

BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of	)	
Columbia MHC East LLC d/b/a Columbia	)	
Park Water and Sewer System for an	)	Case Nos. 18-1294-AEM
Increase in Rates and Charges	)	
	)	
In the Matter of the Application of	)	Case No. 18-1528-WS-AIR
Columbia MHC East LLC d/b/a Columbia	)	
Park Water and Sewer System for an	)	
Increase in Rates and Charges	)	

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**NOTICE OF APPEAL OF APPELLANT COLUMBIA MHC EAST LLC,  
d/b/a COLUMBIA PARK WATER AND SEWER SYSTEM**

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2007-C1, Commercial Mortgage Pass-  
Through Certificates, Series 2007-C1*

### **Notice of Appeal**

Appellant Columbia MHC East LLC, d/b/a Columbia Park Water and Sewer System (“Appellant” or “CPWSS”), consistent with RC. 4903.11 and 4903.13, and S.Ct.Prac.R. 3.11 (B)(2), 3.11 (D)(2), and 10.02, gives notice to this Court and to the Public Utilities Commission of Ohio (“Appellee” or “PUCO”) of this appeal from the Journal Entry and Order of the Public Utilities Commission dated January 23, 2019 in Case No. 18-1528-WS-AIR and Case No. 18-1294-AEM (the “Order”) attached hereto as **Exhibit “A”**.

In accordance with R.C. 4903.10, Appellant timely filed its Motion for Rehearing of Journal Entry made by the Public Utilities Commission of Ohio January 23, 2019 (the “Rehearing Application”) on January 30, 2019 with the PUCO. The PUCO has not granted or denied the Rehearing Application and therefore it is has been deemed denied by operation of law pursuant to R.C. 4903.10 rendering it a final appealable order.

Appellant files this Notice of Appeal complaining of errors in the Order. Appellant alleges that the Order is unlawful and unreasonable in the following respects, all of which were raised and preserved in Appellant’s Rehearing Application:

1. The PUCO acted unlawfully and unreasonably by not considering Appellant’s Opposition to the Intervention of U.S. Bank and the Receiver that was referenced and incorporated into its filings. (Assignment of Error 2 in the Rehearing Application).
2. The PUCO unlawfully and unreasonably granted Intervenor’s Motion to Dismiss without providing Appellant time to respond violating Appellant’s due process rights. (Assignment of Error 3 in the Rehearing Application).

3. The PUCO unlawfully and unreasonably determined the Receiver has the right to own, control and/or operate CPWSS based on the 8<sup>th</sup> District Court of Appeals decision in Case No. CA-18-106910 that is currently being appeal to the Supreme Court of Ohio when nothing in the Receivership Order provides Receiver these rights. (Assignment of Error 4 in the Rehearing Application).

4. The PUCO unlawfully and unreasonably turned over operational control of CPWSS to the Intervenor who lacks the lawful certificates to operate. (Assignment of Error 6 in the Rehearing Application).

Appellant respectfully requests that this Court review and suspend the above referenced Journal Entry and Order of the Public Utilities Commission and find that it is unlawful and unreasonable and take any other action this Court deems appropriate.

Respectfully submitted,

/s/ John W. Monroe

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*Counsel for Appellant Columbia MHC East  
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**CERTIFICATE OF SERVICE**

I certify that on March 8<sup>th</sup> 2019, a true copy of the foregoing *Notice of Appeal of Appellant Columbia MHC East LLC, d/b/a Columbia Park Water and Sewer System* was served upon the Chairman of the Public Utilities Commission of Ohio by regular U.S. Mail and upon all parties of record via electronic transmission.

/s/ John W. Monroe

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**THE PUBLIC UTILITIES COMMISSION OF OHIO**

**IN THE MATTER OF THE APPLICATION OF  
COLUMBIA MHC EAST LLC DBA  
COLUMBIA PARK WATER AND SEWER  
SYSTEM FOR AN INCREASE IN RATES AND  
CHARGES.**

**CASE NO. 18-1294-WS-AEM**

**IN THE MATTER OF THE APPLICATION OF  
COLUMBIA MHC EAST LLC DBA  
COLUMBIA PARK WATER AND SEWER  
SYSTEM FOR AN INCREASE IN RATES AND  
CHARGES.**

**CASE NO. 18-1528-WS-AIR**

**ENTRY**

Entered in the Journal on January 23, 2019

**I. SUMMARY**

{¶ 1} The Commission dismisses and closes these two cases of record at this time.

**II. DISCUSSION**

{¶ 2} Columbia MHC East LLC dba Columbia Park Water and Sewer System (CPWSS or Company) is a waterworks and sewage disposal system company as defined by R.C. 4905.03 and a public utility as defined by R.C. 4905.02, and, as such, is subject to the jurisdiction of this Commission.

