

BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

In the Matter of the Investigation of Howison Heights Inc.'s Ability to Provide Sufficient and Efficient Service)
) Docket No. 13-HHIW-460-GIV
)

In the Matter of the Application of Howison Heights, Inc. for Approval of the Commission to Make Certain Changes in its Rates for Water Service)
) Docket No. 13-HHIW-570-RTS
)

DIRECT TESTIMONY OF
STACEY HARDEN
ON BEHALF OF
CITIZENS' UTILITY RATEPAYER BOARD

JANUARY 17, 2014

VOLUME 1 of 2

TABLE OF CONTENTS

	Page
I. Statement of Qualifications	3
II. Purpose of Testimony	4
III. Summary of Recommendations	5
IV. Howison's Rate Increase Request	
A. 12-HHIW-382-RTS	5
B. 13-HHIW-570-RTS	7
V. Water Quality	17
VI. Financial Practices and Potential Remedies	20
VII. Conclusions and Recommendations	29

Exhibit SMH-1

CURB's Report and Recommendation to Commission in Docket No. 12-HHIW-382-RTS, February 9, 2012.

Exhibit SMH-2

CURB's Reply to Staff's Report and Recommendation to Commission in Docket No. 13-HHIW-570-RTS, May 20, 2013.

Exhibit SMH-3

CURB's Reply to Staff's Report and Recommendation to Commission in Docket No. 13-HHIW-570-RTS, August 5, 2013.

Exhibit SMH-4

January 7, 2014 Kansas Department of Health and Environment Letter to Howison

Exhibit SMH-5

Company responses to Data Requests

1 **I. STATEMENT OF QUALIFICATIONS**

2 **Q. Please state your name and business address.**

3 A. My name is Stacey Harden. My business address is 1500 SW Arrowhead Road, Topeka,
4 Kansas, 66604.

5

6 **Q. By whom and in what capacity are you employed?**

7 A. I am employed by the Citizens' Utility Ratepayer Board ("CURB") as a Regulatory
8 Analyst.

9

10 **Q. Please describe your educational background.**

11 A. I earned a Bachelor of Business Administration degree from Baker University in 2001. I
12 earned a Master of Business Administration degree from Baker University in 2004.

13

14 **Q. Please summarize your professional experience.**

15 A. I joined the Citizens' Utility Ratepayer Board as a Regulatory Analyst in February
16 2008. Prior to joining CURB, I was the manager of a rural water district in Shawnee
17 County, Kansas for five years. I am currently an adjunct faculty member at Friends
18 University, where I am an undergraduate instructor in business and accounting courses
19 such as Data Development and Analysis, Financial Decision Making, Fundamental
20 Financial Accounting Concepts, Financial Reporting of Assets, Debt & Equity, and
21 Managerial Statistics.

22

1 **Q. Please provide the Commission additional information about your experience in the**
2 **water utility industry.**

3 A. From 2003 until I began employment with CURB in 2008, I served as the office
4 manager of Shawnee County Consolidated Rural Water District #4 (“CRWD #4”).
5 At the end of my employment, CRWD #4 had over 4,500 residential customers
6 (making it the largest rural water district in the State of Kansas), one wholesale
7 customer (Jackson County Rural Water District #1) and two water treatment plants.
8 During my tenure at CRWD #4, I had many job responsibilities which provide me with a
9 valuable insight into water utility management, including the day-to-day operations,
10 financial requirements, and various service issues.

11

12 **Q. Have you previously testified before the Commission?**

13 A. Yes. I previously offered testimony in KCC Docket Nos. 08-WSEE-1041-RTS, 10-
14 KGSG-421-TAR, 10-EPDE-497-TAR, 10-BHCG-639-TAR, 10-SUBW-602-TAR, 10-
15 WSEE-775-TAR, 10-KCPE-795-TAR, 10-KCPE-415-RTS, 11-SUBW-448-RTS,
16 12-SUBW-359-RTS, 12-MKEE-410-RTS and 12-MKEE-491-RTS.

17

18 **II. PURPOSE OF TESTIMONY**

19 **Q. What is the purpose of your testimony?**

20 A. The purpose of my testimony is to address Howison Heights, Inc.’s (“Howison” or
21 “Company”) rate application, water quality, and the Company’s financial practices and
22 potential remedies.

23

1 **III. SUMMARY OF RECOMMENDATIONS**

2 **Q. What are your recommendations to the Commission?**

3 A. I recommend the Commission:

- 4 • approve a general rate increase of \$27,266 for the Company;
- 5 • hold the increase in reserve until a qualified water system operator and an
- 6 independent financial agent is hired to operate and manage the utility; and
- 7 • rescind the interim rates approved on April 17, 2013, and order a refund of the net
- 8 revenues received by the Company from this interim rate increase.

9

10

11 **IV. HOWISON'S RATE INCREASE REQUEST**

12 **A. 12-HHIW-382 RTS**

13 **Q. Did you conduct an audit of Howison's rate application in 12-HHIW-382-RTS**
14 **("382 Docket")?**

15 A. Yes. The results of my audit were included in a Report and Recommendation I authored
16 and which was filed on behalf of CURB on February 9, 2012. This report and
17 recommendation is attached to this testimony as Exhibit SMH-1.

