

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. W-1297, SUB 14

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of)	
)	
Pinnacle Bank, as successor by merger with)	
Bank of North Carolina,)	
)	
Complainant)	ANSWERS AND RESPONSES TO
)	COMPLAINT OF PINNACLE BANK
v.)	
)	
Harkers Island Sewer Company,)	
Respondent.)	

NOW COMES RESPONDENT, Harkers Island Sewer Company (“HISCO”), and answers and otherwise responds to Complainant’s Complaint, as follows. [Each numbered paragraph of Respondent HISCO’s Answer below corresponds to the same numbered paragraph in the Complaint.]

1. Respondent has no obligation to assess or respond to legal assertions and conclusions contained and such thus are Denied; Respondent HISCO does not have firsthand specific knowledge regarding the location of various offices of Pinnacle Bank and thus such allegations are denied; Respondent HISCO admits, upon information and belief, that Pinnacle Bank has offices and does business in North Carolina.
2. Admitted that HISCO is a Public Utility providing sewer services in Carteret County, North Carolina.
3. Admitted upon information and belief that documents of the type referenced in this paragraph, as well as prior and subsequent modifying documents, exist. Those documents speak for themselves and any characterizations by Complainant as to the content, meaning, or intent of the document are Denied. HISCO further states that, contrary to implications by Complainant, HISCO is entirely distinct and separate from its principals and any other entities to which those principals are or were connected. HISCO additionally respectfully asserts that this allegation is completely irrelevant and immaterial to any issue properly before this Commission. This paragraph, and indeed the majority of facts and issues discussed in the Complaint have little or nothing to do with Complainant’s (unsupported) allegations of having been denied sewer service, and HISCO requests that the Commission

strike or dismiss those irrelevant and improper allegations of the Complaint.

4. Admitted upon information and belief that documents of the type referenced in this paragraph, as well as prior and subsequent modifying documents, exist. Those documents speak for themselves and any characterizations by Complainant as to the content, meaning, or intent of the document are Denied. HISCO further states that, contrary to implications by Complainant, HISCO is entirely distinct and separate from its principals and any other entities to which those principals are or were connected.
5. Admitted upon information and belief that documents of the type referenced in this paragraph, as well as prior and subsequent modifying documents, exist. Those documents speak for themselves and any characterizations by Complainant as to the content, meaning, or intent of the document are Denied. HISCO further states that, contrary to implications by Complainant, HISCO is entirely distinct and separate from its principals and any other entities to which those principals are or were connected.
6. Denied. *Michael Laws* is a principal of HISCO and previously managed BLE Development, among other entities.
7. Admitted that the referenced documents exist, and that those documents speak for themselves. Any characterizations by Complainant as to the content, meaning, or intent of the document are Denied.
8. Admitted that the referenced documents exist, and that those documents speak for themselves. Any characterizations by Complainant as to the content, meaning, or intent of the document are Denied.
9. Admitted that HISCO's permit applications, amended permit applications, and other relevant documents exist and that those documents speak for themselves. Any characterizations by Complainant as to the content, meaning, or intent of the document are Denied.
10. Admitted that HISCO's permit applications, amended permit applications, and other relevant documents exist and that those documents speak for themselves. Any characterizations by Complainant as to the content, meaning, or intent of the document are Denied.
11. Denied. At all times prior to the foreclosure which prevented the prior developer (BLE) from obtaining sewer service for the lots in James Creek, HISCO represented its intent to serve James Creek through a multi-stage need-based development plan as outlined in the various permits. See HISCO Exhibit 11.5, NCDENR Permit No. WQ0024023. It specifies the expansion of Westbay Waste Water Treatment Plant ("Westbay WWTP") intended to serve James Creek Phase 1. The expansion of Westbay WWTP never occurred because it was never funded by the Developer as required and stated in said Permit and related documentation. Neither the original developer nor any successor in interest ever paid for the expansions to serve James Creek (or any other method of obtaining the requisite permitted capacity for that development).

12. The existence of the referenced document is Admitted. That document speaks for itself, and any characterizations by Complainant as to the content, meaning, or intent of the document are Denied. Respondent further respectfully directs the Commission's attention to Complaint Exhibit B, Page 15. The cost of \$136,500 was incurred *by the developer* BLE Development for the approximately 3,900 feet of transmission lines which connected Westbay WWTP and the permitted, proposed, and intended but never built James Creek WWTP. Complainant presumably acquired and retains possession of those lines which likely CAN be used to benefit future development within James Creek if the Complainant wishes to finish the process of obtaining service capacity by building the intended James Creek WWTP or working with HISCO to create usable capacity at another WWTP site.

