

BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

MAY 29 2013

by
State Corporation Commission
of Kansas

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

**STAFF'S MOTION FOR COMMISSION ORDER COMPELLING HOWISON
HEIGHTS TO ADDRESS QUALITY OF SERVICE AND INDEBTEDNESS ISSUES**

The Staff of the State Corporation Commission of the State of Kansas (Staff and Commission, respectively) hereby moves the Commission to Order Howison Heights, Inc. (Howison) to provide written responses to certain questions affecting its continuing ability to provide sufficient and efficient service. In support of its Motion, Staff states and alleges as follows:

I. Background Regarding Quality of Service Issues

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 the 13-HHIW-570-RTS Docket (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.

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

¹ See, 570 Motion, p. 1, opening paragraph; p. 5, closing paragraph.

² Petition to Intervene of the Citizens' Utility Ratepayer Board (Mar. 22, 2013); Order Designating Prehearing Officer, Discovery Order, Protective Order, and Order Granting CURB's Petition to Intervene (Mar. 28, 2013).

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. Beginning on May 14, 2013, however, the PACP Office began to receive additional comments from Howison's customers, both through phone calls and emails. A copy of every comment received to this date is included in the confidential Attachment "A." The PACP Office has received comments from over 33% of Howison's customers.

5. Comments and complaints state concerns about:

- Low or inconsistent water pressure
- Water main breaks
- Brown water
- Poor service when called – no maintenance crews
- High chlorine content
- "scummy" water
- Fraudulent meter reading
- No fire hydrants in development

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) (April 17, 2013 Order), paragraph 18.

- No water tower

II. Background Regarding Ability to Continue Operations Due to Possible Foreclosure of Utility Assets

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 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. 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.

III. Summary

8. The complaints filed by Howison's customers and the foreclosure action call into question whether Howison is providing, or will be able to continue providing, efficient and sufficient service to its customers.

9. Staff has already begun the discovery process in this docket, and met with the Kansas Department of Health and Environment regarding water quality and service issues. However, in an attempt to provide transparency to the customers who have complained, Staff

wishes to have their complaints formally addressed in this docket rather than through data requests.

WHEREFORE, Staff respectfully requests the Commission order Howison Heights, Inc. to file the following information in this docket by June 7, 2013:

- 1) Using the attached customer complaints, provide a detailed list, on an individual customer basis, how each customer's issues have been addressed and how they will be resolved. For example, if Customer A complains about high chlorine and low water pressure, Howison must address the steps already taken to resolve the matter, as well as a future plan of action. In explaining how the customer's issues will be resolved, provide a cost estimate and an explanation of those costs. If possible, keep responses devoid of confidential information pertaining to the customer.
- 2) Explain what options Howison is currently considering to resolve the Motion for Summary Judgment.
- 3) Explain what steps, if any, Howison is taking to ensure that its customers are provided efficient and sufficient service during the pending litigation period.
- 4) Explain the likelihood that Howison will keep the utility property in its possession.
- 5) Explain how Howison will pay for needed system repairs should it retain possession of the utility property.
- 6) Explain what access to capital (debt or equity) Howison will have on a going forward basis should it retains possession of the utility property.
- 7) Explain how customers of Howison will receive water service in the event that Howison's utility property is sold pursuant to the Saline County foreclosure action.

Respectfully submitted,

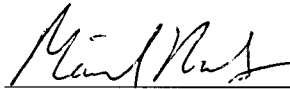
A handwritten signature in black ink, appearing to read "Michael Neeley", written in a cursive style.

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COUNTY OF SHAWNEE)

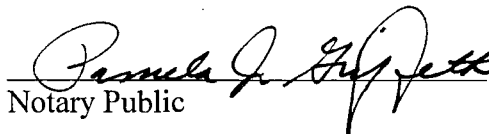
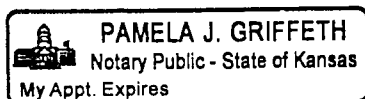
VERIFICATION

Michael Neeley, being duly sworn upon his oath deposes and states that he is Litigation Counsel for the State Corporation Commission of the State of Kansas, that he has read and is familiar with the foregoing *Staff's Motion for Commission Order Compelling Howison Heights to Address Quality of Service and Indebtedness Issues*, and that the statements contained therein are true and correct to the best of his knowledge, information and belief.



Michael Neeley # 25027
Kansas Corporation Commission of the
State of Kansas

Subscribed and sworn to before me this 29th day of May, 2013.


Notary Public

My Appointment Expires: August 17, 2015

CONFIDENTIAL

CERTIFICATE OF SERVICE

13-HHIW-460-GIV

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing Staff's Motion for Commission Order Compelling Howison Heights to Address Quality of Service and Indebtedness Issues was served by electronic service on this 29th day of May, 2013, to the following and a confidential copy placed in the United States mail, postage prepaid, addressed to the following, to-wit:

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CERTIFICATE OF SERVICE

13-HHIW-460-GIV

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Pamela Griffith
Administrative Specialist

* Denotes those receiving the Confidential version