

PLACE: Dobbs Building, Raleigh, North Carolina
DATE: Wednesday, August 17, 2022
DOCKET NO.: W-1297, Sub 14
TIME: 10:00 a.m. - 2:53 p.m.
BEFORE: Commissioner ToNola D. Brown-Bland
Commissioner Jeffrey A. Hughes
Commissioner Floyd B. McKissick, Jr.

IN THE MATTER OF:

MRT-1, LLC,

Complainant

v

Harkers Island Sewer Company,

Respondent

1 A P P E A R A N C E S:

2 FOR MRT-1, LLC:

3 Andrew D. Irby, Esq.

4 Roberson Haworth & Reese, PLLC

5 300 North Main Street, Suite 300

6 High Point, North Carolina 27261

7

8 FOR HARKERS ISLAND SEWER COMPANY:

9 J. Michael Genest, Esq.

10 Forge Law Group

11 1610 Highway 70 East

12 New Bern, North Carolina 28560

13

14 FOR THE USING AND CONSUMING PUBLIC:

15 Gina Holt, Esq.

16 Public Staff - North Carolina Utilities Commission

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18 Raleigh, North Carolina 27699-4300

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T A B L E O F C O N T E N T S
E X A M I N A T I O N S

	PAGE
Opening Statements by Mr. Irby.....	12
Opening Statements by Mr. Genest.....	20
Opening Statements by Ms. Holt.....	25
DAN TIMBERLAKE	PAGE
Direct Examination By Mr. Irby.....	26
Prefiled Direct Testimony of Dan Timberlake....	30
Cross Examination By Mr. Genest.....	44
Redirect Examination By Mr. Irby.....	55
Examination By Commissioner Brown-Bland.....	57
Examination By Commissioner McKissick.....	76
Examination By Commissioner Hughes.....	88
Examination By Commissioner Brown-Bland.....	92
Examination By Commissioner McKissick.....	95
Examination By Mr. Genest.....	95
Examination By Ms. Holt.....	100
Examination By Mr. Irby.....	101
TIM RAGAN	PAGE
Direct Examination By Mr. Irby.....	103
Prefiled Direct Testimony of Tim Ragan.....	105
Cross Examination By Mr. Genest.....	114
Cross Examination By Ms. Holt.....	118

1 Redirect Examination By Mr. Irby..... 119

2 Examination By Commissioner Brown-Bland..... 120

3 Examination By Commissioner McKissick..... 122

4 Examination By Commissioner Hughes..... 123

5 Examination By Mr. Genest..... 126

6 Examination Mr. Irby..... 127

E X H I B I T S

IDENTIFIED/ADMITTED

MRT Timberlake Direct 29/102
 Exhibits A through L

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P R O C E E D I N G S

COMMISSIONER BROWN-BLAND: Good morning.

Let us come to order and go on the record. I am Tonola D. Brown-Bland with the North Carolina Utilities Commission, presiding Commissioner for this hearing, and with me are Commissioners Floyd B. McKissick, Jr., and Jeffrey A. Hughes.

I now call for hearing Docket Number W-1297, Sub 14, in the matter of complaint of MRT-1 LLC, versus Harkers Island Sewer Company, pursuant to North Carolina General Statute 62-73 and Commission Rules R1-9, R10-6 and R10-13.

On May 2, 2019, Pinnacle Bank, successor in interest to Bank of North Carolina, filed a complaint against Harkers Island Sewer Company, hereafter HISCO, alleging that HISCO unreasonably refuses to provide wastewater service to lots located in the James Creek subdivision in violation of its duties as a regulated public utility. Among other things, the complaint asks the Commission to order HISCO to provide sewer utility service to said lots; to appoint an emergency operator to establish sewer utility service to all of HISCO's franchised territories, including James Creek

1 subdivision; to deny HISCO's request for a bond
2 reduction; to order that HISCO be required to pay
3 for any required additions, extensions,
4 improvements, or repairs to HISCO's existing
5 facilities; and to not require any present or
6 future owner-developer of the James Creek
7 subdivision to solely bear the cost of any new
8 wastewater treatment facility that is determined
9 necessary to service the James Creek subdivision
10 and that would be intended to service areas outside
11 of said subdivision.

12 On June 14, 2019, HISCO filed answers
13 and responses to the complaint and amended the same
14 on June 17th.

15 On October 21, 2019, MRT-1 LLC filed a
16 reply to HISCO's answers and responses and
17 requested to be substituted as the complainant.

18 On October 22, 2020, the Commission
19 issued an order granting MRT-1 LLC's, hereafter
20 MRT, request to substitute as complainant.

21 On November 3, 2020, MRT notified the
22 Commission that HISCO's answers were not
23 satisfactory to it and requested a hearing on the
24 complaint.

1 On December 18, 2020, the Commission
2 issued an order scheduling hearing establishing
3 procedural schedule and adopting discovery
4 guidelines. The order scheduled the hearing for
5 April 27, 2021.

6 On February 26, 2021, MRT filed the
7 direct testimony and exhibits of Dan Timberlake and
8 Tim Ragan.

9 On March 1, 2021, MRT filed an
10 additional exhibit.

11 On April 5, 2021, HISCO filed the direct
12 testimony and résumé of James W. "Bill" Forman and
13 the direct testimony and exhibits of Mike Laws.

14 On April 13, 2021, HISCO filed a motion
15 to continue the scheduled hearing.

16 On April 16, 2021, the Public Staff
17 filed notice of intervention, mediation, and
18 request for continuance of complaint proceeding.
19 The Public Staff's intervention is recognized
20 pursuant to North Carolina General Statute 62-15(d)
21 and Commission Rule R1-19(e).

22 On April 19, 2021, the Commission issued
23 an order continuing hearing, suspending procedural
24 deadlines, and requesting status update regarding

1 mediated settlement discussions.

2 On June 2, 2021, the Public Staff filed
3 a report stating that mediation was not successful,
4 and on June 15, 2021, the Public Staff requested
5 the Commission to hold this matter in abeyance to
6 allow HISCO time to continue ongoing discussions
7 for the possible sale of its wastewater utility
8 system.

9 On June 16, 2021, the Commission issued
10 an order holding the proceeding in abeyance and
11 requiring status update.

12 On September 14, 2021, the Public Staff
13 notified the Commission that HISCO had not reached
14 an agreement to sell the utility and requested the
15 Commission reschedule the hearing.

16 On October 13, 2021, the Commission
17 issued an order rescheduling the hearing for
18 December 14, 2021, and establishing new procedural
19 guidelines.

20 On October 18, 2021, MRT filed rebuttal
21 testimony and exhibits of Dan Timberlake.

22 On November 29, 2021, the Public Staff
23 filed its recommendations and exhibits.

24 On December 7, 2021, HISCO moved the

1 Commission to continue the hearing due to an
2 emergency situation with counsel.

3 On October 8, 2021 [sic], the Commission
4 granted the motion and continued the hearing.

5 On December 9, 2021, the Public Staff
6 filed modified recommendations.

7 On June 13, 2022, the Commission issued
8 an order scheduling the expert witness hearing for
9 today, August 17, 2022, at 10:00 a.m. in the
10 Commission hearing room in Raleigh, North Carolina.

11 On August 8, 2022, Michael Genest filed
12 a notice of appearance and substitution of counsel
13 for Clark Wright as attorney of record for HISCO.

14 In compliance with the requirements of
15 the State Government Ethics Act, I remind all
16 members of the Commission of our duty to avoid
17 conflicts of interest, and inquire whether any
18 member of the Commission has a known conflict of
19 interest with regard to this docket.

20 (No response.)

21 COMMISSIONER BROWN-BLAND: The record
22 will reflect that no conflicts were identified.

23 I now call upon counsel for the parties
24 to announce their appearance for the record,

1 beginning with the complainant.

2 MR. IRBY: Good morning, Madam Chair,
3 members of the Commission. My name is Andrew Irby,
4 I-R-B-Y, appearing as counsel for MRT-1 LLC.

5 COMMISSIONER BROWN-BLAND: Thank you,
6 Mr. Irby.

7 MR. GENEST: Good morning. My name is
8 Michael Genest of the Forge Law Group, here on
9 behalf of Harkers Island Sewer Company.

10 COMMISSIONER BROWN-BLAND: Good morning,
11 Mr. Genest.

12 Do the parties have any preliminary
13 matters or anything that has changed that needs to
14 be brought to the Commission's attention at this
15 time?

16 MR. IRBY: No, Your Honor.

17 COMMISSIONER BROWN-BLAND: All right.
18 If not, we'll start with the -- well, let me just
19 stop for a minute to say a little bit about the
20 proceeding. So I think you all know that I've
21 asked for opening statements, and roughly given
22 each side 15 minutes for opening statements.

23 And what I'd like to know is, the -- I
24 hope you know you are covering the issues that you

1 want the Commission to decide and determine within
2 that. And then we'll start -- the case will move
3 to the complainant to put on its case, put up its
4 witnesses, verify that their testimony that they
5 prefiled is the testimony they would have today if
6 asked those same questions, and get exhibits
7 identified. And then those witnesses, as typical
8 practice here, will then be made available to cross
9 examination. And then move into -- when the
10 complainant's done with its case, we'll move into
11 respondent's case, and then complainant can put on
12 a rebuttal case if necessary.

13 And the Public Staff wants to tell me
14 something, so -- you didn't identify yourself,
15 that's right.

16 MS. HOLT: I didn't identify myself.
17 Good morning, Chair Brown-Bland and Commissioners.
18 I'm Gina Holt, manager of the Public Staff legal
19 division's natural gas, water, sewer, telephone,
20 and transportation sections here on behalf of
21 consumers today.

22 COMMISSIONER BROWN-BLAND: All right.
23 Thank you, Ms. Holt. I'm sorry I overlooked you.
24 I don't know how I managed to do that.

1 So with that said, we'll move into
2 opening statement portion. And you can move up and
3 stand if you wish, or you can take it from right
4 there at counsel table.

5 MR. IRBY: Thank you, Madam Chair. If
6 it please the Court, I'll just stay where I'm at,
7 since I've got all this stuff in front of me and I
8 don't want to unnecessarily move back and forth.

9 COMMISSIONER BROWN-BLAND: Perfectly
10 fine.

11 MR. IRBY: Once again, my name is
12 Andrew Irby, I'm appearing on behalf of MRT-1.

13 This is not a simple case and there is
14 absolutely no simple solution to this case. The
15 case is simply about retribution and not much else.
16 For the record, there is no dispute that Harkers
17 Island Sewer Company, which I'll refer to as HISCO,
18 no longer has capacity to serve any new lots or
19 customers within any of its franchised territories.

20 All of the information that has been
21 provided recently indicates that 100 percent of the
22 permitted capacity allocated to HISCO has been
23 utilized with the exception of, you know, maybe
24 100 gallons. But not enough to serve really any

1 new customer within the franchised territory.

2 With that said, for a series of years,
3 dating back to potentially 18 years, HISCO has
4 intentionally and knowingly denied service to the
5 owner of the James Creek subdivision following its
6 foreclosure and provided service to new franchised
7 territories and new customers throughout that
8 entire time period in which the owner of James
9 Creek was asking for service.

10 The evidence will show that the previous
11 owner of James Creek subdivision, BLE Development
12 LLC, is managed, or at least was managed, by the
13 same manager as Harkers Island Sewer Company. This
14 was a developer who developed a sewer company to
15 serve not just his own developments but to expand
16 service on the island to other developments.

17 In 2014, Bank of North Carolina
18 foreclosed on the James Creek subdivision and
19 almost immediately began requesting connection to
20 wastewater treatment services so that James Creek
21 could be developed so that the bank could recoup
22 money on its lost investment in the James Creek
23 development.

24 Almost immediately, Harkers Island Sewer

1 Company, instead of discussing options to connect
2 to its existing wastewater treatment plants to
3 expand capacity of its existing wastewater
4 treatment plants, almost immediately began
5 demanding that Bank of North Carolina and its
6 successor by merger, Pinnacle Bank, construct a new
7 wastewater treatment facility. Not only that, no
8 allocation or pro rata distribution of the costs
9 were provided to Bank of North Carolina or Pinnacle
10 Bank. This is throughout the entire eight-year
11 period between 2014 and the present date.

12 The evidence will show that, in that
13 time period, Harkers Island Sewer Company had
14 plenty of capacity to provide service to all of the
15 lots within James Creek phase one, and as time went
16 on, to some of the lots within James Creek phase
17 one, including up to the date the complaint in this
18 case was filed. In the entire time, the only
19 demand was that MRT-1 or its predecessor in
20 interest, Pinnacle Bank and Bank of North Carolina,
21 construct a new wastewater treatment plant.

22 Long story short, Harkers Island Sewer
23 Company violated its duty as a public utility to
24 serve the public. The only entity that has the

1 right to reduce service to an existing franchised
2 territory or to eliminate service to an existing
3 franchised territory is the Commission, not the
4 public utility. And in this particular case,
5 Mr. Laws, the principal of both BLE Development LLC
6 and Harkers Island Sewer Company, refused to allow
7 James Creek to be developed if he could not develop
8 it himself.

9 The evidence will further show that
10 Mr. Laws intentionally rendered the existing James
11 Creek property ineligible for any septic or
12 wastewater treatment plant on site. Immediately
13 before the foreclosure was completed Bank of
14 North Carolina, the entire property was timbered,
15 rendered all of the old growth that would have
16 rendered -- that would have facilitated an existing
17 wastewater treatment -- the construction of a
18 wastewater treatment plant or any of the lots to
19 perk on their own impossible.

20 That means that the current owners and
21 the prior owners of James Creek had only one option
22 for sewer service, Harkers Island Sewer Company.
23 And instead of having lines extended or capacity
24 expanded, the entire time between 2014 and the

1 present date, HISCO has required or demanded the
2 owner of James Creek build a new wastewater
3 treatment facility.

4 We believe this is an inappropriate
5 request, given the public utility's duty to serve
6 the public, and not pick and choose which customers
7 are going to get served as opposed to which ones it
8 wants to serve.

9 We are requesting a number of things.
10 As Chair Brown-Bland pointed out in the opening
11 statement, we are requesting that an emergency
12 operator be installed for the sole purpose of
13 facilitating the expansion of the wastewater
14 treatment plant that presently exists on the
15 island. We don't -- we don't believe that the
16 existing plant has a lifespan that will last very
17 much longer.

18 The parties agree that the existing
19 wastewater treatment facility is at the end of its
20 useful life and that ongoing maintenance costs are
21 going to be incredibly expensive for the existing
22 customer base, for the existing rate-paying public.
23 So it makes sense that HISCO would want to build a
24 new wastewater treatment plant.

1 What does not make sense is that they
2 want MRT to foot the full bill. MRT does not want
3 a free ride; it's not asking for anything to be
4 provided for it, and it does not want the
5 rate-paying public to provide service for James
6 Creek. It does want a solution for the island. It
7 does want to pay its fair share. And to date, we
8 have not been provided any of those options, other
9 than you build us a wastewater treatment plant and
10 we'll provide you with service.

11 So we are asking for a third-party
12 operator to be installed to act as an honest broker
13 to facilitate the either expansion, repair,
14 maintenance, or construction of a new wastewater
15 treatment facility.

16 The next thing that we're asking for,
17 we're asking for the -- sorry, Your Honor, I'm
18 looking for my notes for the specific -- we would
19 like from the Commission to give Harkers Island
20 Sewer Company time to present multiple options.
21 Not just one option for construction of a new
22 wastewater treatment facility, but multiple options
23 to expand the existing wastewater treatment plant
24 to improve its -- its lifespan without having to

1 build a new wastewater treatment facility, or to
2 provide additional options to slowly replace the
3 wastewater treatment facility. But we'd also like
4 those costs to be allocated.

5 And we'd prefer it if some of these
6 plants came from more than one engineer, given that
7 the current set of plans we believe to be
8 prohibitively expensive and not the most cost
9 reasonable or cost-effective way to repair the
10 existing wastewater treatment facility.

11 We'd also like the ability to have our
12 own expert to go into the site to conduct an
13 analysis of how capacity can be expanded without
14 having to either construct a new wastewater
15 treatment facility or to actually provide an
16 allocation of resources for the construction of a
17 new wastewater treatment facility.

18 Next, we're asking the court to exercise
19 its powers under 62-37 to conduct an investigation
20 of Harkers Island Sewer Company. Not just an
21 investigation of the complete management audit that
22 the Commission is empowered with, but we'd like an
23 audit of Harkers Island Sewer Company's revenue
24 streams and books.

1 We don't know the long-term financial
2 viability of HISCO right now; we don't know what
3 its long-term debts are; we don't know where the
4 revenue is going once it's accepted. We do believe
5 that there have been some accounting practices that
6 make it appear as though this property is worth
7 more than it actually is, given that the existing
8 wastewater treatment facility is at the end of its
9 natural life.

10 Next, we would like, to the extent that
11 Harkers Island Sewer Company cannot comply with any
12 of this Commission's orders, for the Commission to
13 exercise its powers pursuant to 62-310 to fine
14 Harkers Island Sewer Company for every day that
15 service is not provided to James Creek given its
16 public duty.

17 Finally, MRT would like the option to
18 construct our own wastewater treatment plant,
19 including on HISCO's property to expand its current
20 plant. Once constructed, to turn over to Harkers
21 Island Sewer Company the operations of that plant.
22 As an alternative, MRT would like the option to
23 provide notice to HISCO and to the Commission to
24 just leave the franchised territory so we can

1 explore options to establish our own capacity.

2 We don't want to be forced to do that;
3 we want an option for the whole island. We want to
4 try and help the whole island. We want to try and
5 help Harkers Island Sewer Company. But if push
6 comes to shove, we'd like to exercise an option to
7 leave the franchised territory to go at it
8 ourselves. Thank you.

