chlorination at Well #1 to prevent any unchlorinated water from going into the standpipe or into the distribution system; however, the Company has stated it does not intend to do so. Staff has submitted a Data Request to the Company asking why it has refused to comply with the BCA but has not yet received a formal response.⁶ That being said, in an email to the Manager of Staff's Water and Sewer Department, Mr. Deffenderfer indicated that DNR has agreed not to require chlorination of Well #1, as it is tested on a monthly basis for bacteriological contaminants. It is Staff's opinion that installing chlorination on Well #1 is a prudent (and relatively small) expense, and will ensure customers are not exposed to dangerous water contaminants. Waiting until test results again show contamination, thereby potentially exposing customers, is a less prudent action.

⁶ Staff Data Request No. 0043.

A permanent chlorinator would allow Well #1 to be used automatically on a regular basis, consistent with DNR's Water Design Guide section 3.2.1.2 (b) which states, "Public drinking water systems serving 500 or more people shall have more than one well and shall be capable of meeting design maximum day demand with the largest producing well out of service." As RDE has over 1,100 customers, Staff recommends the Company comply with the Design Guide and have both wells in operation on a full-time basis.

Customer Experience

Staff members visited the offices of RDE in Nixa, Missouri on May 2, 2019, in order to inspect facilities, and gather information on billing and other customer service matters related to Chapter 13 compliance. Staff from the Customer Experience Department (CXD) discussed the billing systems and customer records maintained by the Company with the manager's son, who has recently taken over the operations of the billing system. From these discussions, it appears that the Company is still utilizing the same billing system that was in use during the WR-2016-0267 case.

Staff utilized the Commission's EFIS system to determine if there had been any customer complaints regarding billing, payment or customer service for years 2017 through 2019. The EFIS system showed one complaint in 2017 regarding a leak that was not addressed in a timely manner. In 2018, there were two complaints, both involving leaks, which the Company did not immediately address. For 2019, there has been one complaint regarding the reconnection fee required after discontinuance of service due to non-payment. Staff is also aware of at least one civil suit pending against RDE relating to property damage caused by leaks.⁷ While customer complaints are a useful source of information, they do not always provide a definite answer to the question of whether customers are receiving adequate service from the Company. While Staff visited the Company on May 2, 2019, that visit did not allow for adequate time or observation to determine if the Company's operating practices are delivering an appropriate level of service. The Company indicated it was too busy to spend any additional time with Staff that day. The Company has not indicated they would be more welcoming at any time in the future. Because Staff has been unable to conduct a thorough review of the Company's billing system, and because the Company has failed to respond to Staff's Data Requests, Staff cannot definitively ascertain whether these systems are delivering accurate bills to customers, and posting payments in a timely manner, consistent with Commission rules and the Company's tariffs. Staff is also unable to confirm the Company's compliance with the provisions of Chapter 13.

⁷ See Case No. 18CT-CC00231.

Financial Condition

Because the Company refuses to respond to Data Requests, and largely refuses to communicate with Staff, up to this point, Staff has been unable to obtain necessary facts regarding the current state of the Company's finances. That being said, the Company's revenue requirement established in its last rate case is \$277,359. Staff is aware that a back-up operator has not been hired. Maintenance, such as inspecting and painting tanks, is not being done. Well houses are in significant disrepair. In determining the revenue requirement in RDE's last rate case, Staff used a 3-year average of the maintenance and expenses for outside services to build in \$51,602 into rates; these rates have been in effect since November 26, 2016, and the \$51,602 represents 19% of the Company's total cost of service. Based on Staff observations, and statements by RDE, it does not appear that the amounts included in rates for maintenance are being properly utilized. RDE has not stated what these funds are being used for, and Staff is not aware of any new or additional expenses or catastrophic incidents that have required diversion of these funds.

Auditing

The Company did not respond to Staff's Data Requests,⁸ so Staff cannot confirm whether the Company has complied with the conditions of the approved Disposition Agreement in Case No. WR-2016-0267 related to auditing.⁹ The conditions are listed in the section below as Item Nos. 3-8. No additional information regarding current revenues or expenses is available at this time. In the last rate case the Company received a \$20,801 revenue increase to ensure the Company had adequate resources. The Company had requested an increase of \$60,386.

Staff Complaints and Failure to Comply with Commission Orders

In addition to ignoring the Data Requests issued in this case, RDE has demonstrated a willful disregard for compliance with Statutes, regulations, and Commission Orders. On November 2, 2016, the Commission ordered several tasks be completed in accordance with the Disposition Agreement signed by Staff, the Office of the Public Counsel and the Company. To date, the Company has confirmed the following items have not been completed:

1. Within one hundred eighty (180) days of the effective date of an order approving this Company/Staff Disposition Agreement, the Company shall prepare a report of estimated expenses of the following projects for future planning of its capital needs:

⁸ Staff Data Request Nos. 0048-0062.

⁹ Items (11)(a)-(f) in the Disposition Agreement in Case No. WR-2016-0267.

- a. Installation of permanent chlorination on Well #1.
 - b. Repairs of the well house structures as necessary to preserve the life of the structures.
 - c. 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 tank.
 - d. Cleaning and painting of the piping and valves inside the high service pump building, to minimize, further damage from corrosion.
 - e. 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.
 - f. Reconfiguration of plumbing arrangements to allow Well #1 discharge to be pumped to waste.
 - g. Placement of splash blocks under both storage overflow drains.
 - h. Installation of fencing around both of the well/tank facilities.
2. Evaluate and implement cost-effective actions in accord with Commission rules that could reduce the number of customers who do not pay their bill by the due date. Ensure that any anticipated changes in Company policies and practices are fully communicated to all customers.

Due to the Company's refusal to respond to Staff's discovery requests, Staff has been unable to confirm completion of the following items:

3. The Company will maintain the Company's books and records in accordance with National Association of Regulated Utility Commissioners (NARUC) Uniform System of Accounts (USOA) for Class B water systems.
4. Develop Continuing Property Records (CPRs) for all of the Company's Plant in Service and Contribution in Aid of Construction (CIAC).
5. Keep the Company CPRs up to date and complete.
6. Develop a list of duties and responsibilities for any employee that performs work for the Company and maintains records of the number of hours worked with description of the functions performed by the employee.
7. Develop and document a un-collectables write-off policy where after six months of non-payment, an account is written off.
8. Document each invoice received the date that each item on the invoice is placed into inventory and then subsequently the date when the item is placed into plant service.

Furthermore, since the filing of the Company's last rate case, RDE has been the subject of multiple complaints filed by Staff. In all of the instances below, RDE failed to respond to properly served

Complaints. Default Determination was granted by the Commission, and its General Counsel has been authorized to seek penalties.

- a. Staff filed a complaint against RDE for failure to file an annual report, on June 5, 2017.¹⁰ On September 15, 2017, the Commission's General Counsel's Office filed a petition in circuit court seeking penalties.¹¹ However, the petition was voluntarily dismissed on May 3, 2018, after RDE submitted its 2016 Annual Report.
- b. On May 25, 2018, Staff filed a second complaint against RDE, for failure to file its 2017 Annual Report.¹² The Commission's General Counsel's Office filed a petition in circuit court seeking penalties on February 13, 2019.¹³ Notice of the petition was properly served on RDE on May, 24, 2019; however, as of the date of this Report, no counsel for RDE has made an appearance in the case, and RDE has failed to respond to the petition.
- c. On December 6, 2018, at the direction of the Commission, Staff filed another complaint against RDE for failure to comply with Section 393.358, RSMo,¹⁴ 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. RDE failed to file its required statement with the Commission affirming compliance with the statute. As of this date, RDE has not responded to Commission's Orders from August 28, 2018, or October 31, 2018, directing it to file the statement required by Section 393.358.3, RSMo. On April 26, 2019, the Commission's General Counsel Office filed a petition in circuit court seeking penalties.¹⁵ The petition was properly served on RDE on May 24, 2019; however, as of the date of this Report, no counsel for RDE has made an appearance in the case, and RDE has failed to respond to the petition.

Since the Commission opened this investigation, Staff has filed an additional complaint against RDE. On July 15, 2019, Staff filed a Complaint for failure to file its 2018 Annual Report, and failure to pay its 4th Quarter Assessment for Fiscal Year 2019.¹⁶ RDE failed to answer Staff's

¹⁰ See Case No. WC-2017-0321.

¹¹ See Case No. 17CT-CC00980.

¹² See Case No. WC-2018-0352.

¹³ See Case No. 19CT-CC00032.

¹⁴ See Case No. WC-2019-0169.

¹⁵ See Case No. 19CT-CC00096.

¹⁶ See Case No. WC-2020-0008.

complaint, and on August 20, 2019, Staff filed its *Motion for Default Judgment and for Authority to Seek Penalties*. As of the filing of this Report, the Commission has yet to rule on Staff's Motion.

Further, RDE has refused to respond to nearly all of the 64 Data Requests filed by Staff in this matter that request information necessary for Staff to conduct a proper investigation of RDE's operations. After several attempts to elicit responses to its Data Requests, Staff filed its *Motion to Compel Discovery and Motion for Expedited Treatment* on June 21, 2019. On July 10, 2019, the Commission issued its *Order Directing RDE Water Company to Respond to Staff's Data Requests*, providing RDE until July 30, 2019, to respond to Staff's outstanding Data Requests, and informing RDE that Section 386.570, RSMo, provides that any public utility that violates or fails to comply with a Commission order is subject to a penalty of not less than one hundred dollars or more than two thousand dollars for each offense.¹⁷ On August 6, 2019, Staff filed its *Notice of Continued Non-Response to Data Requests*, informing the Commission that RDE failed to comply with its July 10, 2019, Order. At this time, RDE has still not provided Staff with the necessary responses to its Data Requests.

As a result of the Company's failure to comply with Commission Statutes, regulations, and Commission Orders, RDE is potentially subject to several thousands of dollars in penalties to this Commission.

Conclusions

Staff concludes that RDE has thoroughly demonstrated it is either unwilling or unable to provide safe and adequate service to its customers. By failing to properly disinfect the drinking water, conduct repairs to ensure adequate pressure is maintained, and failure to comply with DNR administrative orders, RDE is not sufficiently safeguarding the public health. By repeatedly failing to comply with Commission statutes and regulations, failing to comply with Commission orders, failing to even respond to allegations of noncompliance, and failing to respond to Staff's Data Requests, RDE has demonstrated that it lacks the administrative ability to properly operate a regulated utility, or is not interested in conducting the administrative functions necessary to properly operate as a regulated utility in this state. By failing to hire appropriate operations employees or conduct critical maintenance, RDE has shown it is potentially over earning. As the Company is unresponsive to administrative remedies from the Commission, Staff recommends the utility's assets be placed under the control and responsibility of a receiver, and that the Commission direct the receiver to transfer or sell the utility's assets to a company with the capability to operate it in compliance with the law; thus protecting its customers.

¹⁷ The Commission also stated that for a continuing violation, each day of such violation is a separate and distinct offense subject to additional penalties.

