

Draft of Testimony of Mike Laws on behalf of Harkers Island Sewer Company [HISCO]

Prepared and Submitted to NCUC April 5, 2021

NCUC Docket No. W-1297; Sub 14

Almost ten years ago, on May 16, 2011 BLE Utility Company LLC [later Harkers Island Sewer Company or HISCO] filed with the NCUC a “NOTIFICATION OF Intent to Begin Operations on a Contiguous to Present Service Area” requesting approval to serve the James Creek [JC] Subdivision. Needless to say, the information presented in the form was based on then-existing sewage treatment and disposal costs, both for use of the existing Westbay WWTP and also the projected construction and operation of a larger on site system as lots were sold. The Co-owners of the WWTP utility were at the time simultaneously the members of BLE Development. The Mangers agreed that both the utility and development businesses would mutually benefit from the pledge to serve and the action to develop JC. At the time, the JC Subdivision was approaching final stages of permitting and certifications to market and sell lots. [See attached marketing flyer.] BLE Development had 4 lots under contract and was negotiating with a potential buyer concerning building JC’s first custom home and their home becoming the 1st customer to apply to BLE’s lender, Bank of North Carolina [BNC] for a construction to permanent lot/home loan. The mangers felt optimistic that although the real estate market remained sluggish, the ability to build new affordable homes would allow BLE to be able to sustain and eventually flourish as the market slowly improved. BLE knew it had an advantage to defray sizeable upfront cost associated with public sewer as being governed and allowed by NCDENR [now known as DEQ] and its water quality division’s [now known as DWR] governing

rules allowing for the utility to serve new customers until actual 30-day flow rates exceeds 80% of permitted capacity.

The application of the 80-20 rule by the State's water quality division was due to ownership and then-intended operation of the Westbay WWTP. As events unfolded, the Westbay WWTP never started processing waste water due to such minimal flows resulting from HISCO's very low number of then-active customers. What small flows there were at the time were handled by pump and haul to Morehead City. HISCO realized through the pump and haul process of transferring wastewater to Morehead City sewer system processing the wastewater for a fee of 10 cents per gallon, and the NCDENR mandates of strict monitoring and haul reports that the average home on Harkers Island being 8 homes monitoring in Westbay Subdivision as its case examples, was using only 62 gallons of water per day. With that knowledge, HISCO concluded that the already constructed and operational Westbay WWTP could and would support actual and permitted JC sewer flows throughout the proposed phase 1 buildout, and well into the projected phase 2 buildout. This would allow the BLE Developer to transfer over to the HISCO utility at each lot closing \$10,000 (per closing) which would financially support the construction of the planned on site larger JC WWTP to eventually join in to serve both the subdivision phases and other potential HISCO customers. [Attached is a lot pricing sheet that I prepared with my BLE business partners during the 2011-2012 time period.] At this time, BLE Development had expended several hundred thousand dollars to permit and install both 3" and 4" transmission lines and collection system components to serve the subdivisions. The plan allowed for BLE to process in 1 location but pump to the other for discharge. The engineer [Bill Forman] agreed with me that installing both lines would be a valuable asset with the process

transfer. The fact remains that the plan was for the proposed JC WWTP to become the facility allowing for long term sewer service to JC, with Westbay (and pump and haul) serving as interim permitted and actual sewage treatment capacity to serve initial lot sales and buildout demands.

After plat recordation, BLE Development closed the sale of one lot in JC. It was a cash offer. At this time, there were three other lot sales under contract, with each committed to using the BNC special financing program, (see attached). As time passed and the economy worsened, BNC was not returning BLE Development telephone calls and was not willing to offer any flexibility on financing, either for BLE or potential lot purchasers. BNC then cancelled the special lot financing program and immediately demanded that BLE Development pay off its entire development loan or face foreclosure. I was also personally liable and unable to pay these large loan amounts. Both BLE Development and HISCO [then called BLE Utility Company, LLC] and myself individually all recognized that the JC subdivision as originally planned was dead, and likely lost to foreclosure.

At some point in this time period, HISCO became the utility of record with a simple change of name procedure through the NCUC and State water quality permitting agencies.

As HISCO's Manager, I repeatedly tried to convince BNC officials to transfer back to HISCO the land, transmission lines, and needed assets to maintain both HISCO's ability to comply with its State issued permits and to serve the JC subdivision, either currently or in the future. Certified letters to the bank and its legal counsel from HISCO document the dire circumstances and the consequences if HISCO no longer owns or controls those parts of its

permitted sewage treatment and disposal system. As HISCO's Manager, I clearly stated in these HISCO letters the effect or results that would occur by BNC's lack of cooperation and or working together with HISCO to minimize the damage to all parties. One of those letters is attached.

It is a fact that if BNC had not foreclosed, or at least had transferred back to HISCO the sewer system assets in JC, HISCO then would have been able to maintain its permits and control of these important utility assets. Obviously, neither BLE Development nor any subsequent owners of JC were willing or able to adhere to their end of the deal as stated in the 2011 NCUC territory application. And this is true regardless of who the developer is. Had any owner of the JC subdivision lands been willing to comply with the terms of the April 2011 territory application, the JC subdivision would have sewer service today and HISCO would have the capacity to serve. AT NO TIME DID BLE DEVELOPMENT MAKE ANY PAYMENTS TO HISCO's PREDECESSOR UTILITY TO PAY FOR JC SEWER CAPACITY.

To me, it seems that BNC and then Pinnacle and now MRT-1 all have failed to recognize that once the economic realities set in back then, they needed to separate any animosity or adverse financial actions against me personally or the now bankrupted BLE Development, from the importance of working with me **as manager of HISCO** for the long term benefit of both the utility and future development potential of the JC subdivision property. Additionally, neither BNC, Pinnacle Bank nor MRT-1 have recognized the drastically changed circumstances since 2011 and the adverse impact that BNC's foreclosure had on HISCO's ability to comply with its State permit and to provide actual sewage treatment and disposal services.

