

THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

MAR 29 2013

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)

by
State Corporation Commission
of Kansas

) Docket No. 13-HHIW-570-RTS
)
)

CURB'S RESPONSE OPPOSING MOTION FOR INTERIM RATE RELIEF

The Citizens' Utility Ratepayer Board (CURB) herein files its response opposing the motion of Howison Heights, Inc. for interim rate relief.

I. Background

1. On March 18, 2013, Howison Heights, Inc. ("Howison" or "Company") filed the *Application of Howison Heights, Inc. for Approval of the Commission to Make Certain Changes in its Rates for Water Service* in this docket, requesting a permanent rate increase in the amount of \$48,702.

2. Howison also filed a *Motion for Interim Rate Relief Subject to Refund* on March 18, 2013. Howison's Motion requested permission to put into effect on April 1, 2013, the requested rate increase of \$48,702, to remain in effect through December 31, 2013 or until the Commission makes a final determination regarding Howison's Application.

3. On March 22, 2013, Staff filed its response in support of Howison's motion for interim rate relief of \$48,702, subject to refund.

II. Legal standard for granting the extraordinary remedy of interim rate relief

4. Howison has requested the Commission provide interim rate relief by alleging that it meets the standard prescribed in *Kansas Nebraska Natural Gas Co. v. State Corporation Commission*, 217 Kan. 604, 614, 538 P.2d 702 (1975) (hereafter, *Kansas Nebraska*) for receiving interim rate relief. In the *Kansas Nebraska* case, the KCC had denied the company interim rate relief. On appeal to district court, the KCC's decision was vacated. On appeal, the Kansas Supreme Court reversed the district court and reinstated the KCC decision. Under the two-step analysis set forth in *Kansas Nebraska*, Howison has the threshold "burden of making a prima facie showing that its current rates are no longer just and reasonable, using acceptable methods of accounting procedures in determining and allocating costs and rate bases." 217 Kan. at Syl. 5. "Whether an interim rate should be granted pending final decision on an application for change in rates should ordinarily depend on whether irreparable harm would result to the utility by reason of a distinctive and sudden deficiency in revenue which is not subject to recovery." *Id.*, at Syl. 4. Thus, the burden is on Howison to present a *prima facie* case that establishes "a distinctive and sudden deficiency in revenue" and only then will the KCC consider evidence that supports the "extraordinary remedy of emergency rate relief" *Id.*, at 608. If the burden has been met, the company then must provide evidence that there is a "need for emergency rate relief with evidence indicating that earnings have declined to such a point that the utility cannot be expected to continue to render efficient and sufficient service to its customers." 217 Kan. at 608.

5. In denying interim rate relief in the *Kansas Nebraska case*, the KCC found that although the company had presented evidence of declining revenues, it also found that (1) the decline did not threaten the financial integrity of the company, (2) did not threaten the continuation of reasonably efficient and sufficient service to the public, (3) did not threaten usurpation or confiscation of its property by reason of its existing rates, (4) the decline was in

part created by questionable management decisions and not entirely by declining sales due to customer conservation, and (5) the evidence of the decline in revenues based on annualized data from a single heating season was too speculative to support granting the extraordinary remedy of interim rates. *Id.*, at 608. Reviewing this decision, the Supreme Court recognized the wide latitude given KCC in rate matters, but noted that “Although KCC must have some flexibility in determining what is reasonable and just under the particular circumstances, we think requiring a showing of virtual impending bankruptcy is indeed too stringent a standard to be fixed before interim rate relief can be granted.” *Id.*, at 613. The court, while acknowledging the difficulty of developing guidelines for the analysis of the conditions that would merit interim relief, nevertheless upheld the KCC’s analysis, stating “Necessarily, the determination as to whether a situation warrants the grant of interim rate relief to a public utility rests in the sound discretion of the corporation commission within the perimeter of reasonable and justice to the utility and those served by it.” *Id.*, at 614 .