18

19 **Q. What was Howison's requested rate increase in the 382 Docket?**

20 A. Howison requested an increase in rate of \$41,652, based upon a 2010 test year.

21

22

23

1 **Q. What was your recommendation to the Commission in the 382 Docket?**

2 A. I recommended the Commission deny Howison's application because the Company did
3 not provide sufficient evidence to determine if the requested rates were just and
4 reasonable.

5

6 **Q. Despite your February 9, 2012, recommendation to deny Howison's rate increase,**
7 **did you make a recommendation that, if approved by the Commission, might have**
8 **resulted in a rate increase for the Company?**

9 A. Yes. My recommendation was based upon the fact that Howison did not provide evidence
10 that supported the Company's operating expenses. However, I recognized that Howison
11 is owned and operated by a person who is unfamiliar with the business of utility
12 regulation in Kansas, and therefore may have been unfamiliar with the evidentiary
13 requirements for a general rate increase. For that reason, I recommended that the
14 Commission provide Howison with a list of evidence the Company would need to collect
15 for a six-month period. At the end of the six-month period, Howison could provide the
16 collected evidence and return to the Commission for approval of an appropriate rate
17 increase.

18

19 **Q. What evidence did you recommend the Commission order Howison to collect for a**
20 **six-month period in order to be considered for a rate increase?**

21 A. I recommended the Commission require Howison to collect evidence supporting the
22 Company's revenues and expenses. Specifically, I recommended Howison collect the
23 following evidence:

- 1 (1) A copy of invoices – not statements or cancelled checks – for all items purchased
2 for Howison Heights, Inc.
3
4 (2) A copy of tax statements including the remittance advices from invoices or
5 receipts from the agency collecting the taxes.
6
7 (3) A copy of a current insurance policy for Howison Heights, Inc.
8
9 (4) A copy of all terms, conditions, balances, and payments on all loans or debts
10 currently owned by Howison Heights, Inc. as of June 30, 2012.
11
12 (5) A copy of the Howison Heights, Inc., business checking account.
13
14 (6) A copy of Howison’s customer water usage report, customer payment history, and
15 its accounts receivable register.
16
17 (7) A copy of Howison’s completed election to pay the Clean Water Drinking Fee
18 filed with the Kansas Department of Revenue.
19

20 **Q. Did the Commission adopt your recommendations?**

21 A. The Commission never had the opportunity to rule on any recommendations in the 382
22 Docket, as Howison chose to withdraw its application on August 8, 2012. The
23 Commission approved Howison’s request to withdraw its application on August 22,
24 2012.

25
26 **B. 13-HHIW-570-RTS**

27 **Q. Before beginning a discussion on the merits of the Company’s rate application,**
28 **do you have any preliminary concerns regarding the Company’s application?**

29 A. Yes, I do. I have filed testimony in a dozen dockets before the Commission, including
30 applications where utilities filed for a rate increase with a waiver of the filing
31 requirements contained in K.A.R. 82-1-231, and have never been in a situation such as

1 this one. The Company's request for a rate increase does not include a single piece of
2 testimony from a Company representative. In fact, there is not one filing in the ten
3 months since this docket was opened that includes testimony or statements from a
4 Company witness that attests to the validity and accuracy of the evidence contained in its
5 filing. The Company's failure to provide a witness that will attest to the accuracy of
6 evidence leaves me and Staff's witnesses in the unenviable position of making
7 assumptions and generalizations that sometimes are at odds with each other, sometimes
8 unnecessarily so. Unfortunately, the Company's lack of testimony or presentation of
9 evidence means that I can respond to only one party – Staff. It is not my desire or
10 intention to discredit Staff's witnesses, but the conundrum in this proceeding is that Staff
11 is the only party, other than CURB, that has offered any statements regarding the
12 appropriateness of the Company's revenues, expenses, and rate increase request.

13
14 **Q. Since Howison's rate case application in 13-HHIW-570-RTS ("570 Docket") the**
15 **proceeding has taken several different turns. Please provide a road map of the**
16 **the rate recommendations and orders made in this proceeding.**

17 A. The following is a brief overview of the rate recommendations and related Commission
18 orders in the 570 Docket:

- 19 • March 19, 2013: Howison files an application seeking a general rate increase of
20 \$48,702. Howison's application includes a request for interim rate relief in the
21 amount of \$48,702. No Company testimony supporting the application is
22 provided.

- 1 • April 17, 2013: the Commission approves Howison’s request for interim rate
2 relief in the amount of \$48,702 to remain in effect through December 31, 2013, or
3 until the Commission makes a final determination regarding Howison’s
4 application.
- 5 • May 9, 2013: Staff recommends approval of a general rate increase of \$47,231.
6 Staff’s recommendation is based upon a 2010 test year.
- 7 • May 20, 2013: I filed a report with the Commission recommending the
8 Commission deny Howison’s request for a general rate increase and order a
9 refund of any monies received through interim rates. On the same day, the
10 Company filed a statement indicating that it concurred with Staff’s
11 recommendation.
- 12 • June 6, 2013: the Commission issued an order adopting Staff’s May 9, 2013,
13 recommendation.
- 14 • June 20, 2013: the Commission set aside its June 6, 2013, Order, and ordered
15 further investigation by Staff.
- 16 • July 26, 2013: Staff recommends the Commission approve a general rate increase
17 of \$28,891. Staff’s recommendation is based upon a 2012 test year.
- 18 • August 5, 2013: I filed a report with the Commission recommending a general
19 rate increase of \$27,266. My recommendation was based on the use of a 2012 test
20 year. I also recommended that any increase attributable to the operation of the
21 utility be held in reserve until a qualified water system operator was hired to
22 operate and manage the utility.

