

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

Before the Commissioners: Susan K. Duffy, Chair  
Dwight D. Keen  
Andrew J. French

In the Matter of Delmer Towns d.b.a. Towns )  
Riverview to Show Cause Whether it Should ) Docket No. 20-DTRW-120-SHO  
Not be Required to Obtain a Certificate of )  
Convenience and Necessity to Operate as a )  
Potable Water Public Utility. )

**ORDER GRANTING MOTION FOR EMERGENCY RELIEF**

The above-captioned matter comes before the State Corporation Commission of the State of Kansas (“Commission”) for consideration. Having examined its files and records and being duly advised in the premises, the Commission hereby issues its Order Granting Motion for Emergency Relief.

**I. BACKGROUND**

1. On June 17, 2020, Commission Staff (“Staff”) submitted a Report and Recommendation (“Report”), dated June 10, 2020, attached to an Emergency Motion for Relief Pursuant to K.S.A. 77-536 (“Motion”). In its Motion, Staff requests the Commission: 1) declare Delmer Towns d.b.a. Towns Riverview (“Towns Riverview”) a public utility subject to its jurisdiction pursuant to K.S.A. 66-104; 2) require Towns Riverview to begin complying with ten listed directives enumerated below in paragraph 4; and 3) impose civil penalties against Towns Riverview in the amount of \$370,400 for violation of K.S.A. 66-131 since at least April 20, 2010.<sup>1</sup>

2. Staff’s Motion and Report assert that based on the information received from the Kansas Department of Health and Environment (KDHE) and customer calls, Towns Riverview

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<sup>1</sup> Staff Report and Recommendation (Jun. 10, 2020).

cannot provide sufficient and efficient potable water service to the 232 households it currently serves. As such, Staff is concerned with the welfare of Towns Riverview customers.<sup>2</sup>

3. On June 23, 2020, Towns Riverview filed a Response to Staff's Motion for Emergency Relief.<sup>3</sup> In that Response, Towns Riverview provided historical information related to the operation of the water distribution system while also responding to recommendations contained in Staff's Motion. Towns Riverview requested that several Staff's recommendations be held in abeyance to allow Towns Riverview to locate a buyer for its water distribution system.<sup>4</sup> Additionally, Towns Riverview requested the Commission not impose civil fines as recommended by Staff, or alternatively, set the matter for hearing prior to the Commission issuing any civil penalty.<sup>5</sup>

4. On June 24, 2020, Staff filed a Reply to Towns Riverview's Response.<sup>6</sup> In their Reply, Staff recommended the Commission adopt Staff's recommendations, as set forth in Staff's Motion, with certain clarifications and an exception to Staff recommendation number (8) pertaining to the implementation and use of the NARUC Uniform System of Accounts for small water utilities.<sup>7</sup> Regarding Towns Riverview's request for a hearing on a potential civil penalty, Staff noted their agreement and voiced no opposition to waiting until progress had been made before holding a hearing to discuss the appropriateness of a civil penalty.<sup>8</sup>

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<sup>2</sup> *Id.* at 2.

<sup>3</sup> Delmer Towns (Towns Riverview) Response to Staff's Motion for Emergency Relief Pursuant to K.S.A. 77-536.

<sup>4</sup> *See id.*, pgs. 6-7.

<sup>5</sup> *See id.*, pg. 8.

<sup>6</sup> Commission Staff's Reply to Towns (Towns Riverview) Response to Staff's Motion for Emergency Relief Pursuant to K.S.A. 77-536.

<sup>7</sup> *See id.*, pg. 4.

<sup>8</sup> *See id.*, pg. 3-4.

## II. DISCUSSION

5. The Commission has jurisdiction over Towns Riverview pursuant to K.S.A. 66-104 based on the evidence presented and the fact that Towns Riverview admits it is a public utility.<sup>9</sup> The Commission has full power, authority, and jurisdiction to supervise and control Towns Riverview and is empowered to do all things necessary and convenient for the exercise of such power, authority and jurisdiction.

6. Under K.S.A. 77-536, the Commission is empowered to take immediate action to prevent or avoid an immediate danger to public health, safety or welfare. In this instance, immediate protective action is necessary to protect the welfare of Kansas ratepayers and provide potable water service for residential customers. To that end, the Commission orders Towns Riverview to perform the following directives until further order or orders by the Commission:

- a. Towns water system shall remain on a Boil Water Advisory until a rescind notice is issued by KDHE.
- b. Upon receipt of the Commission's Order, Towns shall supply alternative water suitable for drinking, cooking, washing, and bathing to all customers until all requirements of the Order have been completed. Towns shall not apply additional charges to customers for the provisioning of this alternative water and shall keep records of the costs associated with the alternative water supply.
- c. Upon receipt of the Commission's Order, Towns shall instruct all customers to curtail the watering of lawns, filling of pools, and all other extraneous usage of water that could place undue drawdown of available water pressure in the system if a KDHE Boil Water Advisory due to inadequate system pressure is in effect. This instruction shall be delivered to each customer once per month and provide an update on the status of required repairs being made to the system.
- d. Upon receipt of the Commission's Order, Towns shall acquire and install two continuously recording pressure charts tied directly to its water mains at two representative sites selected by KDHE on the southern and eastern extremities of the system. Data from the pressure recordings shall be submitted to KCC or KDHE Staff on a weekly basis until the construction projects required by KDHE are completed.

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<sup>9</sup> *Id.* Attachment 3.

