

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. W-1297, SUB 14

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	)	
Pinnacle Bank, as successor by merger	)	
with Bank of North Carolina,	)	
Complainant	)	
	)	ORDER SERVING CORRECTED
v.	)	ANSWERS AND RESPONSES
	)	
Harkers Island Sewer Company,	)	
Respondent	)	

BY THE COMMISSION: Notice is hereby given that on June 17, 2019, the attached Answer of Respondent has been filed with the Commission, setting forth the admissions or denials of the complaint and/or an offer or other statement of Respondent relating to satisfaction of the complaint.

Rule R1-9 of the Commission's Rules provides that if this Answer of Respondent is satisfactory to you as Complainant then no further proceedings will be held in this docket. You are requested to review the attached Answer of Respondent and advise the Commission whether the Answer is acceptable to you and, if not, whether you desire a public hearing to present evidence of your complaint. You may advise the Commission of your position by filing a separate Reply to the Answer or, if you so desire, you may check the appropriate box on the form attached to this Notice and sign the form and return it to the Commission.

This Order will be served on Complainant by electronic mail, delivery confirmation requested. If Complainant does not file a reply or request a hearing by July 1, 2019, the Commission will assume the complaint is satisfied and this docket will be closed.

IT IS, THEREFORE, SO ORDERED.

ISSUED BY ORDER OF THE COMMISSION.

This the 18th day of June, 2019.

NORTH CAROLINA UTILITIES COMMISSION



Janice H. Fulmore, Deputy Clerk

DOCKET NO. W-1297 SUB 14

Pinnacle Bank, as successor by merger
with Bank of North Carolina

v.

Harkers Island Sewer Company.

- () The relief offered in the Answer filed by Respondent is acceptable to me as Complainant, and I do not desire a public hearing in this proceeding.
- () The Answer filed by Respondent is not satisfactory to me as Complainant, and I hereby request a public hearing at which time I will present evidence in support of the complaint.
- () Although the Answer filed by Respondent is not completely satisfactory to me as Complainant, I do not request a hearing at this time. I do request that the Commission keep this docket open for at least six (6) months so that the matters complained of can be monitored by Complainant, the Commission, and the Public Staff.
- () The Answer filed by Respondent is not satisfactory to me as Complainant and I request the following additional information subject to Commission review as to the reasonableness of my request. (Detail)

Signature of Complainant

THIS REPLY SHOULD BE RETURNED TO:

Chief Clerk
North Carolina Utilities Commission
4325 Mail Service Center
Raleigh, North Carolina 27699-4325

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. W-1297, SUB 14

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

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

NOW COMES RESPONDENT, Harkers Island Sewer Company (“HISCO”), and provides this corrected and revised answer and response to Complainant’s Complaint, as follows. The corrections and revisions are necessary in part due to the use of a document that was not the final version of counsel for Respondent’s answers and responses. In addition, the corrected and revised answers and responses contains copies of two documents expressly referenced in Respondent’s June 14, 2019 filing. The first 46 numbered paragraphs of Respondent’s corrected and revised answers and responses correspond to the same numbered paragraphs in the Complaint. The final three paragraphs contain general “catchall” denials and a request that the Commission dismiss or limit any allegations of the Complaint deemed by the Commission to travel beyond the Commission’s jurisdiction and authority.

1. Respondent has no obligation to assess or respond to legal assertions and conclusions contained and such thus are denied; Respondent HISCO does not have firsthand specific knowledge regarding the location of various offices of Pinnacle Bank and thus such allegations are denied; Respondent HISCO admits, upon information and belief, that Pinnacle Bank has offices and does business in North Carolina.
2. Admitted that HISCO is a Public Utility providing sewer services in Carteret County, North Carolina.
3. Admitted upon information and belief that documents of the type referenced in this paragraph, as well as prior and subsequent modifying documents, exist. Those documents speak for themselves and any characterizations by Complainant as to the content,

meaning, or intent of the document are Denied. HISCO further states that, contrary to implications by Complainant, HISCO is entirely distinct and separate from its principals and any other entities to which those principals are or were connected. HISCO additionally respectfully asserts that this allegation is completely irrelevant and immaterial to any issue properly before this Commission. This paragraph, and indeed the majority of facts and issues discussed in the Complaint have little or nothing to do with Complainant's (unsupported) allegations of having been denied sewer service, and HISCO requests that the Commission strike or dismiss those irrelevant and improper allegations of the Complaint.