- 1 • August 5, 2013: Howison filed a report disputing Staff's findings and amended its
2 rate increase request to \$40,111.
- 3 • December 17, 2013: the Commission issued an order extending interim rate relief
4 until May 31, 2014.

5

6 **Q. Please provide a brief overview of your May 20, 2013 recommendation to the**
7 **Commission.**

8 A. On May 20, 2013, I recommended the Commission deny Howison's request for a general
9 rate increase and a refund of any monies received through interim rates. A copy of my
10 report and recommendation is attached to my testimony as Exhibit SMH-2.

11

12 **Q. Why did you recommend the Commission deny Howison's request for a general rate**
13 **increase in the 570 Docket?**

14 A. I recommended the Commission deny the Company's application because the Company
15 failed to provide substantial, competent evidence to support its rate increase request. My
16 recommendation is consistent with the recommendation I filed in the 382 Docket. The
17 Company's application in the 570 Docket was based upon the same 2010 test year on
18 which the 382 Docket was based. However, instead of attempting to provide evidence
19 supporting its request or testimony explaining any of the Company's revenues or
20 expenses for 2010, the Company simply relied upon the *pro forma* schedules that were
21 prepared by Staff in the 382 Docket.

1 **Q. Do you agree with the Company's use of Staff's *pro forma* schedules from the 382**
2 **Docket to support its rate increase request in the 570 Docket?**

3 A. No, I do not. Staff's adjustments made in the 382 Docket are not based on actual
4 verifiable evidence that could stand on its own in support for the utility's request for a
5 rate increase. In the 382 Docket, Staff admitted that it was "able to trace some of the
6 expenses reported in the Company's income statement to original documents and
7 invoices, but a sizable percentage of reported expenses had no support."¹ Despite the
8 "large volume of missing information"² Staff chose to estimate, assume and predict many
9 of Howison's expenses. The Company's request for a rate increase in the 570 Docket is
10 made solely on the basis of these estimates, assumptions and predictions, which were
11 made in lieu of actual verifiable evidence. Further, because the Company chose to
12 voluntarily withdraw its application in the 382 Docket, the Commission was never given
13 the opportunity to render a decision on the appropriateness of Staff's *pro forma*
14 schedules.

15
16 **Q. Please provide a brief overview of your August 5, 2013 recommendation to the**
17 **Commission.**

18 A. On August 5, 2013, I filed a report recommending the Commission rescind its interim
19 rate relief order and approve a rate increase of \$27,266. I also recommended that any
20 increase attributable to salary and wages be held in reserve until a qualified water system

¹ February 8, 2012, KCC Staff Report and Recommendation In the Matter of the Application of Howison Heights, Inc., for Approval of Certain Changes in its Charges for Water Service; KCC Docket No. 12-HHIW-382-RTS, at page 4.

² *Id.* At page 6.

1 operator was hired to operate and manage the utility. A copy of my report and
2 recommendation is attached to my testimony as Exhibit SMH-3.

3
4 **Q. Why did you recommend that any increase in rates attributable to salary and wages**
5 **be held in reserve until a qualified water system operator was hired by the**
6 **Company?**

7 A. My recommendation is based on my opinion that the Company's current owner, operator
8 and manager – Mr. Tim Howison – is not able to effectively operate the utility. I
9 completely agree with Staff's July 26, 2013, statement that "Howison has lost the trust
10 and respect of its customers, and they are deeply dissatisfied with their water service.
11 This is a condition which has no chance of being resolved until the water quality and
12 service quality issues discussed above are resolved."³ The evidence presented in the 570
13 Docket, as well as in 13-HHIW-460-GIV ("460 Docket") and the 382 Docket, show a
14 lengthy history of fiscal mismanagement, a high number of customer complaints, and a
15 low quality of water being provided to the Company's customers. The evidence of
16 mismanagement in this company – which is solely in the hands of the Company's owner
17 and manager, Mr. Howison – has exceeded any level of reasonableness. Therefore, my
18 recommendation is based on my opinion that until the Company makes personnel
19 changes, there is no opportunity for a resolution to the Company's current problems.

20
21
22

³ KCC Docket No. 13-HHIW-570-RTS, July 26, 2013, Staff's *Report and Recommendation*, at page 11.

1 **Q. Do you have concerns with the update of the Company's test year to 2012?**

2 A. Yes. On June 26, 2013, the Commission ordered Staff to conduct further investigation
3 into the Company's rate application. This investigation included updating the Company's
4 test year from 2010 to 2012. The Commission denied CURB's request to allow me to
5 accompany Staff during on-site visits, so that I might observe firsthand the available
6 evidence supporting the 2012 test year. I requested evidence from the Company
7 supporting its revenues and expenses for the 2012 test year. However, the Company's
8 replies were unresponsive, including responses such as "ditto", "quit twisting the facts",
9 and "I know what your twisted mind is trying to do."⁴ Because the Company refused to
10 answer CURB's data requests, I had to obtain the available evidence supporting a 2012
11 test year from Staff. Once again, the Company has failed to supply testimony or
12 statements supporting its test year revenues and expenses, and I am left responding to
13 evidence provided by Staff.