6. The Commission’s decision in KCC Docket No. 121,454-U expresses expectations for utilities requesting interim rate relief. In its May 30, 1980, Order, *In the Matter of the Application of the Western Power Division of Central Telephone & Utilities Corporation for Approval of the Commission to Make Certain Changes in its Charges for Electric Service*, the Commission opined that applications for interim relief are “limited by a presumption that all is well with the Applicant except for the set of circumstances precipitating the request for interim relief.”¹ In the same order, the Commission further concluded that “interim relief is appropriate if irreparable harm would result to the utility from a distinctive and sudden deficiency in revenue

¹ May 30, 1980, *In the Matter of the Application of the Western Power Division of Central Telephone & Utilities Corporation for Approval of the Commission to Make Certain Changes in its Charges for Electric Service*, KCC Docket No. 121,454-U, at page 6.

which is not subject to recovery,” and that “the Commission does not believe that an increase in costs as a result of inflation is sufficient in itself to warrant interim relief. Inflation, even at current rates does not result in a distinctive and sudden deficiency in revenues.”²

7. In a more recent case, *In the Matter of the Application of Aquila, Inc. d/b/a Aquila Networks – WPK For Approval of the Commission to make Certain Changes in its Rates for Electric Service*, KCC Docket No. 04-AQLE-1065-RTS (“1065 Docket”), the Commission denied the applicant’s request for interim rate relief. In its Order No. 11, Denying Interim Rate Relief, the Commission stated:

“The first hurdle a utility must leap in order to be granted interim rate relief is the presentation of a *prima facie* case showing that its current rates are no longer just and reasonable using acceptable methods of accounting procedures in determining and allocating the costs and rate base. In other words, the utility must present sufficient evidence that could stand on its own in support for the utility’s request for interim relief ... Adequate evidentiary support for the amount of losses claimed and the amount of interim relief requested must exist or the proffered figures cannot stand. The information Aquila provided in its request for interim relief was lacking the support needed to sustain judgment in favor of the issue. Aquila has failed to meet this burden of showing a *prima facie* case for relief, and therefore its request for interim rate relief must be denied.”³

In Aquila docket, the Commission continued to adhere to the principle that the threshold question is whether the utility has presented sufficient evidence to support a *prima facie* case. While the Commission has not developed a bright-line test for analyzing the overall conditions that must be proven before interim relief may be granted, it stated in the 1065 Docket order that it adopts the basic analysis set forth in *Kansas Nebraska*:

(1) Initially, an applicant for interim rate relief has the burden of making a *prima facie* showing that its current rates are no longer just and reasonable, using acceptable

² *Id.*

³ October 8, 2004, *In the Matter of the Application of Aquila, Inc. d/b/a Aquila Networks – WPK For Approval of the Commission to make Certain Changes in its Rates for Electric Service*, KCC Docket No. 04-AQLE-1065-RTS, Order No. 11 Denying Interim Rate Relief, at ¶20.

methods of accounting procedures in determining and allocating the costs and rate bases. *Id.*[217 Kansas], Syl. Para. 5

(2) Once a *prima facie* case has been made, the determination whether interim relief is warranted within the sound discretion of the Commission within the perimeter of reasonableness and justice to the utility and to those served by it. *Id.*, Syl. Para. 4.

(3) Whether an interim rate increase should be granted pending the final decision on a rate application should ordinarily depend on whether irreparable harm would result to the utility by reason of a distinctive and sudden deficiency in revenue that is not subject to recovery. *Id.*, at Syl. Para. 4.

8. That last standard comes closest to being a bright-line test, but the three steps of the analysis leave room for Commission discretion. As in the cases discussed above, in the 1065 Docket the Commission denied interim relief based on the fact that Aquila failed to make a *prima facie* case that its current rates were no longer just and reasonable, using acceptable methods of demonstrating losses under contracts, and that, in fact, it had provided evidence that it was operating with a positive gross margin. In its order, the Commission stated, “Aquila’s request for interim rates based on *projected* losses under the AP and NHC contracts, had it gone uncontradicted, would still not have supplied sufficient evidence to support its calculated projected losses and relief thereon. Aquila has not made a *prima facie* case that its current rates are no longer just and reasonable, using acceptable methods of demonstrating losses under the contracts.” Order No. 11, at 7. The Commission went on to reject Aquila’s contention that an increase in plant investments had also rendered its rates no longer just and reasonable, stating that the company’s “blanket statement regarding normalization of expenses” was inadequate to make the company’s *prima facie* case. *Id.*, at 8.