9 COMMISSIONER BROWN-BLAND: Thank you.
10 We'll hear from you, Mr. Genest.

11 MR. GENEST: Good morning, and thank
12 you. We fundamentally disagree that this is not a
13 simple case. It is a simple case if what is left
14 off the table is the attempts to wrangle a superior
15 court civil suit into the Utilities Commission.

16 What MRT-1 is attempting today is to
17 raise a kind of a pseudo-contract claim or implied
18 contract claim which would have no legs in superior
19 court and they know that. They're trying to,
20 through the Utilities Commission, force this public
21 utility to give them special treatment and yet are
22 sitting here saying that that's exactly what they
23 don't want.

24 It's incredible to me that in the

1 pleadings and in the opening statement and in
2 the -- all the communications that I have seen in
3 this case, MRT-1 is asking explicitly for plant
4 improvements and increase of capacity of the
5 Harkers Island Sewer Company without MRT-1 paying
6 for it. And then they say that they don't want a
7 free ride. That is the definition of a free ride.

8 The idea that HISCO has an obligation to
9 MRT-1 is partially true. HISCO has an obligation
10 to all of the consumers in its area, and has for
11 more than 10 years conscientiously, carefully, and
12 to its occasional detriment, served the public of
13 Harkers Island dutifully. It has, at every turn,
14 made what capacity it has available or can procure,
15 has made that available on a first-come,
16 first-served basis to the consuming public,
17 including to the predecessors entitled to MRT.

18 MRT bought this property after the
19 responses had been filed in this immediate case.
20 As the Commission is well aware, this case has been
21 going on for more than two years. MRT had full
22 notice that there was no capacity available to
23 serve the James Creek subdivision with the current
24 plant in place.

1 They are choosing to gamble that they
2 can spend their money on a legal fight and get
3 themselves a free treatment plant instead of doing
4 what every other developer has done, should do, and
5 that's to pay for either increase in plant capacity
6 through HISCO, or the creation of their own
7 treatment facility on site.

8 The statement that no options have been
9 discussed is simply not borne out by even the
10 exhibits presented by MRT here today. There have
11 been extensive conversations with Bank of North
12 Carolina, Pinnacle Bank, and now with MRT as to
13 what their options are as to HISCO's exploration of
14 different methodologies by which James Creek can be
15 served.

16 For MRT to come to the evidentiary
17 hearing two and a half years into this case and ask
18 for time to get an engineer is surprising to me.
19 It's very surprising to me. We've had discovery in
20 this case. We've made our engineer available
21 throughout this case. There's never been any
22 prohibition on MRT conducting its own research on
23 hiring its own engineer. I don't know why we would
24 be sitting here at what ought to be the tail end of

1 this case asking for time to explore, time to hire
2 an expert.

3 MRT would like to make this case about
4 retribution. Retribution that it apparently put
5 itself in the shoes of the aggrieved party
6 intentionally. And it simply isn't. There is
7 not -- well, the testimony that this Commission
8 will hear will show that HISCO has always
9 even-handedly, and again, on a first-come,
10 first-served basis, and on a negotiated basis -- so
11 when HISCO has needed to add facilities or -- not
12 necessarily capacity, but to add the ability to
13 serve new customers, those new customers have paid
14 for those increases in HISCO's capacity as is the
15 law, as is the practice, as everyone else does all
16 the time.

17 HISCO is asking that the Commission
18 obviously deny MRT's requests for -- well, all of
19 MRT's requests. HISCO stands by and is prepared to
20 serve James Creek. There is no retribution. There
21 is no refusal to serve MRT or the James Creek
22 subdivision as long as the developers of the James
23 Creek subdivision do what they need to do to
24 acquire that capacity.

1 We're not denying them service on any
2 sort of personal basis. There is no retribution.
3 There is no vendetta against the current holders of
4 that development position. All we ask is that MRT
5 be treated like every other customer of HISCO.

6 I have a number of other contentions to
7 make about the allegation that James Creek is not
8 able to have a wastewater treatment facility
9 because of logging. That's just not true. The
10 evidence will show that that is not true; the
11 testimony will show that that is not true.

12 Additionally, the testimony will show
13 that HISCO has made offers in the past to assist
14 MRT and its predecessors-in-title in placing
15 wastewater treatment facilities in James Creek or
16 expanding other sites so that James Creek can be
17 served.

18 There is no call in this case to
19 penalize the public service of HISCO for the sake
20 of one developer. And the idea that a developer
21 who intentionally put themselves in this position
22 would be able to extort millions of dollars that
23 would, in fact, bankrupt the public utility is
24 just -- it's beyond the pale, and there's no call

1 for it in this case.

2 That's all I have. Thank you.

3 COMMISSIONER BROWN-BLAND: All right.
4 Thank you. So now the case is with -- Ms. Holt,
5 I'm about to leave you out again.

6 MS. HOLT: Good morning again. The
7 Public Staff's involvement in this case has been
8 that -- has been to serve as a mediator. Mediation
9 failed. Consistent with the Public Staff's
10 April 16, 2021, notice of intervention, the Public
11 Staff will not be presenting any witnesses at this
12 hearing.

13 The Public Staff's recommendations filed
14 on November 21, 2021, and the modified
15 recommendations filed on December 9, 2021, were the
16 product of the mediation and were offered in the
17 spirit of settlement. The Public Staff will not
18 seek to admit these recommendations into evidence
19 at this hearing.

20 While the Public Staff is not presenting
21 a witness, we have reserved the right to cross
22 examination -- to cross examine the witnesses
23 called by the other parties. Thank you.

24 COMMISSIONER BROWN-BLAND: Thank you,

1 Ms. Holt. And now the case is with the
2 complainant. You may call your first witnesses.

3 MR. IRBY: Your Honor, my first witness
4 is Dan Timberlake.

5 COMMISSIONER BROWN-BLAND:
6 Mr. Timberlake, if you will come up to the witness
7 stand.

8 Whereupon,

9 DAN TIMBERLAKE,
10 having first been duly sworn, was examined
11 and testified as follows:

12 COMMISSIONER BROWN-BLAND: You may be
13 seated.

14 DIRECT EXAMINATION BY MR. IRBY:

15 Q. Would you please state your name, position,
16 and business address for the record?

17 A. Dan Timberlake. My business address is 1714
18 East Center Street Extension, Lexington,
19 North Carolina. I'm a principal and one of the three
20 managing members of MRT-1.

21 Q. Okay. On February 26, 2021, did you prefile
22 direct testimony consisting of approximately 13 pages
23 along --

24 A. Yes.

1 Q. I'm sorry, along with accompanying exhibits
2 labeled A through K?

3 A. Yes.

4 Q. If I were to ask you those same questions
5 today, would your answers be the same?

6 A. Yes.

7 Q. Do you have any changes or corrections to
8 your testimony or your exhibits?

9 A. No.

10 Q. On October 15, 2021, did you prefile rebuttal
11 testimony consisting of approximately five pages and
12 additional accompanying rebuttal exhibits?

13 A. Yes.

14 Q. If I were to ask you those same questions
15 today, would your answers be the same?

16 A. Yes.

17 Q. Do you have any changes or corrections to
18 those rebuttal exhibits that were filed along with your
19 rebuttal testimony?

20 A. No.

21 MR. IRBY: Chair Brown-Bland, I move
22 that Dan Timberlake's direct testimony and rebuttal
23 testimony be copied into the record in this
24 proceeding as if given orally from the stand, and

1 that the exhibits attached to his direct testimony
2 labeled as A through K, and the additional exhibit
3 that was filed labeled additional exhibit, be
4 identified as marked when filed.

5 COMMISSIONER BROWN-BLAND: All right.
6 Mr. Irby, do you intend to submit the witness on --
7 on his rebuttal all in one swoop or do you want to
8 bring him back in rebuttal following respondent's
9 case?

10 MR. IRBY: If it's okay to reserve
11 bringing him back as potential rebuttal witness
12 following the defense case, we can do that.

13 COMMISSIONER BROWN-BLAND: So in that
14 case, it would be most appropriate to --

15 MR. IRBY: Limit it to the direct
16 testimony.

17 COMMISSIONER BROWN-BLAND: -- bring in
18 the rebuttal at that time.

19 MR. IRBY: Yes, ma'am.

20 COMMISSIONER BROWN-BLAND: Just for the
21 record to be clear. So I will receive the
22 witness's direct testimony as if given orally from
23 the witness stand. And the exhibits that were
24 attached to the complaint, let's mark them to be in

1 line with the usual convention of the Commission.
2 So they will be identified as MRT Timberlake Direct
3 Exhibits A through K. And the additional, let's
4 have it marked as L, Exhibit L.

5 (MRT Timberlake Direct Exhibits A
6 through L, were identified as they were
7 marked when prefiled.)

8 (Whereupon, the prefiled direct
9 testimony of Dan Timberlake was copied
10 into the record as if given orally from
11 the stand.)

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AUG 31 2022

HARKERS ISLAND SEWER COMPANY

DOCKET NO. W-1274, SUB 7

**DIRECT TESTIMONY OF DAN TIMBERLAKE
ON BEHALF OF MRT-1, LLC.**

February 26, 2021

1. Q. PLEASE STATE FOR THE RECORD YOUR NAME, ADDRESS,
2. AND PRESENT POSITION.
3. A. My name is Dan Timberlake. My address is 735 Roslyn Road, Winston-Salem,
4. North Carolina. I am a Member and Manager of MRT-1, LLC, a North Carolina limited
5. Liability company that invests in real estate projects in various stages of development. MRT
6. 1 is the record owner of the James Creek Subdivision at issue in the present NCUC action
7. which is recorded in Plat Book 32, Page 403 in the Carteret County Register of Deeds.
8. Q. HOW DID MRT COME TO PURCHASE THE JAMES CREEK SUBDIVISION?
9. A. Pinnacle Bank, which merged with Bank of North Carolina was actively marketing
10. the property which included all but one of the subdivision Lots in James Creek, Phase I. It
11. was evident the subdivision had serious problems because there was no water or sewer
12. service connections in contradiction to all of the certifications represented on the recorded
13. Map for this subdivision. Upon further investigation with Carteret County, no Performance
14. Bond has ever been submitted to ensure all applicable development activities were
15. completed as required. Therefore, it was impossible to get a building permit for any lot.
16. We felt MRT could take the steps necessary over time to fix all the applicable problems
17. related to utility services.

1. Q. ON WHAT DATE DID MRT BECOME THE OWNER OF THE JAMES
2. CREEK SUBDIVISION?

3. A. We purchased the lots in James Creek, Phase 1 (22 lots), a 2.67 acre tract with 9 boat
4. slips, and 30+ acres adjacent to James Creek on December 30, 2019 via deed recorded in
5. Book 1659, at Page 65 of the Carteret County Registry.

6. Q. PLEASE DESCRIBE THE DUE DILIGENCE PROCESS YOU
7. UNDERTOOK IN PURCHASING JAMES CREEK.

8. A. Bank of North Carolina provided us their complete file on the property so we were
9. obviously aware of this pending action. In addition to reviewing all pertinent
10. documentation including surveys, engineering, title documents, etc..., we reviewed all the
11. Bank's allegations in the complaint with NCUC, the file that was publicly available with
12. the NCUC as well as the publicly available documents related to HISCO's history. We
13. also had a title search conducted and reviewed all relevant documents in the chain of title.
14. The Bank also provided certain communications it had with Michael Laws who was their
15. primary contact for BLE Development which developed James Creek, and which the Bank
16. foreclosed upon, as well as the operating member/manager of HISCO which had certified
17. on the recorded Plat would serve the James Creek subdivision.

18. Q. PLEASE DESCRIBE WHAT YOUR DUE DILIGENCE
19. INVESTIGATION REVEALED.

20. A. The property MRT purchased consisted of three (3) parts which are (1) an undeveloped
21. tract of approximately 32 acres, (2) a 2.67 acre parcel on Oak Hammock Road with a boat

1 ramp and boat slips, and (3) all but 1 (Lot 49) of the lots in James Creek, Phase I subdivision
2 as shown on the recorded map of same in Plat Book 32, Page 403 in Carteret County
3 Register of Deeds.

4 Our title search revealed BLE Development acquired the James Creek property in July of
5 2006 via deed recorded in book 1180, page 36 of the Carteret County Registry. BLE had
6 a financing relationship with Bank of North Carolina as evidenced by certain deeds of trust
7 recorded as liens encumbering the applicable property. Phase I plat map, recorded in Plat
8 Book 32, at Page 403, was recorded on October 7, 2013 where Mr. Laws signed
9 certifications on behalf of BLE Development (as owner) and on behalf of HISCO to certify
10 this property would be serviced for sewer utility. Shortly thereafter, Mr. Laws executed
11 and recorded Declarations of Covenants, Conditions and Restrictions for the James Creek
12 Subdivision on behalf of BLE Development as owner.

13 In December of 2014, Bank of North Carolina successfully foreclosed upon all the
14 properties against BLE Development as evidenced by the Trustee's deed conveying the
15 Property to BNC recorded in book 1496, at Page 98 of the Carteret Registry, and re-
16 recorded in Book 1497, Page 24. Additionally, our title search revealed a deficiency
17 judgment in favor of BNC against BLE Development and its Members, including Mr.
18 Laws, for approximately \$1.5 Million.

19 We purchased the property from Pinnacle Bank, as successor in interest to Bank of North
20 Carolina following their merger. We were made aware of this proceeding before the NCUC
21 and given the information we discovered in our due diligence investigation, we elected to
22 assume their position in this regard. Pinnacle Bank was completely transparent and also
23 made us aware of issues which prior potential purchasers had discovered during

1. their own due diligence period, specifically providing documents for our review relating to
2. certain difficulties in establishing sewer service to James Creek Subdivision.

3. Q. WHAT DOCUMENTS DID YOU REVIEW AND RELY ON IN DECIDING TO
4. PURCHASE JAMES CREEK?

5. A. We reviewed a large volume of documentation, most of which included either public
6. or private representations by Harkers Island Sewer Company that it was ready, willing and
7. able to commence providing wastewater service to James Creek Subdivision. This starts
8. with the Plat Map for Phase One of the Subdivision, which includes a representation signed
9. by Mike Laws that James Creek, as platted, *“will be served by Harkers Island Sewer*
10. *Company for a new sewer system, and that said system has been installed in an acceptable*
11. *manner and in accordance with the requirements of Carteret County and the State of North*
12. *Carolina.”*

13. The foregoing statement was entirely consistent with the contents of the Declarations that
14. BLE Development recorded for James Creek, which provides *“Declarant has caused to be*
15. *created and chartered a public utility company by the name of Harkers Island Sewer*
16. *Company, LLC (the “Sewer Company”). The Sewer Company has constructed a sewage*
17. *treatment plant outside of the Development, along with pumps, pipelines, lift stations and*
18. *other equipment installed and located within reserved easements and properties in the*
19. *Development... Further, Declarant has labeled a certain site on the recorded Plat of the*
20. *Development as ‘AREA RESERVED FOR ON-SITE SEWER COLLECTION STATION’*
21. *[sic] Declarant reserves the right to install other sewage and wastewater disposal systems*
22. *and facilities within this area to supplement and facilitate the operations of the Sewer*
23. *Company...”*

1. Those two public representations by HISCO and Mr. Laws appeared to be entirely
2. consistent with Permit No. WQ0024023 issued by the NC Department of Environmental
3. and Natural Resources. This permit is enclosed with a letter dated January 7, 2015 to Mr.
4. Laws from NCDENR, and outlines a three phase schedule to establish and expand services
5. to the Westbay Subdivision and the James Creek Subdivision. Phase I of Permit No.
6. WQ0024023 calls for treatment and disposal of 10,080 gallons per day for up to 28 lots in
7. Westbay Subdivision, and 22 lots in James Creek subdivision via force main. Phase II of
8. the same permit expands treatment and disposal at the Westbay wastewater treatment
9. facility to 20,160 gallons per day. Phase III involved construction and expansion of
10. wastewater treatment capabilities through the to-be-constructed treatment facility in the
11. James Creek Subdivision. So, it made sense that HISCO had publicly represented that the
12. proper facilities had been installed and were in place to provide wastewater treatment
13. services to James Creek when the treatment facility at James Creek had not yet been
14. constructed. It appeared clear that the first 22 lots of James Creek, essentially James Creek
15. phase one as platted, was to receive wastewater treatment at the Westbay facility via force
16. main.

17. HISCO's application to the Utilities Commission to have Westbay and James Creek placed
18. within its franchise territory appeared to contemplate the two systems as well (page 4 of
19. that application states that "BLE Development to transfer all equipment, lines, plant real
20. estate etc. for both projects to BLE Utility Co., LLC." Page 3 of that application
21. contemplates \$583,804 in plant construction costs to be paid for by the developer, BLE;
22. however, page 5 provides that there is \$0 anticipated expenditures over the next five years

1. because “BLE Development has already installed all lines, inside Westbay and James
2. Creek Subdivisions. This includes service lines. Meter connection boxes at each individual
3. lot. \$136,504 expansion to James Creek is already underway by BLE Development Co.
4. and will be completed by July 30, 2011.” That same representation is outlined in Exhibit
5. 4 to that same application, in which BLE Development outlines its intent to install 3900
6. feet of sewer transmissions between Westbay and James Creek, to provide sewer service
7. to James Creek at the Westbay wastewater plant, and to include a covenant in the James
8. Creek Declarations to that effect. Finally, Exhibit 8 of that same application outlines the
9. phased upgrade of the Westbay plant to accommodate flows from James Creek via force
10. main. Only when flows approached 20,000 gallons per day would they then commence
11. construction of a second plant in James Creek. As late as July 30, 2013, the Notice to
12. Customers located in James Creek outlined a \$65 monthly charge per residential unit, and
13. a \$2,500 connection fee or “Tap” charge. So, we never believed that construction of the
14. James Creek plant was necessary for wastewater service to commence for lots in James
15. Creek. We knew capacity did not exist for the entire subdivision, but we knew that plans
16. existed to provide service for Phase One.