4. Admitted upon information and belief that documents of the type referenced in this paragraph, as well as prior and subsequent modifying documents, exist. Those documents speak for themselves and any characterizations by Complainant as to the content, meaning, or intent of the document are Denied. HISCO further states that, contrary to implications by Complainant, HISCO is entirely distinct and separate from its principals and any other entities to which those principals are or were connected.
5. Admitted upon information and belief that documents of the type referenced in this paragraph, as well as prior and subsequent modifying documents, exist. Those documents speak for themselves and any characterizations by Complainant as to the content, meaning, or intent of the document are Denied. HISCO further states that, contrary to implications by Complainant, HISCO is entirely distinct and separate from its principals and any other entities to which those principals are or were connected.
6. Denied. *Michael* Laws is a principal of HISCO and previously managed BLE Development, among other entities.
7. Admitted that the referenced documents exist, and that those documents speak for themselves. Any characterizations by Complainant as to the content, meaning, or intent of the document are Denied.
8. Admitted that the referenced documents exist, and that those documents speak for themselves. Any characterizations by Complainant as to the content, meaning, or intent of the document are Denied.
9. Admitted that HISCO's permit applications, amended permit applications, and other relevant documents exist and that those documents speak for themselves. Any characterizations by Complainant as to the content, meaning, or intent of the document are Denied.
10. Admitted that HISCO's permit applications, amended permit applications, and other relevant documents exist and that those documents speak for themselves. Any characterizations by Complainant as to the content, meaning, or intent of the document are Denied.
11. Denied. At all times prior to the foreclosure which prevented the prior developer (BLE) from obtaining sewer service for the lots in James Creek, HISCO represented its intent to serve James Creek through a multi-stage need-based development plan as outlined in the

various permits. See HISCO Exhibit 11.5, first page of NCDENR Permit No. WQ0024023. It specifies the expansion of Westbay Waste Water Treatment Plant (“Westbay WWTP”) intended to serve James Creek Phase 1. The expansion of Westbay WWTP never occurred because it was never funded by the Developer as required and stated in said Permit and related documentation. Neither the original developer nor any successor in interest has ever properly paid, or offered to properly estimate and agree to pay for, any of the increases in permitted sewage treatment and disposal capacity needed to serve any of the phases of the James Creek Subdivision.

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

The expectation that improvements would not be needed was based on predictions that the then-existing 10,080 gpd Westbay WWTP could accept actual wastewater flows and would be able to adequately process the actual volume of both Westbay Subdivision and James Creek Phase 1 for a period exceeding ten years based on the then existing needs of those substantially undeveloped and unoccupied developments. All 32 Westbay Subdivision lots were sold in the year 2005, yet only five homes have been constructed which use the HISCO sewer system. Taking into consideration that only five homes had been constructed in Westbay in six years (now 14 years), HISCO reasonably and properly concluded that no additional upgrades were likely to be needed within the next five to ten years, based on present and anticipated future sewage flow volumes. Answering further, at that time, the **actual** sewer flows for which HISCO was responsible during the first 7-8 years of its existence *were so small that, according to HISCO’s experience and expertise, as well as that of HISCO’s engineer, HISCO could not properly start up or run the Westbay WWTP.* Instead, at great expense, HISCO incurred monthly pump and haul costs to carry out its legal obligations to properly treat and dispose of all **actual** sewage flows generated by its customers, while also maintaining large amounts of excess, **permitted** capacity as required by DWR/DEQ, DHHS and the CCHD.

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

HISCO’s total original **permitted** capacity of 58,600 gpd (which included the permitted capacity of the intended James Creek WWTP), was required to comply with DWR/DEQ, requirements for serving the two subdivisions *at that point in time.* The additional WWTP facility designed to serve further buildout of the James Creek Subdivision was

never actually constructed **by the developer** due to lack of actual home sales **and** due to the foreclosure by Complainant and its predecessor bank, and the knowing refusal of Complainant to incur the required costs associated with permitting additional sewage treatment and disposal capacity. The feasibility and legitimacy of the formerly permitted capacity held by HISCO directly and proximately was rendered a nullity and an impossibility by the actions of the foreclosing bank, after which HISCO was required by law to cancel the State agency permits associated with HISCO's loss of ownership and other legal rights within the James Creek Subdivision.

