

**STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH**

DOCKET NO. W-1125, SUB 9  
DOCKET NO. W-1125, SUB 10

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. W-1125 Sub 9

In the Matter of  
Greater Kinnakeet Shores Home Owners, Inc.  
c/o Pat Weston, P. O. Box 853, Avon, North  
Carolina 27915,

Complainant

v.

Outer Banks/Kinnakeet Associates, LLC.,  
Defendant

DOCKET NO. W-1125 Sub 9

In the Matter of  
Kashf Ain, 17715 Dry Mill Road, Leesburg,  
VA 20175

Complainant

v.

Outer Banks/Kinnakeet Associates, LLC.,  
Defendant

ORDER DECLARING AN  
EMERGENCY AND DIRECTING  
PUBLIC STAFF TO IDENTIFY  
EMERGENCY OPERATOR

BY THE COMMISSION: On June 28, 2022, the Commission issued an order in the above-referenced dockets directing Outer Banks/Kinnakeet Associates, LLC (OBKA) to appear before the Commission on Friday, July 22, 2022, at 10:00 a.m. in Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, and show cause why the Commission should not exercise its authority under N.C. Gen. Stat. § 62-116(b) to appoint an emergency operator to furnish sewer utility service to the Kinnakeet Shores subdivision. Docket No. W-1125, Sub 9 involves the complaint of Greater Kinnakeet Shores Home Owners, Inc. (HOA) against OBKA, and Docket No. W-1125, Sub 10 involves the complaint of Kashf Ain against OBKA. Both complaints pertain to OBKA's ownership and operation of the Kinnakeet Shores Wastewater Treatment Plant (WWTP).

The order also, among other things, consolidated Docket No. W-1125, Sub 9 and Docket No. W-1125, Sub 10, scheduled an expert witness hearing on these consolidated dockets to be held in conjunction with the show cause hearing, and directed the participation of the Public Staff by providing expert witness testimony related to the allegations of the complaints and the Commission's investigation into whether to appoint an emergency operator.

At the hearing held on July 22, 2022, Pat Weston, President of the HOA, testified regarding the impact of the moratorium on residents and property owners and expressed serious concern regarding the viability of the system and the threat of future failure of the WWTP that would affect residential sewer service and have a negative environmental impact.

Also at the hearing, Charles Junis, Director, Water, Sewer, and Telephone Division appeared on behalf of the Public Staff. Witness Junis testified that he conducted an onsite investigation on July 19, 2022, and pursuant to his investigation he discovered the WWTP to be in very poor condition. He testified that most crucial parts of the WWTP are not functioning at all or are not functioning properly, that many system components are being used to improperly store sludge, that the latest repair to the system failed within three days of installation of a replacement part, and that the system is releasing untreated wastewater directly into a storage/infiltration pond which is very likely impacting a nearby recreational pond. Witness Junis testified that the dilapidated condition of the WWTP posed a danger to operators and inspectors as well as a liability to the customers served by the WWTP. Witness Junis testified that the residents of Kinnakeet Shores are experiencing an actual loss of adequate service because of the condition of the WWTP and in his expert opinion, a real emergency exists necessitating the appointment of an emergency operator.

Witness Junis also presented evidence that the Division of Water Resources (DWR) of the North Carolina Department of Environmental Quality (DEQ) has determined that the WWTP is non-compliant with the applicable permits. Specifically, the evidence presented by the Public Staff shows that on July 19, 2022, DWR found that wastewater is being pumped into the WWTP, that the WWTP is not treating the wastewater, and that effluent discharged from the WWTP will not meet permit limits. The Public Staff also presented evidence that DEQ caused to be filed on May 5, 2022, in Dare County Superior Court a Complaint and Motion for Injunctive Relief, alleging, among other things, chronic neglect and mismanagement of the WWTP and requesting, among other things, that the Court direct OBKA to take specific and significant corrective action to comply with its permits.

On behalf of the Public Staff, witness Junis requested that the Commission appoint an emergency operator immediately. He stated that the Public Staff has engaged in discussions with Carolina Water Service, Inc., of North Carolina (CWSNC) regarding the willingness of CWSNC to serve as the emergency operator of the WWTP. Witness Junis provided CWSNC's successful history of serving as an emergency operator and detailed its current operation of coastal facilities.

No evidence was provided to controvert the evidence provided by witness Weston and witness Junis.

Based on the entirety of the record including the evidence received at the hearing on July 22, 2022, the Commission finds that a real emergency exists at the WWTP, as the WWTP is in very poor condition and in need of significant repair; is in non-compliance with its permits; is not treating wastewater received; is not providing customers adequate service; and as OBKA does not have the technical, managerial, and financial capacity to become compliant with its obligations. Based on the foregoing, the Commission determines that it is necessary to appoint an emergency operator for the WWTP.

IT IS, THEREFORE, ORDERED, as follows:

1. That the Public Staff confirm whether CWSNC is willing to serve as emergency operator and, if so, pursuant to what conditions;
2. That the Public Staff identify an alternative emergency operator to the extent CWSNC is not willing to serve as an emergency operator of the WWTP;
3. That the Public Staff confirm whether OBKA consents to the appointment of an emergency operator;
4. That the Public Staff report to the Commission as soon as possible, but no later than noon on Friday, July 29, 2022, on the foregoing matters; and
5. That upon receipt of the Public Staff's report, the Commission will issue further orders as necessary.

ISSUED BY ORDER OF THE COMMISSION.

This the 22nd day of July, 2022.

NORTH CAROLINA UTILITIES COMMISSION

A handwritten signature in black ink that reads "Erica N. Green". The signature is written in a cursive, flowing style.

Erica N. Green, Deputy Clerk