14

15 **Q. Have you made subsequent efforts to obtain 2012 test year data from the Company?**

16 A. Yes. In preparation for the evidentiary hearing ordered by the Commission in this
17 proceeding, I issued additional data requests on December 17, 2013. I asked the company
18 to provide for the following 2012 test year data:

- 19 • a statement from Saline County that shows the property taxes owed by Howison
20 Heights, Inc. as of December 31, 2012,
- 21 • a statement from the Kansas Department of Revenue that shows the Water
22 Protection Fee owed by Howison Heights, Inc. as of December 31, 2012,

⁴ Howison's responses to CURB's Data Requests 38-59 is attached as part of Exhibit SMH-3.

- 1 • a copy of Howison Heights, Inc. 2012 Federal Income Tax Return, and
- 2 • a copy of Howison Heights, Inc.'s 2012 general ledger, balance sheet, income
- 3 statement, statement of retained earnings, and any other 2012 financial reports.

4

5 **Q. Did the Company provide timely responses to your discovery request?**

6 A. No. The responses were due on January 3, 2014. After several requests from CURB, the

7 Company finally provided overdue responses to my data requests on January 16, 2014,

8 after my testimony had been fully prepared. An initial review of the responses results in

9 no changes to any of my recommendations, as Howison has continued the financial

10 mismanagement discussed later in my testimony. I have attached the Company's

11 responses to my testimony as Exhibit SMH-5

12

13 **Q. Your recommendation was filed with the Commission over five months ago. Is it still**

14 **your recommendation that the Commission rescind its order for interim rate relief**

15 **and approve a rate increase of \$27,266, and hold in reserve an amount from the rate**

16 **increase that is attributable to salary and wages until a qualified water system**

17 **operator is hired to operate and manage the utility?**

18 A. Yes it is.

19

20 **Q. Why should the Commission rescind its April 17, 2013, order approving interim**

21 **rates and order refunds to customers?**

22 A. Interim rate relief is only awarded to prevent irreparable harm to the utility. It is clear that

23 the additional infusion of revenue has failed to prevent such harm to Howison. The

1 condition of the Company is arguably worse now than it was when the Commission
2 approved the interim rates. Since interim rate relief of \$48,702 was awarded, the
3 Company failed in securing refinancing on its mortgaged debts, filed for bankruptcy
4 protection, failed in providing safe drinking water to its customers during a 36-day boil
5 water advisory, and is only a few days away from commencement of a formal
6 enforcement action by KDHE for failure to correct several deficiencies.⁵ It is my opinion
7 that despite the infusion of additional revenues from interim rates, the company is in
8 worse financial condition today than it was when the interim rates were approved.

9
10 **Q. Has the Company improved the water utility system since being awarded the**
11 **interim rate increase of \$48,702 on April 17, 2013?**

12 A. No. There has been no verifiable evidence presented by the Company in this or any other
13 proceeding to identify any improvements that have been made as a result of the interim
14 rate relief.

15
16 **Q. If the Company did not use the increased revenues obtained from interim rates to**
17 **improve the water utility, how did the Company use the additional revenues?**

18 A. I don't know. In data requests issued on December 17, 2013, I requested evidence to
19 quantify the amount of additional revenues received through interim rates, as well a list
20 of expenses that were paid in 2013. Unfortunately, the Company objected to my
21 questions because they referred to data outside the scope of the 2012 test year data. In
22 response to the Company's objections I withdrew the data requests. Because I was not

⁵ January 7, 2014 Letter from KDHE is attached as Exhibit SMH-4

1 able to receive this evidence from the Company, I cannot specify on how the Company
2 used the increased revenues obtained from interim rate relief.

3
4 **Q. In your opinion, what would the financial condition of the Company be today, if the**
5 **Commission denied the application for interim rate relief?**

6 A. In my opinion, the Company would be in no worse condition than it is today. As I
7 detailed earlier, there is no evidence the Company made any improvements to the water
8 system with its increased revenues. The approval of interim rate relief – which increased
9 rates 127% - has done nothing to improve the Company’s ability to provide sufficient and
10 efficient service. Further, it has become apparent during these proceedings that the
11 financial woes of this Company are symptoms of gross mismanagement. The financial
12 problems faced by Howison cannot be fixed with an additional \$48,702 in annual
13 revenues. At this point, in my opinion, there is no amount of rate increase that will
14 unravel the mismanagement of this water utility company.

15
16 **Q. Should the Commission order the Company to refund the additional revenues it**
17 **received through interim rate relief?**

18 A. Yes. The purpose of the interim rate relief approved by the Commission was to prevent
19 irreparable harm to the utility. There is no evidence that suggests the interim rate relief
20 helped avoid irreparable harm or improved the condition of the Company. In fact, all
21 evidence in this proceeding indicates that the Company is in worse condition now than it
22 was before the approval of interim rates. Unless the Company can provide evidence
23 showing the increased revenues received from interim rate relief were used to improve

1 the Company, the increased revenues received by the Company should be refunded to
2 customers.

3
4 **V. WATER QUALITY**

5 **Q. Are you familiar with the water quality testing procedures required by the Kansas
6 Department of Health and Environment (“KDHE”) for public water suppliers?**

7 A. Yes I am.

8
9 **Q. Please summarize the water quality testing standards employed by KDHE.**

10 A. The KDHE requires all public water suppliers to submit water samples for the testing of
11 contaminants. A water supplier the size of Howison must submit two water samples each
12 month to the KDHE laboratory located near Forbes Field in Topeka – which are tested
13 for coliform bacteria. Throughout the course of a calendar year, the KDHE will require
14 water samples to be submitted for the testing of other contaminants. If the KDHE
15 laboratory determines that the contaminants exceed an established level in a water
16 sample, the KDHE can require the utility to notify the public and can order the utility to
17 make necessary system improvements. In some cases, the KDHE can issue a boil water
18 advisory to the public, signaling that the water is not meeting established drinkable water
19 standards.