13. The existence of the referenced document is Admitted. That document speaks for itself, and any characterizations by Complainant as to the content, meaning, or intent of the document are Denied. Respondent further states that it is undisputed that HISCO intended and expected to provide both actual and permitted sewer service to future anticipated customers within the James Creek subdivision upon completion of the requisite processes. Although substantial infrastructure was built by the original developer in anticipation of providing sewer service to James Creek, the foreclosure (and subsequent dormancy of the development of James Creek) rendered impossible the original, permitted means by which to provide that service. HISCO lost substantial permitted capacity, which was issued based on the intent to serve James Creek, when it lost rights within the planned subdivision, coupled with the refusal of Complainant to negotiate an agreement with HISCO in which Complainant, or some other owner of the property, agrees to fund additional permitted sewer system capacity.
14. Admitted.
15. The existence of the referenced document is Admitted. That document speaks for itself, and any characterizations by Complainant as to the content, meaning, or intent of the document are Denied.
16. The existence of the referenced document is Admitted. That document speaks for itself, and any characterizations by Complainant as to the content, meaning, or intent of the document are Denied.
17. The existence of the referenced document is Admitted. That document speaks for itself, and any characterizations by Complainant as to the content, meaning, or intent of the document are Denied. Respondent further answers that the referenced declarations are not a guarantee of permitted or other regulatory system capacity, and also were disclaimed and rendered impossible, despite HISCO's *repeated requests* and warnings communicated to the Complainant and others.
18. The existence of the referenced document is admitted. That document speaks for itself, and any characterizations by Complainant as to the content, meaning, or intent of the document are Denied.
19. Admitted. Answering further, the Loan Modification Agreement referenced was written with awareness of, and implicit reference to, the customary additional costs to be borne by the developer of the subdivision (for needed permitted sewer capacity) and to be

integrated into the allocation of future tap fees and/or sewer service rates. The Loan Modification Agreement does **not**, despite Complainant's apparent misunderstandings, establish any waiver of the usual costs to a developer to create or secure future permitted sewer treatment/disposal capacity, nor does it constitute a contract for guaranteed sewer service allocations.

20. Admitted on information and belief.
21. Admitted on information and belief.
22. Admitted on information and belief.
23. The existence of the referenced letter is Admitted. That document speaks for itself, and any characterizations by Complainant as to the content, meaning, or intent of the letter are Denied. Further Admitted that a renewal of permits was executed by HISCO in late 2014 and issued in 2015 by NCDENR with the hope that Pinnacle Bank's predecessor in interest, Bank of North Carolina (BNC) would eventually comply with HISCO's repeated requests to retain sewer service rights within the James Creek Subdivision. However, after approximately one year of no response from BNC officials or legal representatives, HISCO had no choice but to cancel the permits which had been nullified by the loss of property, easement, and permits to build the intended on-site WWTP. See HISCO Exhibit 23.5, which represents the brief correspondence from HISCO to the State to properly cancel this previously permitted capacity in order to bring HISCO back into full regulatory compliance.
24. The existence of the referenced document is admitted. That document speaks for itself, and any characterizations by Complainant as to the content, meaning, or intent of the letter are Denied.
25. Denied. HISCO is willing and able to provide sewer services to Complainant or any successor in interest pursuant to normal procedures and subject to all then-current, applicable regulations. Such procedures and regulations include creation of additional available (permitted) sewage handling capacity, which may be accomplished in several different ways (subject to regulatory review and approval). To date, Complainant has not sought to (or indicated willingness to) work with HISCO and its engineer(s) to formulate and fund an appropriate method to create the legally and functionally required additional available (permitted) sewer service capacity necessary to serve the James Creek subdivision.
26. Admitted. HISCO can supply James Creek with public sewer and stands ready to do so pursuant to normal procedures and subject to all then-current, applicable regulations.
27. It is admitted that HISCO has **not** sought to remove the James Creek subdivision from its franchise territory.
28. Admitted. No such hearing is required, appropriate, or contemplated. Denied as to any legal conclusions.