17. Q. WHAT HAVE YOU LEARNED ABOUT HISCO’S OPERATIONS SINCE
18. THAT INITIAL APPLICATION?

19. A. Things have changed. In 2014, BNC foreclosed on James Creek. There has been a lot
20. of back and forth about the letter HISCO sent BNC on November 4, 2014 whereby HISCO
21. requested the 3 acre lot within James Creek earmarked for a future treatment plant be
22. transferred to HISCO because otherwise, according to HISCO, BNC would have to build

1. Its own treatment plant at the then-estimated cost of \$950,000.00. But again, we interpreted
2. that future plant expansion was phase three of a plan that contemplated providing
3. wastewater service to Phase One of James Creek via force main to Westbay. Nonetheless,
4. it was a moot point because the bank did not agree to convey that lot to HISCO which
5. resulted in that plant permit being withdrawn or terminated. Also in 2014, probably by
6. coincidence, HISCO acquired the Harker's Village treatment plant, which we've referred
7. to as Harker's Point. Westbay, to the best of my knowledge, is permitted, but not operating,
8. has never operated, and was likely never intended to operate. We believe all obligated
9. flows of the wastewater being serviced by HISCO are going to Harker's Point. James Creek
10. is not included in those flows, because James Creek was never allocated by HISCO.

11. Q. TO YOUR KNOWLEDGE, HAVE ANY OPTIONS BEEN PRESENTED BY
12. HISCO TO PROVIDE WASTEWATER SERVICE TO JAMES CREEK VIA
13. HARKER'S POINT OR WESTBAY?

14. A. No, never. In the HISCO letter dated November 4, 2014, Mr. Laws indicated that Bank
15. of North Carolina would have to build its own treatment plant if the bank did not convey
16. the 3 acre parcel within James Creek to HISCO. We understand that Tyson Reilly, who
17. worked for a property development company known as DRAPAC, also entered into a
18. contract to purchase James Creek prior to us but terminated it when he was told by HISCO
19. the estimated cost to expand HISCO's plant was between \$1.1 Million and \$1.2 Million.
20. Additionally, and this troubles us, Mr. Laws stated he was only willing to work with
21. DRAPAC on sewer plant expansion if the bank would release him and his business partner
22. from the judgment BNC obtained against him. We have been provided with similar
23. estimates regarding plant expansion from HISCO of approximately \$1.1 Million.

1. Q. IS THIS AN ESTIMATE TO EXPAND CAPACIY AT HARKER'S POINT, OR TO
2. BUILD A NEW PLANT?

3. A. That's unclear. We believe that only three of the four drain fields have been constructed
4. at Harker's Point. We've requested but, as of the date hereof, have not been provided or
5. reviewed any estimates or budget to expand current capacity to provide service to James
6. Creek, Phase One, which is only 22-25 lots. We've obtained estimates to construct a new
7. plant to serve James Creek, and our estimated costs are substantially lower than the \$1.1
8. Million we've heard.

9. Q. ARE THE FIGURES THAT HAVE BEEN PROVIDED TO EXPAND EXISTING
10. CAPACITY, OR TO REBUILD THE WHOLE SYSTEM/PLANT THAT IS SERVING
11. OTHER COMMUNITIES?

12. A. That's also unclear. We've asked for a breakdown of how much of that \$1.1 Million
13. plant expansion figure would be allocated to MRT, specifically Phase I of James Creek and
14. future development of our acreage, but Mr. Laws has indicated we'd be obligated to cover
15. the whole amount. It's our informed opinion and belief that a substantial portion of that
16. figure would strictly benefit HISCO's existing customer base. We also need to clarify the
17. distinction between the adequacy of HISCO's existing facilities (it's capability) and
18. HISCO's capacity. MRT does not dispute that, ordinarily, new subdivisions must create
19. an expansion of capacity, but (and this is key) James Creek is not a new subdivision. It is
20. literally one of the first two subdivisions placed within HISCO's franchise territory when
21. it was first established as a public utility. Yes, the Bank's foreclosure occurred in 2014,
22. and the permit for construction of a new treatment facility within James Creek was

1. intentionally terminated by HISCO in 2015, but ever since this foreclosure, BNC, and
2. thereafter Pinnacle Bank, at least one other prospective developer of James Creek, and now
3. MRT has been requesting to commence services to any lot, or fewer than all lots, within
4. James Creek, and those requests have been summarily denied. We know that since 2014,
5. HISCO has expanded its flows and customer base. On May 11, 2018, HISCO filed a
6. request with the NCUC to have its bond reduced. As justification for the request, HISCO
7. stated that *“On July 30, 2013 HISCO was granted a franchise by the commission, after its*
8. *application to serve Westbay Subdivision on Harkers Island and its 32 lots. In the following*
9. *four years and 9 months, HISCO has successfully added subdivisions; Harkers Village,*
10. *Harkers Pointe, Cape Pointe, Beach Hammock, by The Bay subdivisions to its applied for*
11. *and approved territories. In addition, HISCO has added commercial services to Fish Hook*
12. *Grille, Harkers Island RV Park, Sand Bar Club, and most notably Cape Lookout National*
13. *Seashore... Currently, HISCO has expanded to cover with its sewer main extensions the*
14. *entire island, along Island Road Ease and West, and several extensions on north and south*
15. *roads. HISCO can serve with its current sewer mains approximately 60 percent of the*
16. *Island’s existing and future homes, and businesses. Harkers Island consist of*
17. *approximately 1,200 existing homes and businesses. HISCO [sic] current established*
18. *territories, along with contiguous territory possibly served by HSCO [sic] represents*
19. *approximately 460 more homes and businesses than its existing 140 current users. HISCO*
20. *acquired a 2nd wastewater treatment plant permitted for 60,000 GPD when it established*
21. *Harkers Village and Harkers Pointe as served territories. The 6 ½ acre facility contains*
22. *some of the highest in elevation land and best soils on the island for drain fields current*

1. *and future.*” It is our position that this whole letter is disingenuous. If the contents of this
2. communication to the NCUC were accurate, there should be no demand for HISCO to
3. require MRT-1 construct a new, \$1.1 Million wastewater treatment facility to
4. accommodate flows from 22-25 residential lots.

5. In fact, throughout the entire period in which HISCO was adding new territories, new
6. subdivisions, and new customers, it has been actively denying ANY service to ANY lots
7. within James Creek. I am aware of numerous requests to provide piecemeal service to lots
8. within James Creek based on HISCO’s capacity, each such request being denied. By letter
9. dated December 1, 2017, Pinnacle Bank sent HISCO a request for service to James Creek
10. lots. We know that, at the time, HISCO had capacity to provide service to at least some of
11. those residential lots. HISCO had available taps to sell. Despite this, the request was
12. denied. I do not believe it is proper or lawful to deny such a request. As a public utility, if
13. HISCO had residential taps available to sell based on its existing capacity, the owner of
14. James Creek, being in HISCO’s territory, was entitled to purchase as many as it could up
15. to HISCO’s available capacity. We believe that all such requests were denied in bad faith.

16. After MRT acquired James Creek, we had hoped we could work with HISCO since we
17. were not involved in any of the prior foreclosure issues. Despite our efforts and requests,
18. MRT has never been provided any material information or communication regarding
19. potential options to expand capacity without having to totally upgrade HISCO’s
20. infrastructure. The only information provided thus far has been a figure in excess of \$1.1
21. Million, which we once again believe in good faith is for upgrading HISCO’s overall plant
22. capability, not simply an expansion of capacity.

1. Q. DO YOU DISPUTE ANY OF THE OBLIGATED FLOW OR CAPACITY
2. FIGURES PROVIDED BY HISCO?
3. A. We actually have not been provided any of that technical information from HISCO.
4. We've asked for it. It's possible we will receive it in the course of discovery or in testimony
5. here today. We know the information HISCO has provided to the NCUC and to NCDENR.
6. The answer to the question is, no. This case is not about disputing HISCO's current
7. capacity. We believe Mr. Laws' self-dealing through BLE Development, BNC's
8. foreclosure, deficiency Judgment in favor of BNC, etc. while also being the owner and
9. operator of HISCO is the sole reason for the issues before NCUC at this time.
10. Logically and collectively taken, the history of information publicly available on HISCO
11. coupled with our due diligence on James Creek's evolution and Mr. Laws direct
12. involvement has created reasonable questions in our minds regarding the facts and figures
13. that have been presented. However, if HISCO and Mr. Laws testifies regarding its
14. obligated flow rates and current capacity, we will accept those figures because we view
15. this case being about HISCO's behavior to date. Essentially, from and after the Bank's
16. foreclosure in 2014, we believe HISCO's actions evidence a repeated and consistent denial
17. of service to the James Creek Subdivision while they expanded service to other
18. subdivisions. We believe HISCO had capacity to provide service to at least some of the
19. lots within James Creek Phase One, but elected to demand a new plant in lieu of allowing
20. James Creek to commence development of at least some of its lots. We believe this is a
21. blatant violation of its duty as a public utility to operate in good faith. Also, this case is
22. about the estimates provided by HISCO to expand capacity. We believe HISCO has and is

1. demanding funds primarily designed to benefit its current facilities and existing customer
2. base which MRT is not obligated to fund. MRT can establish its own capacity for much
3. less than the amount being demanded by HISCO.

4. Q. WHAT RELIEF ARE YOU SEEKING FROM THE NCUC?

5. A. One of the main things a public utility should do is to accurately disclose the availability
6. and costs of services. Here, Mr. Laws, through recording the Plat Map of Phase One of
7. James Creek indicated sewer services were available and publicly represented the same in
8. recording of the subdivision's Declaration. Both publicly recorded documents violates the
9. adequate and accurate disclosure of availability of sewer services. Additionally, we believe
10. it is clear at several points in time subsequent to BNC's foreclosure, HISCO had ample
11. capacity to provide service to Phase One of James Creek (or at least to a certain number of
12. lots within James Creek Phase One), and Mr. Laws intentionally denied service preferring
13. to work with other new customers. We can only speculate as to why these decisions were
14. made. Regardless of the reason, we also believe his actions, and those of HISCO, were a
15. clear violation of a public utility's duty. We're asking for the following, to the extent the
16. NCUC believes they're reasonable or possible:

17. 1) We'd like Mr. Laws to be removed as the operator of HISCO. We believe Mr. Laws has
18. withheld information, and not acted in good faith as a proper public utility with regard to
19. its treatment of the James Creek Subdivision;

20. 2) Alternatively, we'd respectfully request James Creek be removed from HISCO's
21. franchise territory. HISCO has had ample opportunity to commence providing services
22. within James Creek, and has willfully opted to deny service until such time as its capacity

1. to serve was eliminated. Now, having expressed that no capacity exists, MRT should be
2. allowed to explore relationships with other operators and alternative options in an arm's
3. length manner to determine the most efficient manner within which to provide wastewater
4. services;

5. 3) Alternatively, if forced to remain in HISCO's franchise territory, we'd respectfully
6. request permission to establish our own capacity and, if necessary, turn operations over to
7. HISCO once that capacity has been established. This option should include, but not be
8. limited to, allowing MRT to explore constructing its own treatment facility to be turned
9. over to HISCO to operate. MRT should not be obligated to build the system that HISCO
10. dictates be constructed. Rather, MRT should be allowed to construct a system (fully
11. permitted and with NCUC's and NCDENR's approval, as well as with the approval of any
12. other State or local governmental entity so required) that provides adequate capacity to
13. serve James Creek subdivision, and then to turn over such system to HISCO. We believe
14. we have at our disposal the ability to construct our own system at a lower cost than has
15. been quoted by HISCO.

16. Q. DOES THIS COMPLETE YOUR TESTIMONY AT THIS TIME?

17. A. Yes.

CERTIFICATE OF SERVICE

I certify that I have this day served a copy of the foregoing Testimony on the parties of record by electronic mail, properly addressed to the following:

I. CLARK WRIGHT, JR.
DAVIS HARTMAN WRIGHT, PLLC
209 Pollock Street
New Bern, NC 28560
Email: icw@dhwlegal.com
Attorney for Respondent HISCO

This the 26th day of February, 2021.

Electronically submitted

/s/ Andrew D. Irby, NCSB # 35353
Attorney for MRT-1, LLC

Roberson Haworth & Reese, PLLC

PO Box 1550

High Point, NC 27261

1 COMMISSIONER BROWN-BLAND: All right.
2 The testimony is received into evidence at this
3 time.

4 MR. IRBY: Thank you, ma'am. I tender
5 the witness.

6 CROSS EXAMINATION BY MR. GENEST:

7 Q. Good morning, Mr. Timberlake.

8 A. Good morning.

9 Q. Mr. Timberlake, were you aware of this
10 lawsuit when you purchased what's known as the James
11 Creek subdivision?

12 A. Yes, I was.

13 Q. Were you aware of the response filed by HISCO
14 in this case?

15 A. Yes, I was.

16 Q. And you knew at that time that HISCO had
17 stated publicly that there was no capacity available to
18 serve the James Creek subdivision?

19 A. No, I was not aware of that.

20 Q. Did you read the response filed by HISCO in
21 this case?

22 A. At some point I did.

23 Q. Okay.

24 A. I have no recollection of there not being

1 capacity. When we purchased this -- you know, I used
2 to be an attorney, practiced law in the late '80s and
3 early '90s. This was platted. It was platted with
4 Carteret County, plat book 32, page 403. On the --
5 there's representations to the public in the
6 recordation of the plat.

7 And Mr. Laws signed on behalf of BLE
8 Development to certify that all the utilities were in
9 place. He also certified to the -- to the public that
10 HISCO had the capacity, had built the plant, and would
11 serve sewer to the property. So these public
12 representations were made.

13 Were we aware that there were issues? Yes,
14 we were aware. Was there capacity at that time? My
15 understanding, there was capacity in taps.

16 Q. At what time are you referring to?

17 A. When we purchased the property.

18 Q. In 2019?

19 A. I think so. I remember one tap. There was
20 one lot that was sold to another individual, I think it
21 was lot 49. And we've had ongoing conversations with
22 that individual and referred him, because at some point
23 Mr. Laws said he had a tap. Now, the main connection
24 between the sewer and the infrastructure that's in

1 place at the subdivision was never made.

2 And as Tim Ragan, MRT, we develop property,
3 we've never seen a situation where a county would
4 certify a plat and allow it to be reported unless there
5 was a performance bond ensuring that whatever work that
6 was remaining would be completed in case the developer
7 went away.

8 The developer in this case for the existing
9 subdivision was Mr. Laws and BLE Development. We are
10 not a developer of James Creek subdivision. It is
11 platted, it is recorded. The infrastructure is in.
12 The connections can be made to sewer, water, and
13 electric.

14 Q. In 2019, did you speak with Mr. Laws about
15 how much capacity was available to serve James Creek?

16 A. I don't recall. I think Mr. Ragan may have
17 spoken with him, but I don't personally recall speaking
18 with him.

19 Q. As part of your due diligence, did you seek
20 information about how much actual capacity there was to
21 serve James Creek?

22 A. No, I do not recall that.

23 Q. Do you recall what the date was,
24 approximately, of the plat that you're referring to?

1 A. I do not. I want to say 2014, but I'm not
2 sure. Actually, I think it was 2013. I think -- I
3 think the plat was recorded in 2013, because I think
4 the foreclosure took place in 2014.

5 Q. And you were aware of the foreclosure,
6 correct?

7 A. Oh, yes.

8 Q. And you were aware that the on-site
9 facilities for wastewater treatment had never been
10 constructed at James Creek?

11 A. Based on the existing permit at that time, it
12 wasn't required. That was not part of the plan. That
13 it was actually going to be treated or served by a
14 forced main to West Bay.

15 Q. But you were aware that the -- well, let me
16 ask that differently.

17 There was a wastewater treatment facility
18 contemplated and platted for James Creek, correct?

19 A. That's correct. And that was going to be
20 part of phase three of the strategy to serve a much
21 larger subdivision.

22 Q. And you were aware that that had never been
23 constructed, correct?

24 A. Absolutely.

1 Q. And did you, through this purchase, acquire
2 the land on which that wastewater treatment facility
3 was supposed to be built?

4 A. Yes, we did.

5 Q. Have you deeded that land to HISCO?

6 A. Nobody's ever requested it. No.

7 Q. Okay. Are you the developer -- are you in
8 the shoes of the developer in the original agreement?

9 A. No.

10 Q. You expect HISCO to meet its obligations, as
11 you see them, to the, quote, unquote, developer, right?

12 A. We do not know what -- there should not be
13 any obligations to the developer because the property
14 is developed, it is platted. It has been certified to
15 the public, representing to the public that the
16 utilities are available. So there is no status or
17 facet of a developer for the existing platted lots in
18 phase one.

19 If you're referring to the potential for the
20 additional capacity as James Creek has been
21 pre-approved for 80 lots, and that would be phase two,
22 and I think that's what Mr. Laws' original vision was
23 for not only James Creek but for HISCO and the permit
24 that was in place, yes.

1 We are not -- we are not opposed in any way,
2 shape, or form, never have been, to paying what we need
3 to pay to increase the capacity of Harkers Island Sewer
4 Company. What we refute and what we take issue with is
5 we have never been provided any information of any
6 allocation. We've simply been given a number of 1.1,
7 \$1.2 million, with no allocation of how much of that is
8 to increase the capacity, how much of that is to serve
9 the existing lots, how much of that would, in turn,
10 serve your existing customer base.

11 Well, the answer impliedly is, it's a brand
12 new plant. I take issue with your opening comment
13 about we now need time to hire an engineer. We have
14 engineers. We know -- have a reasonable degree of
15 confidence in what it will cost and what it will take
16 to take the existing facility.

17 But our engineers have not been on site, they
18 do not have the information. It is not publicly
19 available, it has not been provided to us. We have
20 serious questions about the financial stability of
21 Harkers Island Sewer. And because there's a public
22 plat, if for any reason whatsoever Harkers Island
23 system should fail, we don't understand what will
24 happen and how it would be fixed.