9. It is important to take note that the Commission placed particular emphasis on the necessity of the applicant providing evidence “using acceptable accounting methods.” The

Commission held in the 1065 Docket that *pro forma* projections and normalization of expenses without sufficient evidentiary foundations are not sufficient to establish a *prima facie* case that the utility's "current rates are no longer just and reasonable, using acceptable methods of accounting procedures in determining and allocating the costs and rate bases." 217 Kan. at Syl. Para. 5. It is this necessity of using appropriate accounting practices supported by evidence that is at the heart of Howison Heights' failure to present sufficient evidence to establish a *prima facie* case for receiving the extraordinary remedy of interim rate relief while awaiting the outcome of its rate case. While it may be true that Howison's owner is in dire need of financial relief, that relief should not be provided by utility customers, who have not created the conditions that have led to his difficulties.

III. Argument: Howison has failed to make a *prima facie* case for interim rate relief.

A. Introduction.

10. Howison has provided no evidence in its application that would meet the burden of establishing a *prima facie* case under the legal standards discussed above. Instead, Howison relies upon its position in KCC Docket No. 12-HHIW-382-RTS ("382 Docket"), and the recommendations made by Staff in that proceeding. The 382 Docket – which utilized a 2010 test year – was plagued by lack of evidence and multiple inconsistencies in the presentation of the Company's financial condition. Both Staff and CURB expressed concern after their on-site audit at Howison's offices and their subsequent efforts in discovery that Howison was unable to locate or provide sufficient evidence to support many of Howison's day-to-day operating expenses or the amount of debt that the water system currently has. Specific references to instances of missing evidence and inconsistencies in financial presentation is discussed later in this motion.

11. In its current application and motion for interim relief, Howison has provided no explanation of what specific event or set of circumstances has caused it to experience a distinctive and sudden revenue deficiency. In fact, in a previous application made by Howison to the Commission on May 6, 2011, Howison indicates that it was in need of a rate increase because “of the economy”.⁴ Later in the 382 Docket, Howison asked the Commission to increase rates because “with the economy like it is”, Mr. Howison was no longer financially able to subsidize the water company with personal funds.⁵ These claims, as a basis for the need for interim rate relief, do not constitute *prima facie* evidence under the standard most recently applied by the Commission in the 1065 docket.

12. In this docket, Staff has expressed its opinion that the schedules and testimony provided in Howison’s application were sufficient to meet the *prima facie* requirement. Because Howison’s current application relies entirely on filings made in the previous rate case docket, CURB discusses below some key aspects of Howison’s previous rate case and the differing positions presented in that proceeding. CURB argues that the evidence in the previous case added to the minute amount of new information introduced in this case fails to establish a *prima facie* case for interim rate relief. Further, even if the Commission finds that the company has met its threshold burden, there is more than enough evidence to refute the company’s contention that its current financial condition merits interim rate relief.

⁴ May 6, 2011, KCC Docket No. 11-HHIW-741-RTS, Application at page 1.

⁵ November 22, 2011, KCC Docket No. 12-HHIW-382-RTS, Application at exhibit 2.4.

B. There is little evidence supporting day-to-day operating expenses of the utility.

13. On March 18, 2013, Howison filed a request to increase rates \$48,702 – which, consequently, is more than the amount requested in the 382 Docket. Howison determined this is an appropriate rate increase request based upon Staff's adjustments and recommendations in the 382 Docket and the inclusion of an annual salary of \$23,500 for Mr. Tim Howison. Howison also filed a request for interim rate relief, subject to refund.

14. Howison has not established a prima facie case in this proceeding to support its motion for interim rate relief. It is the burden of the company, not of Staff or CURB or any other party to provide evidence that supports the Company's claim. In its application, Howison has failed to provide any form of written testimony from the company's owner and operator, Mr. Tim Howison. As the sole owner and operator of the water system, Mr. Howison's testimony might explain, or at least attempt to justify certain aspects of Howison's day-to-day operating expenses. Additionally, Mr. Howison's testimony would be vital to determine if there was a specific event or set of circumstances that caused the water system to experience a distinctive and sudden revenue deficiency. Further, in its application Howison failed to provide necessary evidence to support its claims. Instead, Howison elected to utilize Staff's schedules, which were filed in Staff's Report and Recommendation in the 382 Docket. Staff's adjustments filed in the 382 Docket are based upon a 2010 test year and Staff estimated, assumed, and predicted many of Howison's day-to-day operating expenses because there was so little evidence that could be relied on.