1 Q. **Have you reviewed the KDHE laboratory reports that the Company has filed in this**
2 **proceeding, as well as the 460 Docket?**

3 A. Yes. Howison has provided its Consumer Confidence Report covering the 2012 calendar
4 year. The Consumer Confidence Report is an annual report that all water suppliers must
5 provide to their patrons each year. This report details the testing results of Howison's
6 water samples.

7
8 Q. **According to the Consumer Confidence Report, does Howison's water meet**
9 **established drinking water standards?**

10 A. Yes. For the test year January 1, 2012 through December 31, 2012, Howison's water
11 meets the KDHE's established drinking water standards.

12

13 Q. **On October 10, 2013, did the KDHE issue a boil water advisory for Howison's**
14 **customers?**

15 A. Yes.

16

17 Q. **Was the boil water advisory issued because a sample revealed contaminant levels**
18 **that exceeded established drinking water standards?**

19 A. No. The KDHE issued a boil water advisory due to fluctuating chlorine levels in
20 Howison's water. KDHE was alerted to the problem initially by customers complaining
21 that high chlorine levels in the water were burning their skin and eyes. Upon
22 investigation, the KDHE found some areas of the distribution system where chlorine
23 levels dropped below required minimum chlorine level. If chlorine levels remain below

1 the minimum levels, the presence of coliform will likely increase, which may cause the
2 water to be harmful to people if consumed.

3
4 **Q. Has the boil water advisory issued by KDHE been rescinded?**

5 A. Yes. The boil water advisory, which was in place for 36 days, was rescinded on
6 November 15, 2013.

7
8 **Q. Have you reviewed the customer complaints filed in the 460 Docket regarding water
9 quality?**

10 A. Yes, I have. The sheer number of complaints is alarming.

11
12 **Q. Are you recommending a specific course of action that the Commission should take
13 in order to improve water quality?**

14 A. No. I am shocked by some of the details contained in the consumer complaints regarding
15 the color, smell, and taste of Howison's water. However, the KDHE laboratory is
16 reporting that the water is safe for consumption. KDHE's standards for water quality are
17 established in accordance with the United States Environmental Protection Agency's Safe
18 Drinking Water Act. The KDHE constantly monitors water quality and ensures that
19 drinking water is meeting minimum standards. While the aesthetic presentation of the
20 water may not be the greatest, according to KDHE reports, it is safe to drink.

1 **Q. Did you conduct an independent investigation into the Company's water quality and**
2 **customer complaints?**

3 A. No, I did not. CURB does not have available resources to conduct an independent
4 investigation into the Company's water quality. However, it is CURB's understanding
5 that the KCC Staff did conduct such an investigation. Therefore, while I have not
6 included any recommendations relating to an investigation into Howison's water quality
7 in my testimony, CURB reserves its right to adopt or reject recommendations that may be
8 proposed by Staff.

9

10 **VI. FINANCIAL PRACTICES AND POTENTIAL REMEDIES**

11 **Q. Please describe your experience in the financial practices that should be employed**
12 **by a water utility company.**

13 A. As I previously mentioned, I have five years experience managing the day-to-day
14 operations of a large rural water district. During my five years at CRWD #4, I oversaw
15 monthly customer meter readings and billings, was responsible for the preparation and
16 accuracy of all financial statements for the water district, managed the water district's
17 accounts payable and receivable, filed and paid all local, state and federal taxes, and
18 managed the water district's \$2.9 million in cash investments.

19

20 **Q. Based upon your experience, is Howison employing sound financial practices?**

21 A. No. During my analysis of Howison's application in the 382 Docket, I discovered several
22 areas where sound business and financial practices were not being employed. My

1 subsequent analysis in the 570 Docket revealed that the Company had made no effort to
2 improve or resolve the financial deficiencies that were discussed in the 382 Docket.

3
4 **Q. Please describe the areas in which Howison is not employing sound business or**
5 **financial practices.**

6 A. As detailed in each of my reports, which are attached as Exhibits SMH-1, SMH-2, and
7 SMH-3, I have identified the following areas of business and financial practice
8 deficiencies in the Company:

- 9 • Cash Account – the Company has a business checking account at Bennington
10 State Bank. My review of the business checking account statement shows that
11 some customer payments are not deposited in this account; the owner uses the
12 business checking account to pay for personal expenses; the owner or his wife
13 withdraws cash from the business checking account; the owner uses the business
14 checking account to deposit funds from other non-regulated businesses.
15 Additionally, there is no evidence that the bank statements are balanced and
16 matched to the Company’s accounting records either monthly, annually – or ever.
- 17 • Taxes – the Company is responsible for the following taxes: property taxes in
18 Saline County, local sales tax on water sales in Saline County, and the Kansas
19 Water Protection Fee, which is paid to the Kansas Department of Revenue. The
20 inclusion of a salary would make the Company responsible for employer payroll
21 taxes paid to the Internal Revenue Service. My audits in the 382 Docket and the
22 570 Docket found that the Company has not paid property tax in Saline County
23 since 2010 and currently owes \$10,913.06, has never paid the Saline County sales

1 tax on water sales in Saline County, and has never paid the Kansas Water
2 Protection Fee.⁶ The non-payment of taxes puts the Company at increased risk for
3 tax liens and possible forfeiture of assets by local or State agencies.