1 But we came to this action and we came here
2 today, we're prepared to do whatever we need to do
3 within reason. We don't have an axe to grind with
4 HISCO. We don't have any ill will. We just simply
5 want to continue to develop the 30 acres and to get our
6 existing development served by sewer.

7 Q. You stated that you have your own engineers.

8 Have you -- I take it you did not bring an
9 engineer here with you today; is that correct?

10 A. We saw no need for one.

11 Q. Did you submit any testimony from an
12 engineer?

13 A. We saw no need for that.

14 Q. Are you an engineer, sir?

15 A. No, sir.

16 Q. Are you a utility contractor?

17 A. No, sir.

18 Q. So in this evidentiary hearing, is there any
19 competent testimony as to the cost to perform these
20 increases in capacity, other than the licensed engineer
21 and the utility contractor sitting next to me?

22 A. I'm not aware of any.

23 Q. Okay. Have you developed other subdivisions,
24 Mr. Timberlake?

1 A. Yes.

2 Q. Do you know the difference between a will
3 serve letter and a reservation of capacity?

4 A. No. We have not developed another
5 subdivision where there was a public -- private --
6 privately held public utility.

7 Q. In dealing with publicly held public
8 utilities, have you encountered the difference between
9 a will serve letter and a reservation of capacity?

10 A. No.

11 Q. Have you obtained a reservation of capacity
12 in this case?

13 A. I do not know. You'll have to define
14 "reservation of capacity."

15 Q. Okay. Were you assigned any agreements
16 between your predecessors-in-title and HISCO that
17 guaranteed capacity for the James Creek subdivision?

18 A. I'm not aware.

19 Q. Have you requested the ability to reserve
20 capacity at the existing Harkers Island wastewater
21 treatment facility?

22 A. I don't understand the question.

23 Q. Do you know the difference between actual
24 capacity for a wastewater treatment facility and the

1 permitted capacity?

2 A. Yes.

3 Q. And you're aware that the law governs how
4 much of that permitted capacity can be allocated to
5 different consumers, right?

6 A. If you're asking me if I'm familiar with the
7 law, no.

8 Q. You're not familiar with that. Okay.

9 Are you aware that the allocation by the
10 sewer company is governed by rules and regulations that
11 dictate how the service is allocated?

12 A. Could you repeat that?

13 Q. Yeah. I'm asking you whether you're aware
14 that Harkers Island Sewer Company, as a public utility,
15 is required to file -- excuse me -- required to follow
16 rule and regulations that dictate how its capacity is
17 allocated?

18 A. I presume that to be the case, yes.

19 Q. Okay. I'm gonna save that question for
20 later.

21 In your testimony, you referred to a 2011
22 contiguous service area application; do you recall
23 that?

24 A. Not specifically, no.

1 Q. I'm gonna try to refer to it, and if we need
2 to go to the actual document, we can.

3 Do you recall there being a document that you
4 referred to in your written testimony in which the
5 plant costs of \$583,000 and some change were referred
6 to in the application by what was then the BLE utility
7 for the development of services to James Creek?

8 A. Vaguely.

9 Q. Okay.

10 A. I think you're referring to what -- BLE
11 Development was working with HISCO and -- are you
12 referring to sort of a cost reimbursement from BLE
13 Development?

14 Q. Well, you referred in your testimony to the
15 2011 application of what would become HISCO to serve
16 the James Creek area. And in your testimony, you
17 specifically noted the cost of the plant, which was --

18 A. \$583,000. My recollection on this issue was
19 if HISCO -- our contention was, if HISCO ever
20 envisioned the developer, which was BLE Development, or
21 any successor in title, or any buyer in the ordinary
22 course of business, to pay to HISCO any fees, like the
23 tap fees, or the allocation of the plant cost for that
24 subdivision, there would be an agreement, a written

1 agreement.

2 But in this case, there was self-dealing
3 because Mr. Laws was managing Harkers Island Sewer
4 Company, HISCO. And Mr. Laws was dealing with himself
5 and BLE Development as developer.

6 So our contention was, if there was ever any
7 intent or agreement that -- whether it be the
8 development or the individual buyers would participate
9 in the cost structure of the equipment installed
10 presumably by HISCO, we would have an agreement to that
11 effect, and we did not have one.

12 Q. Your interpretation -- I just want to make
13 sure that I understood you correctly.

14 Your interpretation when you saw that
15 document during your due diligence was that, if there
16 was further development needed to provide capacity,
17 that there would be an agreement between you in the
18 role of developer?

19 A. No. Number one, when you refer to "that
20 document," I don't know what you're referring to.

21 What we're contending and what we're saying,
22 which we think is logical, is if there was ever
23 originally any vision, intent, agreement, foresight
24 that HISCO would somehow be paid or compensated for the

1 \$583,000 worth of equipment, there would be a -- you
2 know, you went to law school, statute of fraud. There
3 would be something in writing to that effect. And
4 there was nothing. So that's all I remember about that
5 issue.

6 MR. GENEST: No further questions for
7 this witness at this time. Thank you.

8 COMMISSIONER BROWN-BLAND: All right.
9 Redirect?

10 MR. IRBY: Yes, please.

11 COMMISSIONER BROWN-BLAND: Excuse me, I
12 forgot Ms. Holt.

13 MS. HOLT: I have no questions. Reserve
14 for rebuttal.

15 COMMISSIONER BROWN-BLAND: All right.
16 Redirect?

17 MR. IRBY: Very briefly,
18 Chair Brown-Bland.

19 REDIRECT EXAMINATION BY MR. IRBY:

20 Q. Mr. Timberlake, is it your understanding that
21 any new plant to be constructed within the
22 wastewater -- I'm sorry, within the James Creek
23 subdivision, would serve the initial 22 platted lots?

24 A. Rephrase that -- restate that.

1 Q. Was it your understanding that the wastewater
2 treatment facility to be constructed as planned within
3 the James Creek subdivision, was that plant going to
4 serve the initial platted 22 lots?

5 A. No.

6 Q. What was your understanding?

7 A. Our understanding was, in reading the permit
8 and the documents that were publicly available, was --
9 and I think it was -- I want to say WQ-2320 -- 23024,
10 that the actual construction of an on-site collection
11 system in the platted area, it was a future site, was
12 the third of three phases of the development of an
13 overall system that would have -- but we would have
14 been -- James Creek would have been served by West Bay
15 treatment facility. Which I may have it wrong, but I
16 think Mr. Laws or HISCO purchased that first prior to
17 purchasing its now main facility.

18 To my knowledge, West Bay has been permitted
19 but never -- has never been constructed or operational.
20 And so we understood that it was gonna be -- James
21 Creek was gonna be served by West Bay as, I think,
22 phase one or two. And then the third phase, which I
23 believe we envisioned as a collection -- on-site
24 collection system for the expansion of phase two of

1 James Creek.

2 Q. So it didn't bother you that the wastewater
3 treatment facility had not yet been constructed?

4 A. Oh, no, no.

5 MR. IRBY: Those are all my questions.

6 COMMISSIONER BROWN-BLAND: All right.

7 Commission has a few questions.

8 EXAMINATION BY COMMISSIONER BROWN-BLAND:

9 Q. Mr. Timberlake, a minute ago you answered
10 Mr. Genest that you did not consider MRT to be in the
11 shoes of the developer.

12 Recognizing that you're not sitting here
13 serving as your own legal counsel, but could you expand
14 and explain more of why you don't see that MRT is in
15 the shoes?

16 A. MRT is the owner of a development. Okay? If
17 we -- the infrastructure is in. The subdivision James
18 Creek, phase one, that's a gated community, the
19 pavement's in, the -- I think it's connected
20 electric -- to the electric. The water is offered by
21 Harkers Island sanitary district and we can connect at
22 any point.

23 When -- so there's really nothing left to do
24 that an ordinary developer would do for the 22 lots. I

1 think it's 22 lots. There's really nothing left to do
2 except either put a septic -- you know, connect with
3 public utility or have septic tanks, which are not
4 available -- you know, not capable of doing.

5 Our issue, now, if we began to develop the
6 30 acres, then we would step in the role as developer,
7 which we're prepared to do. But we're here as owner of
8 the property, not in the capacity as the developer of
9 this property. This property's been developed. It's
10 there, it's ready. But for the foreclosure, it would
11 have sewer.

12 Q. And that would be prior to there being
13 customers on the property to receive service; is that
14 what you mean?

15 A. Could you restate that?

16 Q. Well, just -- there are no -- is it correct
17 that, with regard to the 22 lots that has been referred
18 to here, that there's not currently anyone on the 22
19 lots prepared and ready to receive who need sewer
20 service?

21 A. Therein lies the problem. This is a
22 complicated situation, as Mr. Irby referenced, from a
23 legal standpoint. Carteret County screwed up royally.
24 They should have never platted this without a

1 performance bond. There is no performance bond.
2 Because when you certify a plat and you record a plat,
3 you're representing to the public that utilities are in
4 place, sewer's in place, and will be served by Harkers
5 Island Sewer. Mr. Laws certified that.

6 BLE Development certified that we have
7 electricity, we have water, we have sewer. Mr. Laws
8 certified that as developer for BLE Development. It's
9 our understanding, unfortunately, the person who
10 certified this from the planning department at Carteret
11 County, it was their first plat that they recorded.
12 We've attempted to contact Carteret County and Carteret
13 County's attorney to understand why there was no
14 performance bond required if the connections and if
15 there was further work that was required.

16 They would not return our calls. I think
17 they understand they have a problem. But we're not
18 looking to -- we're not looking at Carteret County as
19 liable. You guys forgot more about these issues than
20 I'll ever know, but the best that I can tell, if
21 something happens to this system, and we all know it's
22 at its end lifecycle, what happens.

23 Well, what we think will likely happen is
24 you'll have to appoint an emergency operator, which

1 would likely be the Carteret County Health Department.
2 And then they're going to either have to condemn
3 however many customers' properties, or they're going to
4 have to fix the system. We want to fix the system. We
5 want to help the island. We want to serve our own
6 property.

7 Financially, we're capable of doing all these
8 things. But when you are dealing with somebody who
9 will not adequately respond or cooperate or provide
10 information, or basically you just feel like you either
11 buy a new system or not. That's why we're here today.

12 Q. So with regard -- you say, like, for example,
13 the electric service is in, in place?

14 A. It is connected. But bear in mind, see, you
15 cannot -- we cannot go to the Carteret County, nor can
16 the other buyer of lot 49. We can't get a building
17 permit.

18 Q. So the property is not being serviced by the
19 provider at this time?

20 A. There's nothing to serve, it's just a bunch
21 of vacant lots. And we cannot get a building permit
22 issued by the county.

23 Q. And so with regard to the sewer. I believe
24 you testified that but for the foreclosure, there would

1 be sewer service there.

2 A. Yes, ma'am.

3 Q. And my question was, that's your testimony,
4 notwithstanding that there's no -- that that property
5 is not able to receive service at this time, because
6 there's no -- no one on that property that needs sewer
7 service?

8 A. There cannot be anybody on the site that
9 would want sewer service or that would require sewer
10 service, because we cannot get a building permit to
11 construct anything. Sewer was run right up to the
12 property. And the infrastructure to make the
13 connection is throughout the existing roadwork. So the
14 infrastructure is there. It's paved and everything is
15 ready to go.

16 The connection has to be made to what I
17 presume was gonna be the forced main, originally to
18 West Bay, but now it would be to what I call the
19 Harkers Point site. But this is the trap that we're
20 in. We're between a rock and a hard place. Is we
21 cannot make any improvements to this land.

22 Q. What do you need now to show that there is
23 sewer service there that you don't have?

24 A. We have to actually have sewer service.

1 Q. All right. And that entails what, from your
2 point of view?

3 A. From our point of view, we are in the Harkers
4 Island -- Mr. Laws is the individual on behalf of
5 Harkers Island Sewer Company that came to the Utility
6 Commission to -- to bring in the James Creek territory,
7 phase one of James Creek. So we're in his territory.
8 We're in the Harkers Island Sewer Company territory.
9 Okay.

10 As such, that, coupled with the plat that's
11 recorded in Carteret County, impliedly certifies or
12 directly certifies to the general public you have
13 utilities. Okay. We don't have utilities. We don't
14 have sewer service. At the time that -- when the bank
15 foreclosed on the property, at sometime prior, there
16 was some septic capacity on the platted future
17 development area where a septic system or systems could
18 have been constructed.

19 The property unquestionably was timber,
20 presumably by Mr. Laws. And we have a report from our
21 engineer that I believe is in one of the exhibits that
22 says it rendered it unable or incapable of now putting
23 in a septic system.

24 So this is -- this is very frustrating for

1 us. We just want to do what's right. We don't mind
2 paying our fair share, whatever that is, provided that
3 figure comes from a verified source, an independent
4 source. We do not trust anything that HISCO tells us.
5 We do not -- we -- we're fairly sophisticated people.
6 We have engineers. We're financially stable. We're
7 stable. We do not have to borrow money. We can
8 develop it. We're happy to fix it. But we do not want
9 to pay for all of our capacity, fixing the system, and
10 his existing customer base and additional capacity. So
11 we're ready, willing, and able to help, we just don't
12 know how to do that when we have a counterpart that's
13 saying that we need a new system.

14 Q. Can you explain, a minute ago you said you
15 could not get a building permit; why is that?

16 A. You cannot get a building permit from
17 Carteret County if you don't have a septic permit to go
18 with it or a septic -- or a tap. So the County is not
19 gonna issue a building permit unless you have public --
20 unless you can show to the County you have access to
21 water, which would be through a well, a private system,
22 or public utility; and sewer, which can be through a
23 septic tank permit or a public utility or municipality;
24 and electric which can be a municipality, a county or,

1 you know, a private -- private source.

2 Q. And what you're missing now is the ability to
3 tap -- to have a tap?

4 A. Well, we can't -- there are no taps left.

5 Q. Right.

6 A. He's exceeded his capacity and there -- in
7 one of the permits, and I fail to recall the specific
8 one, there were certain amount of taps specifically
9 allocated to James Creek phase one. Those were
10 subsequently sold to -- or redirected or assigned,
11 whatever the right term is -- to another project.

12 Q. All right. You mentioned that part of your
13 concerns and lack of trust when it comes to HISCO
14 concerns not being able to get information. Have --
15 what discussions have you had with HISCO? Have you
16 asked and made these requests?

17 A. I have probably individually spoken to
18 Mr. Laws on one or two occasions by phone. We were
19 here in a mediation, I think April of last year,
20 through our attorney who was also the attorney for our
21 predecessor in interest. We've made various attempts
22 of what about this, what about that, and the standard
23 response we get is no, it's gonna cost a million
24 dollars.

1 Q. Do you know, whether in the course of this
2 proceeding or otherwise, MRT made specific requests for
3 the information that you say you need in order to be
4 able to trust HISCO?

5 A. We have specifically asked for -- I believe
6 it's an allocation of -- for this million dollars, or
7 1.1, whatever, what portion of that is to serve your
8 existing customer base versus to add the capacity or
9 the additional capacity required of counsel referred to
10 is there's permitted capacity and what I call
11 operational capacity or actual capacity that's
12 functionally available.

13 Q. And what was the response?

14 A. We didn't get one.

15 Q. Just no response or refuse to answer?

16 A. I don't recall anything. There was -- we've
17 never gotten any kind of allocation. At one point,
18 Mr. Laws -- and I believe he contacted my partner,
19 Mr. Ragan, and said there was a reconditioned system
20 down in Wilmington that was approximately, I want to
21 say, 580- to \$600,000 that would fix everything. And
22 I'm oversimplifying, overgeneralizing. And told us the
23 amount.

24 Well, we went to the actual owner and found

1 out the price was not what he represented it to us.
2 And we looked at the potential to buy it, to the
3 freight and the installation. But we abandoned that,
4 because the problem was it was gonna have to go onto
5 his footprint, his existing property. And we -- we're
6 prepared to spend whatever is reasonably necessary.
7 We're not prepared to give him that money and entrust
8 that it be done.

9 Q. How do you propose to find out what's
10 reasonably necessary, in terms of cost?

11 A. Our engineer -- we have a pretty good idea
12 about what we think and believe. He needs to go in to
13 confirm and do his actual due diligence, look at the
14 existing plant, look at the system, make sure that the
15 equipment necessary to upgrade, whether it's just to
16 serve the 22 lots, whether it's to serve -- you know,
17 it all depends. And I'm not as familiar with the
18 technology.

19 But what he generally said is he felt like --
20 and, in fact, I spoke to him this morning. He felt
21 like, for a quarter-million dollars, the system could
22 be upgraded. But he could not confirm that until he
23 was on the site. That's why we requested the ability
24 to have somebody actually go on site, do the due

1 diligence.

2 Q. Have you made that request prior to today of
3 HISCO?

4 A. Actually --

5 Q. To have access, to allow your engineer
6 access?

7 A. We had a prior engineer, gentleman named
8 Dan Pritchett. I don't think we've actually ever
9 requested somebody go on site because, once again, it
10 was a moot point. He wasn't interested in anything
11 about serving James Creek. He wanted a new plant.

12 Q. Did HISCO say to you, or HISCO's
13 representatives say to you that they didn't want to
14 serve James Creek?

15 A. Verbally?

16 Q. Yes. Expressly.

17 A. They at no point could serve us because the
18 connection wasn't made. We would make the connection,
19 but there were no taps, there was no capacity.

20 Q. Did they indicate if they did not have
21 funding or if you -- did they indicate if they did have
22 funding or if MRT provided funding that they would not
23 serve James Creek?

24 A. Not in so many words. It was just we're not

1 gonna -- you -- the statement we always were presented
2 with is "you're a developer," which we're not in this
3 case, "you'd have to pay for your capacity. Your
4 capacity costs a million dollars."