- e. Upon receipt of the Commission's Order, Towns shall install a meter that measures the quantity of water delivered to the mobile home section of the water distribution system. Volumes of water usage to the mobile home section shall be reported to KCC or KDHE) Staff on a monthly basis.
- f. Towns shall initiate a meter installation/meter change out program to ensure each customer has an operable water meter by September 15, 2020.
- g. By July 15, 2020, Mr. Towns shall have a checking account for his personal use, a separate checking account for the water operations of Towns & Sons Enterprises, and a separate checking account(s) for any other businesses Mr. Towns has. The revenue collected from water ratepayers shall be deposited into the water company's checking account. All purchases and operating expenses associated with water operations shall be paid from the water company's checking account.
- h. Beginning August 1, 2020, Towns & Sons Enterprises shall implement and use the NARUC Uniform System of Accounts for small water utilities. Separate general ledger accounts shall be established for the customer service charge, revenue collected for water usage above the 5,000 gallon minimum, the cost of purchased water, the Water Protection Fee, and realized gains and losses related to the water operations of Towns & Sons Enterprises. Appropriate separate expense accounts shall be established to record the expenses of Towns & Sons Enterprises. Appropriate balance sheet accounts shall be established for the partnership's assets, liabilities, and partner capital.
- i. Beginning July 1; 2020, a representative (either employee, partner, or independent contractor) of Towns & Sons Enterprises shall read the water meters each month. If no meter is present or the meter is not working, the billing account shall reflect that information.
- j. The water customer's monthly bill shall show:
  - i. Customer charge.
  - ii. Beginning and ending water meter readings along with the date the meter was read.
  - iii. Volume of water used stated in thousand gallons and any volumetric water charges.
  - iv. Water Protection Fee.
  - v. Other elements of a customer bill as required by the Commission's Billing Standards.<sup>10</sup>

7. Pursuant to K.S.A. 66-138, a water public utility that fails to perform any duty enjoined upon it, or fails, neglects or refuses to obey any lawful order made by the Commission

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<sup>10</sup> [https://kcc.ks.gov/images/PDFs/pi/billing\\_2012.pdf](https://kcc.ks.gov/images/PDFs/pi/billing_2012.pdf)

shall for every violation, failure or refusal, forfeit or pay to the state treasurer a sum of not less than \$100 and no more than \$1,000 for such offense.

8. As set forth in Staff's Motion, Towns Riverview has been operating in violation of the public utility act since approximately 1975, as it failed to seek and obtain certification as a public utility before providing service to its customers<sup>11</sup>, and charged untariffed rates for the service it provides.<sup>12</sup> While the statutory language indicates that Towns Riverview could be subject to penalties dating back decades for its violations of Commission statutes, rules, and regulations, the Commission may only impose civil penalties as of April 20, 2010, the date bylaw amendments to a Home Owners Association (HOA) were adopted which eliminated provisions that gave the HOA oversight of the water distribution system. The elimination of that HOA oversight effectively established Towns Riverview as an investor owned utility, which must receive certification pursuant to K.S.A. 66-131. Because Towns Riverview did not receive the necessary certification, Towns Riverview could be assessed the minimum civil penalty of \$100 per day for the number of days it has been in violation of K.S.A. 66-131. Towns Riverview has been in violation of K.S.A. 66-131 and K.S.A. 66-117 for 3,704 days, with each day constituting a separate and distinct violation. Given the preceding, the Commission would be within its rights to assess a civil penalty to Towns Riverview; however, in light of the recent filings by both Towns Riverview and Staff, the Commission has determined that a hearing at a future date on the appropriateness of a civil penalty is acceptable.

9. Finally, the Commission directs Staff to investigate whether Towns Riverview is capable of providing sufficient and efficient service in the future. If circumstances persist in which Towns Riverview continues to provide insufficient and inefficient service, the Commission

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<sup>11</sup> K.S.A. 66-131.

<sup>12</sup> K.S.A. 66-117.

reserves the right to issue further Orders and penalties to take whatever steps necessary within its power to ensure customers receive safe and reliable water service.

**THEREFORE THE COMMISSION ORDERS:**

A. Staff's Motion for Emergency Relief is hereby granted. Towns Riverview is a public utility pursuant to K.S.A. 66-104, subject to Commission jurisdiction.

B. Towns Riverview is hereby directed to comply with the requirements and directives set out in paragraph 6 above, with the exception of requirement (h) which shall be held in abeyance to allow Towns Riverview to locate a buyer for its water distribution system, or in the alternative, to initiate the process to convert the water distribution system to a rural water district.

C. Additionally, any potential civil penalty will be held in abeyance until after a hearing to be held at a future date. At that hearing, parties will be given the opportunity to discuss the appropriateness of any penalty.

D. Commission Staff is directed to further monitor and investigate Towns Riverview to determine whether it will be capable of providing sufficient and efficient service in the future.

E. Any party may file and serve a petition for reconsideration pursuant to the requirements and time limits established in K.S.A. 77-529(a)(1).<sup>13</sup>

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<sup>13</sup> K.S.A. 66-118b; K.S.A. 77-503(c); K.S.A. 77-531(b).

**BY THE COMMISSION IT IS SO ORDERED.**

Duffy, Chair; Keen, Commissioner; French, Commissioner

Dated: 06/25/2020



Lynn M. Retz

Executive Director

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**CERTIFICATE OF SERVICE**

20-DTRW-120-SHO

I, the undersigned, certify that a true copy of the attached Order has been served to the following by means of  
06/25/2020  
first class mail and electronic service on \_\_\_\_\_.

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