

BEFORE THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS

MAR 22 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. )

Docket No. 13-HHIW-570-RTS

by  
State Corporation Commission  
of Kansas

**STAFF'S RESPONSE IN SUPPORT OF HOWISON HEIGHTS, INC.'S  
MOTION FOR INTERIM RATE RELIEF SUBJECT TO REFUND**

The Staff of the State Corporation Commission of the State of Kansas (Staff and Commission, respectively) hereby files its Response to Howison Heights, Inc.'s Motion for Interim Rate Relief Subject to Refund, and states as follows:

**I. Background**

1. On March 18, 2013, Howison Heights, Inc. (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 this Docket, requesting a permanent rate increase in the amount of \$48,702.00.

2. Howison also filed its Motion for Interim Rate Relief Subject to Refund (Motion) on March 18, 2013. Howison's Motion requested that the rate increase of \$48,702.00 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.<sup>1</sup>

**II. Prior Docket – 12-HHIW-382-RTS**

3. On November 22, 2011, Howison filed an Application in the 12-HHIW-382-RTS Docket (382 Docket), seeking a rate increase.<sup>2</sup> Staff filed its Report and Recommendation (382 R&R) on February 8, 2012. In the 382 R&R, Staff stated:

<sup>1</sup> See, Motion, p. 1, opening paragraph; p. 5, closing paragraph.

<sup>2</sup> Application for Howison Heights, Inc. (Nov. 22, 2011).

Howison Heights is in dire financial condition. The Company's 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. The negative retained earnings balance of \$280,575 overwhelms the positive balances in the Company's common stock and paid in capital and results in a negative equity balance of \$239,269. Since Howison Heights has an overall negative equity balance, the Company has had to rely on bank loans to finance its continuing operating losses. Additionally, the Company's revenues of \$38,463 are less than half of its \$80,116 of expenses for 2010 . . .<sup>3</sup>

4. On August 8, 2012, Howison withdrew its Application, stating it wished to seek refinancing in order to attempt to sell the utility.<sup>4</sup> The Commission granted Howison's Motion to Withdraw Application on August 22, 2012.<sup>5</sup>

### III. Current Docket

5. Staff notes that Howison's current Application utilizes Staff's schedules from the 382 Docket with limited additional information. Howison's position has not changed since it filed its rate case in 2011. In fact, it is Staff's opinion that Howison's financial position is even more tenuous now. Howison is a 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.<sup>6</sup> Clearly, Howison was unable to secure refinancing or to sell the public utility, even though it stated that it wished to do both in the 382 Docket.<sup>7</sup>

6. Because Staff received notice of Howison's pending foreclosure action, Staff requested the Commission open an investigation into Howison's ability to continue to provide efficient and sufficient service to its customers.<sup>8</sup>

---

<sup>3</sup> 382 Docket, Notice of Filing Staff's Report & Recommendation (Feb. 8, 2012), Attach. A, p. 4.

<sup>4</sup> 382 Docket, Motion to Withdraw Application (Aug. 8, 2012), ¶ 6.

<sup>5</sup> 382 Docket, Order Granting Motion to Withdraw (Aug. 22, 2012).

<sup>6</sup> Case No. 12 CV 444, *Central Nat'l Bank v. Howison Heights, Inc., et al.* Staff has intervened on behalf of the Commission in order to observe and receive court documents. *See*, Docket No. 13-HHIW-460-GIV.

<sup>7</sup> 382 Docket, Motion to Withdraw Application (Aug. 8, 2012), ¶ 6

<sup>8</sup> *See*, Docket No. 13-HHIW-460-GIV, Motion to Initiate Investigation (Jan. 14, 2013) (460 Motion).

7. Howison stated the Commission has authority to issue interim rate relief pending resolution of the application for permanent rate relief, citing *Kansas-Nebraska Natural Gas Co. v. State Corporation Commission*, 217 Kan. 604, 614 (1975).<sup>9</sup> Staff agrees.

8. The Kansas Supreme Court found that the grant of interim rate relief to a public utility rests in the sound discretion of the commission, and lies within the “perimeter of reasonableness and justice to the utility and those served by it.”<sup>10</sup> Further, the court concluded that the applicant has the burden of making a *prima facie* showing that its current rates are no longer just and reasonable. Staff suggests that the schedules and testimony provided in Howison’s Application make such a showing. The Kansas Supreme Court also stated in the *Kansas-Nebraska Gas Co.* case:

The fact that a utility is unable to arrange necessary debt financing at reasonable rates without improved revenues manifestly could be a condition warranting the grant of interim rate relief. This condition is mentioned only by way of illustration and is not meant that others of like import are to be excluded as grounds for such relief.<sup>11</sup>

As stated in paragraph 4 above, it seems apparent to Staff that Howison has been unable to secure refinancing and Howison reported to the Commission that it was unable to sell the utility,<sup>12</sup> even though it stated that it wished to do both in the 382 Docket.