5 Q. So as not a developer -- you've said in this
6 situation you're not here as a developer, and at least
7 with regard to the 22 lots; am I correct, you're not a
8 developer?

9 A. We own 22 lots, and we're seeking to have
10 those lots served by the public utility, within which
11 the territory that we're in, by the member manager of
12 Harkers Island Sewer Company, who is also the member
13 manager of the BLE Development that developed the
14 certified plat that -- of the 22 lots that we
15 purchased.

16 Q. So is it your position that, as to the 22
17 lots, MRT, not being a developer, does not need to make
18 a contribution towards the sewer facility?

19 A. No, that's not my position. I think -- to
20 clarify my position, I think, and we believe -- and
21 this is just our opinion -- that the original plan was
22 probably, since he was wearing two hats as both
23 developer and Harkers Island Sewer Company, I think
24 what he intended to do, or what we would have done is

1 if we were gonna put all this infrastructure into James
2 Creek, okay, you would want a means to -- to get
3 reimbursed over time on the sale of the lots. That's
4 what we would do as a developer.

5 There was no -- never a written agreement
6 and -- which is inexplicable to us, because it's the
7 same guy dealing with himself. Why was there not an
8 agreement? Why would you not have an agreement between
9 BLE Development and Harkers Island Sewer that you're
10 gonna install this infrastructure? He could have
11 deeded to himself, to HISCO, the future development for
12 the on-site wastewater collection at any point. That
13 never happened.

14 Q. For our purposes today, does the lack of such
15 an agreement indicate to you that HISCO should cover
16 those costs?

17 A. Let me just say that, generally, we're
18 prepared to pay our fair share of the costs to --
19 whether it's the 22 lots, the future development. We
20 don't have a position -- we're not trying to get, you
21 know, water out of a rock. There's no capacity. And
22 so there's no taps. So we're gonna have to pay for it.
23 We're ready to fix our situation, his situation, our
24 own situation. But we do not want to pay for anything

1 for his existing customer base or additional capacity
2 over and beyond what we will utilize either in phase
3 one or phase two of our development. We're happy pay
4 for all that.

5 Q. So my question goes back to asking and
6 seeking access to whatever wastewater treatment plants
7 are involved here that might be possible options for
8 service to James Creek.

9 Why wasn't there a step made to seek access
10 by your engineer to do whatever study needed to be done
11 to be able to cost out or even suggest different
12 options, that you might be able to present that to
13 HISCO for their consideration?

14 A. Because it was a moot point.

15 Q. Why do you call it a moot point?

16 A. Because he's got a system at the end of the
17 lifecycle, and unless we pay from the whole
18 shebangabang and fix his problem, we weren't gonna get
19 service. And that was very, very apparent to us. So
20 we're not gonna spend money -- to answer your question,
21 we're not gonna spend a lot of money on an engineer to
22 go do a site assessment, evaluation, analysis when we
23 know it's a moot point because --

24 Q. Aren't you asking for that today?

1 A. No. I believe what we're asking for today is
2 a myriad of things. Is one -- we are asking for the
3 opportunity -- what we're doing here today is bringing
4 the issues to a third party and let an objective,
5 knowledgeable third party look at both sides, look at
6 the law, and tell us what you think. And what
7 frustrates us is this was filed originally by the bank,
8 I can't even remember if it was three or four years
9 ago.

10 We were asked in April of last, you know, to
11 mediate. We're gonna do anything and everything
12 reasonably possible to me to get this resolved. It
13 took about five minutes to realize that there was no
14 good faith effort to mediate. And then we're put off
15 until July of last year. Right before we get ready for
16 that, he's gonna sell the company. That proved to be
17 another, in our opinion, delay.

18 Q. Let me ask you another way, Mr. Timberlake.
19 Was there ever -- did MRT or any predecessor
20 present any counter or evidence of other cost figures
21 besides those that Mr. Laws presented to you, or
22 presented to MRT?

23 A. I can't say for certain. I believe we shared
24 some information from our engineer, Dan Pritchett.

1 Gosh, I don't know, it would be 12, 18 months ago.

2 And --

3 Q. Would you have anything in writing that
4 showed what that might be?

5 A. I just don't recall --

6 Q. Or your engineers?

7 A. I think it was -- I think it was, you know,
8 communication between counsel and information that we
9 had gotten from Mr. Pritchett about what about this,
10 what about that, and it was refuted. There is a
11 complexity here that y'all would probably understand.
12 I don't quite grasp. But it's my understanding that,
13 if the affluent is subsurface versus above surface
14 dictates whether it falls in DWQ's or DHHS and the
15 permits. And I don't understand how all that works,
16 but there's evidently, you know, some confusion there
17 as to which permits and how things work.

18 So this gets confusing to me, but I think we
19 have offered some general solutions, but we've just
20 always been, no, that's the cost.

21 COMMISSIONER BROWN-BLAND: Mr. Irby,
22 around here, we do receive what we call late-filed
23 exhibits, and I'm requesting that, if you or your
24 client discover that you have some evidence showing

1 either options offered or cost figures presented to
2 HISCO, that you provide those to the Commission as
3 a late-filed exhibit at a later time.

4 MR. IRBY: I will look for those
5 communications. I don't have a specific
6 recollection of a formal letter. There may be some
7 informal emails about some of these figures. But I
8 will need to go back and look, Madam Chair.

9 COMMISSIONER BROWN-BLAND: And I'm just
10 asking if you have those, that you please present
11 them to Mr. Genest so that he can look at them, but
12 also file them with the Commission as a late-filed
13 exhibit.

14 Q. Mr. Timberlake, so the Public Staff has
15 recommended that the cost of the wastewater treatment
16 expansion to serve James Creek be shared among MRT and
17 HISCO. And they recommend, based on a stipulation in
18 another docket, which was 1297, Sub 0, that MRT pay 50
19 percent of the expansion cost, that 30 percent be
20 covered in tap fees, and that HISCO invest the
21 remaining 20 percent to be recovered in rates.

22 Is that something that MRT is agreeable to or
23 has thought about?

24 A. Oh, absolutely; yes, ma'am.

1 Q. So yes, agreeable?

2 A. Yes, ma'am.

3 Q. To the 50 percent and the 30 percent?

4 A. Yes, ma'am.

5 Q. All right. Have any lots within James Creek
6 service area been sold to potential customers?

7 A. Mr. Laws sold -- or BLE Development, I
8 believe, sold one to -- it's lot 49. I can't recall
9 the purchaser's name.

10 Q. And has any customer, to your knowledge, been
11 denied a building permit due to --

12 A. I believe he was, but I'm not sure.

13 Q. Is that the only one that --

14 A. Yes, ma'am.

15 Q. -- you're aware of?

16 A. We knew we couldn't get one.

17 Q. All right. And does MRT have any customers
18 who are ready and willing to purchase lots in the James
19 Creek service area now?

20 A. We -- we could sell the 22 lots -- if we
21 had -- if we had the permits to serve the property, we
22 could sell all 22 lots very quickly.

23 Q. But you don't have that ready-and-willing
24 buyer as we sit here today?

1 A. Yeah, I think we do. We have a myriad of
2 people that would buy the lots as a whole, but we're
3 not going to represent to anybody anything other than
4 the actual facts. And right now, they're unbuildable,
5 because you can't get a building permit because there
6 is no sewer. If we had sewer in place today, in this
7 market, we could sell all 22 lots before we got back to
8 Lexington.

9 Q. And just a follow-up to an earlier question
10 about the recommendation of the Public Staff.

11 Have you had an opportunity to discuss that
12 with HISCO, the Public Staff? Or had occasion, I
13 should say. Have you had occasion to discuss the
14 Public Staff's recommendations with HISCO?

15 A. No, ma'am. I mean, we have not
16 communicated -- since this is in kind of the
17 Commission's -- you know, I don't think it's
18 appropriate. We don't have regular or normal
19 communications going back and forth with HISCO, because
20 we're not an existing customer, we're not an account.
21 And it's kind of awkward. We don't have anything to
22 talk about. So we've just really, kind of, patiently
23 waited for this process to evolve and unfold so that we
24 could know where we stood and what to do.

1 MR. IRBY: Madam Chair, if I may, I've
2 instructed my client to not communicate with
3 Harkers Island Sewer Company since they were
4 represented by counsel. So a lot of these
5 communications took place between myself and
6 Clark Wright.

7 COMMISSIONER BROWN-BLAND: Okay. Thank
8 you for that. And I'll just say in a general way
9 where you both can hear, it's just almost standard
10 for me to say, or my motto, that the solution that
11 the parties come up with themselves is probably
12 better than the solution, and you'll be happier
13 with it than the solution that the Commission might
14 impose. But that -- notwithstanding that, it is
15 absolutely your right to come here and seek answers
16 from the Commission.

17 So other Commissioners have --
18 Commissioner McKissick?

19 EXAMINATION BY COMMISSIONER MCKISSICK:

20 Q. Yeah, I have just a few questions.

21 A. Yes, sir.

22 Q. As it currently stands, you own the 30-acre
23 tract as well as the 22 lots; is that correct?

24 A. That is correct. And then we also own about

1 a 2.6-acre tract across Oak Hammock Drive that has 9 --
2 we own 9 of the 10 boat slips.

3 Q. Okay.

4 A. And that's part of the development.

5 Q. All right. Now, when you acquired -- I'm
6 gonna refer to them collectively as "the properties,"
7 were you aware at that time that this lot that the
8 original wastewater treatment plant would have been
9 built upon was a property that you were acquiring that
10 wasn't going to be owned by HISCO?

11 A. Yes, sir, we were.

12 Q. Now, at that point in time, did you go out
13 and do any due diligence to find out how that -- the
14 existing lots were currently being served?

15 A. They were not being currently served and we
16 were aware of that.

17 Q. You were aware of that?

18 A. Yes, sir.

19 Q. So you knew they were not being served at
20 that time?

21 A. However, we were also aware that we -- that
22 the entire subdivision was in the territory of Harkers
23 Island Sewer Company. And we were also aware that we
24 could not do individual septic tanks on the lots. So

1 therefore -- and we originally asked to be removed from
2 the territory, and Mr. Laws refused. And so we were
3 stuck in purgatory. We were in a territory, we
4 couldn't do anything, and he wouldn't let us out.

5 Q. So you asked not to be served by HISCO?

6 A. We asked to be served by HISCO.

7 Q. You asked to be served?

8 A. Yes, sir. And, you know, the standard
9 response we get is it's gonna cost -- "you're a
10 developer, you have to pay for, you know, your cost for
11 providing the capacity. It's going to be a million
12 dollars."

13 Q. Okay. Now, you've indicated that Harkers --
14 excuse me, Carteret County would not allow or issue
15 septic permits to you --

16 A. Carteret County --

17 Q. And let me ask this. I'm trying to
18 understand what kind of communications you had with
19 them, because I understand that you felt like they
20 wouldn't issue them because the property had been
21 logged or timbered. But I would also assume that there
22 are certain lot-size requirements or absorption rates
23 of the soil that had to be met and satisfied.

24 So can you explain to me exactly what

1 Carteret County indicated to you when you approached
2 them about the potential of using septic tanks?

3 A. Carteret County certified the plat. So the
4 plat is recorded and anybody can pull it up, a public
5 record. So they're well aware -- it's very difficult
6 to educate somebody, whether it's in the building
7 permit department, the zoning department, explain this
8 unique situation. I've never seen it before, I hope I
9 never see it again.

10 But you've got an existing plat, and if you
11 look on the plat it says Harkers Island Sewer Company
12 is gonna serve sewer. Harkers Island sanitary district
13 is gonna serve water. I can't remember who serves the
14 electric. Everybody signs off. Planning director
15 signs off. It's certified.

16 When we go to get a building permit, you
17 either have to have a septic permit in hand or a septic
18 tap. In this case, if they look at it, they're like,
19 well, you need a septic tap. Well, we can't get a
20 septic tap. So by default, can we get a septic system
21 on each individual lots.

22 We had a soil engineer go in, and I can't
23 remember his name, but none of the lots -- the whole
24 reason Mr. Laws put the infrastructure in there is the

1 site will not perk. So it's -- you can't get a
2 building permit without one of those two requirements,
3 and we can't get either one of those requirements, and
4 we can't get a tap, despite the fact that we're in
5 Harkers Island's territory, because of either capacity
6 issues or there's no taps or we don't have a million
7 dollars to buy a new system to rebuild his existing
8 system, so.

9 Q. Okay. And let me ask you this:

10 So the communications you had with Carteret
11 County were based upon the fact that you did not have a
12 sewer tap at the property that could be provided by
13 HISCO and the land would not perk, after you had an
14 engineer go out and -- a soil engineer and test the
15 soils?

16 A. Correct. They can't issue -- they legally
17 cannot issue one without those requirements.

18 Q. Did -- the person that you sent out was like
19 the soil engineer. Did they consider replatting the
20 subdivision so that it would allow the septic tanks to
21 be used if perhaps it was related to that factor?

22 A. We have since purchased, in addition to the
23 30 acres another, what 4, 5 acres, 3 acres adjacent
24 that -- to where we can get, I think, two or three

1 septic permits there. But if -- it's not -- it's not
2 feasible, it's not possible on the 22 lots or on the
3 30 acres. And there was -- prior to being timbered,
4 there was probably not much that could have been done
5 on site. But after it was timbered, there was nothing
6 that could be done.

7 Q. So the timbering that you referred to had
8 really negligible impact in the ability for the land to
9 perk and be served?

10 A. Negligible is a relative term in the sense of
11 it did not eliminate very many spots that would perk,
12 but some is one heck of a lot better than none.

13 Q. Okay. And did you give -- so it sounds as if
14 you relied upon the representations on the plat to your
15 detriment?

16 A. No, sir. We walked into this with eyes wide
17 open. We understood the situation. We understood
18 initially and to today, we're gonna have to contribute
19 to fixing this problem. You've got a volcano down
20 there, and it might go off next week, next month, next
21 year. Might be three or four years, but it's going
22 off. And when it does, now, the simplest thing for us
23 to do is just sit back and wait.

24 Q. Okay.

1 A. Because we're in the territory, and if we
2 need to wait 10 or 15 years. But that doesn't help the
3 island, that doesn't help us. We want to do -- we want
4 to develop the rest of this property. We want the 22
5 lots served. We're willing to pay our fair share. We
6 don't want to buy a whole new system for the existing
7 customer base and walk away with a lot of future
8 capacity and just give that away free of charge.

9 Q. Okay. And I believe, in response to
10 Commissioner Brown-Bland's question about the proposed
11 allocation of cost made by the Public Staff, you
12 indicated that those allocations were numbers that you
13 found to be acceptable?

14 A. Yes, sir.

15 Q. I guess the question that in my mind remains
16 open is, who would make the determination as to what
17 would be necessary, in terms of infrastructure
18 improvements to provide the capacity for these 22 lots
19 at this time? Would you agree with that assessment?

20 A. We would only trust an objective third party.

21 Q. Someone who is an engineer, I assume --

22 A. Yes, sir.

23 Q. -- would make that determination?

24 A. Yes, sir.

1 Q. As to the 22 lots but not as to the remainder
2 of the tract?

3 A. Both.

4 Q. Both?

5 A. Yes, sir.

6 Q. So as it relates to the remainder of the
7 tract, which I guess is 30 acres, how do you
8 contemplate that that would be developed? And when I
9 ask that question, how many additional lots do you
10 think would be created for, I would assume,
11 single-family homes that would be a certain number of
12 bedrooms that might determine how much additional
13 capacity is needed?

14 Not simply for the 22 lots, but to develop
15 the remainder of the tract which you currently own.
16 Because that's something an engineer would need to know
17 in making an assessment as to what infrastructure
18 capacity would need to be created to adequately serve
19 the development that you reasonably anticipate.

20 A. Yes, sir. And the good thing, there is --
21 Carteret County has already approved -- I think it's a
22 total of 80 lots, which would include the 22 or 23 in
23 phase one, and I think it's an additional 57 lots. So
24 that information is available.

1 Now, from MRT's standpoint, we do not have
2 specific plans. We take things incrementally step by
3 step. And the first step is resolving this issue.
4 There's really nothing else we can do until this issue
5 is resolved. And so there's not -- it's a moot point
6 to spend a lot of money on engineers, soil scientists
7 to look at all the myriad of options.

8 But we have looked at taking the existing 22
9 lots, purchasing the one lot that we don't own,
10 replatting it and having five home sites. And that's
11 all there is on the existing site and the 30 acres.
12 All the way to let's develop the 23 -- you know, if we
13 get service on the 23 lots, we'll develop the other 57
14 lots for a total of 80. So we'll replat the whole
15 thing and do 150 lots for an RV park.

16 Or we put the whole thing in a conservation
17 easement. Where -- my partner is a certified -- an
18 appraiser, and he does a lot of conservation easement.
19 So we've looked at a myriad of different scenarios.
20 But it's a moot point to speculate, because we just
21 don't know what the costs are, what the options are,
22 nor have we had the ability to evaluate those
23 adequately.

24 Q. Okay. So I take it that, at this time, your

1 concerned about the 22 lots and the one additional lot
2 that would be --

3 A. Twenty-three.

4 Q. -- 23 total?

5 A. Yes, sir.

6 Q. That is immediate concern in the near term?

7 A. Yes, sir.

8 Q. And that, as it relates to the balance of the
9 property that's there, it would be your thought that,
10 once development plans are more clearly defined, that
11 you would seek -- potentially seek service for those
12 areas as well, but if you use it as a conservation
13 district, you don't need any service?

14 A. That's correct. At that point, to
15 Ms. Brown-Bland's point, we become the developer.

16 Q. Yes.

17 A. And we ascertain, evaluate, and analyze
18 what -- what are our options. And I just can't
19 honestly answer what that could be. I have three other
20 partners in this venture, and we really hadn't even
21 given any thought -- because it's a beautiful island.
22 It's kind of stuck in time. We've tried to be very
23 respectful to the -- you know, the inhabitants, the
24 citizens or residents there. They don't like change.