{¶ 3} On August 15, 2018, as amended on October 9 and November 30, 2018, CPWSS filed an application in Case No. 18-1294-WS-AEM seeking an emergency increase in rates pursuant to R.C. 4909.16 (hereafter, emergency rate increase application). CPWSS requested that the emergency rate relief continue for 18 months or until such time as the Commission has considered the Company's forthcoming application for a permanent rate increase.

{¶ 4} On October 9, 2018, CPWSS filed an application in Case No. 18-1528-WS-AIR (hereafter, permanent rate increase application) for a small utility increase in rates pursuant to Ohio Adm.Code 4901-7-01, Appendix A, Chapter III of the Commission's standard filing requirements.



{¶ 5} An application for a permanent increase in rates is governed by and must meet the requirements of R.C. 4909.17 to 4909.19 and the Commission's standard filing requirements set forth in Ohio Adm.Code Chapter 4901-7. The Commission will endeavor to conclude its review of an application that satisfies the requirements of R.C. 4909.17 to 4909.19 and the Commission's standard filing requirements within 275 days as set forth in R.C. 4909.42.

{¶ 6} Included within the Company's October 9, 2018 permanent rate increase application was a request for waiver of certain rate base schedules involving plant-in-service, depreciation accrual rates, and jurisdictional reserve balances as well as a fully allocated cost of service study for the addition of a new customer class.

{¶ 7} Pursuant to Ohio Adm.Code 4901-7-01, Appendix A, Chapter III(A)(4)(e), a waiver request not granted by the Commission within 30 days of its filing shall be considered denied. The Company's waiver request was denied pursuant to Ohio Adm.Code 4901-7-01, Appendix A, Chapter III(A)(4)(e).

{¶ 8} On November 20, 2018, Staff sent CPWSS a letter stating its permanent rate increase application filed on October 9, 2018, did not comply with the standard filing requirements covered in Ohio Adm.Code 4901-7-01, Appendix A, Chapter III and that Staff did not receive enough information to begin its review of the application. Staff's letter detailed the information CPWSS must provide in order to complete the permanent rate increase application.

{¶ 9} Pursuant to Ohio Adm.Code 4901-7-01, Appendix A, Chapter III(A)(4)(c), within 60 days of an application for permanent increase in rates being filed, the Commission will issue an entry indicating whether the application complies with the Commission's standard filing requirements. In light of the deficiencies outlined in the Staff's November 20, 2018 letter, the Commission issued an Entry on December 5, 2018, finding that the permanent rate increase application of CPWSS filed on October 9, 2018, was not in

compliance with the Commission's standard filing requirements at that time for purposes of calculating the time period set forth in R.C. 4909.42.

{¶ 10} On November 30, 2018, CPWSS filed supplemental information to support its permanent rate increase application. The Commission stated in the December 5, 2018 Entry that we would review this supplemental information and thereafter make a determination whether the supplemental information renders the permanent rate increase application in substantial and technical compliance with the standard filing requirements.

{¶ 11} On November 16, 2018, in both the emergency rate increase application and the permanent rate increase application proceedings, M. Shapiro Real Estate Group Ohio, LLC, through Kimberly Scott (the court-appointed receiver), and U.S. Bank National Association, as trustee for the registered holders of certain commercial pass-through certificates (Bank) (collectively, Movants), filed joint motions to intervene in both the emergency and permanent rate increase application proceedings.<sup>1</sup> Movants claim to have a direct, real, and substantial interest in issues and matters involved in both proceedings, and are so situated as the court-appointed receiver and mortgagee of the subject waste water treatment plant assets and real property that the disposition of this proceeding may, as a practical matter, impair or impede their abilities to protect their respective interests. Further, Movants assert that their participation will not unduly prolong or delay these matters and that the legal positions advanced directly relate to the merits of the Company's ability to pursue the emergency and permanent rate increase applications. As a final matter, Movants claim that their interests will not be represented by other parties to these proceedings.

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<sup>1</sup> Movants assert that the waste water treatment plant and waterworks system (collectively, WWTP) is included in a loan agreement whereby Columbia Park East MHP, LLC (Columbia Park East) and Columbia Far West, LLC, as part of a first mortgage fixture filing, refinanced the subject property for \$55,000,000. CPWSS is the sole member of borrower Columbia Park East and Kenneth C. Burnham is the president of CPWSS as well as a member and shareholder of two entities that own CPWSS.

{¶ 12} On November 30, 2018, CPWSS, through counsel, filed comments opposing the Movants' motion to intervene in the emergency rate increase proceeding. In the comments, the Company asserts that Movants have established no right to intervene in this matter. CPWSS further asserts that there is no contract or agreement between the Movants and the Company. Finally, CPWSS states that intervention by Movants will cause undue delay in the implementation of the Company's emergency rate increase proceeding. CPWSS did not file a memorandum contra opposing Movants intervention in the permanent rate increase proceeding.