15. In the 382 Docket, Staff recommended that the Commission allow Howison to increase rates by \$20,981. This recommendation is important because it is the foundation for the

Company's request for interim rate relief in this proceeding. The procedural schedule in the 382 Docket did not give CURB the opportunity to file reply comments to Staff's report and recommendation. Similarly, because the Company chose to withdraw its application, the Commission never ruled on the merits—or lack of merits—of Howison's application. Staff's adjustments and recommendations in the 382 Docket are, at this point, unchallenged.

16. However, the record is clear that Staff's adjustments made in the 382 Docket are not based on actual evidence that could stand on its own in support of the utility's request for interim relief. In its report and recommendation, Staff indicated that it was "able to trace some of the expenses reported in the Company's income statement to original documents and invoices, but a sizable percentage of reported expenses had no support."⁶ Despite the "large volume of missing information"⁷, Staff chose to estimate, assume and predict many of Howison's expenses. The Company's request for interim rate relief is made solely on the basis of these estimates, assumptions and predictions, which were made in lieu of actual evidence.

17. Staff's efforts, however well-meaning, to construct *pro forma* spreadsheets that showed a revenue deficiency for Howison were based on Staff's estimates and assumptions concerning the "large volume of missing information" in Howison's files, along with Staff's predictions based on those estimates and assumptions. The so-called evidence Howison has presented in this case is derived directly from the Staff's spreadsheets developed in the 382 Docket. Those spreadsheets do not meet the standards of *prima facie* evidence developed with acceptable accounting methods. There is so little documentary support for them that they cannot be fairly characterized as "*pro forma*." They were simply made up.

6 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.

7 *Id.*, at p. 6.

18. In the 382 Docket, CURB utilized more acceptable accounting practices in developing its recommendations. As a result, CURB chose not to include an estimate for several of Howison's day-to-day operating expense categories. The lack of evidence provided to CURB by Howison makes any estimate, assumption, or prediction, unreliable and unfounded. It is the evidentiary burden of the company, not CURB or Staff, to provide evidence to support estimates made in its rate application. Ultimately, CURB recommended "the Commission deny Howison Heights's application because the company has not provided sufficient evidence to determine if the requested rates are just and reasonable."⁸

19. In this case, CURB's recommendation has not changed. Howison has not provided evidence to support its day-to-day operating expenses and therefore has not met the burden of establishing a *prima facie* case for interim rate relief.

C. Howison's cost of debt has not been established.

20. In its application in this proceeding, Howison requests interim rate relief because it cannot meet its day-to-day operating expenses and its cost of debt. Staff concurs, stating that "it is apparent to Staff that Howison has been unable to secure refinancing ..."⁹ Again, Howison has failed to provide the proper evidence supporting its claim that it is unable to meet its cost of debt. Further, Howison hasn't provided any evidence that even supports what its cost of debt is.

21. In the 382 Docket, CURB calculated \$325,870 in debt for Howison Heights.¹⁰ CURB was able to determine that Howison holds two long term loans at Bennington State Bank.

8 February 9, 2012, CURB's 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 1.

9 March 22, 2013, Staff's Response in Support of Howison Heights, Inc.'s Motion for Interim Rate Relief Subject to Refund in KCC Docket No. 13-HHIW-570-RTS, at p. 3.

10 Staff determined that Howison's debt was \$315,244.

As of January 17, 2012, one loan has a principal balance of \$217,810.63 with a current interest rate of 6.0%. The second loan at Bennington State Bank has a principal balance of \$8,939.94 and also holds an interest rate of 6.0%.