In 2019 HISCO's engineer performed a study confirming that HISCO's actual flows (68 gpd on average per home) could and would allow for JC homes to be operating today if only everyone had worked together to allow HISCO to maintain permitted capacity for the JC subdivision [approximately 38,600gpd]. At HISCO's expense, HISCO's engineer also prepared a valid cost estimate and discussion of how best to provide sewage treatment and disposal capacity for JC in today's circumstances. A copy of this engineer's report and estimate is attached. NONE OF THESE SEWAGE TREATMENT AND DISPOSAL COSTS REPRESENT REPAIRS TO HISCO'S EXISTING SYSTEM – THE COSTS DISCUSSED IN THE ATTACHED DOCUMENT ARE THE MOST COST EFFECTIVE WAY TO PROVIDE SEWER TO JAMES CREEK.

BLE Development transferred all sewer related assets to HISCO including the WWTP at Westbay and the transmission lines connecting JC and Westbay. However, as stated above, BLE lost control to transfer the installed infrastructure **within** JC as well as the permits allowing for the 38,600 gpd capacity contained in JC WWTP permit. BNC's foreclosure actions and refusal to work with HISCO [same with Pinnacle Bank later on] are what prevented this.

It is a fact that then developer BLE, transferring by foreclosure to BNC and then later to Pinnacle Bank, and then later Pinnacle selling to MRT-1, has NEVER resulted in the payment of ANY dollars to the serving utility, (HISCO) to pay for sewer service. In the May 16, 2011 NCUC application, on Page three under "Recovery of Plant Cost", the sum of \$583,804 is listed. At this point in time, BLE Development planned to fund payments to the utility based on \$10,000 per lot closing being paid to the utility. This amount would fund the total the amount needed to build the JC WWTP over time, as flow totals from both subdivisions dictated. **To date the utility has not been funded the amount pledged by any developer or owner.**

The simple solution today is to adhere to the basic **principles** as presented in the May 16, 2011 NCUC territory application, **taking into account inflation and changed costs realities, as well as the large negative impacts caused by BNC's foreclosure and subsequent unwillingness to work with the utility.** HISCO's predecessor utility received approval in 2011 from the NCUC, and HISCO remains ready, willing and able to follow through with similar terms today, adjusted for current costs and of course recognizing the adverse impacts caused by BNC/Pinnacle. MRT-1 is just plain wrong to assert that this means HISCO somehow must serve each lot for only a \$2,500 tap fee. In my opinion the only negotiating needed is the inflation rated calculations allowing for cost increases to be covered since the May 16, 2011 application date, and taking into account that HISCO had to deal with State regulators to correct the adverse impacts caused by the BNC foreclosure and unwillingness to work with HISCO regarding the valuable sewer system assets thereby taken away **FROM HISCO** – not just from BLE. I am proud of how I have managed HISCO and have earned repeated NCUC approvals for other larger developers and the NPS. All I ask is that the NCUC recognize that **circumstances have changed a great deal since 2011**, and that the owners and developers of the JC subdivision property – like everyone else that HISCO serves – must be required to properly fund the needed sewer capacity based on the **concepts** in the 2011 territory agreement, **but priced based on today's costs and the realities of how the BNC foreclosure adversely impacted the utility.**

Based on all of my 30+ years of experience in the sewage treatment and disposal business, as well as on the expert input from HISCO's engineer, I do not think that MRT-1 is capable of designing, building or operating its own separate sewage treatment and disposal facility – and doing so also would deprive the subdivision of an additional 6-7 lots that can be

sold today in a strengthening real estate market. The method of writing in mandates and acceptance from Developer to the HOA Covenants has long been problematic as HOA members and volunteers have no business running a WWTP and it inherits issues on a day-by-day basis. MRT-1 cannot efficiently operate this system from Lexington or any other distant location, and thus whomever the developer is they always end up dumping the long term regulatory and O&M burdens on the development HOA, who is ill-equipped to handle such, and who then ends up passing on inefficiencies to all future JC home owners. Further to this point, the Carteret County Subdivision ordinances (see attached excerpt) mandate the use of **public** utilities when possible in order to curtail the transfer to non-suspecting consumers whom were only buying real estate or 2nd home not realizing the cost and responsibilities of be a HOA member and owner operating a WWTP. I am fairly certain that there are few, if any, home or lot purchasers who anticipate that their property investment includes owning and operating their share of the subdivision's own WWTP. History has repeatedly proven that this developer-desired "dump and run" tactic does not benefit the homeowners, the regulators, the NCUC or the environment over the long term.

As additional testimony, I am attaching the verified discovery responses that I previously provided to MRT-1.

s/Mike Laws

Short Resume:

Michael Laws [age 61]

Associates Degree in Marine Construction and Construction Engineering at
Cape Fear Tech, Wilmington, NC

Plant manager at age 24 at Summey Homes in Dallas, NC

Self employed as GC thereafter starting at age 26 as licensed Contractor.

- 1) General Contractor since age 22, (39yrs.)
- 2) Built and installed all water sewer lines in subdivision it developed including
- 3)
 - A. Magnolia Square Office Park. Aberdeen NC.
 - B. Hidden Valley Subdivision Aberdeen, NC
 - C. Pine Sage Subdivision Pinehurst, NC
 - D. The Bluffs at High Rock Salisbury NC
 - E. Westbay Subdivision Harkers Island, NC
 - F. James Creek Subdivision, Harkers Island NC