The expectation that improvements would not be needed was based on predictions that the then-existing 10,080 gpd Westbay WWTP could accept actual wastewater flows and would be able to adequately process the actual volume of both Westbay Subdivision and James Creek Phase 1 for a period exceeding ten years based on the then existing needs of those substantially undeveloped and unoccupied developments. All 32 Westbay Subdivision lots were sold in the year 2005, yet only five homes were constructed which used the sewer system. Taking into consideration that only five homes had been constructed in Westbay in six years, the conclusion was reached that no additional upgrades were likely to be needed within the next five to ten years based on present and anticipated future volume.

As indicated in the application, consistent with the approved and customary procedures for acquiring sewer service, the cost of upgrades to Westbay WWTP would eventually be triggered by actual flows and would be performed at the Developer's expense.

HISCO's total original permitted capacity of 48,600 gpd (which included the permitted capacity of the intended James Creek WWTP), was required to comply with NCDENR requirements for serving the two subdivisions. The facility for which James Creek was permitted was never actually constructed by the developer due to foreclosure of the development, nor was it constructed by any of its successors in interest, including complainant. The feasibility and legitimacy of the permitted capacity was nullified by the foreclosing bank, and the permits were cancelled and the combined permitted capacity held by the Utility was reduced by that amount.

13. The existence of the referenced document is Admitted. That document speaks for itself, and any characterizations by Complainant as to the content, meaning, or intent of the document are Denied. Respondent further states that it is undisputed that HISCO intended and expected to provide sewer service to future anticipated customers within the James Creek subdivision upon completion of the requisite processes. Although substantial infrastructure was built in anticipation of providing sewer service to James Creek, the foreclosure (and subsequent dormancy of the development of James Creek) obviated the original intent to provide that service. HISCO lost substantial permitted capacity, which was issued based on the intent to serve James Creek, when it lost rights within the planned subdivision.

14. Admitted.
15. The existence of the referenced document is Admitted. That document speaks for itself, and any characterizations by Complainant as to the content, meaning, or intent of the document are Denied.
16. The existence of the referenced document is Admitted. That document speaks for itself, and any characterizations by Complainant as to the content, meaning, or intent of the document are Denied.
17. The existence of the referenced document is Admitted. That document speaks for itself, and any characterizations by Complainant as to the content, meaning, or intent of the document are Denied. Respondent further states that the referenced declarations were both disclaimed and rendered impossible *against HISCO's repeated requests* by the foreclosing Bank.
18. The existence of the referenced document is Admitted. That document speaks for itself, and any characterizations by Complainant as to the content, meaning, or intent of the document are Denied.
19. Admitted. Further, the Loan Modification Agreement referenced was written with awareness of, and implicit reference to, the customary additional costs to be borne by the developer of the subdivision and the allocation of future tap fees. It does not, despite Complainant's apparent misunderstanding, establish any waiver of the usual costs to a developer to create or secure future Sewer treatment capacity.
20. Admitted on information and belief.
21. Admitted on information and belief.
22. Admitted on information and belief.
23. The existence of the referenced letter is Admitted. That document speaks for itself, and any characterizations by Complainant as to the content, meaning, or intent of the letter are Denied. Further Admitted that a renewal of permits was executed by HISCO in late 2014 and issued in 2015 by NCDENR with the hope that BNC would eventually comply with HISCO's urgent requests to retain sewer service rights. However, after approximately one year of no response from BNC officials or legal representatives, HISCO had no choice but to cancel the permits which had been nullified by the loss of property, easement, and permits to build the intended on-site WWTP. See HISCO Exhibit 23.5.
24. The existence of the referenced document is Admitted. That document speaks for itself, and any characterizations by Complainant as to the content, meaning, or intent of the letter are Denied.
25. Denied. HISCO is willing and able to provide sewer services to Complainant or any successor in interest pursuant to normal procedures and subject to all applicable regulations. Such procedures and regulations include creation of additional available

sewage handling capacity, which may be accomplished in several different ways (subject to regulatory review and approval). To date, Complainant has not sought to (or indicated willingness to) work with HISCO and its engineer(s) to formulate and fund an appropriate method to create the legally and functionally required additional available service capacity necessary to serve the James Creek subdivision.