9. It is Staff’s opinion that Howison Heights, Inc. requires a rate increase in order to continue to provide sufficient and efficient water utility service to its customers. Further, due to the extreme nature of Howison’s current financial situation, it is critical that it receive that increase now, rather than sometime in the future, although that amount should rightfully be subject to true-up after Staff investigates Howison’s rate filing. Therefore, Staff supports Howison Heights, Inc.’s Motion for Interim Rate Relief.

---

<sup>9</sup> Motion, paragraph 3 (¶ 3).

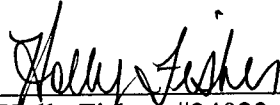
<sup>10</sup> *Kansas-Nebraska Natural Gas Co. v. State Corp. Comm’n*, 217 Kan. 604, Syl. ¶ 3, 538 P.2d 702 (1975).

<sup>11</sup> *Kansas-Nebraska Natural Gas Co.*, 217 Kan. at 614.

<sup>12</sup> Docket No. 13-HHIW-224-CPL, Howison Heights, Inc.’s Third Compliance Filing (Nov. 29, 2012).

WHEREFORE Staff supports Howison Heights, Inc.'s Motion for Interim Rate Relief, and respectfully requests that the Commission grant Howison's Motion and such other relief as the Commission deems appropriate in the premises.

Respectfully submitted,



Holly Fisher, #24023

Michael Neeley, #25027

Litigation Counsel

1500 S.W. Arrowhead Road

Topeka, KS 66604

(785) 271-3312 phone

(785) 271-3167 fax

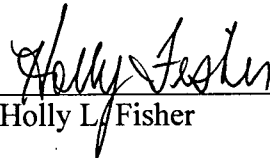
Attorneys for Commission Staff

VERIFICATION

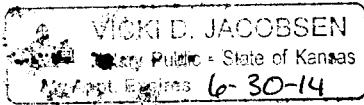
STATE OF KANSAS        )  
                                  ) ss  
COUNTY OF SHAWNEE )


Holly L. Fisher of lawful age, being first duly sworn upon oath, deposes and states:

That she is an attorney for The State Corporation Commission of the State of Kansas; that she has read the above and foregoing *Staff's Response in Support of Howison Height's, Inc.'s Motion for Interim Rate Relief Subject to Refund* and that the statements therein contained are true according to her knowledge, information and belief.

  
\_\_\_\_\_  
Holly L. Fisher

Subscribed and sworn before me this 22<sup>nd</sup> day of March, 2013.



  
\_\_\_\_\_  
Notary Public

My Appointment Expires: 6-30-14

**CERTIFICATE OF SERVICE**

13-HHIW-570-RTS

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing Staff's Response in Support of Howison heights, Inc.'s Motion for Interim Rate Relief Subject to Refund was placed in the United States mail, postage prepaid, or hand-delivered this 22nd day of March, 2013, to the following:

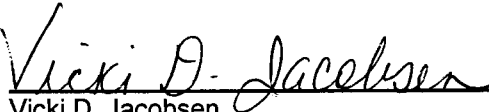
JAMES G. FLAHERTY, ATTORNEY  
ANDERSON & BYRD, L.L.P.  
216 S HICKORY  
PO BOX 17  
OTTAWA, KS 66067  
Fax: 785-242-1279  
jflaherty@andersonbyrd.com

HOLLY FISHER, LITIGATION COUNSEL  
KANSAS CORPORATION COMMISSION  
1500 SW ARROWHEAD RD  
TOPEKA, KS 66604-4027  
Fax: 785-271-3167  
h.fisher@kcc.ks.gov

ANDREW FRENCH, ADVISORY COUNSEL  
KANSAS CORPORATION COMMISSION  
1500 SW ARROWHEAD RD  
TOPEKA, KS 66604-4027  
Fax: 785-271-3314  
a.french@kcc.ks.gov

MICHAEL NEELEY, LITIGATION COUNSEL  
KANSAS CORPORATION COMMISSION  
1500 SW ARROWHEAD RD  
TOPEKA, KS 66604-4027  
Fax: 785-271-3167  
m.neeley@kcc.ks.gov

TIMOTHY B. HOWISON  
1212 MEYER DR  
SALINA, KS 67401

  
Vicki D. Jacobsen