

THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

Received
on

DEC 13 2013

by
State Corporation Commission
of Kansas

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-R1S

In the Matter of the Investigation of Howison Heights Inc.'s Ability to Provide Sufficient and Efficient Service.)

) Docket No. 13-HHIW-460-GIV

**NOTICE OF FILING OF CURB'S REPLY
TO STAFF'S REPORT AND RECOMMENDATION**

The Citizens' Utility Ratepayer Board (CURB) submits its *Reply to Staff's Report and Recommendation* regarding Staff's report and recommendation and motion for hearing and directive.

CURB's Reply sets forth the evidentiary basis for CURB's recommendation.

Respectfully Submitted,



David Springe #15619
Niki Christopher #19311
C. Steven Rarrick #13127
Citizens' Utility Ratepayer Board
1500 SW Arrowhead Road
Topeka, KS 66604
(785) 271-3200
(785) 271-3116 Fax

VERIFICATION

STATE OF KANSAS)
) ss:
COUNTY OF SHAWNEE)

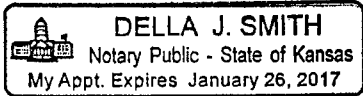
I, Niki Christopher, of lawful age, being first duly sworn upon her oath states:

That she is an attorney for the above named petitioner; that she has read the above and foregoing document, and, upon information and belief, states that the matters therein appearing are true and correct.



Niki Christopher

SUBSCRIBED AND SWORN to before me this 13th day of December, 2013.


Notary Public

My Commission expires: 01-26-2017.

Citizens' Utility Ratepayer Board

Board Members:

Robert L. Harvey, Chair
Ellen K. Janoski, Vice-Chair
Brian Weber, Member
Bob Kovar, Member



State of Kansas
Sam Brownback, Governor

David Sprunge, Consumer Counsel
1500 S.W. Arrowhead Road
Topeka, Kansas 66604-4027
Phone: (785) 271-3200
Fax: (785) 271-3116
<http://curb.kansas.gov>

REPLY TO STAFF'S REPORT AND RECOMMENDATION

TO: Chairman Mark Sievers
Commissioner Thomas E. Wright
Commissioner Shari Feist Albrecht

FROM: Stacey Harden

A handwritten signature in black ink, appearing to read "Stacey Harden".

DATE: December 13, 2013

SUBJECT:

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.

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

EXECUTIVE SUMMARY:

On December 9, 2013, Staff filed a Report and Recommendation with the Commission. This report and recommendation includes the following observations made by Staff:

- "Not only is (Howison) unable to manage its financial affairs, but it is also unable to provide even a modicum of utility services to its customers without substantial assistance from consultants."¹
- "... Staff does not see Chapter 11 reorganization as a viable strategy for Howison going forward."²
- "Howison has demonstrated an inability to prudently manage the water system."³
- "... it is clear to Staff that Howison does not have the competency or financial wherewithal to operate the water system."⁴

¹ December 9, 2013, Notice of Filing of Staff's Report And Recommendation; Motion for Hearing and Directive, Page 1.

² December 9, 2013, Notice of Filing of Staff's Report And Recommendation; Motion for Hearing and Directive, Page 4.

³ December 9, 2013, Notice of Filing of Staff's Report And Recommendation; Motion for Hearing and Directive, Page 5.

⁴ December 9, 2013, Notice of Filing of Staff's Report And Recommendation; Motion for Hearing and Directive, Page 5.

- “It is also abundantly clear to Staff that Howison’s pattern of incompetency, disregard for its customers and disregard for regulatory authority demonstrates the current operator, Mr. Tim Howison, does not have the knowledge, skills, ability, or desire to provide sufficient and efficiency utility service.”⁵
- “Regardless of any cash infusion from a rate increase, Staff does not believe the current operator will be able to improve the customer service to a reasonable – let alone satisfactory – level.”⁶

I agree with Staff’s observations and commend Staff for reaching its conclusion – that “Howison should not continue to operate or own the water system.”⁷ It has consistently been my testimony that the Howison Heights water system is troubled and mismanaged, and that Staff’s previous efforts to improve the Company’s mismanagement have gone without resolution. I further agree with Staff’s recommendation that an evidentiary hearing be scheduled to determine the future of the Howison Heights Water District.

While I agree with the observations and recommendations included in Staff’s report and recommendation, it is my opinion that the Commission should allow Howison’s interim rates, which were approved on April 17, 2013, to expire. Further, if the Commission accepts Staff’s recommendation to hold an evidentiary hearing, the Commission should address Howison’s rate application at that time and determine what, if any, rate increase is appropriate, and whether refunds to customers are necessary.

INTERIM RATES:

On March 19, 2013, Howison Heights, Inc. filed an application seeking Commission approval to increase its retail water rates by \$48,702, a 127% increase over the current rates. Howison also filed a Motion for Interim Rate Relief Subject to Refund on March 18, 2013. Howison's Motion requested that the rate increase of \$48,702 be put into effect on April 1, 2013 and remain in effect through December 31, 2013, or until the Commission makes a final determination regarding Howison's Application. On March 22, 2013, Staff supported Howison’s request for interim rate relief stating “[i]t is Staffs opinion that Howison Heights, Inc. requires a rate increase in order to continue to provide sufficient and efficient water utility service to its customers.”⁸

The Commission approved Howison’s request on April 17, 2013. In its order, the Commission granted “Howison's Motion for Interim Rate Relief Subject to Refund in the amount of \$48,702.

