

**THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS**

Before Commissioners: Mark Sievers, Chairman
Thomas E. Wright
Shari Feist Albrecht

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

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

**ORDER CONSOLIDATING DOCKETS AND
COMPELLING STAFF AND CURB TO DISCLOSE RATE CASE EXPENSES**

The above-captioned matters come before the State Corporation Commission of the State of Kansas (Commission) for consideration. Having examined the files, the Commission concludes as follows:

1. On March 18, 2013, Howison filed the Application of Howison Heights, Inc. for Approval of the Commission to Make Certain Changes in its Rates for Water Service (Application) in Docket No.13-HHIW-570-RTS (570 Docket), requesting a permanent rate increase in the amount of \$48,702.00. Howison also filed a Motion for Interim Rate Relief Subject to Refund (570 Motion) on March 18, 2013.¹ On March 28, 2013, the Citizens' Utility Ratepayer Board (CURB) was granted intervention in the 570 Docket.² The Commission established a procedural schedule for the 570 Docket on April 3, 2013.

¹ See 570 Motion, pp. 1, 5.

² Order Designating Prehearing Officer, Discovery Order, Protective Order, and Order Granting CURB's Petition to Intervene (Mar. 28, 2013).

2. The Commission granted the 570 Motion on April 17, 2013, and also ordered Howison to provide a list of its creditors and corresponding debts within one week of the date of the April 17, 2013 Order.³ Howison complied with the April 17, 2013 Order on April 22, 2013, by filing the Statement of Howison Heights, Inc.'s List of Creditors.

3. On May 7, 2013, Howison filed a Second Amended Rate Schedule and a New Notice to Customers. Pursuant to the modified procedural schedule, Staff filed its Report and Recommendation on May 9, 2013. On May 20, 2013, CURB filed its Reply to Staff's Report and Recommendation, and Howison filed its Response to Staff's Report and Recommendation.

4. An initial comment period was provided in the 570 Docket from April 6, 2013, through May 6, 2013. During that period, the Commission's Public Affairs and Consumer Protection Office (PACP Office) received three comments. During a second public comment period beginning on May 14, 2013, however, the PACP Office began to receive additional comments from Howison's customers, both through phone calls and emails. The PACP Office has received comments from over 33% of Howison's customers.

5. Comments and complaints include concerns about low or inconsistent water pressure, water main breaks, brown or "scummy" water, poor service when called (no maintenance crews), high chlorine content, fraudulent meter reading, no fire hydrants in development, and no water tower.

6. On November 21, 2012, Central National Bank sued Howison in civil court for recovery of \$396,442.04 including interest stemming from alleged unpaid loans. Central National Bank also requested foreclosure of mortgages on property owned by Howison to satisfy the debts. Central National Bank included The Bennington State Bank (Bennington) as a

³ Order Granting Motion for Interim Rate Relief Subject to Refund and Motion for Waiver of Filing Requirements Under K.A.R. 82-1-231b (Apr. 17, 2013), ¶ 18.

defendant in the foreclosure case, alleging that Bennington held a first mortgage on the same property. The case was filed in Saline County District Court, Case No. 12-CV-444, styled *Central National Bank v. Howison Heights, Inc., et al.* (Foreclosure Case).

7. Due to the Foreclosure Case, Staff requested the Commission open an investigation into Howison's ability to continue to provide efficient and sufficient service to its customers. On January 8, 2013, the Commission opened a general investigation into Howison Heights' ability to provide sufficient and efficient service in Docket No. 13-HHIW-460-GIV (460 Docket).⁴

8. On March 13, 2013, Bennington filed a Motion for Summary Judgment and Memorandum in Support (Summary Judgment Motion) in the Foreclosure Case. Since that time, no party, including Howison, has filed any response to Bennington's Summary Judgment Motion.

9. On May 29, 2013, Staff of the Commission (Staff) filed a Motion for Commission Order Compelling Howison Heights to Address Quality of Service and Indebtedness Issues in the 460 Docket. Staff alleged the complaints Howison's customers filed, as well as the Foreclosure Case, call into question whether Howison is providing, or will be able to continue providing, efficient and sufficient water service to its customers. On June 13, 2013, the Commission issued an Order granting Staff's Motion, ordering Howison to address in detail the issues raised in the customer comments and the Foreclosure Case. Howison filed its response on June 14, 2013.