22. CURB also determined that Howison holds a loan term loan with Central National Bank. On January 17, 2012, the current loan balance at Central National Bank was \$275,000 and has a current interest rate of 6.56%. Based on the evidence provided by Howison in the 382 Docket, CURB was unable to determine the payment terms of either the loan at Central National Bank or Bennington State Bank. Further, Howison has not updated this information for this case.

23. Currently, Howison is the defendant in a pending foreclosure action in The District Court of Saline County, Kansas, in which the real estate, fixtures and personal property underlying the public utility are at risk. In the pending foreclosure case, Central National Bank is seeking recovery of \$396,442.04, plus interest and costs from Howison.

24. In its current application, Howison has not provided any evidence or support for its cost of debt. Howison has not provided any information regarding the payment terms or conditions of these debts. Furthermore, even if it was possible to determine Howison's cost of debt, there is no evidence to support a decision on how much of that cost of debt should be allocated to the utility and how much to Mr. Howison's other businesses or to him personally. Without this evidence, no one can determine Howison's actual cost of debt. Without a determination of the actual cost of debt, CURB cannot support Howison's request for interim rate relief. The failure of Howison to provide evidence supporting the cost of debt of the utility

is another reason why Howison has failed to make a *prima facie* showing of the need for interim relief.

D. Inclusion in interim rates of a proposed salary for owner should be denied.

25. Howison's current application includes additional operating expenses that were not included in the 382 Docket. Howison has requested to include an annual salary of \$23,500, payable to its sole operator, Mr. Tim Howison, in its request for interim rate relief. It is inappropriate to include this newly-requested expense in the Company's request for interim rate relief. The standards for allowing interim rate relief indicate that a utility must make a showing that it is unable to meet its day-to-day operating expenses and cost of debt. Currently, Howison does not have any employees, and its owner and operator Mr. Tim Howison is not paid a salary. Howison cannot claim that it needs interim rate relief for an expense that, at the time of its application, does not even exist. As a *pro forma* expense, it would be inappropriate to include in interim rates. The analysis and recommendation of whether or not to increase Howison's cost of service to cover salary and wages should be addressed in Howison's rate case proceeding. However, CURB believes that it is relevant to note that if Howison Heights begins paying an annual salary to any employee, Howison Heights will become subject to federal employer tax reporting and liabilities. These tax liabilities would be in addition to the annual salary paid to its employees. Based upon CURB's review in the 382 Docket, Howison does not have a strong record of paying its expenses, including taxes that are mandated at the local and state levels. In CURB's opinion, without significant assistance from an accountant, it is unlikely that Howison will submit the required reports and tax payments to the federal government.

26. Finally, inclusion of a salary in interim rates for Mr. Howison at a time when he has shown no willingness or ability to adopt appropriate utility accounting practices or even take the initiative to find out what all he owes would be diverting money from the utility that should be applied at the very least to paying down the debts and arrearages that threaten the utility's very existence. If the utility is truly in "dire financial straits", every available dime should be applied first to ensuring the continued existence of the utility, not to lining the owner's pockets. There is absolutely no way to force Mr. Howison to use that salary to pay off the utility's debts once it is in his hands. If and when the utility is back on track, then paying Mr. Howison an appropriate salary would be acceptable. But to begin paying him a salary in the midst of this mess is simply throwing his customers' money away

27. This is not an attack on the owner's character, but a simple recognition of the likely outcome, whether or not an increase is granted. Mr. Howison apparently has had a successful career as a home builder, a real estate agent and as a developer of subdivisions. That career is now bogged down in financial problems that are tied, as he has said, "to the economy", but there is absolutely no evidence in the record to support that "the economy" caused his utility business to crash. Rather, it appears much more likely that his financial problems with his other businesses are impairing his ability to operate this utility. Requiring his water customers to bail him out of debt he has incurred because the bottom fell out of the home construction business is not consistent with Kansas law or Commission practice.