26. Admitted. HISCO can supply James Creek with public sewer and stands ready to do so pursuant to normal procedures and subject to all applicable regulations.
27. It is Admitted that HISCO has not sought to remove the James Creek subdivision from its franchise territory.
28. Admitted. No such hearing is required, appropriate, or contemplated.
29. Complainants characterizations of the referenced documents are Denied.
30. Complainants characterizations of the referenced documents are Denied.
31. Complainants characterizations of the referenced documents are Denied. It is Admitted that HISCO is willing and able to provide sewer service to the James Creek subdivision pursuant to normal procedures and subject to all applicable regulations.
32. Denied. *Michael Laws* is or was a member of the referenced entities.
33. The existence of the referenced letter is Admitted. That document speaks for itself, and any characterizations by Complainant as to the content, meaning, or intent of the letter are Denied.
34. The existence of the referenced letter is Admitted. That document speaks for itself, and any characterizations by Complainant as to the content, meaning, or intent of the letter are Denied.
35. The existence of the referenced letter is Admitted. That document speaks for itself, and any characterizations by Complainant as to the content, meaning, or intent of the letter are Denied. HISCO further states that James Creek is not currently served by HISCO and would therefore be a “new” subdivision under the rules governing the Utility. Again, HISCO **IS** willing to provide sewer service to the James Creek subdivision pursuant to normal procedures and subject to all applicable regulations.
36. Admitted. The permit for construction of James Creek WWTP cannot be renewed by HISCO due to the loss of control of property. HISCO notified NCDENR representatives and all concluded a permit would not be valid without the control of the property assigned to permit holder.
37. Admitted. At the time of the permit renewal, HISCO did possess 58,600 gpd capacity as stated in NCUC applications to date. However, after loss of control and permit cancellation in late 2015, HISCO did reduce its stated capacity by 38,600 gpd and James Creek lost the capacity to serve James Creek. BNC officials and its legal representatives

were made aware and were notified of the consequences of their ignoring the pleas to retain the permitted capacity, as well as notified of the responsibility of developer to incur ongoing and future costs related to the sewer service.

38. The existence of the Bond Reduction letter is Admitted. That document speaks for itself, and any characterizations by Complainant as to the content, meaning, or intent of the letter are Denied.

39. The existence of the Bond Reduction letter is Admitted. That document speaks for itself, and any characterizations by Complainant as to the content, meaning, or intent of the letter are Denied.

40. The existence of the Bond Reduction letter is Admitted. That document speaks for itself, and any characterizations by Complainant as to the content, meaning, or intent of the letter are Denied.

41. The existence of the Bond Reduction letter is Admitted. That document speaks for itself, and any characterizations by Complainant as to the content, meaning, or intent of the letter are Denied.

42. The existence of the Bond Reduction letter is Admitted. That document speaks for itself, and any characterizations by Complainant as to the content, meaning, or intent of the letter are Denied.

43. Denied. HISCO does have the ability to expand its capacity and is willing to do so for any qualified requestor under the normal terms and regulations which govern Public Utilities.

44. Denied. HISCO has and will continue to commit to serve James Creek at the developer's or owner's expense.

45. Admitted, and further admitted that HISCO has done and continues to do meet and exceed its legal obligations.

46. Denied. HISCO has not received, and therefore has neither "agreed" as stated on the one hand nor "refused" as claimed on the other, any proper request to provide sewer to James Creek by the current owner of that planned subdivision. Nor is there any prior agreement to provide that service under the terms asserted by the Complainant.

This the 3rd day of June, 2019.

Electronically submitted

/s/I. Clark Wright, Jr.

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N.C. Bar No. 11163

J. MICHAEL GENEST

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Attorney for Respondent HISCO

CERTIFICATE OF SERVICE

I certify that I have this day served a copy of the foregoing ANSWERS AND RESPONSES TO COMPLAINT OF PINNACLE BANK on the parties of record by electronic mail or by United States first class mail, postage prepaid, addressed to the following:

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This the 14th day of June, 2019.

Electronically submitted

/s/ I. Clark Wright, Jr.

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