1 You know, I mean, this is an old fishing
2 community, and so we do not want to rock the boat. We
3 just really -- we haven't been in a position to really
4 give this any serious thought. Our immediate concern
5 is the 22, 23 lots; the second priority would be what
6 are the options for the additional 30 acres. And we're
7 willing to do what we need to do to help the island, to
8 help our development, to help HISCO.

9 Q. I understand. I think that the thing that
10 occurs to me is that, assuming there's an objective
11 engineer doing this assessment, it might substantially
12 impact projections or cost in infrastructure
13 improvements, depending upon whether you're serving 22
14 lots or it's your eventual intention to serve, perhaps,
15 80.

16 You know, because certain things might be
17 done infrastructure-wise in the near term that provide
18 that capacity for the 23 lots. But it might not be as
19 cost-effective to take that approach if you're looking
20 at expanding to serve a substantial greater capacity
21 depending on what you do with the remainder of that
22 tract.

23 A. My understanding is that the technology is,
24 and our current situation is, phase one is in the

1 territory, but phase two or the undeveloped is not
2 currently in Harkers Island territory. So I think we
3 would have -- the dynamic would change. Even if phase
4 two is in the current territory, we are asking for
5 relief today to be able to opt out of the territory.
6 Whether that would be all our property or one specific,
7 two specific, because we can't predict what your --
8 what your ruling will be. And so we just have to look
9 at a myriad of different options.

10 And so we actually turn into a developer on
11 phase two. And at that point in time, I think we have
12 to go to Harkers Island Sewer Company arm's length and
13 say, "What's it gonna take? Do you have the capacity?
14 Do we have to increase the capacity? Or there is no
15 capacity?" And that, in turn, will dictate whether we
16 do a conservation easement, no development, some
17 development.

18 But with respect to the 22 lots, it's already
19 in the territory, the infrastructure's done. It's been
20 certified to the public that utilities are in place.
21 The County certified that, did not require performance
22 bond, and unfortunately they're not in place. And --
23 which prevents anybody from getting a building permit.

24 Q. So you would like this Commission to focus

1 upon providing relief as to the 22 or 23 lots at this
2 time and leave open the issue as to what may happen
3 with the balance of the properties, because you may
4 want to opt out, as I understand it; is that correct?

5 A. In general terms, I'd really like the
6 Commission's determination and feedback as to how to
7 resolve all these issues. And whatever you come back
8 with, we're gonna be fine with. I just want decisions
9 to be made so that we know where we stand and how, if
10 at all, to go forward.

11 Q. Thank you. I have no further questions.

12 COMMISSIONER BROWN-BLAND: Commissioner
13 Hughes?

14 EXAMINATION BY COMMISSIONER HUGHES:

15 Q. Yeah, thank you. Just I think these are
16 follow-ups really. A lot of moving parts here. I
17 apologize if I get something wrong. But the numbers --
18 I'm a numbers guy.

19 You mentioned a number and you were pretty
20 adamant that it was gonna cost you a million dollars,
21 no, I mean, that's the impression I got that -- was
22 that million dollars for -- was that response for the
23 23 lots or the 23 lots plus the additional one? And
24 maybe I misunderstood you, but I was just trying to

1 link that answer --

2 A. To get a new service.

3 Q. Pardon me?

4 A. To get service.

5 Q. Okay. So that would be for the entire
6 everything you own, not just the 23 lots?

7 A. I can't answer that. I mean, it never got to
8 that kind of level of detail, because it was apparent
9 the million dollars was not to serve James Creek; the
10 million dollars was to replace the existing system.

11 Q. Okay. And then the -- thank you for that.
12 And then the -- the other adamant response it seemed to
13 say was that the terms of the Public Staff's
14 settlement, that you seem to be positive about that.

15 But the 50 percent, was that settlement --
16 was your kind of agreement with that settlement, again,
17 for the 23 lots or was it for the entire area?

18 A. Either/or.

19 Q. Okay. Either/or.

20 A. Yeah, it doesn't --

21 Q. So either/or?

22 A. Yeah. And logically, that's gonna be subject
23 to the respondent. You know, what -- because I assume
24 they were picking up a certain percentage. Our focus

1 right now is the 22 lots.

2 Q. Okay.

3 A. The existing platted subdivision that we own.

4 Q. Okay.

5 A. That -- everything that's already developed.

6 Q. Okay. So -- so the 50 percent for the -- I
7 know it's either/or, but the either -- the first part
8 of the either, 22 lots, the cost, you'd willing to do
9 50 percent. I think Commissioner McKissick said this,
10 we're all struggling with trying to pinpoint costs
11 these days, and I realize that. You know, you-all know
12 better than us how all the moving parts of trying to
13 predict costs, even with engineering estimates.

14 But the -- does that 50 percent have
15 approximate caps in your mind? You know, that
16 50 percent, you know, is it 50 percent of 2 million?
17 Because that's a million.

18 A. That's not a problem.

19 Q. Okay. So there's --

20 A. But it does -- but our agreement doesn't have
21 caps --

22 Q. Okay.

23 A. -- but it does have conditions. We're not
24 paying HISCO. We will pay an independent third party.

1 We will pay direct. But we will not entrust money
2 going to HISCO to determine how it's spent.

3 Q. Okay. But there is not -- in your mind there
4 is not -- because if you go back to the original
5 agreement eight or nine years ago there's much more
6 modest numbers that now I think are --

7 A. It's our understanding, and I believe very
8 firmly in -- there's a gentleman that we've been
9 working who is a representative of a company called
10 AquaPoint, and they're a manufacturer of systems in the
11 Northeast. He grew up on Nags Head. He lives in
12 Asheville. He strikes me as brilliant. And he was
13 familiar with this system because -- and actually has
14 come to the system at the request of Mr. Forman and
15 Mr. Laws long before we ever got involved, and he chose
16 not to get involved at that time.

17 But he had -- he's familiar with the system,
18 and he's pulled up the public record. And Mr. Ragan
19 and I have met with him a few times and he says the
20 system can be fixed. There is technology now and there
21 is a way -- and I may not use the right terminology,
22 but there's a way to transition through
23 compartmentalized equipment and advanced technology to
24 utilize -- either fix the existing system or redo the

1 system on the existing footprint.

2 And the numbers he gave us -- I spoke to him
3 this morning, were kind of updated for inflation. And
4 so we understand what the approximation is.

5 Q. Okay. And those were numbers -- again, just
6 to be clear, those were numbers for the 22 lots or
7 the -- or he didn't matter?

8 A. He gave me a range for 22 lots plus
9 additional capacity, and that's to be determined.

10 Q. Okay. And I won't ask you for that, I know
11 it's preliminary. But you did the math in your head
12 and half of that seemed --

13 A. Oh, I didn't pass out, no.

14 Q. Okay. Thank you. We'll leave it there. We
15 don't want you to pass out.

16 A. Yeah.

17 Q. Okay.

18 EXAMINATION BY COMMISSIONER BROWN-BLAND:

19 Q. Mr. Timberlake, I believe Public Staff
20 indicated that the Department of Human Health and
21 Services, who permitted the wastewater treatment plant
22 known as Harkers Point or Harkers Village would need in
23 addition -- be able to serve an additional
24 40,000 gallons per day just to serve, I believe, the

1 entire 80 lots that are known as James Creek.

2 Do you take issue with that?

3 A. If that's Mr. Berkowitz, I take no issue with
4 it. I'm sure it's correct whatever they said.

5 Q. And so if in addition -- if the expansion is
6 for an additional 40,000 gallons per day, and the costs
7 were limited -- the additional cost, the cost of
8 expansion were limited to those 40,000 gallons a day,
9 limited that that service for James Creek, not service
10 for other existing customers per se, does MRT take
11 issue with funding that? To the -- to the --

12 A. I don't know how to answer that question.

13 Q. To the percentages that you earlier said
14 would be --

15 A. I don't know how to answer that question.
16 Because you're getting into nebulous territory as to
17 are we fixing the entire system. I don't know how you
18 can pinpoint or allocate specifically it's gonna cost X
19 to add a capacity. I don't think it's as simple as
20 that. I don't think -- my understanding --

21 Q. If those costs could be determined to some
22 reasonable degree --

23 A. If those costs could be determined and we
24 could be assured that we could pay our percentages into

1 the Commission or directly to the manufacturer of the
2 equipment or the installation company or whoever, we
3 have no issue with that.

4 But as we all know, the devil is in the
5 details. And I don't think it's as easy as you can
6 spend X amount and add capacity. I think it's -- the
7 existing system is gonna have to be upgraded and fixed
8 for the existing customer base.

9 Q. And with regard to paying HISCO, you're
10 familiar that the Public Staff's recommendation was
11 that MRT would place money in escrow?

12 A. I believe I do recall that; yes, ma'am.

13 Q. Is that an acceptable approach?

14 A. Yes, ma'am.

15 Q. All right.

16 A. Provided that's not -- again, just based on
17 the details. We'll put money into escrow, we don't
18 want to leave it there, you know, for an undetermined
19 amount of time. Once it's put in there, we want to
20 know that there is a schedule and that the process is
21 gonna move forward and move forward quickly. And we're
22 hesitant to invest any money where in any way, shape,
23 or form we're dependent upon HISCO to do this.

24 COMMISSIONER BROWN-BLAND: Mr. Genest,

1 do you have questions on the Commission's
2 questions? Wait just a moment.

3 Commissioner McKissick?

4 COMMISSIONER MCKISSICK: I just had one
5 quick follow-up.

6 EXAMINATION BY COMMISSIONER MCKISSICK:

7 Q. You identified an engineer up in Asheville.
8 Is this an engineer licensed to practice in
9 the state of North Carolina?

10 A. Yes, sir.

11 Q. Would you mind disclosing his name or her
12 name?

13 A. I would not at this point in time --

14 Q. I understand.

15 A. -- because --

16 Q. That's fine.

17 A. -- I spoke to him and said I would not.

18 Q. Okay. That's fine. Thank you.

19 COMMISSIONER BROWN-BLAND: All right.

20 Now, Mr. Genest, questions on the Commission's
21 questions?

22 MR. GENEST: Thank you.

23 EXAMINATION BY MR. GENEST:

24 Q. Mr. Timberlake, did you ask for any

1 allocations of the available capacity at any point in
2 your ownership of MRT?

3 A. Personally?

4 Q. Yes.

5 A. No.

6 Q. Do you know whether any request was made?

7 A. I'm not aware.

8 Q. What would it take, to your understanding,
9 for a building permit to be issuable on any of the lots
10 that you have in James Creek?

11 A. They cannot be. They will not issue one.

12 Q. If you received a will serve letter --

13 A. I'm not aware.

14 Q. Okay. Have you asked Carteret County what it
15 would take to get a building permit, as far as
16 documentation from HISCO regarding service?

17 A. It was a moot point. We couldn't get a
18 building permit.

19 Q. Why is it a moot point to --

20 A. Well, when Carteret County says you cannot
21 get a building permit without a septic permit or a tap,
22 I think it's kind of fairly moot after that point. So
23 we're -- we're not gonna go spend a lot of time,
24 energy, and effort when we know there's no capacity and

1 there's no taps. And we're not gonna spend a million
2 dollars to replace the system, so.

3 Q. On each lot where you could get a tap, where
4 there was capacity to provide service, you could
5 potentially have a building permit, correct?

6 A. In theory, yes.

7 Q. Okay. Have you had the lines and meters and
8 other infrastructure that is in place in James Creek
9 pressure tested or otherwise checked by your engineers
10 for their ability to be hooked up to HISCO's water
11 treatment?

12 A. Once again, it's a moot point if HISCO is not
13 gonna serve the subdivision. And we're not gonna go
14 through that expense. If you know anything about
15 development, that's not cheap. Okay. So we're not
16 gonna spend a lot of money on soil engineers and
17 infrastructure engineers, utility contractors to go in
18 and test something that we can't use.

19 Q. Is it your testimony that you did not at any
20 time ask for a breakdown of the number that was being
21 presented to you -- the one that keeps getting
22 mentioned is a million dollars -- that you did not ask
23 for a breakdown of where that money would go?

24 A. Oh, we did ask.

1 Q. Okay.

2 A. I think that was between counsel of tell us
3 what the costs were and how they were gonna be
4 allocated with respect to the existing customer base
5 versus the James Creek -- the additional capacity.
6 And -- but we get moving chair responses of, well, West
7 Bay's not constructed and we got to construct this, and
8 DHHS and DWQ and this permit and that permit. And we
9 had to go do this for the RV park and they paid for
10 this additional capacity where our permits went. So we
11 never felt like we got a straight, coherent answer on
12 anything.

13 Q. As to the question of whether --

14 A. We never got a breakdown, no. Let me
15 rephrase that. We never got a breakdown that we
16 trusted that our engineers looked back and said that's
17 right.

18 Q. So you did get a breakdown, but you didn't
19 like it?

20 A. We got information. I don't know -- you
21 know, you call it a breakdown, we got some general
22 response. We never get anything of a specific factual
23 or fact-based nature. We never got any response, to my
24 knowledge, about that, other than the figure tended to

1 stay the same of a million, million-one, million-two.
2 But I don't remember ever seeing any responsive
3 document, statement.

4 I mean, it's like tacking Jell-O to the wall.
5 I could never figure out what they were and were not
6 saying. But bear in mind I do not understand the
7 details of the technology involved. I freely admit
8 that. But I trust the engineers that were looking at
9 that same information and what they were telling me.

10 Q. And is Aqua a provider of wastewater
11 treatment facilities that you would trust?

12 A. Aqua is a public utility that's licensed in
13 the state of North Carolina. AquaPoint is a
14 manufacturer of equipment. They're based in the
15 Northeast, I think. Boston maybe. Or actually I'm not
16 sure where they're based.

17 Q. You mentioned that the preliminary plat shows
18 80 lots, correct?

19 A. We understood -- and I'm not sure if -- I
20 think I've seen a preliminary plat. We understood that
21 there was preliminary approval for a total of 80-plus
22 lots, but I don't remember the specific details.

23 Q. Do you know whether those lots, outside of
24 the original 23 in phase one, were the same size as

1 those in phase one?

2 A. No, I don't.

3 Q. What would you say is the value of each of
4 the lots currently in phase one if they're served with
5 sewer?

6 A. I think that's an irrelevant, nebulous
7 opinion that can vary wildly. So I don't understand
8 the point of the question.

9 Q. Approximately, what would you say?

10 A. As is?

11 Q. Yeah, with sewer.

12 A. I just -- I wouldn't put a value on it. I
13 mean, I just -- I don't know how to answer that
14 question. I'm not an appraiser.

15 Q. Your partner is, right?

16 A. Yes, he's an appraiser.

17 Q. All right. I'll ask him.

18 MR. GENEST: I don't have any further
19 questions for this witness at this time.

20 COMMISSIONER BROWN-BLAND: Ms. Holt,
21 questions on Commission's questions?

22 MS. HOLT: I do have one.

23 EXAMINATION BY MS. HOLT:

24 Q. Mr. Timberlake, I'd like to follow up on the

1 Commission's questions regarding what I think they were
2 referring to as the Public Staff's modified
3 recommendations of December 9 --

4 A. Yes, ma'am.

5 Q. -- 2021.

6 A. Yes, ma'am.

7 Q. And you stated that MRT-1 is agreeable to the
8 percentage investment allocations of 50 percent and
9 30 percent, correct?

10 A. Yes, ma'am.

11 Q. Are there any terms of the recommendations to
12 which MRT-1 is not agreeable?

13 A. Not to my recollection.

14 Q. Okay. Thank you.

15 COMMISSIONER BROWN-BLAND: Mr. Irby,
16 questions on Commission's questions?

17 MR. IRBY: Just one follow-up question.

18 EXAMINATION BY MR. IRBY:

19 Q. To the extent that the Commission enters an
20 order consistent with the modified recommendations of
21 the Public Staff, would you anticipate recouping any of
22 those funds or any of your investment with tap fees?

23 A. We -- that's a good question. If we
24 hypothetically were to contribute, it's our

1 understanding we would at least get credit for the
2 taps, the \$2,500-per-lot tap that we would -- if we had
3 to do half a million dollars and there was 80 taps, we
4 would be able to walk away with 80 taps, which is the
5 equivalent of \$200,000 in value, if we understood it
6 correctly.

7 MR. IRBY: Those are all my questions.

8 COMMISSIONER BROWN-BLAND: All right.

9 Mr. Timberlake, before you leave, we'll take motion
10 from you on exhibits.

11 MR. IRBY: Yes, Your Honor. Just to
12 clean up the record, we've previously referenced
13 Exhibits A through L. I'd move that the exhibits
14 identified that were submitted with
15 Mr. Timberlake's direct testimony as Exhibits A
16 through L be admitted into evidence.

17 COMMISSIONER BROWN-BLAND: All right.

18 Without objection, that motion will be allowed and
19 MRT Timberlake Direct Exhibits A through L will be
20 received into evidence at this time.

21 (MRT Timberlake Direct Exhibits A
22 through L, were admitted into evidence.)

23 COMMISSIONER BROWN-BLAND: Now,

24 Mr. Timberlake, you may be excused. Give me just a

1 moment. We're gonna end up taking -- off the
2 record for a minute.

3 (Discussion off the record.)

4 COMMISSIONER BROWN-BLAND: Back on the
5 record. Mr. Irby, call your next witness.

6 MR. IRBY: We call Tim Ragan.

7 Whereupon,

8 TIM RAGAN,

9 having first been duly sworn, was examined
10 and testified as follows:

11 COMMISSIONER BROWN-BLAND: All right.

12 You may be seated. Mr. Irby?

13 DIRECT EXAMINATION BY MR. IRBY:

14 Q. Would you please state your name, position,
15 and business address for the record?

16 A. My name is Tim Ragan. I live at -- and my
17 business address is at home. It's 138 Lam Drive, and
18 that's Lexington, North Carolina. I'm a member and
19 manager of MRT-1 in addition to Mr. Timberlake and one
20 other -- two others.