10. On June 6, 2013, the Commission issued an Interim Order in the 570 Docket, approving Howison's rate application with Staff modifications. On June 7, Howison filed a

⁴ See Docket No. 13-HHIW-460-GIV, Order Opening Investigation of Howison Heights, Inc.'s Ability to Provide Sufficient and Efficient Service, (Jan. 8, 2013) (460 Docket).

Petition for Reconsideration on a limited issue in the Interim Order. On June 10, 2013, CURB filed a Notice of CURB's Kansas Open Meetings Act (KOMA) Complaint, which was filed with the Kansas Attorney General's Office and the Shawnee County District Attorney. The Complaint alleges the Commission issued the Interim Order using a procedure which violated KOMA.

11. The Commission finds the issues involved in 13-HHIW-460-GIV and 13-HHIW-570-RTS are so intertwined, it would be practical to consolidate the two dockets. Consolidation of these two dockets will be economic for the Commission and the parties. No party will be prejudiced by the consolidation of these two dockets.

12. Based on the foregoing, the Commission finds and concludes that the two above-captioned cases should be consolidated. Pleadings filed after the date of this Order should be captioned and docketed for both Docket No. 13-HHIW-460-GIV and Docket No. 13-HHIW-570-RTS. Pleadings shall be filed with a dual caption for both dockets, with the understanding that they will be filed into each docket. Pleadings should clearly indicate whether they are addressing one docket only or both dockets.

13. The Commission also is concerned that the parties to these actions are spending inordinate amounts of public time and resources on these matters, one of which is a rate case proceeding for a non-Class A water utility under K.A.R. 82-1-231b. The Commission therefore concludes Staff and CURB should be compelled to provide to the Commission their rate case expenses thus far in the 570 Docket, as well as any expenses incurred in the 460 Docket. The Commission notes parties usually provide their rate case expenses with their initial testimony and again in post-hearing briefs. As no hearing is currently scheduled in either docket, the Commission finds the present time, at the beginning of the 90-day comment period following the

issuance of the Interim Order in the 570 Docket, to be an appropriate time to request this information under the unique circumstances of these cases.

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

A. From and after the date of this Order, Docket Nos. 13-HHIW-460-GIV and 13-HHIW-570-RTS are consolidated. Pleadings filed after the date of this Order should be captioned and docketed for both Docket No. 13-HHIW-460-GIV and Docket No. 13-HHIW-570-RTS.

B. Commission Staff and the Citizens' Utility Ratepayer Board are hereby ordered to provide to the Commission their rate case expenses in the 570 Docket, as well as any expenses incurred in the 460 Docket.

C. The parties have fifteen days from the date of electronic service of this Order in which to petition the Commission for reconsideration of any issue or issues decided herein.⁵

D. The Commission retains jurisdiction over the subject matter and parties for the purpose of entering such further orders as it may deem necessary.

BY THE COMMISSION IT IS SO ORDERED.

Sievers, Chairman; Wright, Commissioner; Albrecht, Commissioner

Dated: JUN 19 2013

Jackie Montfoort Paige
ORDER MAILED JUN 19 2013

Jackie Montfoort Paige
Acting Executive Director

JV

⁵ K.S.A. 66-118b; K.S.A. 2012 Supp. 77-529(a)(1).

CERTIFICATE OF SERVICE

13-HHIW-570-RTS

13-HHIW-460-GIV

JUN 19 2013

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing Order Consolidating Dockets and Compelling Staff and CURB to Disclose Rate Case Expenses was served by electronic mail this 19th day of June, 2013, to the following parties who have waived receipt of follow-up hard copies:

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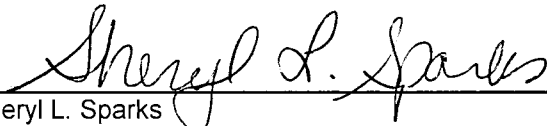
ORDER MAILED JUN 19 2013

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13-HHIW-570-RTS

13-HHIW-460-GIV

JUN 19 2013

A handwritten signature in cursive script, reading "Sheryl L. Sparks", is written over a horizontal line.

Sheryl L. Sparks
Administrative Specialist

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