⁵ December 9, 2013, Notice of Filing of Staff’s Report And Recommendation; Motion for Hearing and Directive, Page 9.

⁶ December 9, 2013, Notice of Filing of Staff’s Report And Recommendation; Motion for Hearing and Directive, Page 9.

⁷ December 9, 2013, Notice of Filing of Staff’s Report And Recommendation; Motion for Hearing and Directive, Page 10.

⁸ March 22, 2013, Staff’s Response in Support of Howison Heights, Inc.’s Motion for Interim Rate Relief Subject to Refund, at ¶9.

These interim rates shall go into effect on April 17, 2013 through December 31, 2013 and are subject to true-up and potential refund at such time the Commission rules on Howison's Application for a permanent rate increase.”⁹

The interim rates approved by the Commission increased consumer’s bills by 113%. Before its approval of interim rates, an average customer using 6,000 gallons of water a month paid a water bill of \$33.00. Under the approved interim rates, this same customer now pays a monthly water bill of \$70.19.

Since the April 17, 2013, interim rates were approved, several noteworthy events related to this case have occurred. Staff provides a chronological listing of twelve significant events on page 3 of its report and recommendation. The impact of these events – which include a 36-day boil water advisory – appear to have changed Staff’s opinion of the necessity of Howison’s need for interim rate relief. In April, Staff opined that Howison “requires a rate increase in order to continue to provide sufficient and efficient water utility service to its customers,”¹⁰ Staff now concludes that “(r)egardless of any cash infusion from a rate increase, Staff does not believe the current operator will be able to improve the customer service to a reasonable – let alone satisfactory – level.”¹¹

I agree with Staff’s most recent conclusion and find that it is inappropriate for consumers to continue paying 113% more for their water utility service than they were previously paying. I concur with Staff’s assessment of the ominous financial condition of the Howison Heights water utility. Clearly, the infusion of cash granted to Howison in the April 17 order approving interim rates has had no positive impact on this utility. There is no evidence whatsoever that this rate increase was used to improve the utility’s ability to provide sufficient and efficient service. I cannot attest to what Howison may have done with the increased revenue gained from the interim rates. Howison’s history of comingling of personal and business funds makes it impossible to determine whether the additional revenues simply provided Mr. Tim Howison with extra cash for other expenses. There is no evidence the additional revenues provided by interim rate relief were used to improve the water distribution system.

I further agree with Staff – and have previously recommended – that Mr. Tim Howison no longer be allowed to operate the utility. Based upon the evidence in the record, Mr. Howison is either incapable or unwilling to do the things necessary to be a utility operator. The evidence supporting this conclusion has piled up over the past two years of investigations and inquiries and no evidence to the contrary has been discovered. Mr. Howison **still** does not pay State-required water taxes (even though he collects them from ratepayers). Mr. Howison **still** does not

⁹ April 17, 2013, *Order Granting Motion for Interim Rate Relief Subject to Refund* ¶16.

¹⁰ March 22, 2013, Staff’s Response in Support of Howison Heights, Inc.’s Motion for Interim Rate Relief Subject to Refund, at ¶9.

¹¹ December 9, 2013, Notice of Filing of Staff’s Report And Recommendation; Motion for Hearing and Directive, Page 9.

file KCC-required annual reports in a timely manner. Mr. Howison **still** does not adhere to statutory requirements and orders issued by the Kansas Department of Health and Environment. Mr. Howison **still** has not made the improvements to the utility that have been recommended by Staff or ordered by the Commission. Howison's failure to comply with statutory requirements, as well as his willful disobedience of orders issued by State agencies, are unacceptable for a regulated utility.

Considering these circumstances, it is inappropriate for Howison to continue to be awarded with interim rate relief. I recommend the Commission allow Howison's interim rates to expire as currently scheduled on December 31, 2013. I further recommend the Commission address Howison's rate application at an evidentiary hearing to determine what, if any, rate increase is appropriate, as well as whether customer refunds are required.

RECOMMENDATIONS:

- The Commission should allow Howison's interim rates to expire as scheduled on December 31, 2013;
- The Commission should approve Staff's recommendation and hold an evidentiary hearing in this case;
- The Commission should hear testimony and weigh the evidence regarding Howison's proposed rate increase during an evidentiary hearing.

CERTIFICATE OF SERVICE

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

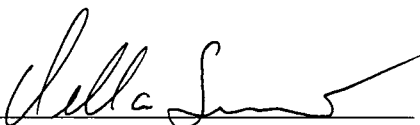
I, the undersigned, hereby certify that a true and correct copy of the above and foregoing document was served by electronic service on this 13th day of December, 2013, to the following parties who have waived receipt of follow-up hard copies:

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