E. Howison's ability to refund overcharges if ordered is in serious doubt.

28. In a recent meeting with members of Staff and Howison's owner and its counsel, CURB asked Mr. Howison how big his monthly debt payments are. He replied that he didn't

know, because he hasn't been able to make payments lately. In describing why his debt is so large, he stated that one reason is that he had to borrow money to buy out a partner who wanted out of one of his subdivision development companies, a company he owns that is entirely unrelated to the water utility. We don't know which loan that was, and whether it is secured by utility assets. CURB asked how large his arrearages are for water fee payments or other taxes. He said he didn't know, because he would have to call them to ask, and he didn't want to put himself "on their radar" or words to that effect. CURB inquired whether he had, as CURB and Staff recommended in the 382 Docket, started isolating the revenues and expenses of the utility from his other businesses and personal expenses, such as making sure he uses the utility checking account only for utility expenses. He replied to the effect that sometimes there just isn't enough money in one of his accounts to take care of what needs to be done, and that he has to write a check from the account that has money in it.

29. Such responses did nothing to assure those present that Howison Heights has made any effort whatsoever to address the concerns that the Commission, Staff and CURB raised in the 382 Docket. CURB might be more amenable to being more lenient with Howison Heights in this proceeding had the company presented any evidence, anecdotal or otherwise, that any effort has been made to identify and quantify the debts and outstanding obligations of the utility, to segregate utility revenues and expenses from those of Mr. Howison's other businesses, or, at the very minimum, to retain invoices and receipts in separate piles—anything that would at least assist Staff or CURB to put together a credible picture of the utility's costs of service and debt.

30. There are other serious concerns. CURB has no confidence whatsoever that Howison's utility revenues have decreased, or that utility revenues are inadequate to cover the cost of service and provide a reasonable profit. The failure of Howison to keep utility books

separate from those of his other businesses and his personal expenses make it impossible to tell. Mr. Howison's debts have increased, but we have no idea whatsoever how much of that debt is related to utility expenses or capital investment, and how much to his difficulties with his other businesses.

31. Further, the assets of the utility are at risk of foreclosure, whether or not the utility itself is running in the black or not. It may not make any difference whether Howison gets an increase. The company also owes an unknown amount of water fees and perhaps other taxes, which may result in the utility's assets or revenues being subject to liens, seizure or sanctions. Mr. Howison has made no effort to find out what he owes or what the consequences may be of continued non-payment. We simply don't know how imminent a foreclosure or seizure may be. That threat, not an increase, should be the primary concern of the Commission. Without Howison's creditors at the table, we have no idea whether or when the utility's assets or revenues may be diverted by legal action to pay his debts or outstanding arrearages on fees or taxes.

32. Moreover, granting an interim increase subject to refund is an exercise in speculation with customers' money. Mr. Howison has demonstrated a consistent inability to keep appropriate books. How will he calculate refunds if he can't even keep utility revenues separate from his personal accounts? Where will the refund money come from if his utility account is seized or spent on his development business? The least the Commission can do if it grants this interim increase is to insist that Mr. Howison execute a bond or other instrument that will ensure ratepayers will receive the full amount of whatever refund is ordered.

IV. Summary and conclusions.

33. CURB's analyst, Stacey Harden, conducted a review of Howison's financial condition in the 382 Docket. Ms. Harden discovered many instances of fiscal mismanagement, lack of evidence to support operating expense claims made by the Company, the co-mingling of personal and business funds, and much more. However, CURB expressed its opinion that it did not appear that the owner and operator of Howison Heights, Mr. Tim Howison, was willingly withholding evidence in an effort to purposefully deceive CURB. Rather, it was CURB's position that Mr. Howison is unfamiliar with the business of utility regulation in Kansas.

In the 382 Docket, CURB stated the following:

CURB is sympathetic to the plight of Howison – which has only 62 customers – likely making it one of the smallest regulated utilities in the State of Kansas. Additionally, Howison is owned and operated by a person who is unfamiliar with the business of utility regulation in Kansas. However, it is irrelevant how big or small Howison Heights, Inc. is – Howison is still a regulated utility and therefore must be regulated in the same manner that other similar utilities are. The records and evidence CURB seeks are those collected in the normal course of operating any business. CURB cannot imagine a scenario in which the Commission would allow a utility to set retail rates based upon financial statements that purport to establish its dire financial condition, without a shred of evidence to support those financial statements or the proposed rate design. There is simply no underlying evidentiary justification for granting recovery from customers on the basis of this application.¹¹

Additionally, CURB stated:

Further, Ms. Harden does not believe that Mr. Howison's current fiscal management habits will change based upon a Commission order. It is Ms. Harden's opinion that granting Howison's application now and requiring it to change habits later, is a bad policy. Granting the application as presented will ultimately lead to Howison's retail customers paying for the fiscal mismanagement of this utility.¹²

¹¹ February 9, 2012, CURB's 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 14.

