

BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

MAR 19 2013

by
State Corporation Commission
of Kansas

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

MOTION FOR INTERIM RATE RELIEF SUBJECT TO REFUND

COMES NOW Howison Heights, Inc. ("Howison") and pursuant to K.S.A. 66-117 files this Motion for Interim Rate Relief Subject to Refund ("Motion"). Howison is requesting authority to place into effect interim rates in the gross amount of \$48,702.00. Howison is further requesting that these interim rates be authorized during the period April 1, 2013, through December 31, 2013, or until the Kansas Corporation Commission ("Commission") issues a final order in Howison's pending request in this docket for a permanent rate increase. Any interim rates authorized by the Commission pursuant to this request would be subject to refund. In support of its Motion, Howison states as follows:

1. Howison is an investor owned public utility authorized to transact business in the State of Kansas. Howison holds appropriate certificates from the Commission to engage in the water utility business.
2. On March 18, 2013, Howison filed with the Commission an application for a permanent rate adjustment requesting an increase in gross revenues of \$48,702.00.
3. Howison's current retail water rates are producing an annual net operating loss. Howison is experiencing irreparable harm, in part, by reason of a deficiency in revenue, which is not subject to recovery. Specifically, the inability to pay for operating costs and no ability to pay for debt cost associated with the water utility's operations, are producing a deteriorating financial condition

warranting the granting of interim relief. Because Howison has no funds to pay its debt cost, one of its lenders has filed a petition seeking full payment of the debt, or in the alternative, foreclosure of the water utility system. A copy of said Petition has been filed with the Commission in Docket No. 13-HHIW-224-CPL and is incorporated herein by reference.

4. It is clear that the Commission has the authority to issue interim rate relief subject to refund pending resolution of an application for permanent rate relief when there is evidence that absent such relief irreparable harm would result to the utility by reason of a significant deficiency in revenue, which is not subject to recovery. *Kansas Nebraska Natural Gas Co. v. State Corporation Commission*, 217 Kan. 604, 614, 538 P.2d 702 (1975). In *Kansas Nebraska*, the Kansas Supreme Court found that in order to obtain interim rate relief a utility did not have to show if the requested relief is not granted it will not be able to reasonably serve its customers, meet day-to-day operating expenses or meet its current payroll expenses. *Id.*, at Syl. 2. Instead, a utility must show that it has a significant deficiency in revenue, which is not subject to recovery, and which if not corrected, will result in irreparable harm to the utility. *Id.*, at Syl 4. In this case, Howison can clearly show current rates do not allow it to meet day-to-day operating expenses and its cost of debt.

5. *In the Matter of the Application of the Gas Service Company*, KCC Docket No. 126,922-U, the Gas Service Company ("Gas Service") applied for authority to place into effect interim rates pending its request in the docket for a permanent rate increase. *Order dated May 29, 1981, at page 1*. In referencing the *Kansas Nebraska* case, the Commission granted Gas Service interim rates, pointing to the utility's decline in revenues and the totality of the utility's financial condition. *Id.*, at pages 7-8. Among the factors considered by the Commission in the Gas Service case was the fact that the actual return on investment produced by Gas Service's current rates did not even cover the utility's

interest expense relating to its debt cost. *Id.*, at page 15 (dissent of Commissioner Dick).

6. As mentioned above, the weak financial condition of Howison's water utility business is causing irreparable harm to Howison and will continue to cause harm absent interim rate relief between now and when the Commission makes a decision on permanent rates. Current rates do not generate enough revenues to pay the operating expenses of the water utility and provide no revenue to pay for the utility's debt cost, as evidenced by the lender's recent petition against Howison. Howison requests the Commission take administrative notice of said petition. The current losses are not subject to recovery absent interim relief. These factors clearly meet the standard for interim rate relief established by the Commission and the Kansas Supreme Court.