- 4 • Insurance – Howison does not carry insurance – liability or otherwise – for the
5 water utility. While this has been a constant concern since I first discovered it,
6 after the recent problems at Howison with over and under chlorination of water,
7 the lack of liability insurance is simply unacceptable. The lack of insurance makes
8 Howison vulnerable in the event of injury or damage caused by the company.
- 9 • Late payments – there is a clear pattern of late payment on all accounts of the
10 Company. I found evidence showing that Howison pays nearly all of its bills for
11 utility service, invoices for supplies, professional services provided by its
12 accountant, quarterly assessments from the Kansas Corporation Commission, and
13 debt payments well after the due date. Late payment of accounts can lead to
14 increased fees and penalties, and can lead to unsatisfactory credit terms, both of
15 which ultimately harm customers.
- 16 • Debt – the analysis of the amount of debt held by this small water utility company
17 is truly startling. At last count, the Company is being asked to repay over
18 \$600,000 in mortgaged debt and fees as a result of a Saline County District Court
19 foreclosure proceeding.⁷ This amount of debt is staggering when compared to the
20 long-term assets held by the Company, which total less than \$100,000. The
21 careless borrowing habits of the Company, possible usage of loan proceeds for

⁶ Company's response to CURB Data Request 64, attached as Exhibit SMH-5

⁷ As calculated in Attachment 2 of Staff's December 10, 2013, *Amended Notice of Filing of Staff's Report and Recommendation; Motion for Hearing and Directives*.

1 non-utility purposes, and the Company's pattern of non-payment have led to
2 foreclosure proceedings, which may result in forfeiture of the utility's assets.

- 3 • Non-compliance with State regulations – the Company is not complying with
4 regulations at the Kansas Corporation Commission or the Kansas Department of
5 Health and Environment (“KDHE”). My investigation in the 570 Docket shows
6 that since Howison received its certificate of service in 2005, it has only filed one
7 annual operating report (2010). Howison has not filed its annual operating report
8 with the Commission for 2011 or 2012. Pursuant to K.S.A. 66-122, the Company
9 is required to file these reports in a timely manner. Additionally, the Company
10 was ordered by KDHE to improve several water system deficiencies in 2009,
11 February 2012, and again in November 2013. The Company has ignored the
12 requests of KDHE and has not resolved the system deficiencies. The failure to
13 comply with state regulations can lead to increased penalties and fees.

14
15 **Q. Have you previously made recommendations to the Commission regarding**
16 **Howison's business and financial practices?**

17 A. In my reports filed with the Commission in the 382 Docket and the 570 Docket, I
18 identified each of the areas where the Company needed to improve its business practices.
19 For example, I explained that the Company was co-mingling the cash account for the
20 water utility system with other non-regulated business revenues and expenses. My
21 remedy for this situation was to recommend the Commission order the Company to stop
22 co-mingling cash accounts. My other recommendations were not complicated – rather

1 they were simple, common-knowledge business practices such as “buy insurance” and
2 “pay taxes”.

3
4 **Q. Did Staff make any recommendations relating to the Company’s business and**
5 **financial practices?**

6 A. Yes. Staff identified similar areas of concern and made similar recommendations in its
7 reports and recommendations filed in the 382 Docket and 570 Docket.

8
9 **Q. What recommendations did Staff make to the Commission in order to improve the**
10 **Company’s business and financial practices?**

11 A. Staff’s recommendations in the 382 Docket and the 570 Docket included the following:
12 (1) maintain a checking account that is used exclusively for water operations, and that all
13 revenues and expenses associated with the water company should be deposited to or paid
14 exclusively from this account, (2) purchase property liability insurance, (3) create and
15 maintain a file folder for the Company’s revenues, and a separate file folder for each
16 expense item shown in Staff’s adjustments, (4) keep a written log of the trips made to the
17 Company’s certificated area and for other water-related business, and several others.⁸

18 Another of Staff’s recommendations was that “Staff shall review Mr. Howison’s
19 maintenance of records at the end of each quarter in 2012 or until Mr. Howison
20 demonstrates that the maintenance of records process is working. Based on Staff’s
21 experience with Mr. Howison, Staff believes the time Staff spends on reviewing Mr.

⁸ February 8, 2012, KCC Staff Report and Recommendation In the Matter of the Application of Howison Heights, Inc., for Approval of Certain Changes in its Charges for Water Service; KCC Docket No. 12-HHIW-382-RTS, at pages 14-16.

