

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
)

Received
on

APR 03 2013

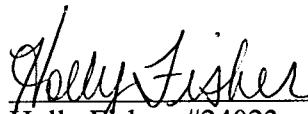
NOTICE OF FILING OF LETTER TO COURT

by
State Corporation Commission
of Kansas

The Staff of the State Corporation Commission of the State of Kansas (Staff and Commission, respectively) files the attached letter to the Saline County District Court and parties to Case No. 12 CV 444, styled *Central National Bank v. Howison Heights, Inc.* (Letter). Staff is filing this Letter for informational purposes only and no Commission action is required at this time.

WHEREFORE, Staff requests the Commission accept this Letter for informational purposes and for such other and further relief as the Commission deems just and proper.

Respectfully submitted,



Holly Fisher, #24023
Litigation Counsel
1500 S.W. Arrowhead Road
Topeka, KS 66604
(785) 271-3312 phone
(785) 271-3167 fax
Attorney for Commission Staff

1500 SW Arrowhead Road
Topeka, KS 66604-4027



Phone: 785-271-3100
Fax: 785-271-3354
<http://kcc.ks.gov/>

Mark Sievers, Chairman
Thomas E. Wright, Commissioner
Shari Feist Albrecht, Commissioner

Sam Brownback, Governor

April 3, 2013

The Honorable Jerome P. Hellmer, Chief Judge
City-County Bldg.
300 W Ash St
P.O. Box 1760
Salina, KS 67402-1760

RE: *Central National Bank v. Howison Heights, Inc., et al.*, Case No. 12 CV 444

Dear Judge Hellmer,

The purpose of this letter is to assist the Court and the parties to the above-stated action in understanding the Kansas Corporation Commission's ("KCC" or "Commission") concerns in this proceeding and to provide the Court and all parties with information regarding the statutes affecting anyone who may acquire a public utility.

As you are aware, the KCC regulates public utilities in Kansas, requiring safe, adequate and reliable services at reasonable rates. In the above-stated action, the KCC intervened more specifically because it is interested in ensuring that the 62 customers of Howison Heights, Inc. ("Howison") continue to receive uninterrupted water service in an efficient and sufficient manner through what may be a transition of the ownership of public utility property through the judicial foreclosure process and eventual sheriff's sale, as well as beyond any possible sale.

While the owner(s) of a public utility must be concerned with a myriad of statutes and regulations, there are a few statutes the Commission would like to bring to the Court's attention as this case proceeds.

First, under normal circumstances, the KCC must approve the acquisition of a public utility property and either the acquisition of a new Certificate of Convenience or transfer of an existing Certificate of Convenience ("Certificate"). *See*, K.S.A. 66-131, 66-136. The Commission's concern in such matters is that any party acquiring a public utility has the ability to provide reasonably efficient and sufficient service at just and reasonable rates. *See*, K.S.A. 66-1,232. As such, the Commission is concerned that the purchasing party:

- (1) has the financial wherewithal to run the public utility;
- (2) understands the legal boundaries of the public utility (maps, legal descriptions, and/or customer lists);
- (3) understands the existing rates and tariffs for the public utility they are acquiring; and
- (4) personally has the technical knowledge to run the public utility or has engaged the proper personnel with the technical knowledge to run the public utility.

In normal circumstances, the Commission makes its determination of the fitness of the purchasing party prior to issuing the transfer or new Certificate. Because of the unusual circumstances of the foreclosure and potential sheriff's sale of Howison Heights, Inc., the KCC cannot be assured that any prospective purchaser of the public utility will be able to fulfill all of the prerequisites above before purchasing the property. It is fairly certain that the prospective purchaser will not timely apply for either the transfer of or creation of a new Certificate with the Commission prior to their purchase of the public utility property. Regardless of when the new owner applies for a Certificate, the Commission will investigate the public utility's owner, pursuant to its authority under K.S.A. 66-1,231.