{¶ 13} Having fully reviewed the arguments of the parties concerning the issue of intervention, the Commission finds that Movants have satisfied the requirements for intervention in these matters as outlined in R.C. 4903.221 and Ohio Adm.Code 4901-1-11. Intervention is, therefore, granted to Movants in both the emergency and permanent rate increase application proceedings.

{¶ 14} On December 21, 2018, Movants filed a motion seeking to dismiss the emergency rate increase application. On January 4, 2019, in the permanent rate increase application, Movants filed a similar motion to dismiss. In both proceedings, Movants assert that CPWSS lacks standing to file, let alone maintain, the emergency and permanent rate increase applications pursuant to a valid and effective state court order. In fact, Movants maintain that the court-appointed receiver possesses exclusive authority with respect to the waste water treatment plant facilities at this time.

{¶ 15} In support of the motions to dismiss, Movants recount that on October 9, 2017, the Bank commenced Cuyahoga County Court of Common Pleas (the Court) Case No. CV-17-887110 in order to, among other things, enforce payment of the matured \$55,000,000 promissory note, foreclose its mortgage, fixture filing, and other security interests in the Columbia Park Mobile Home Community (Community) including the waste water and waterworks system operated by CPWSS within the boundaries of the Community, and



appoint a receiver to manage and control the subject property. On March 1, 2018, the Court entered its Order Appointing Receiver (Receivership Order) wherein the Court appointed the receiver and authorized the court-appointed receiver “to take immediate possession and full control of the Receivership Property and...to exercise full control over, to prevent waste, and to preserve, manage, secure, and safeguard the Receivership Property.”<sup>2</sup> According to Movants, the Receivership Order grants receiver authority to manage and control all “Receivership Property,” which is defined as including all real estate that is subject to the mortgage, all personal property located thereon, all fixtures attached to or used in connection with the use and operation of the Community, and all improvements thereon. CPWSS and related defendants commenced an appeal of the Receivership Order in the Eighth District Court of Appeals on March 7, 2018, asserting that the WWTP is not subject to the Bank’s mortgage and therefore cannot be subject to the Receivership Order. On December 20, 2018, the Eighth District Court of Appeals entered its judgment affirming the Receivership Order in all respects. The appellate court agreed that the WWTP constitutes a fixture upon the Columbia Park real estate, is therefore subject to the mortgage, is part of the mortgaged property, and is thus subject to the Receivership Order. Accordingly, Movants seek a Commission order finding that CPWSS lacks standing to file and maintain rate increase matters due to the receivership and dismiss both the emergency and permanent rate increase applications.

{¶ 16} No memoranda contra the motions to dismiss have been filed.

{¶ 17} The Commission determines that, in light of the Receivership Order and proceedings in state court, only the receiver, acting on behalf of CPWSS, has standing to pursue both emergency and permanent rate increase applications. As the receiver, acting

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<sup>2</sup> Journal Entry and Order Appointing Receiver, Court of Common Pleas Cuyahoga County, Case No. CV-17-887110, (Mar. 1, 2018).

on behalf of CPWSS, has requested dismissal of both the emergency and permanent rate increase applications, the Commission finds that both applications should be dismissed.

**III. ORDER**

{¶ 18} It is, therefore,

{¶ 19} ORDERED, That, in accordance with Paragraph 17, Case Nos. 18-1294-WS-AEM and 18-1528-WS-AIR be dismissed and closed of record. It is, further,


{¶ 20} ORDERED, That a copy of this Entry be served upon all parties of record.

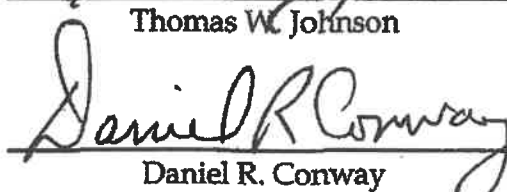
THE PUBLIC UTILITIES COMMISSION OF OHIO

  
Asim Z. Haque, Chairman

  
M. Beth Trombold

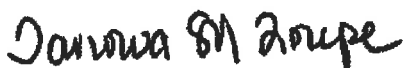
  
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Entered in the Journal  
JAN 23 2019



Tanowa M. Troupe  
Secretary

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**Case No(s). 18-1294-WS-AEM, 18-1528-WS-AIR**

Summary: Notice of Appeal of Appellant Columbia MHC East LLC, d/b/a Columbia Park Water and Sewer System electronically filed by Mr. John W Monroe on behalf of Columbia MHC East LLC, d/b/a Columbia Park Water and Sewer System