21 Q. Mr. Ragan, on February 26, 2021, did you
22 prefile direct testimony consisting of approximately
23 eight pages?

24 A. Yes.

1 Q. If I were to ask you those same questions
2 today, would your answers be the same?

3 A. Not entirely.

4 Q. What -- what corrections to your testimony
5 would you like to make?

6 A. I believe on page 4, there was an
7 indication -- based on some previous documents that we
8 had received, we thought that James Creek already had
9 the allocation assigned to it. I'm striking that from
10 my testimony. It was not allocated.

11 Q. Okay. Are there any other changes?

12 A. No.

13 MR. IRBY: Chair Brown-Bland, I move
14 that Mr. Ragan's direct testimony be copied into
15 the record in this proceeding as if given orally
16 from the stand.

17 COMMISSIONER BROWN-BLAND: All right.
18 That motion will be allowed and Mr. Ragan's
19 prefiled direct testimony will be received into
20 evidence as if given orally from the witness stand.

21 (Whereupon, the prefiled direct
22 testimony of Tim Ragan was copied into
23 the record as if given orally from the
24 stand.)

HARKERS ISLAND SEWER COMPANY**DOCKET NO. W-1274, SUB 7****DIRECT TESTIMONY OF TIM RAGAN
ON BEHALF OF MRT-1, LLC.****February 26, 2021**

1. Q. PLEASE STATE FOR THE RECORD YOUR NAME, ADDRESS,
2. AND PRESENT POSITION.
3. A. My name is Tim Ragan. My address is 138 Lambe Drive, Lexington, North Carolina.
4. I am a Member and Manager of MRT-1, LLC, a North Carolina limited
5. liability company that invests in real estate projects in various stages of development. I am
6. also a licensed real estate broker, and a certified general real estate appraiser.
7. Q. PLEASE DESCRIBE YOUR RESPONSIBILITIES WITH MRT-1 IN CONNECTION
8. WITH THE ACQUISITION AND DEVELOPMENT OF JAMES CREEK?
9. A. I have been tasked with determining what physical infrastructure has been installed in and
10. around the James Creek Subdivision, researching the permitting, outlining the documents
11. that have been filed with the Utilities Commission, and identifying options for expanding
12. capacity to provide wastewater treatment services to James Creek.
13. Q. DID YOU ENGAGE IN CONVERSATIONS WITH MICHAEL LAWS?
14. A. Yes.
15. Q. PLEASE DESCRIBE WHAT YOUR RESEARCH AND DISCUSSIONS
16. REVEALED.
17. A. Let's start with the infrastructure in Phase One of James Creek, as illustrated in Plat Book

1. 32, Page 403. My initial call with Mr. Laws was in the fall of 2019. In that call, Mr. Laws
2. Stated that the storm water permit had been satisfied, the electrical infrastructure had been
3. Installed in Phase One, water and sewer systems were in place for Phase One, but had not
4. Been connected to main sources, and Mr. Laws estimated that total cost to MRT-1 to
5. Establish sewer services to James Creek was \$1,200,000.00.

6. Q. DID MR. LAWS INDICATE WHAT THAT \$1,200,000.00 FIGURE
7. WOULD COVER?

8. A. He told me that the \$1,200,000.00 figure would be the cost for James Creek to acquire utility
9. services.

10. Q. DID MR. LAWS INDICATE THAT THE NEW PLANT WOULD BE TO
11. PROVIDE SERVICES TO JUST THE LOTS WITHIN JAMES CREEK,
12. OR WAS IT TO HAVE CAPACITY TO SERVE ADDITIONAL AREAS?

13. A. He did not provide me with what proportion of any new capacity created would benefit
14. MRT-1 versus new customers or HISCO's existing customer base. I was simply told that it
15. would cost \$1,200,000.00 for HISCO to provide wastewater treatment services to James
16. Creek.

17. Q. DID MR. LAWS PROVIDE YOU WITH AN OPTION OF BRINGING
18. THE WESTBAY TREATMENT PLANT ONLINE, OR REGARDING
19. EXPANDING CURRENT FLOW RATES AT THE HARKERS POINTE
20. PLANT TO ITS MAXIMUM PERMITTED CAPACITY?

21. A. No. That's never been an option.

22. Q. WHAT DID YOUR RESEARCH REVEAL ABOUT HISCO'S
23. CAPACITY, BOTH IN TERMS OF APPROVED TOTAL CAPACITY

1. AND EXISTING CONSTRUCTED CAPACITY?

2. A. My most recent numbers are as of July 31, 2019, but my understanding is they have not
3. Changed significantly since that time. My figures were obtained from the Department of
4. Health and Human Services, but the source is ultimately HISCO, that provided these
5. Figures. HISCO has total approved capacity of 80,160 gallons per day. 60,000 of those
6. Gallons are from the Harkers Pointe treatment plant, and 20,160 of those gallons are from
7. The West Bay treatment plant. That's total approved capacity – not total constructed
8. Capacity. Existing constructed capacity is 40,000 gallons for the Harkers Pointe treatment
9. plant, which is operational, and 10,080 gallons for the West Bay treatment plant, which is
10. Not operational.

11. WHAT PERCENTAGE OF HISCO'S PERMITTED CAPACITY HAS
12. BEEN ALLOCATED?

13. I believe all of it has been allocated. As of August 2019, it appeared
14. As though 75,475 gpd had been allocated, and HISCO has around
15. 4,685 gpd that was considered excess un-allocated capacity. This
16. Coincides with a call I had with Mr. Laws at the beginning of 2020,
17. In which he indicated that he had about 10 sewer taps available at
18. \$2,500 per tap. If we're looking at approximately 360 gpd per three
19. Bedroom residential house, at the time he had about 3600 gpd excess
20. Capacity. Today, Mr. Laws indicates that he has zero taps left. Recent
21. Communications sent to HISCO from DHHS (which we received in
22. Discovery) appears to confirm that Mr. Laws has zero excess capacity.
23. Q. OF THE APPROXIMATELY 80,000 GALLONS PER DAY OF TOTAL

1. FLOW ALLOCATED, ARE ANY OF THE LOTS WITHIN JAMES
2. CREEK INCLUDED OR CONTEMPLATED?
3. A. I believe so, yes. I believe Phase One of James Creek is already allocated in those figures.
4. In the spreadsheet provided by DHHS, there are 48 lots allocated pursuant to HISCO Phase
5. I/West Bay Service Areas. The West Bay permit identifies a limited number of lots within
6. West Bay and James Creek as part of that allocation. That same chart totals the flow from
7. those 48 lots at 17,280 gallons per day. Again, at 360 gallons per day per three bedroom
8. residential house, James Creek Phase One appears to be allocated in HISCO's total permitted
9. and approved capacity.
10. Throughout this civil action before the Utilities Commission, HISCO
11. Has pointed to NCUC Rule 10-12(c) as justification for a requirement that MRT construct a
12. new treatment facility. The relevant paragraph states that "*An applicant for a sewer*
13. *collection system extension to serve a new subdivision, tract, housing project, industrial, or*
14. *residential development, or organized service district shall be required to advance to the*
15. *utility before construction is commenced the estimated reasonable cost of installation of such*
16. *facilities, including the estimated reasonable cost associated with the installation of any*
17. *reasonable and prudent amount of excess capacity, if any, upon approval by the*
18. *Commission. If additional facilities are required specifically to provide service exclusively*
19. *for the service requested, the cost of such facilities may be included in the advance upon*
20. *approval by the Commission.*" However, with respect to the phrase "sewer collection system
21. extension...", that infrastructure is in place at James Creek along with, according to Mr.
22. Laws, a force main connection to West Bay wastewater treatment plant, so that issue has

1. been completed. Additionally, with respect to the other issue relating to the cost of excess
2. capacity, James Creek Phase One, as platted, appears to already be allocated into HISCO's
3. total permitted capacity. MRT is not merely an applicant to serve a new subdivision – it's
4. an existing subdivision within HISCO's franchise territory, and is contemplated in HISCO's
5. allocated permitted capacity. Perhaps there are additional costs associated with making West
6. Bay operational (such as having it certified for operation), and we would consider those
7. reasonable and prudent costs, but HISCO is obligated as a utility to provide services to its
8. customers who may reasonably be served under the General Statutes. Requiring MRT to
9. construct a \$1.1 - \$1.2 Million facility is altogether unreasonable and discriminatory,
10. especially considering that flows from James Creek Phase One appear to be already allocated
11. within HISCO's total permitted capacity.

12. Q. HAVE YOU IDENTIFIED ANY OTHER AVAILABLE METHODS TO ALLOW HISCO
13. TO PROVIDE REASONABLE UTILITY SERVICES TO JAMES CREEK?

14. A. Yes, we believe so, through Harkers Pointe treatment facility. The public records
15. confirm that Harkers Pointe has 60,000 gallons per day of permitted capacity, but
16. only 40,000 gallons per day of constructed capacity. It appears as though there is room for a
17. 4th drainfield on that site that is not being utilized. I do not know if construction of that
18. drainfield would increase the constructed capacity from 40,000 gallons per day to 60,000
19. gallons per day, or if it is mechanically possible to engineer plant facility additions to that
20. aged facility, but we believe it would certainly increase that plant's capacity to some degree.

21. Q. HOW MUCH CAPACITY DOES MRT NEED TO ESTABLISH UTILITY SERVICES
22. AT JAMES CREEK?

1. A. We're obviously examining a number of options. We have conducted some initial
2. examination relating to the options available to us, but given that, at present, HISCO and
3. Mr. Laws has taken the position that MRT-1 should not be afforded the right to construct or
4. establish its own capacity. Mr. Laws has taken the position, incorrectly in my opinion, that
5. because we're in HISCO's franchise territory, we are not allowed to create our own capacity
6. and thereafter turn it over; rather, Mr. Laws has insisted that we simply provide HISCO with
7. the funding to establish such capacity. To a certain extent, we need the NCUC to confirm
8. that if a new plant is required to be constructed, that we can establish such a plant ourselves,
9. and then turn operations over to HISCO. Still, we have begun looking at several scenarios.
10. There's a scenario where we limit Development of James Creek to eight to ten lots,
11. there's a scenario where we develop Phase one only, and there's a full buildout scenario.
12. Our primary focus has been to gauge costs necessary to develop as few as eight of the lots,
13. or to limit development of James Creek to Phase One solely, since those lots
14. (i) are within HISCO's franchise territory, And (ii) appear to have already been allocated
15. into HISCO's permitted Capacity. At 360 gallons per day and at the presently platted
16. 21 lots, we'd need to establish around 7,560 gallons per day of capacity. We believe West
17. Bay has the current constructed capacity to take those flows, and we believe
18. Harkers Pointe would easily increase its constructed capacity by developing that
19. fourth drainfield to accept those flows as well. Those are costs we'd be happy to contribute
20. to, because they would increase HISCO's constructed capacity solely to
21. benefit increased wastewater flows from James Creek, but
22. we believe taking the position that constructing a new treatment plant at a cost of \$1.1

1. to \$1.2 Million is disingenuous. We do not believe we're being provided adequate or
2. complete information in good faith by HISCO. We also do not believe such costs would be
3. limited to establishing wastewater capacity solely for James Creek; we believe such a plant
4. would benefit HISCO's existing customer base.

5. With regard to West Bay, there may be some concern about ramping up to adequate flow
6. rates. That's not a concern of ours. We can bring a number of houses on line in an extremely
7. short period of time to accommodate requisite flow rates. I believe that is an inadequate
8. reason to deny us the potential use of the West Bay facility for waste water services. Also
9. with regard to West Bay, I have reviewed communications submitted by HISCO to the
10. NCUC, and have seen an email filed July 17, 2015 from Mr. Laws to the NCUC. In that
11. email, Mr. Laws outlines his long term preference to operate one facility at one location. I
12. also believe this is an inadequate reason to deny our potential use of West Bay as an option
13. for waste water treatment purposes.

14. Q. WHAT ELSE DID YOUR RESEARCH REVEAL?

15. A. We need to have address the infrastructure that has been installed in James Creek.
16. Water and sewer systems have been physically installed, but I have been unable to locate
17. a permit authorizing the installation. At this time, it's unclear if we'd need
18. to rip it out and re-install it under a properly issued permit. This is one of the reasons why
19. we're examining a development with fewer lots. This is also why, if we have to establish
20. our own capacity by constructing our own treatment plant, we need to be able to do so
21. entirely for ourselves, including recover all tap fees for ourselves, and thereafter turn
22. ownership and control over to a utility – HISCO if need be.

23. Q. CAN YOU RECALL ANY ADDITIONAL DETAILS FROM YOUR

1. CONVERSATIONS WITH MR. LAWS?
2. A. We spoke about a 55,000 GPD package plant that he located. We've spoken to the seller –
3. it would cost about \$600,000.00 to purchase it, install it, and get it properly permitted and
4. online. Of course, if we are going to establish our own capacity by building a plant, we'd
5. buy it for ourselves and recover all of the tap fees ourselves, to reduce the cost of the plant.
6. We'd never buy such a thing for HISCO – there would be no way we could ensure we were
7. not paying to benefit other customers on the Island, or that we'd be able to recover all of
8. the tap fees. One thing of note is that Mr. Laws stated outright that we could never place the
9. package plant on the James Creek Site. He did not indicate why, but I suspect he knows that
10. timbering the property immediately prior to completion of the foreclosure seriously damaged
11. the property, created ponding where none previously existed, and disrupted
12. runoff/infiltration matrix patterns of the existing surface drainage network.
13. Q. DOES THIS COMPLETE YOUR TESTIMONY AT THIS TIME?
14. A. Y e s .

CERTIFICATE OF SERVICE

I certify that I have this day served a copy of the foregoing Testimony on the parties of record by electronic mail, properly addressed to the following:

I. CLARK WRIGHT, JR.
DAVIS HARTMAN WRIGHT, PLLC
209 Pollock Street
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Email: icw@dhwlegal.com
Attorney for Respondent HISCO

This the 26th day of February, 2021.

Electronically submitted

/s/ Andrew D. Irby, NCSB # 35353
Attorney for MRT-1, LLC

Roberson Haworth & Reese, PLLC

PO Box 1550

High Point, NC 27261

1 MR. IRBY: Thank you, ma'am. I tender
2 the witness.

3 CROSS EXAMINATION BY MR. GENEST:

4 Q. Good morning, Mr. Ragan.

5 A. Good morning.

6 Q. Did you have communications with Mr. Laws at
7 any point about securing available taps?

8 A. I did, yes.

9 Q. Were there taps available at one point in
10 your conversation?

11 A. Yes, there were.

12 Q. Do you recall how many?

13 A. Approximately 10.

14 Q. Okay. And were those offered to you on a
15 lot-by-lot basis?

16 A. I'm not sure what you mean by "lot-by-lot."

17 Q. Did you have the ability to request service
18 for individual lots in James Creek?

19 A. The offer was, "I'm happy to sell you 10
20 permits at \$2,500 a piece if you get a building permit
21 prior to that." That he did not want to just sell an
22 empty permit not knowing that it was going to be built
23 upon and put into -- and so that the sewer would
24 actually be active and put into use so that he could

1 collect fees off it, which made economical sense, sure.

2 Q. And under that arrangement, would you have
3 received a will serve letter so that you could get a
4 building permit?

5 A. Did I?

6 Q. Would you have under that arrangement. I
7 take it that you did not, in fact, carry through that
8 arrangement; is that right?

9 A. That's correct.

10 Q. But you could have received a building permit
11 with a will serve letter from Mr. Laws?

12 A. I'm not familiar with that part of the
13 building permit requirement. But I will -- if I can
14 expound on that just a little bit. It's -- without
15 water, without sewer, without electricity all being
16 active, there's no point in trying to get a -- with a
17 will serve letter or anything else, there's no point in
18 trying to get a building permit, even if I could have
19 gotten it with that without any active -- because we
20 would, in turn -- we're not builders, we're -- you
21 know, we do develop and buy and sell properties.

22 So we would have simply not been able to get
23 a builder to buy those lots, even with the will serve,
24 even with the building permit, without actually having

1 sewer, active sewer and water and electricity in the
2 development. No one's gonna go build 10 houses and,
3 you know, know that they cannot close on those houses
4 and people get active services, and not knowing how
5 long that would take.

6 Q. If you had paid the tap fee and received the
7 allocation, you would have expected to receive actual
8 sewer service, yes?

9 A. Yes.

10 Q. I'm not following why you're saying that you
11 wouldn't have service if you built on the basis of a
12 will serve --

13 A. It's not connected.

14 Q. If you pay a tap fee to the sewer company,
15 you would believe that it would be connected, yes?

16 A. Well, I believe that. But I also believe
17 that the property had already been sitting there for
18 some time without being connected. And we -- I'm also
19 familiar with the -- with the capacity issues and with
20 the condition of the existing facility as to whether
21 that would have been possible or not.

22 Q. We are all familiar with the capacity issues.
23 But at the time that we're talking about right now, you
24 asked if there was capacity and the answer was yes and

1 you could have it for a tap fee, yes?

2 A. With a building permit and a tap fee.

3 Q. As far as you know, did any -- did MRT or any
4 of its predecessors-in-title ever pay HISCO to reserve
5 capacity?

6 A. No.

7 Q. Did you ever ask HISCO for a breakdown of
8 what the cost that was being proposed for an increase
9 in capacity, what that would represent or where that
10 would go?

11 A. No. Most of those negotiations were being
12 handled by Mr. Timberlake and the other partners.

13 Q. Mr. Timberlake deferred to you on the
14 question of what the value of the preliminarily platted
15 80 lots would be.

16 Do you know what those lots would be worth if
17 they had sewer on them?

18 A. I cannot answer that question legally. As a
19 certified appraiser in North Carolina, I cannot answer
20 your question. I to have a back-up file for any number
21 that I -- if I give you a number, I have to have a
22 supporting file to come up with that number.