Second, every public utility, including Howison, is required to provide reasonably efficient and sufficient service at just and reasonable rates. *See*, K.S.A. 66-1,232. The KCC is concerned that there may be potential for repossession of certain personal property or fixtures, or both, utilized in the provision of water service, that may be under security agreements with parties to the above-stated action. Howison must be permitted to continue to provide reasonably efficient and sufficient water service to its 62 customers throughout the pendency of the above-stated action, up to and including such time that there may be a sheriff's sale. If and when the ownership of the water utility transitions to another party, the new owner of the public utility, pursuant to K.S.A. 66-1,232, must continue to provide the same sufficient and efficient public utility service. In addition, any new owner should not pursue selling utility assets, such as a water well, prior to receiving a certificate from the Commission and explaining to the Commission how efficient and sufficient service will be provided to customers.

Third, any new owner may not change any rate, charge, classification and division of rates without approval by the Commission. *See*, K.S.A. 66-1,232.

While the Commission recognizes that the Court's jurisdiction in this matter is limited to the matters before it, the Commission must reiterate that it is very concerned that sufficient and efficient public utility service continues to be provided to the 62 water customers of Howison Heights, Inc. This service must continue, without regard to the owner of the public utility property. The transfer of ownership of utility property requires an orderly preapproval process by the Commission that is not well-suited to a sale by auction to an unknown buyer. Therefore, we would welcome any recommendations from the Court or the parties as to how to ensure that

this happens, both during the pendency of this action and after. Please do not hesitate to contact either Michael Neeley or myself.

Sincerely,

A handwritten signature in cursive script that reads "Holly Fisher". The signature is written in black ink and is positioned above the printed name.

Holly L. Fisher

Cc: John F. Thompson, II.;
Michael P. Alley, Aaron O. Martin;
Susan G. Saidian.

CERTIFICATE OF SERVICE

13-HHIW-460-GIV

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing Notice of Filing of Letter to Court was served by electronic service on this 3rd day of April, 2013, to the following parties who have waived receipt of follow-up hard copies.

JAMES G. FLAHERTY, ATTORNEY
ANDERSON & BYRD, L.L.P.
216 S HICKORY
PO BOX 17
OTTAWA, KS 66067
Fax: 785-242-1279
jflaherty@andersonbyrd.com

NIKI CHRISTOPHER, ATTORNEY
CITIZENS' UTILITY RATEPAYER BOARD
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
Fax: 785-271-3116
n.christopher@curb.kansas.gov

ANASTACIA HARDEN
CITIZENS' UTILITY RATEPAYER BOARD
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
Fax: 785-271-3116
s.harden@curb.kansas.gov

C. STEVEN RARRICK, ATTORNEY
CITIZENS' UTILITY RATEPAYER BOARD
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
Fax: 785-271-3116
s.rarrick@curb.kansas.gov

DELLA SMITH
CITIZENS' UTILITY RATEPAYER BOARD
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
Fax: 785-271-3116
d.smith@curb.kansas.gov

SHONDA SMITH
CITIZENS' UTILITY RATEPAYER BOARD
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
Fax: 785-271-3116
sd.smith@curb.kansas.gov

DAVID SPRINGE, CONSUMER COUNSEL
CITIZENS' UTILITY RATEPAYER BOARD
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
Fax: 785-271-3116
d.springe@curb.kansas.gov

TIMOTHY B. HOWISON, PRESIDENT
HOWISON HEIGHTS, INC.
1212 MEYER DR
SALINA, KS 67401-5274
Fax: 785-825-6449
timhowison.remax@yahoo.com

HOLLY FISHER, LITIGATION COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604-4027
Fax: 785-271-3167
h.fisher@kcc.ks.gov

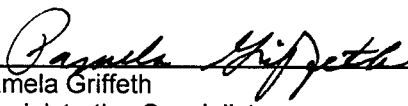
ANDREW FRENCH, ADVISORY COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604-4027
Fax: 785-271-3314
a.french@kcc.ks.gov

CERTIFICATE OF SERVICE

13-HHIW-460-GIV

MICHAEL NEELEY, LITIGATION COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604-4027
Fax: 785-271-3167
m.neeley@kcc.ks.gov

JAY VAN BLARICUM, ADVISORY COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604-4027
Fax: 785-271-3354
j.vanblaricum@kcc.ks.gov



Pamela Griffeth
Administrative Specialist