1 Howison's establishment and maintenance of the water company's records every quarter
2 would make the next audit more accurate, more complete, and more efficient."⁹
3

4 **Q. Did the Company comply with any of the recommendations made by CURB or Staff**
5 **in the 382 Docket?**

6 A. No. According to Howison's response to Staff Data Request No. 1 in the 570 Docket,
7 "Howison has not had the financial ability to implement Staff's recommendations."
8

9 **Q. Has the Company's failure to comply with previous recommendations led to**
10 **increased costs?**

11 A. Yes. Staff and CURB would have spent a lot less time on Howison's rate application had
12 the Company simply followed through and adopted the simple record-keeping practices
13 we initially recommended. The Company's failure to comply with simple record-
14 keeping and good business practices has led to increased regulatory costs from Staff and
15 CURB.
16

17 **Q. In your opinion, will the Company comply with CURB's or Staff's**
18 **recommendations if they are ordered by the Commission in this proceeding?**

19 A. No. By my count, 12 of Staff's 14 recommendations made in the 382 Docket do not
20 require any expenditure – it's simply a change in procedure or practice. The Company's
21 claim that it did not have the financial ability to implement these recommendations is

⁹ February 8, 2012, KCC Staff Report and Recommendation In the Matter of the Application of Howison Heights, Inc., for Approval of Certain Changes in its Charges for Water Service; KCC Docket No. 12-HHIW-382-RTS, at pages 14-16.

1 not credible and, in my opinion, signals that the Company has no intention of complying
2 with any recommendations made by Staff, CURB or the Commission.

3
4 **Q. If the Company refuses to comply with recommendations or Commission orders,**
5 **what remedies can be taken to ensure customers continue to receive water utility**
6 **service?**

7 A. Unfortunately, there isn't a one-size-fits-all resolution for the Commission, assuming the
8 Company continues to refuse to comply with our recommendations and the
9 Commission's orders. However, the lack of simple answers does not make inaction
10 acceptable. The Commission is responsible for ensuring that Howison's 62 residential
11 customers pay just and reasonable rates and receive safe, sufficient, and efficient service,
12 the same as customers of other regulated utilities in the state of Kansas. These 62
13 customers should not be held responsible for the financial mismanagement of this
14 Company because a simple solution for all its problems does not exist.

15
16 **Q. What action do you recommend the Commission take in order to ensure the**
17 **customers of Howison receive safe, sufficient and efficient water service?**

18 A. I recommend the Commission remove the current manager from the day-to-day
19 operations of the utility. This includes service functions such as meter reading, customer
20 service, and water line repairs. Additionally, the current manager should no longer be
21 permitted to handle the day-to-day financial operations of the Company. This includes
22 preparing customer billing statements, receiving customer payments and depositing
23 payments, paying invoices, and managing the Company's cash account.

1 **Q. If the Commission issues an order removing the current manager from the day-to-**
2 **day operations of the Company, who will manage the water utility?**

3 A. I recommend the Commission oversee a request for proposal (“RFP”) process that would
4 hire a qualified water system operator to oversee the day-to-day operations of the
5 Company. This contractor would perform tasks such as reading customer meters, would
6 maintain and check the water pumps and wells to ensure they are functioning properly,
7 investigate customer complaints regarding low water pressure or quality of water, adhere
8 to water quality requirements of KDHE, and perform repairs to the water distribution
9 system as necessary.

10 Additionally, the Commission should oversee an RFP process to contract with a
11 qualified, independent agent to manage the day-to-day bookkeeping and financial
12 operations of the Company. This contractor, which could also be considered a trustee,
13 would perform the day-to-day administrative and financial duties of the Company such as
14 preparing customer billing statements, receiving and depositing customer payments,
15 paying invoices, preparing monthly financial statements and monthly bank
16 reconciliations, and managing the Company’s cash account. This contractor should also
17 be required to submit quarterly reports detailing the financial transactions of the company
18 to the Commission.

19

20 **Q. Why is important for the Commission to require an independent agent or trustee to**
21 **manage the day-to-day financial operations of the Company?**

22 A. An independent agent should be appointed primarily because the utility needs competent
23 financial management. There is currently not competent financial management at

1 Howison. Further there is no oversight of any kind within the Company. Howison's
2 current manager is responsible for reading customer meters, sending monthly billings,
3 collecting customer payments, paying the Company's bills, and receiving and balancing
4 bank statements. Only one person at the Company knows how much money was actually
5 billed, how much was actually collected, and where the money actually went. The lack of
6 checks and balances creates the perfect conditions for costly errors – even financial fraud.
7 Considering the current financial difficulties being faced by the Company, it is clear to
8 me that the Commission should require an independent agent to perform all financial
9 duties for the company.

10
11 **Q. In your opinion, should the Commission be involved in the Company's management**
12 **decisions, including who should be the manager?**

13 A. In this case, yes. I recognize the Commission's respect for the prerogatives of
14 management. However, such respect should be reserved for competent management.
15 While my recommendation may appear to be extreme, it is clear to me that the
16 Company's current management is incapable of managing the Company, and has taken
17 no action to comply with Commission directives. With remarkable consistency, the
18 Company's manager has failed to answer questions, made excuses for rather than
19 improve the management of the Company, and has resisted following the
20 recommendations made by KDHE, Staff, CURB, and the Commission. In my
21 opinion, the only way to ensure that the Company provides safe, sufficient, and efficient
22 service to its customers at a reasonable cost, is to determine that the current management
23 should not be involved in the day-to-day responsibilities of the Company.

1 **Q. If the Commission approves your recommendations, what happens to the current**
2 **manager of the Company?**

3 A. The current manager of the Company is Mr. Tim Howison, who is also the owner of the
4 Company. My most recent rate increase recommendation of \$27,266 includes an 8%
5 operating margin. The owner of the Company would not be denied the opportunity to
6 receive this operating margin. Thus, he would not be denied the net earnings from the
7 utility's operations.