29. Complainants characterizations of the referenced documents are denied.
30. Complainants characterizations of the referenced documents are Denied.
31. Complainants characterizations of the referenced documents are Denied. It is admitted that HISCO is willing and able to provide sewer service to the James Creek subdivision pursuant to normal procedures and subject to all then-current, applicable regulations.
32. Denied. Answering further, admitted that Mr. *Michael* Laws is or was a member of the referenced entities. Denied as to any legal conclusions.
33. The existence of the referenced letter is admitted. That document speaks for itself, and any characterizations by Complainant as to the content, meaning, or intent of the letter are Denied.
34. The existence of the referenced letter is Admitted. That document speaks for itself, and any characterizations by Complainant as to the content, meaning, or intent of the letter are Denied.
35. The existence of the referenced letter is Admitted. That document speaks for itself, and any characterizations by Complainant as to the content, meaning, or intent of the letter are Denied. HISCO further answers that James Creek is not currently served by HISCO and would therefore be a “new” subdivision under the rules governing the Utility. Again, HISCO **IS** willing to provide sewer service to the James Creek subdivision pursuant to normal procedures and subject to all then-current, applicable regulations.
36. Admitted. The permit for construction of James Creek WWTP cannot be renewed by HISCO due to the loss of control of property. HISCO notified NCDENR representatives of its loss of such rights (due to the foreclosure) and agency officials agreed that the HISCO permit could not be valid without some form of legal ownership or control of the needed property and rights being assigned to HISCO as the permit holder.
37. Admitted. At the time of the permit renewal, HISCO **did** possess 58,600 gpd of permitted capacity, as stated in its NCUC applications and related documents at that point in time. However, after loss of control of Lot 7 and the right to own/manage the onsite collection system and related easements (caused by the actions of Complainant when it acquired title to same by means of foreclosure), and related State permit cancellation in late 2015 (required by State permitting laws), HISCO accurately and publicly disclosed to the Commission and others the resulting reduction in permitted sewage treatment and disposal capacity of 38,600 GPD. As a result, at that point in time, and continuing to the present, HISCO’s **permitted** capacity currently does not include the number of gallons per day necessary to fully serve the lots located within the James Creek subdivision. BNC officials and BNC legal representatives were made aware and were notified of the consequences of their ignoring the pleas from HISCO to allow HISCO to retain ownership and control over Lot 7, the in-ground collection system and related infrastructure, and related easement rights that was necessary for HISCO to be able to continue to retain that **permitted** capacity. HISCO also notified numerous BNC officials/agents that it remained the responsibility of developer to incur ongoing and

future costs related to providing the additional actual and permitted sewage treatment and disposal capacity needed to serve James Creek.

38. The existence of the Bond Reduction letter is Admitted. That document speaks for itself, and any characterizations by Complainant as to the content, meaning, or intent of the letter are Denied.
39. The existence of the Bond Reduction letter is Admitted. That document speaks for itself, and any characterizations by Complainant as to the content, meaning, or intent of the letter are Denied.
40. The existence of the Bond Reduction letter is Admitted. That document speaks for itself, and any characterizations by Complainant as to the content, meaning, or intent of the letter are Denied.
41. The existence of the Bond Reduction letter is Admitted. That document speaks for itself, and any characterizations by Complainant as to the content, meaning, or intent of the letter are Denied.
42. The existence of the Bond Reduction letter is Admitted. That document speaks for itself, and any characterizations by Complainant as to the content, meaning, or intent of the letter are denied.
43. Denied. HISCO does have the ability to expand its capacity and is willing to do so for any qualified requestor under the normal terms and regulations which govern Public Utilities.
44. Denied. HISCO has and will continue to commit to serve James Creek at the developer's or owner's expense.
45. Admitted, and further admitted that HISCO had met, and continues to meet and exceed its obligations as stated in its various permits and approvals. Denied as to any legal conclusions.
46. Denied. HISCO has not received, and therefore has neither "agreed" as stated on the one hand nor "refused" as claimed on the other, any proper request to provide sewer service to the James Creek subdivision. Nor is there any prior agreement to provide that service under the terms asserted by the Complainant. Any legal assertions or conclusions denied.
47. All Legal assertions, inferences or conclusions contained in the Complaint are denied.
48. All factual allegations or assertions contained in the Complaint not expressly admitted are denied.
49. To the extent that Complainant seeks to litigate common law, contract, tort or other typical legal claims before this Commission, Respondent HISCO respectfully requests that the Commission dismiss the Complaint, and/or specifically limit the scope of any hearing to only address and resolve the matters necessary to resolve any issues as to

Respondent HISCO's compliance with matters within the Commission's jurisdiction.

This the 17th day of June, 2019.

Electronically submitted

/s/ I. Clark Wright, Jr.