¹² February 9, 2012, CURB's 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 13.

CURB stands by these remarks. Nothing has changed since the 382 Docket except that we have even more evidence that Mr. Howison has not followed any of the advice he was given in that docket nor taken any action to determine the magnitude of his outstanding debts, and now we know that the threat of foreclosure or seizure is real. Providing Mr. Howison with an additional \$48,702 in rates today will not improve the financial condition of the company tomorrow. Further, CURB finds it highly unlikely that any interim increase in revenues received from Howison's customers will be available to provide refunds if the Commission later orders that all or part of the interim rates granted should in fact be refunded.

V. CURB's request for relief and recommendations.

34. CURB recommends the Commission DENY Howison's motion for interim rate relief because Howison has failed to establish a *prima facie* case and meet the standards set by the *Kansas Nebraska* case and Commission orders in the 1065 and 121,454-U Dockets. Even if the Commission finds that the company met its burden, there is sufficient evidence to find that that the primary source of the utility's distress is Howison's financial difficulties with his non-utility businesses, combined with his failure to take appropriate actions to isolate and protect the utility from those difficulties. That alone should lead the Commission to deny the extraordinary remedy of interim rate relief.

35. Before making any final decision in this docket, CURB strongly recommends that the Commission, through its Staff, contact the known creditors of Howison Heights, as well as the Department of Revenue and any other taxing agency with which Howison is in arrears to set up a on-the-record meeting with all creditors, CURB, Staff, and Mr. Howison in an effort to identify the magnitude of Howison's debt obligations and tax arrearages and obtain input from

these entities with the intent of determining the likelihood of foreclosure or seizure of utility assets and/or revenues, and to gauge to what extent agreements can be reached with those entities to ensure the continued operation of Howison Heights for the benefit of its customers. If Mr. Howison will not take these actions on behalf of his customers, then the Commission should exercise its authority and discretion to do so. It is vital to ensure that those served by Howison Heights will continue to receive reliable service at reasonable rates, and that revenues collected from customers will be expended solely on utility-related expenses and debt.

36. To this end, prior to determining the procedural schedule for the remainder of the docket. CURB recommends that the Commission develop an agenda for a meeting with creditors. There is no point in the parties expending a lot of time and energy on this docket if the bank or other creditor intends to take action soon that may render this entire docket moot.

In summary, CURB opposes Howison Heights' motion for interim rate relief, and respectfully requests that the Commission DENY the motion for lack of evidence supporting the company's request.

In addition, CURB recommends that the Commission initiate efforts to bring Howison's creditors to the table to determine, if possible, the potential risk of foreclosure and/or seizure of utility assets or revenues, and to take whatever action within its power that is necessary to protect Howison's customers from the adverse effects of Mr. Howison's financial difficulties with his other businesses.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'Niki Christopher', written in a cursive style.

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

CERTIFICATE OF SERVICE

13-HHIW-570-RTS

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing document was placed in the United States mail, postage prepaid, e-mailed, or hand-delivered this 29th day of March, 2013, to the following:

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

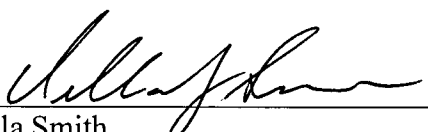
HOLLY FISHER, LITIGATION COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604-4027
Hand Delivered

ANDREW FRENCH, ADVISORY COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604-4027
Hand Delivered

MICHAEL NEELEY, LITIGATION COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604-4027
Hand Delivered

JAY VAN BLARICUM, ADVISORY COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604-4027
Hand Delivered

TIMOTHY B. HOWISON, PRESIDENT
HOWISON HEIGHTS, INC
1212 MEYER DR
SALINA, KS 67401-5274



Della Smith
Administrative Specialist