23 Q. What did you pay for the James Creek
24 property?

1 A. What's the total price, 120 -- \$120,000, I
2 think. Something like that.

3 Q. \$120,000 for all of it?

4 A. Yes.

5 (Pause.)

6 MR. GENEST: We have no further
7 questions for this witness at this time.

8 COMMISSIONER BROWN-BLAND: All right.
9 Ms. Holt?

10 MS. HOLT: Yes, just a couple clarifying
11 questions.

12 CROSS EXAMINATION BY MS. HOLT:

13 Q. Mr. Ragan, is MRT -- what wastewater
14 treatment plant does MRT want to connect to? The
15 Harkers Point treatment plant or the West Bay treatment
16 plant?

17 A. It should be Harkers Point, because from what
18 our engineer told us -- this would have been
19 Dan Pritchett from Jamestown Engineering -- that West
20 Bay, having never been operational, that a sewer plant
21 needs to have water running through it in order to
22 remain operational. And it's been sitting for quite
23 some time and that it would probably not be functional
24 even if you tried to -- to get it operational at this

1 time.

2 Q. And MRT is willing to contribute funds to
3 upgrade or expand capacity?

4 A. Yes, absolutely. Or a pro rata share, for
5 sure.

6 Q. Thank you. That's all --

7 A. Within -- within -- you know, as long as it
8 makes the entire project, you know, cost feasible, so.

9 Q. Thank you.

10 A. All right.

11 COMMISSIONER BROWN-BLAND: Redirect?

12 REDIRECT EXAMINATION BY MR. IRBY:

13 Q. Mr. Ragan, could you expand on your -- for
14 lack of a better term, your explanation of the catch-22
15 between Mr. Laws offering to sell ten taps and your
16 inability to purchase or acquire those taps?

17 A. Well, I mean, our desire not to purchase them
18 would be based on the fact that we could not get a
19 building permit. Maybe with a will serve letter, if
20 that's available. But if it will serve, then -- with
21 no sewer connections, there's, again, no point in us
22 trying to accommodate or trying to acquire those lots
23 or those sewer taps, I'm sorry, without any possible or
24 potential to -- for those lots to be built upon.

1 Q. If you had acquired those taps without
2 HISCO's requirement that you have a building permit
3 first, would that have repaired that issue?

4 A. Yes.

5 MR. IRBY: No further questions.

6 EXAMINATION BY COMMISSIONER BROWN-BLAND:

7 Q. Mr. Ragan, with regard to the Public Staff's
8 modified recommendation, and having heard the testimony
9 of your partner, Mr. Timberlake, do you have anything
10 else to add or do you take issue with Mr. Timberlake's
11 testimony to us?

12 A. No, I don't take issue with any of that. I
13 mean, I'm with him and I think we are with our other
14 partners as well, willing to accept the Public Staff's
15 recommendation on the allocation of the expenses
16 related to providing sewer to James Creek. And then
17 the only other -- there are 80 lots total for this
18 development. Okay. There were 22 or 23 on the
19 recorded plat from 2013, and then the balance of those
20 80 are in this preliminary plat that you've heard
21 testimony about.

22 So we really would like to have a plan for
23 sewer allocation to the remainder of the preliminary
24 lots as well. Speaking as the -- one of the scenarios

1 that Mr. Timberlake presented was the possibility of
2 one option would be to put some or all of the property
3 in a conservation easement in order to create value for
4 that conservation easement. I am a conservation
5 easement appraiser and do -- that's pretty much all I
6 do nowadays as far as appraising.

7 And you have to create a before value and an
8 after value to determine what the value of those rights
9 that you're giving up by putting a conservation
10 easement on a piece of property. So if those 80 lots
11 don't have any possibility of sewer or septic, then
12 that value that you put in there before you put a
13 conservation easement on it, and the value after,
14 there's not much difference in those two values.

15 Because if you can't really do anything with
16 the property before you put the conservation easement
17 on other than agricultural use or something like that,
18 then you just don't create any additional -- you're not
19 really giving up a whole lot by donating conservation
20 easement on something that can't really be used for
21 anything other than agricultural purposes.

22 Q. And with regard to the recommendation coming
23 from the Public Staff and the percentages of sharing
24 that 50, 30, and 20, that applies to any repair,

1 upgrade, or replacement, correct?

2 A. Correct.

3 Q. Okay.

4 COMMISSIONER BROWN-BLAND: Commissioner
5 McKissick?

6 EXAMINATION BY COMMISSIONER MCKISSICK:

7 Q. Just one or two quick questions, sir. I
8 believe you indicated that you were offered 10 taps at
9 \$2,500 a piece?

10 A. Correct.

11 Q. And that if you had acquired those, you would
12 have been able to secure a building permit; is that
13 correct?

14 A. No, we would not have been able.

15 Q. You would not have been?

16 A. I'm sorry, with -- from what I understand
17 from what respondents are saying that with a will
18 call -- or will serve letter, I'm sorry, that you could
19 possibly get a building permit.

20 Q. Did you investigate that possibility?

21 A. Not -- we're not familiar with the will
22 serve.

23 Q. You're not familiar with the will serve?

24 A. That's correct.

1 Q. And are you familiar with the process that
2 some jurisdictions use or companies of reserving sewer
3 capacity?

4 A. Yes.

5 Q. And did you explore that possibility?

6 A. No.

7 Q. You did not. Okay. All right.

8 And I believe you said the acquisition price
9 for the 22 lots and the 30 acres was \$120,000?

10 A. That's correct. That's approximately.

11 Q. To the best of your recollection?

12 A. Uh-huh.

13 Q. Okay. Thank you. I don't have any further
14 questions.

15 COMMISSIONER BROWN-BLAND: Commissioner
16 Hughes?

17 EXAMINATION BY COMMISSIONER HUGHES:

18 Q. Yeah, I'd like a clarification at least, but
19 it was of your partner's comments, so if you can't do
20 it, you can't do it. But this arrangement -- first
21 off, now we're even more complicated because now we
22 have 10, 22, or 80. That's different options.

23 But from your personal experience -- well,
24 first off, would you -- would you be comfortable, as

1 your partner said, with the either/or, the 22 --
2 because what you just finished saying, it seemed to
3 imply that you were nervous about leaving those 58
4 lots, kind of, out there. But he was -- he was pretty
5 adamant that either/or would be okay by him.

6 A. I'm fine with either/or --

7 Q. Okay.

8 A. -- as well. I didn't mean to -- you know,
9 I'm not nervous about that. It's like -- you know, it
10 just naturally creates more value the more lots you
11 have.

12 Q. True.

13 A. That's all.

14 Q. Sure. The other thing I just want to make
15 sure I understand, your understanding of this agreement
16 that you're saying you're okay with it.

17 When it says 50 percent of the payment would
18 be from MRT and 30 percent would be from tap fees, it
19 wasn't completely clear in the response that was just
20 presented, but there was a little bit of insinuation
21 that the tap fees would be part of the 50 percent?

22 And was that your understanding, that if you
23 were responsible for 50 percent, that would be -- you
24 would get a credit from whatever tap fees? And just to

1 round numbers, if you had to pay \$100,000 and you
2 collected \$25,000 in tap fees, you would put those tap
3 fees against that \$100,000; was that your understanding
4 of the --

5 A. I don't know that I have that understanding.

6 Q. Okay.

7 A. An understanding of that.

8 Q. Okay. Would your understanding be that you
9 would have to pay the \$100,000 -- I mean -- excuse me,
10 you would have to -- sorry.

11 You would have to pay the 50 percent, you
12 would collect tap fees, and that would need to come up
13 to an additional 30 percent, and then you would look
14 toward HISCO to pay the extra 20 percent; is that your
15 understanding of how it worked?

16 A. I think that is correct. I'm just gonna be
17 honest, I haven't really discussed the Public Staff's
18 recommendation in detail.

19 Q. Okay.

20 A. Sorry.

21 Q. Yeah, I realize that. Let's leave it at that
22 for the questions.

23 COMMISSIONER BROWN-BLAND: Mr. Genest,
24 questions on Commission's questions?

1 MR. GENEST: My follow-up questions
2 were, I believe, I think, just very well explored
3 by Commissioner Hughes.

4 EXAMINATION BY MR. GENEST:

5 Q. The one question that I did forget to ask you
6 earlier was, did you, or did MRT, ask HISCO to allow
7 Dan Pritchett to investigate the wastewater treatment
8 facilities?

9 A. No, we did not. Dan Pritchett was engaged by
10 Pinnacle Bank. And then Pinnacle Bank, as part of our
11 purchase, gave us access to some of his findings.

12 Q. So as to your information, your
13 predecessor-in-title did send an engineer over to HISCO
14 to do some investigation; is that right?

15 A. I don't know the extent of his communication
16 with HISCO. I just know that his job was to research
17 the situation and the status of the sewer plant and the
18 subdivision. But what communications they had, I have
19 no -- no knowledge of.

20 Q. You don't have any information that MRT or
21 its predecessors-in-title were prohibited from seeking
22 information from HISCO?

23 A. I don't have any information on that, no.

24 MR. GENEST: Thank you.

1 COMMISSIONER BROWN-BLAND: Ms. Holt?

2 MS. HOLT: I have no questions.

3 COMMISSIONER BROWN-BLAND: Mr. Irby?

4 MR. IRBY: Just a couple, Your Honor.

5 EXAMINATION BY MR. IRBY:

6 Q. Mr. Ragan did -- when you were discussing the
7 10 taps that were available with Mr. Laws, were you
8 offered a will serve letter to facilitate obtaining a
9 build permit?

10 A. I was not.

11 Q. Were you offered a shall serve letter to
12 facilitate obtaining a build permit?

13 A. No.

14 Q. What exactly were you told by Mr. Laws?

15 A. Just cut and dry, I have 10 permits available
16 still at \$2,500 each. With -- if you have a building
17 permit.

18 Q. Okay.

19 MR. IRBY: That's all.

20 COMMISSIONER BROWN-BLAND: All right.

21 Well, you made me a fibber. We're gonna be done
22 with Mr. Ragan before lunch. Mr. Ragan, you may be
23 excused.

24 THE WITNESS: Thank you.

1 COMMISSIONER BROWN-BLAND: All right.
2 We're gonna break now for lunch. Be back at 1:30.

3 (At this time, a recess was taken from
4 12:27 p.m. to 1:42 p.m.)

5 COMMISSIONER BROWN-BLAND: Let's come to
6 order. The Commission is going to take a recess
7 now until 2:00 to give the parties some time to go
8 over some matters and maybe help narrow the issues
9 or come to some agreement. With that, we will be
10 in recess until 2:00.

11 (At this time, a recess was taken from
12 1:43 p.m. to 2:46 p.m.)

13 COMMISSIONER BROWN-BLAND: So for the
14 record, we have finished the case in chief for MRT,
15 the complainant. And we are at the stage where the
16 respondent would put on its case. But in the
17 meantime, the parties have come to me, and they
18 wish to put a settlement in principle on the
19 record. Which I think they're going to be
20 following up in writing in a few days.

21 So I will -- Mr. Irby, it looks like you
22 have the honors.

23 MR. IRBY: I do. Thank you,
24 Madam Chair, and members of the Commission. The

1 parties are willing to accept a substantial portion
2 of the Public Staff's recommendation for MRT to pay
3 80 percent of the cost to establish capacity for
4 approximately 28,000 --

5 COMMISSIONER BROWN-BLAND: Was that 80?

6 MR. IRBY: 80 lots, Your Honor. 80
7 percent of the cost and -- which would produce
8 approximately 28,800 gallons per day, which would
9 serve approximately 80 lots within James Creek, the
10 existing phase one and the expansion phase. With
11 that said, 30 percent of that cost would then be
12 recouped by MRT in tap fees, as recommended by the
13 Public Staff.

14 The parties have agreed that HISCO will
15 work with MRT's engineer to build a new wastewater
16 treatment plant at present of unknown size, but
17 which would be intended to partially or wholly
18 replace existing capacity at the Harkers Point
19 wastewater treatment facility, and at MRT's new
20 capacity.

21 So by way of example, an
22 80,000-gallon-per-day plant would have 28,800
23 gallons allocated specifically for James Creek, and
24 the rest of it would be used by Harkers Island

1 Sewer Company. Also by way of example, MRT would
2 not be responsible for any cost associated with
3 expanding the existing plant or constructing the
4 new plant that would serve the existing customer
5 base. MRT would pay 80 percent of its allocated
6 28,800 as opposed to, you know, the full 80, if
7 that make sense.

8 Within 30 days of today, HISCO will
9 submit an application to the Commission to approve
10 a loan to cover its 20 percent share of the cost to
11 cover the establishment of MRT's allocation of
12 28,800. Within 10 days of today, the attorneys for
13 the Public Staff, MRT, and HISCO will work together
14 to present a consent order to be considered by the
15 Commission. Will consider -- will submit it in
16 Word document format so the Commission can make
17 whatever changes the Commission feels appropriate.

18 And in the interim, this hearing we
19 request to be held in recess until October 6th. In
20 the event that our proposed consent order is
21 entered by the Commission, that hearing would be
22 unnecessary. Instead, we would request the
23 Commission require a series of updates through the
24 next year to ensure that the settlement that we've

1 come to in principle is moving forward. Did I miss
2 anything?

3 MR. GENEST: I hesitate to muddy the
4 waters at all, but I just wanted to make clear that
5 what MRT is paying 80 percent towards is its
6 28,800-gallon capacity. I just wanted to be clear,
7 because the statement of they would not be
8 contributing to other Harkers Island customers,
9 slightly ambiguous in my mind, because if it's a
10 new facility it will, of course, be serving Harkers
11 Island customers. But the limiting factor for MRT
12 is that it's paying 80 percent into escrow of only
13 its 28 --

14 MR. IRBY: It's 28 -- that's correct.

15 MR. GENEST: -- whatever proportional
16 amount that is of a new facility.

17 MR. IRBY: That's correct.

18 COMMISSIONER BROWN-BLAND: And this
19 is -- the contributions go toward a new facility
20 for Harkers Point?

21 MR. IRBY: That's the thinking,
22 Your Honor. Instead of just paying to increase
23 capacity of the existing facility, given that the
24 existing facility is at the end of its natural

1 life, my understanding is it's better for everybody
2 if we just build a larger new system. Which MRT
3 would obviously be required to pay for 80 percent
4 of its 28,800, and Harkers Island Sewer Company
5 would, you know, take care of the rest of it.
6 20 percent of which would be approved with a loan
7 by the Commission to facilitate it at a minimum
8 expanding capacity to establish that 28,800 so that
9 MRT could develop it's 80 lots.

10 COMMISSIONER BROWN-BLAND: All right.
11 Ms. Holt, do you have anything to add or is that in
12 alignment with your understanding?

13 MS. HOLT: That's in alignment with our
14 understanding and we agree to it as well.

15 COMMISSIONER BROWN-BLAND: All right.
16 Anything else that needs to come before the
17 Commission with respect to this?

18 MR. IRBY: Not today, Your Honor. We
19 will obviously be in touch with the Commission over
20 the coming 10 days regarding our proposed consent
21 order. And we'd be willing to work with the
22 Commission to make whatever changes need to be
23 made. Obviously, we've got a long 10 days ahead of
24 us to try to put pen to paper to make sure this is

1 properly documented.

2 COMMISSIONER BROWN-BLAND: So within
3 30 days -- 30 days from today, we would get the
4 application?

5 MR. IRBY: I think 30 days from today
6 we'd get the application. HISCO says it's got a
7 pretty good idea of the amount that it's going to
8 need to cover its 20 percent cost. It's going to
9 request an amount over and above that just so that
10 they don't fall short given, you know, inflationary
11 factors.

12 COMMISSIONER BROWN-BLAND: So the
13 Commission will order that, in the same 30-day time
14 period, or plus one, the day after, that a report
15 or status report about the situation be made to the
16 Commission about where we are, and if anything is
17 changed with respect to settlement and the
18 settlement staying on track.

19 MR. IRBY: Yes, Madam Chair. And
20 candidly, I was going to request with opposing
21 counsel and with the Commission for regular status
22 updates. We don't need to come in for hearings if
23 things are moving forward. I'm fine with one-page
24 piece of paper jointly signed by both myself and

1 Mr. Genest that things are moving forward. I just
2 want regular status updates. I just don't want
3 radio silence for the next year is what I'm getting
4 at.

5 COMMISSIONER BROWN-BLAND: So we're
6 going to continue the hearing until October 6th at
7 1:00 p.m. in this hearing room. That hearing will
8 go forward if the settlement is not on track. If
9 the settlement is proceeding and progressing and
10 parties are in agreement, we will convert at that
11 point to 30-day status report. Every 30 days
12 indicate to the Commission and to each other what's
13 going on and where we stand with respect to getting
14 the matter resolved. Does that sound good?

15 MR. IRBY: Yes, ma'am.

16 COMMISSIONER BROWN-BLAND: Any problems?

17 MR. GENEST: We agree. Thank you.

18 MR. IRBY: We agree.

19 COMMISSIONER BROWN-BLAND: I think
20 that's it. All right. We will be adjourned and --
21 or continued until October 6th.

22 (Hearing adjourned at 2:53 p.m.)
23
24

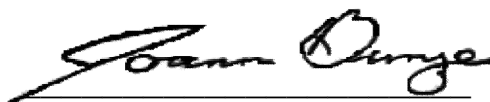
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STATE OF NORTH CAROLINA)
COUNTY OF WAKE)

I, Joann Bunze, RPR, the officer before whom the foregoing hearing was conducted, do hereby certify that any witnesses whose testimony may appear in the foregoing hearing were duly sworn; that the foregoing proceedings were taken by me to the best of my ability and thereafter reduced to typewritten format under my direction; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this hearing was taken, and further that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.

This the 29th day of August, 2022.



JOANN BUNZE, RPR

Notary Public #200707300112



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