I. CLARK WRIGHT, JR.

N.C. Bar No. 11163

J. MICHAEL GENEST

N.C. Bar No. 40703

For the Firm of

DAVIS HARTMAN WRIGHT PLLC

209 Pollock Street

New Bern, NC 28560

Telephone: (252) 514-2828

Facsimile: (252) 514-9878

Email: icw@dhwlegal.com

Attorneys for Respondent HISCO

CERTIFICATE OF SERVICE

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

Alan B. Powell
Roberson Haworth & Reese, PLLC
300 N. Main Street, Suite 300
Post Office Box 1550
High Point, NC 27261
Email: apowell@rhrlaw.com

Andrew D. Irby
Roberson Haworth & Reese, PLLC
300 N. Main Street, Suite 300
Post Office Box 1550
High Point, NC 27261
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Christopher C. Finan
Andrew D. Irby
Roberson Haworth & Reese, PLLC
300 N. Main Street, Suite 300
Post Office Box 1550
High Point, NC 27261
Email: cfinan@rhrlaw.com

This the 17th day of June, 2019.

Electronically submitted

/s/ I. Clark Wright, Jr.
I. CLARK WRIGHT, JR.
N.C. Bar No. 11163
For the Firm of
DAVIS HARTMAN WRIGHT PLLC
209 Pollock Street
New Bern, NC 28560
Telephone: (252) 514-2828
Facsimile: (252) 514-9878
Email: icw@dhwlegal.com
Attorney for Respondent HISCO



North Carolina Department of Environment and Natural Resources

Division of Water Quality

Charles Wakild, P.E.

Director

Beverly Eaves Perdue
Governor

Dee Freeman
Secretary

July 26, 2012

Mike Laws, Managing Partner
Harkers Island Sewer Company, LLC.
Post Office Box 370
Harkers Island, North Carolina 28531-0370

Subject: Permit No. WQ0024023
West Bay WWTF
High-Rate Infiltration System
Carteret County

Dear Mr. Laws:

In accordance with your permit major modification request received December 30, 2011, and subsequent additional information received May 2, 2012 and June 28, 2012 we are forwarding herewith Permit No. WQ0024023 dated July 26, 2012, to Harkers Island Sewer Company, LLC. for the construction and operation of the subject wastewater treatment and high-rate infiltration facilities.

The modifications to the subject permit which are to be implemented in phases are the expansion of the West Bay WWTF from 10,080 gallons per day (GPD) to 20,160 GPD to serve 29 lots at West Bay subdivision and 22 lots from the James Creek subdivision (Permit WQ0034190) via force main.

The following permit description, permit expiration date, and permit conditions, have been modified since the last permit issuance:

- **Permit Description** – The permit description has been modified to state that the wastewater treatment plant and infiltration system are for continued operation, and that the Phases I, II and III wastewater treatment and infiltration system are for construction and operation. In addition, the permit description has been amended to clearly state that the wastewater treatment plant is presently rated for the permit limiting 10,080 GPD, and that Phase II will have a flow limit of 20,160 GPD.
- **Permit Expiration Date** – The expiration date has been extended from August 31, 2010 to August 31, 2013 due to Session Law 2009-406 - An Act to Extend Certain Government Approvals Affecting the Development of Real Property within the State. For more information, please visit: <http://portal.ncdenr.org/web/wq/aps/lau#Extension>.

EXHIBIT

11.5

AQUIFER PROTECTION SECTION
1636 Mail Service Center, Raleigh, North Carolina 27699-1636
Location: 512 N. Salisbury St., Raleigh, North Carolina 27604
Phone: 919-807-6464 \ FAX: 919-807-6496
Internet: www.ncwaterquality.org

One
North Carolina
Natural

OFFICIAL COPY

JUN 17 2019

**HARKERS ISLAND SEWER COMPANY
PO BOX 370
HARKERS ISLAND NC 28531**

Date: September, 2nd 2015

To: Ed Hardee

Division of Water Resources

Water Quality Permitting Section, Non-Discharge Permitting Unit

1617 Mail Service Center

Raleigh, NC 27699-1617

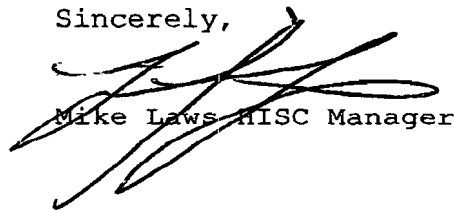
Phone (919) 807-6319

Re: James Creek WWTP permits

Dear Mr. Hardee,

Per our conversation on September 1, 2015 Harkers Island Sewer Company has no intent of constructing the designed and approved WWTP facility within the James Creek Subdivision located on Harkers Island NC. As far as Harkers Island Sewer Company is concerned the permits may be extinguished by any NC authority.

Sincerely,



Mike Laws HISC Manager

23.5

OFFICIAL COPY

JUN 17 2019