8

9 **VII. CONCLUSIONS AND RECOMMENDATIONS**

10 **Q. Do you have any final comments or concerns regarding this proceeding?**

11 A. Yes I do. The plight of Howison has been an unduly complicated journey. Initially, I was
12 sympathetic to the plight of Howison – which has only 62 customers – likely making it
13 one of the smallest regulated utilities in the State of Kansas. It was my initial opinion that
14 Howison is owned and operated by a person who was simply unfamiliar with the business
15 of utility regulation in Kansas. However, as time passed, it became clear that this utility
16 was in serious trouble. I recognize that Howison has not implemented a rate increase in
17 several years. I further acknowledge that the rates being charged by Howison at the time
18 of its application were less than neighboring water systems and may not have been
19 sufficient to pay the Company's expenses. However, it is the Company's burden to
20 provide the substantial, competent evidence required to establish cost-based rates in
21 Kansas. This burden is not insurmountable for a utility that keeps and retains records
22 typically kept in the normal course of operating any business.

1 As someone with experience managing a large rural water district, I cannot
2 excuse the deficient management actions and decisions made by Howison's current
3 manager/owner. It should not take numerous CURB and Staff investigations and
4 recommendations for a business owner to know not to co-mingle the cash, assets, and
5 debt of different businesses. Good management of businesses always requires exercising
6 financial responsibility and adhering to accepted business practices. It is my opinion that
7 Howison does neither.

8 The facts in this case show that this water utility has been mismanaged to the
9 brink of total disaster. It is no longer a question of "if" but rather a question of "when"
10 disaster will strike. It is only a waiting game until the water utility assets are seized from
11 the possession of the utility's current owner, either by the bank in a foreclosure
12 proceeding, by creditors in the Bankruptcy court, by the Kansas Department of Revenue
13 for non-payment of taxes, by the Saline County District Court for non-payment of
14 property taxes, or by the Kansas Department of Health and Environment for failure to
15 comply with drinking water standards. There is no longer any merit in attempting to
16 resolve the complaints of any one of these creditors, as Howison's excessive debt to asset
17 ratio is not sustainable and any one or all of the creditors may have the authority to seize
18 the water utility assets.

19 In conclusion, while I may not be able to tell the Commission what the right
20 answer is, I most certainly can advise the Commission of what the wrong answer is. It is
21 extremely unlikely, in my opinion, that the Company's current owner will be able to
22 retain control of utility's assets. There is no amount of money that can be, or should be,
23 shouldered by the Company's 62 customers that can fix the financial distress of this

1 utility. These 62 customers, whose average bills increased from \$33.00 to over \$70.00
2 because of interim rate relief, have consistently suffered low water quality, poor customer
3 service, and disruptions in service. It is unfair and unjust to increase the financial burden
4 on these customers further. The Commission should not add insult to injury by requiring
5 these customers to pay for a resolution that will never come.

6
7 **Q. What are your recommendations to the Commission?**

8 A. I recommend the Commission:

- 9 • approve a general rate increase of \$27,266 for the Company;
- 10 • hold the increase in reserve until a qualified water system operator and an
11 independent financial agent is hired to operate and manage the utility; and
- 12 • rescind the interim rates approved on April 17, 2013, and order a refund of the net
13 revenues received by the Company from this interim rate increase.

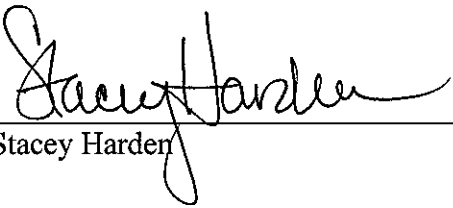
14
15 **Q. Does this conclude your testimony?**

16 A. Yes.

VERIFICATION

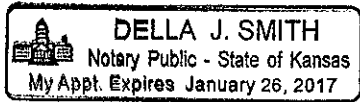
STATE OF KANSAS)
COUNTY OF SHAWNEE) ss:


I, Stacey Harden, of lawful age and being first duly sworn upon my oath, state that I am a regulatory analyst for the Citizens' Utility Ratepayer Board; that I have read and am familiar with the above and foregoing document and attest that the statements therein are true and correct to the best of my knowledge, information, and belief.



Stacey Harden

SUBSCRIBED AND SWORN to before me this 17th day of January, 2014.





Notary Public

My Commission expires: 01-26-2017.

CERTIFICATE OF SERVICE

13-HHIW-570-RTS/13-HHIW-460-GIV

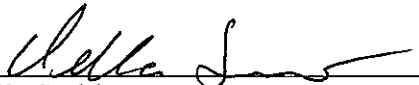
I, the undersigned, hereby certify that a true and correct copy of the above and foregoing document was served by electronic service on this 17th day of January, 2014, to the following parties who have waived receipt of follow-up hard copies:

JAMES G. FLAHERTY, ATTORNEY
ANDERSON & BYRD, LLP
216 S HICKORY
PO BOX 17
OTTAWA, KS 66067
jflaherty@andersonbyrd.com

MICHAEL NEELEY, LITIGATION COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604-4027
m.neeley@kcc.ks.gov

JAY VAN BLARICUM, ADVISORY COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604-4027
j.vanblaricum@kcc.ks.gov

TIMOTHY B. HOWISON, PRESIDENT
HOWISON HEIGHTS, INC
1212 MEYER DR
SALINA, KS 67401-5274
timhowison.remax@yahoo.com


Della Smith
Administrative Specialist