7. In further support of its Motion, Howison incorporates herein by reference the accounting schedules filed in Docket No. 12-HHIW-382-RTS ("382 Docket") that reflect Howison's financial condition. Howison also incorporates herein by reference the Staff's Report and Recommendation filed in the 382 Docket. Howison's water utility business has continued to deteriorate since February 8, 2012, when the Staff Report was filed. As indicated by the KCC Staff in its Report and Recommendation in the 382 Docket,

Howison Heights is in dire financial condition. The Company debt of \$315,244 far exceeds the Company's net property, plant and equipment of \$95,110. The Company has incurred operating losses so large over the years that the retained earnings account has a negative balance. ... Additionally, the Company's revenues of \$38,463 are less than half of its \$80,116 of expenses for 2010.¹

8. Howison does not have the funds to pay for an accountant and must, therefore, rely upon the analysis conducted by Staff in the 382 Docket for its request for interim and permanent relief, with a few adjustments to Staff's analysis in the 382 Docket. Adjustment No. 1 increases operating

¹382 Docket, Staff Report and Recommendation, page 4.

expenses to include a salary for Tim Howison of \$23,500. This salary amount is based upon what it would cost the utility if its operations were performed by a third party. Howison has included bids it received from third parties to support the salary based upon discussions it had with Staff and CURB in its pre-filing meeting with Staff and CURB as required by the Commissions' regulations. Howison also added rate case expense amortized over three years. When the adjustments are made to Staff's recommendation in the 382 Docket, it supports a rate increase of approximately \$48,702.00.

9. As indicated in the Staff Report, Howison's customers currently pay on average \$41.00 per month for their water. The customers of Ottawa #2 Rural Water District, who live immediately adjacent to the area served by Howison currently pay \$63.26 per month on average. The water customers in nearby Salina, Kansas pay \$79.43 per month on average.² For purposes of this case, including its request for interim rate relief, Howison is requesting that its rates be increased to \$40.00 per month and \$5.00 per 1,000 gallons of water, plus taxes and fees.³ A customer using 7,000 gallons a month will pay approximately \$75.00 per month. This will approximately provide the requested rate increase.

10. Because any interim relief is for a short time period and fully subject to refund upon the Commission's final determination in the permanent rate case filing, Howison's water utility customers, who have had only one rate increase in the past 42 years⁴ and no rate increase in the past 19 years, will not be harmed by this request and will be paying rates similar to what other customers in Saline County pay for water utility service.

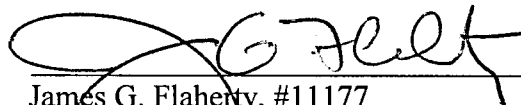
²382 Docket, Staff Report and Recommendation, page 5.

³The commodity rate is reduced as usage increases under the proposed rates.

⁴382 Docket, Staff Report and Recommendation, page 2.

11. Howison requests the Commission consider Howison's request for interim relief within the "perimeter of reasonableness and justice to the utility and those served by it." *Kansas Nebraska, Id.* at 614.

WHEREFORE, for the reasons set forth herein, Howison requests its Motion for Interim Rate Relief Subject to Refund be granted by the Commission so the interim rates can go into effect no later than April 1, 2013, and remain in effect until December 31, 2013, or until the Commission makes a final determination on the permanent rate filing.

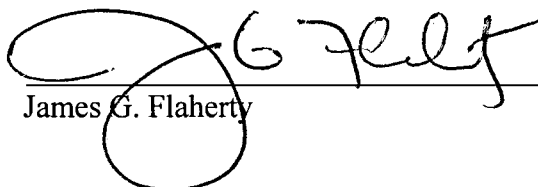


James G. Flaherty, #11177
ANDERSON & BYRD, LLP
216 S. Hickory, P. O. Box 17
Ottawa, Kansas 66067
(785) 242-1234, telephone
(785) 242-1279, facsimile
jflaherty@andersonbyrd.com
Attorneys for Howison Heights, Inc.

VERIFICATION

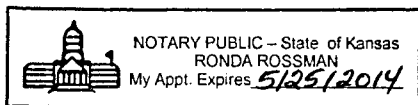
STATE OF KANSAS)
) ss:
COUNTY OF FRANKLIN)

James G. Flaherty, being duly sworn upon his oath, deposes and states that he is the attorney for Howison Heights, Inc.; that he has read and is familiar with the foregoing Motion for Interim Rate Relief Subject to Refund; knows the contents thereof; and that the statements contained therein are true.



James G. Flaherty

SUBSCRIBED AND SWORN to before me this 18th day of March, 2013.





Notary Public

Commission/Appointment Expires: