

1 PLACE: Dobbs Building, Raleigh, North Carolina

2 DOCKET NO.: W-1297, Sub 14

3 DATE: Thursday, October 6, 2022

4 TIME: 1:00 p.m. - 1:57 p.m.

5 BEFORE: Commissioner ToNola D. Brown-Bland, Presiding

6 Commissioner Jeffrey A. Hughes

7 Commissioner Floyd B. McKissick, Jr.

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IN THE MATTER OF:

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MRT-1, LLC,

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Complainant

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v

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Harkers Island Sewer Company,

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Respondent

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VOLUME 2

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

2 FOR MRT-1, LLC:

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7

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13

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NORTH CAROLINA UTILITIES COMMISSION

## P R O C E E D I N G S

COMMISSIONER BROWN-BLAND: Good afternoon.

Let's come to order and go on the record, please. We are resuming a recessed hearing in Docket No. W-1297, Sub 14. This hearing is a virtual hearing by remote means of Webex. Just to reset and re-establish, I am ToNola D. Brown-Bland with the North Carolina Utilities Commission, and with me, joining me today are Commissioners Jeffrey A. Hughes and Floyd B. McKissick, Jr. Let me have appearances, and indicate who you are and who is with you, for the record, and I will start with the Complainant.

MR. IRBY: Good afternoon, Madam Chair. My name is Andrew Irby, I-r-b-y. I'm attorney for Complainant MRT-1, LLC, and sitting with me is a representative from MRT, Dan Timberlake.

COMMISSIONER BROWN-BLAND: All right. Thank you. From Respondent?

MR. GENEST: Good afternoon, Madam Commissioner. I'm Michael Genest for the Respondent Harkers Island Sewer Company. I do not see Mr. Mike Laws who is our representative. As far as I know, he's working on logging into this Webex session now.

COMMISSIONER BROWN-BLAND: So you do expect

NORTH CAROLINA UTILITIES COMMISSION

1 him to join us?

2 MR. GENEST: I do.

3 COMMISSIONER BROWN-BLAND: And that is fine.  
4 And the Public Staff.

5 MR. LITTLE: John Little, Public Staff  
6 Attorney with the North Carolina Public Staff, and  
7 with me is Charles Junis, the Director of the Water,  
8 Sewer, and Telephone Division.

9 COMMISSIONER BROWN-BLAND: All right. Thank  
10 you, gentlemen, for being here. Mr. Genest, do you  
11 need us to wait for Mr. Laws?

12 MR. GENEST: If the Commission is prepared  
13 to move forward, I'm absolutely ready, Commissioner  
14 Brown-Bland.

15 COMMISSIONER BROWN-BLAND: We are prepared.  
16 I just don't -- if you feel that you need him or he  
17 needs to be here, I don't want to get too far down the  
18 road before he joins.

19 MR. GENEST: I believe I'm authorized to  
20 speak for him on all of the matters that I understand  
21 we are talking about today, and hopefully he'll join  
22 us as soon as possible.

23 COMMISSIONER BROWN-BLAND: Do you have any  
24 ability to check with him just to be sure he's trying

1 to join? If he's having any difficulties, he needs to  
2 get in touch with our I.T.

3 MR. GENEST: Yes, ma'am. I just sent him a  
4 text message.

5 COMMISSIONER BROWN-BLAND: Okay.

6 MR. GENEST: I've not heard back yet.

7 COMMISSIONER BROWN-BLAND: All right. Well,  
8 if we get to the point where you need him, we'll pause  
9 and let you try to tend to that the best we can.

10 MR. GENEST: Thank you, Madam Commissioner.  
11 And he has just texted me to say that he is trying to  
12 log in. Apparently, he's having some technical  
13 difficulties.

14 COMMISSIONER BROWN-BLAND: All right.  
15 Mr. McCoy, do we have any way to reach out to assist  
16 Mr. Laws?

17 MR. MCKOY: All I have is his e-mail. I can  
18 try e-mailing him again and I'll send him another  
19 link, maybe an attendee link so he can get in that  
20 way. So I'll send that right now.

21 COMMISSIONER BROWN-BLAND: All right. Thank  
22 you. All right, gentlemen. I was hoping we would not  
23 have to be back here, but based on the progress --  
24 well, I was hoping we would not have to be back here

1 based on the progress we had made at the time we were  
2 last together, but it doesn't seem that it's worked  
3 out that way. The Commission is concerned that there  
4 hasn't been any progress since we were last here. And  
5 if I'm wrong about that, I'll give you each an  
6 opportunity to tell me more about it, but first, let's  
7 recount a little bit about where it appears we are.

8           So on August -- I believe it was  
9 August 17th, we were last here in the hearing room,  
10 and the Complainant's case-in-chief had been  
11 completed. We recessed after the parties informed the  
12 Commission on the record that within 10 days of that  
13 day, back in August, that the attorneys for the Public  
14 Staff MRT and for Harkers Island would work together  
15 to present a Consent Order for the Commission's  
16 consideration. That within 30 days from that date,  
17 the Commission would receive an application from the  
18 Utility requesting authorization to seek financing.  
19 And it was my understanding that that was an element  
20 that had been requested as a way of establishing trust  
21 between these parties, and in the same 30-day time  
22 period, plus an extra day, I gave -- the Commission  
23 would receive a status report about where we were on  
24 this, and if anything had changed.

1           Since we recessed, the Commission received a  
2       filing on September 29th of a proposed Consent Order  
3       that recounted a settlement in principal, and that  
4       document itself indicated that the parties would on or  
5       before October 6 provide the Commission with a status  
6       update regarding the tentative settlement that had  
7       been outlined and confirming that the process was  
8       moving forward. Having not received the status  
9       report, it would have been my understanding that we  
10      would have continued with the hearing and it was  
11      supposed to continue and be here. Yet it's my  
12      understanding that Mr. Genest, you had not planned to  
13      be here, as you had other matters scheduled, so I need  
14      to hear from you guys about what's been going on since  
15      we were last together and what, if any, progress has  
16      been made. So I guess I'll referee a little bit and  
17      give each one a chance to speak up. So I'll start  
18      with the Complainant.

19           MR. IRBY: Thank you, Madam Chair. Your  
20      recitation is not inaccurate. We did exchange drafts  
21      of the Consent Judgment, but admittedly we're not --  
22      MRT-1 is not really driving the train with regard to  
23      filing an application for approval to borrow funds.  
24      You know, until -- really until -- I think Mr. Genest

1 and I spoke on Tuesday. I did not know the source of  
2 funds. I didn't know, you know -- they kept that  
3 pretty close to the chest. But since Tuesday, I've  
4 been informed of the sources that they anticipate  
5 applying for money for. I do not believe that HISCO  
6 has been in touch with Bill Foreman, the engineer,  
7 regarding sizing a system since August 17th.

8 At the very least, my client has informed me  
9 that he spoke with Bill Foreman. And Mr. Foreman has  
10 not spoken with anyone at HISCO, so we're not  
11 100 percent clear about what kind of progress Mr. Laws  
12 has made as far as designing a system, you know, a  
13 hammering down how much money would need to borrowed.  
14 We were hoping that the status update today would  
15 provide us with that information.

16 As it stands, we're ready to fund our part  
17 for the 28,800 gallons that would serve James Creek,  
18 and, you know, the money's ready to go. We're just  
19 waiting for plans and for, you know, permitting and  
20 approval so that we can put those funds forward.

21 COMMISSIONER BROWN-BLAND: All right. I'll  
22 come back to that in a minute. Mr. Genest, from your  
23 point of view, what's going on and why hadn't the  
24 Commission heard from you within these timetables that

1 had been established when we were last together?

2 MR. GENEST: Thank you, Madam Commissioner.

3 As Mr. Irby just indicated, he and I did exchange  
4 drafts to get that over to Public Staff, and Public  
5 Staff has made their comments. So all that has been  
6 circulated, all that has been submitted. As was  
7 noted, the submission of the proposed Consent Order  
8 was fairly recent after receiving all the feedback  
9 from all the parties. And as soon as that Consent  
10 Order was agreed to and submitted, I spoke with  
11 Mr. Laws about getting in the application as soon as  
12 possible.

13 And speaking for him, he immediately got in  
14 contact with the Staff. And I'm not sure exactly who  
15 he spoke to, but the question that he had was there's  
16 no form application for what he's trying to do. He  
17 was instructed to submit a letter indicating the need  
18 for funds and the sources of funds. To my knowledge,  
19 he's done that and has listed at least two  
20 conventional sources of funds that he's pursuing and a  
21 third source of private money that he's pursuing. Any  
22 one of which would suffice to bring the funds  
23 necessary for this project, so he has definitely been  
24 taking the steps that were contemplated.

1 I think something that we did not  
2 necessarily understand at the time of the prior  
3 hearing was that the information sought as to the  
4 ability to incur debt includes the direct source of  
5 the funding. And to get that, Mr. Laws has made  
6 applications for that funding from two different  
7 banks. And as I said, there's also a third option, a  
8 private party option for that as well. So that was  
9 done in compliance with the consent or the Consent  
10 Order that's been submitted that was timely performed,  
11 but getting the actual funds in hand is dependent on  
12 the banks sending their appraisers out, assigning  
13 appraisers, getting their appraisals and completing  
14 the rest of their loan process. So I'm happy to  
15 answer any questions that the Commission has, but I  
16 would point out we have been working on this issue and  
17 we have been working together with MRT's counsel to  
18 get the Commission the necessary documents.

19 COMMISSIONER BROWN-BLAND: All right. And  
20 before I follow up with any questions, let me hear  
21 from the Public Staff. Anything that you have to add  
22 about the process and where we are?

23 MR. LITTLE: The Public Staff, I would just  
24 say, your Honor, Mr. Laws did inquire of the Public

1 Staff the e-mail about the process for the form for  
2 submitting the financing and responded in -- the  
3 Public Staff responded in a letter detailing the  
4 financing obligations. At this point, I don't see  
5 anything on the Commission's docket where that letter  
6 has been submitted, and I have not received any  
7 further communication regarding same Order and any  
8 further request for help from Mr. Laws.

9 COMMISSIONER BROWN-BLAND: All right. Thank  
10 you, Mr. Little. So the concern here is and --

11 MR. LAWS: Yes, ma'am. I'm just joining.  
12 I'm sorry.

13 COMMISSIONER BROWN-BLAND: Good afternoon,  
14 Mr. Laws. Glad you made it on.

15 MR. LAWS: Yes. Sorry for the delay. It  
16 was technical. I was just trying to get on and there  
17 was just a struggle there, but I'm here. That's all.

18 COMMISSIONER BROWN-BLAND: Prior to your  
19 joining, I've just gone over and heard from each  
20 attorney the status of where we are up to this point.  
21 So the Commission is very concerned, and quite frankly  
22 not happy that we left here, and we had strict  
23 agreement about keeping us informed of what was going  
24 on. And perhaps there's some misunderstanding or

1 confusion that the Public Staff is a substitute for  
2 the Commission, but we're two separate agencies, and  
3 speaking to the Public Staff is not the same as  
4 speaking to the Commission. If something is to be  
5 filed, it has to be filed in the Commission's docket.

6 So until now, we had no way of knowing and  
7 no indication that Mr. Laws or the Utility was  
8 following through on its promise to seek the funding,  
9 and that's the kind of information that we wanted to  
10 know and be kept abreast of, how that was going. Then  
11 you say you've exchanged drafts, but what came back to  
12 us, that we received on September 29th, appears to  
13 just be a restatement of what you told us here in the  
14 hearing room, which was an agreement in principle.  
15 And it does not seem to be a finalized agreement, and  
16 perhaps there's a lot more involved. But you left  
17 here saying you had a lot of work ahead of you, and  
18 that's what I expected you would be doing, is trying  
19 to come to terms and making some things specific.

20 So it seems as though some progress has been  
21 made. The parties have not walked away from their  
22 agreement here, and that's good to know. That means  
23 I'll consider that, that we're moving on track, but I  
24 need to hear what you have to say about why we don't

1 have more than just the same agreement in principle.  
2 Again, I'll go around the table. And we're trying to  
3 make sure we get on the same page here, so I'll start  
4 with Mr. Irby.

5 MR. IRBY: Thank you, Madam Commissioner.  
6 So after we received communication from Ms. Jarvis  
7 that the document we submitted was insufficient to  
8 meet with the Commission's expectations, I asked  
9 Mr. Genest's permission to put pen to paper on what I  
10 would call a settlement agreement that has a little  
11 bit more detail and suggest timelines for funds to  
12 be -- an application for a loan to be approved for a  
13 design system to be, you know, submitted, for  
14 permitting to be submitted so that -- there's a little  
15 bit more -- I guess there's a little bit more teeth to  
16 meet with the Commission's expectations for updates  
17 going forward.

18 I've not received anyone's comments back on  
19 that, but the idea would be to include those  
20 timelines, those very specific markers for us going  
21 forward so that we can start construction on a system,  
22 you know, within the next 9 or 10 months. As I said,  
23 we're ready to go. In fact, we've gotten a quote for  
24 an 80,000 gallon per day system for \$1.8 million

1 dollars, but we can't really move forward without -- I  
2 mean, this is kind of -- it's kind of HISCO's show.  
3 It's their system. We're just kind of providing money  
4 to produce our own capacity. So we're more than happy  
5 to take the ball and run with it, but we don't want to  
6 put the cart before the horse. So I hate to keep  
7 throwing this back on HISCO and Mr. Genest, but we're  
8 waiting on -- I mean, they need to file the  
9 application. They need to secure funding. They need  
10 to help us design the system. Once -- I'm sorry?

11 COMMISSIONER BROWN-BLAND: Mr. Irby, what  
12 was your understanding and why to this date didn't you  
13 take it on yourself to get a status report to the  
14 Commission?

15 MR. IRBY: I chalk it up to attorney delays.  
16 I mean, when we would submit drafts back and forth to  
17 each other -- like I got Mr. Genest his draft of  
18 the -- we said 10 days, so it was going to be a week  
19 and a little bit more following the Thursday hearing  
20 that we had on August 17th. That was a Thursday. I  
21 think I got him a draft of the Consent Order the  
22 following Monday or Tuesday. It took Mr. Genest a  
23 couple of days to get back to me with his changes. It  
24 took me a day to get back to him, to respond to his

1 red lines, and that's when we submitted it to the  
2 Public Staff. So I chalked it up to just attorney  
3 delays. You know, maybe we were overambitious with  
4 estimating a 10-day time period to get that Order  
5 submitted to the Commission, but I do recognize that  
6 it was a restatement of what we said in open court.  
7 It was not a document that included what I would  
8 prefer to have included, you know, actual measureable  
9 markers to be met by certain periods of time so that  
10 we -- you know, what we hope to avoid candidly as a  
11 status update saying things are really moving forward,  
12 you know.

13 Well, we're waiting on, you know, this  
14 application. I'd like to put certain deadlines in  
15 there that allows us to gauge whether this is actually  
16 moving forward or whether we're just, you know,  
17 talking about it moving forward, if that makes sense.

18 COMMISSIONER BROWN-BLAND: All right. Mr. --

19 MR. IRBY: That's the draft that I've  
20 circulated, and that draft candidly would include the  
21 signatures of not just the parties, but the attorneys  
22 for the parties so that we're all on the hook. It's  
23 not just a Consent Order to be signed by the  
24 Commission. I'm hoping that we could get everyone's

1 signature on a document like that or that relatively  
2 soon.

3 COMMISSIONER BROWN-BLAND: Mr. Genest, your  
4 view of why we hadn't moved beyond the agreement in  
5 principle to date?

6 MR. GENEST: Madam Commissioner, I think  
7 that the first point to recognize is that we worked  
8 hard in our last meeting to make sure that the  
9 agreement was fairly comprehensive saying the general  
10 statement in open court was actually fairly specific.  
11 So the subsequent agreements embodying the same or  
12 system points is partially due to some -- I would  
13 credit Mr. Irby as well. That being fairly  
14 comprehensive upfront, I do take his point that the  
15 Commission would like to see -- and I understand that  
16 Mr. Irby would like to include some additional ways  
17 he's described as benchmarks, and I don't think  
18 there's going to be any objection on our side,  
19 including his benchmarks. What those benchmarks will  
20 actually be, to be blunt with you, we need a little  
21 bit of time to speak with Mr. Irby and MRT about what  
22 is reasonable there.

23 The thing that I don't want to inadvertently  
24 commit to, and then not follow through on as far as

1 the Commission, is there are quite a few dates that we  
2 can't control. So for instance, we can control the  
3 submission of applications for these loans from the  
4 banks that we referred to earlier, but I can't control  
5 how long it takes the banks to get back to us with  
6 that funding, making that funding available.

7 As far as the sizing of the system, that's  
8 already been done. That work -- and I know there was  
9 a reference earlier to whether Mr. Laws had spoken to  
10 his engineer about sizing a new system at this point.  
11 That is work that was done prior and quite honestly  
12 doesn't -- we can check that box now. That sizing of  
13 that system and the approximate pricing of that system  
14 is work that's already been done.

15 I'm in accord with Mr. Irby in terms of  
16 getting a settlement agreement between the parties as  
17 a method of resolution, and I don't have any problem  
18 with a more formal reporting structure to the  
19 Commission. I would ask for some guidance from the  
20 Commission on what that should look like. If the  
21 Commission wants a filed document on a regular basis,  
22 you know, of course we would appreciate some guidance.

23 COMMISSIONER BROWN-BLAND: All right. So  
24 gentlemen, let me say the Commission takes seriously

1 what you represent to this forum, and what was  
2 represented was that 10 days after we were here,  
3 certain things were going to happen. 30 days after  
4 that, certain things were going to happen. If they're  
5 not going to happen, you guys practice law. You know  
6 you need to come back to the forum, explain why  
7 they're not happening. We hit a snag, it was bigger  
8 than we thought. It's more difficult than we thought,  
9 I had to -- taken a personal issue. Whatever the  
10 issue may be, and then you come back and you inform  
11 the Court or the Commission, in this case, of that and  
12 you ask for additional time. You don't leave the  
13 Commission strung out here not knowing what's going  
14 on.

15 And Mr. Genest, as far as you knew, this  
16 hearing was still on for today, and then when we went  
17 to have it, you weren't available to come here. The  
18 Commission falls in line just like any other court.  
19 The priorities and the timing of which courts take  
20 precedent, the same rules apply, and I just want  
21 you-all to know that. This is a serious matter and we  
22 take it seriously. This matter's been hanging out  
23 here about three years and we want it moving along.  
24 We don't want it just hanging on.

1           That being said, we agree with you that the  
2 appropriate and a better means to get this resolved is  
3 by agreement and settlement. So when we left, what I  
4 was anticipating, and maybe it had not been made  
5 clearly enough, but I'm anticipating you-all will work  
6 out what is called a settlement agreement. That you  
7 would come back with the settlement agreement that  
8 contains some of the specifics that are needed to  
9 resolve all the issues that have been raised here and  
10 to let go of the issues that you agree you can let go  
11 of, enumerate what those are. File it as an agreement  
12 and the Commission would incorporate it into an Order,  
13 whether that be a Consent Order or otherwise, and we  
14 would then go from there. The agreement would be  
15 something that each party could hang its hat on in  
16 terms of the rights that you agreed on as basically a  
17 contractual matter.

18           So we're disappointed that we didn't hear  
19 back and that we're just now hearing back. So what we  
20 would like to happen, just in a general way, is a  
21 finalized agreement between you, and that involves  
22 more than just saying the percentages of what you'll  
23 contribute to the 28,000 plus -- I think it was 28,  
24 800,000 gallons (sic) of capacity that would be

1 reserved for James Creek. We need to have the  
2 commitment from the Utility that if all the conditions  
3 that you agree on are met, that the service will be  
4 provided and will be reserved and to James Creek. You  
5 know, the promises that are being made between you  
6 need to be spelled out and specified. If this takes  
7 longer, then you need to let me know it takes longer.  
8 If I'm not giving you enough time, I need to hear from  
9 you or how much time is needed, but we want to see  
10 this to continue moving on.

11 We also would like some agreement that all  
12 the property or equipment that's necessary will be  
13 under the control of Harkers. I would imagine a legal  
14 property interest of some sort is necessary before  
15 lenders will want to provide the funding, so you need  
16 to work that out in terms of where this new facility  
17 is going and how it is that Harkers, the Utility, will  
18 have control and access to it, and of course we need  
19 to be clear on how much capacity is being reserved to  
20 James Creek. And so what I want is I would say from  
21 this time going forward, we would like to have an  
22 executed settlement agreement regarding all the  
23 outstanding issues in the docket. At this point, I  
24 would ask -- I'll give you a chance to be heard in a

1 moment, but at this point, I would ask that you  
2 provide that within 30 days of this date. And within  
3 that same 30-day period, we have either a status  
4 report or an actual application for authorization for  
5 the Utility to seek that financing. And if no  
6 agreement has been reached within the 30 days or  
7 within some agreed upon time when we leave here,  
8 whatever is ultimately a final outcome of today's  
9 hearing, then we will set this matter back on for  
10 trial and we will try out. So I need to hear from you  
11 whether that sounds workable. I'll start with  
12 Mr. Genest.

13 MR. GENEST: Thank you, Madam Commissioner.  
14 It sounds reasonable to me. I anticipate that there  
15 may be a couple of things that needs to be put into  
16 the agreement to have either flexible timelines or,  
17 you know, conditional timelines because there are  
18 steps that go one after the other, but I actually  
19 think that we're much closer to that final agreement,  
20 then maybe apparent by what's already in place. I  
21 think that we know exactly where the facility will go,  
22 who will owns the land underneath, who owns the  
23 facility afterwards. Those issues, I think that we  
24 can resolve between us very quickly. And any issues

1 about timing, I think that we can come up with some --  
2 both reasonable and concrete solutions for that to  
3 include in the settlement agreement to present to this  
4 Commission, and I do also believe that 30 days should  
5 be sufficient. Unless Mr. Laws tells me otherwise, I  
6 apologize, but I have no way of conferring with him  
7 before speaking on that matter. But unless Mr. Laws  
8 tell me otherwise, I believe 30 days should be  
9 sufficient.

10 COMMISSIONER BROWN-BLAND: All right,  
11 Mr. Irby.

12 MR. IRBY: It's hard to disagree. I think  
13 30 days is incredibly generous. I wouldn't have mind  
14 it if the Commission suggested four weeks, which would  
15 put us at October 27th as opposed to November 6, but  
16 once again, I'm not -- I don't want to force HISCO  
17 into a timeline that they can't meet.

18 COMMISSIONER BROWN-BLAND: All right. Now  
19 on a separate matter, and I just want to know if  
20 anybody thinks this affects what we're trying to do  
21 here in this case. The Commissioners' aware that a  
22 moratorium has been place on the Harkers Point  
23 facility. And I don't know that that impacts, but I  
24 want to know -- I mean, are you-all aware of that and

1     how you think it may impact or not impact this matter  
2     that we're trying to resolve now.   Mr. Irby.

3                 MR. IRBY:   Yes, ma'am.   I was informed of  
4     the August 29th letter to Harkers Island Sewer  
5     Company, the Notice of Violation and Enforcement  
6     Actions dated August 29th, and the Notice of Violation  
7     dated September 15th.   I was notified of them about an  
8     hour and a half ago, so I have not had a whole lot of  
9     time to digest.   I don't want to throw anyone under  
10    the bus.

11                I will say I'm upset that I'm learning about  
12    it now as opposed to, you know, when the letters were  
13    issued.   I don't necessarily think it changes my  
14    calculus.   One of the provisions I put in my proposed  
15    settlement agreement was Harkers Island Sewer Company  
16    cannot expand capacity until a new wastewater  
17    treatment facility is built and capacity is provided  
18    to James Creek.   So they can't expand a new franchised  
19    territory, can't obtain any new customers.   We're  
20    first in line so that this new system can get built  
21    partially with our money, so it doesn't necessarily  
22    change my calculus.   In fact, it's almost like DHHS  
23    took, you know, one of my portion mechanisms away from  
24    me and decided to do it themselves.   I'll be curious

1 to hear what Harkers Island Sewer Company has to say  
2 about them.

3 COMMISSIONER BROWN-BLAND: Mr. Genest.

4 MR. GENEST: Yes, ma'am. Thank you. And  
5 I'll let Mike Laws speak to anything that he feels the  
6 Commission needs to know about his conversations with  
7 Mr. Berkowitz, DHHS. But it's my understanding that  
8 the two issues are related to the same core concern  
9 which is that facility needs to be substantially  
10 updated or replaced, and that's what this agreement --  
11 as Mr. Irby just said, that's what this agreement  
12 facilitates. And so the two issues, while I don't  
13 think that the one -- I don't think that the other  
14 matter impacts this matter. I think that they'll both  
15 be resolved by the same action on our part.

16 COMMISSIONER BROWN-BLAND: All right.  
17 Mr. Little, anything that you need to add?

18 MR. LITTLE: Yes, your Honor. Thank you.  
19 The Public Staff is very concerned upon learning this  
20 information. The main focus is on the capacity of the  
21 present sewer plant, and with a -- essentially, it  
22 operates as a moratorium. At the very least, getting  
23 plans submitted to DHS and other regulatory agencies,  
24 it's going to lengthen this process longer than

1 already contemplated. And the other issue is --

2 COMMISSIONER BROWN-BLAND: Mr. Little, just  
3 to stop you, why do you say it will lengthen the  
4 process? The plan is to build a new facility, as I  
5 understand it.

6 MR. LITTLE: Those plans will have to be  
7 submitted to the DHS and approved by the DHS, which is  
8 an extra step that I don't know is contemplated with  
9 the settlement agreement after the last hearing. So I  
10 think a 30-day -- and I would assume that Mr. Laws,  
11 Mr. Genest are aware of that and are working towards  
12 that.

13 COMMISSIONER BROWN-BLAND: Right. They're  
14 aware now, so I would presume they can work that into  
15 their settlement agreement if need be, but go ahead.  
16 Continue.

17 MR. LITTLE: Yes, but I think at the least,  
18 it's going to lengthen the process beyond what was  
19 contemplated at the previous hearing. And it also --  
20 it's not only that there is capacity issue. There are  
21 other violations of so seems it's some Nitrogen  
22 discharge and other things like that. And truthfully,  
23 upon learning of these violations and the Notice of  
24 Violation, especially the Public Staff has concern

1 about Harkers Island's ability to operate and manage  
2 the Wastewater Treatment Plant. And Mr. Genest, on  
3 behalf of his client, Mr. Laws, it seems like they're  
4 working towards an expansion of capacity. But with  
5 these other violations, I don't know -- just I will  
6 stop and say that we are concerned about the ability  
7 of Harkers Island to continue operation of this plant  
8 and this wastewater system.

9 COMMISSIONER BROWN-BLAND: So Mr. Little,  
10 will the Public Staff be making follow-up contact with  
11 the Utilities as part of its usual monitoring of the  
12 regulated utility?

13 MR. LITTLE: Yes, we will, your Honor.

14 COMMISSIONER BROWN-BLAND: Having become  
15 aware of the Notices of Violation?

16 MR. LITTLE: Yes. I think you'll see the  
17 Public Staff take a little bit more of an active role  
18 in this case now that we are under --

19 COMMISSIONER BROWN-BLAND: And for now, that  
20 concerns the --

21 MR. LITTLE: We're aware of these violations  
22 and we're contemplating additional action outside of  
23 this Complaint case. We haven't decided on any other  
24 further course action, but there are discussions about

1 other actions the Public Staff could take.

2 COMMISSIONER BROWN-BLAND: And so for now,  
3 that concerns the existing customers and the existing  
4 facility and the service that they will have between  
5 now and the time, presumably, that we get to a new  
6 facility. They will have to go through the approval  
7 process as you make (35:59) permitting approval, et  
8 cetera. Is that correct?

9 MR. LITTLE: Yes, ma'am.

10 COMMISSIONER BROWN-BLAND: All right.  
11 Anybody else have anything else to add with regard to  
12 the Notices of Violation and how they might impact  
13 what we're planning with regard to the Complaint?

14 MR. LAWS: Nothing, your Honor.

15 COMMISSIONER BROWN-BLAND: That's Mr. Laws?  
16 Mr. Laws, could you turn your camera on?

17 MR. LAWS: Yes.

18 COMMISSIONER BROWN-BLAND: There you go.

19 MR. LAWS: Got it.

20 COMMISSIONER BROWN-BLAND: All right. Now  
21 your attorney has spoken for you, but if you think  
22 there's something else that we need to hear, we will  
23 entertain it.

24 MR. LAWS: Yeah. The Notice of Violation --

1           COMMISSIONER BROWN-BLAND: Mr. Laws, can you  
2 get closer to your microphone? We're having a little  
3 trouble hearing you.

4           MR. LAWS: Yeah. I'll turn it up here.  
5 Okay. Is that better?

6           COMMISSIONER BROWN-BLAND: Yes.

7           MR. LAWS: The Notice of Violations, there  
8 were four points there that we could control, I guess  
9 you'd say, and three out of four have already been  
10 rectified, so it's a matter of operator, a backup  
11 operator and a new testing lab. And all those have  
12 been completed, executed. So the only one that is  
13 still in process is a Do Not Duplication upgrade to  
14 the plant. Half of the plant -- this plant has two,  
15 what we call, trains. It's two separate chambers that  
16 treat wastewater. And one of those two have been  
17 upgraded with Denitrification system.

18           The second train is in process. That is  
19 something that we cannot do during summer months  
20 because of the flow that we're experiencing. We are a  
21 resort community, so we have to do this on an  
22 off-season time periods. And that is upcoming, and we  
23 will switch over and do the second train. I have  
24 appealed to Mr. Berkowitz to forego that second train

1 in lieu of that, going through that expense for the  
2 Utility, since we should have a new plant coming  
3 online in the next, you know, year or to be including  
4 this agreement, the time frame. I don't think that  
5 that Notice of Violation has anything to do with this  
6 or should hold up this agreement or this process. As  
7 a matter of fact, it should bring along DHHS to be  
8 diligent in their reviews and help us with getting  
9 this matter.

10 As we concluded in our hearing, this plant  
11 is 25 years old. The engineer stated in the permit  
12 itself that its age is 25 years. I'm putting very  
13 expensive bandaids on a plant. There's no risk to any  
14 kind of spillage or anything like that, but they are  
15 expensive bandaids that the Utility is incurring. And  
16 sometimes myself, personally, expenses to keep this  
17 thing running and to keep it in operable status. In  
18 the mean time, I'm under a moratorium which -- and  
19 have been under a new connection moratorium for  
20 approximately 18 months now through the actions of  
21 Mr. Berkowitz which limits the funds available, you  
22 know, to do upgrades.

23 So one side, we're's getting financially  
24 squeezed and -- you know, but we're going to urge to

1 do these Denitrification upgrades, which are  
2 expensive. We have to go inside the plant and weld in  
3 metal chambers. And new additional props and  
4 aeration, and it's an expensive process. It's about  
5 30 to 35,000 per train, so that is -- you know, that  
6 is something I've asked Mr. Berkowitz to forego. The  
7 plant is operating, as far as capacity is concerned,  
8 it's within the capability of train number 1 or north  
9 train. It is within the capability and within the --  
10 you know, its design capability. It's operating  
11 properly there with the exception of the  
12 Denitrification.

13 That system has just come online, so our lab  
14 results should reflect that soon. And if the design,  
15 the civil engineers' design and Mr. Berkowitz'  
16 approval, that design being adequate, if they hold to  
17 be true, then Item No. 4 is checked off with the  
18 Denitrification Notice of Violation. So the Notice of  
19 Violation is, if you want to attach numbers to it, is  
20 75 percent complete.

21 COMMISSIONER BROWN-BLAND: All right.  
22 Mr. Genest, did you have anything you wanted to add to  
23 what your client has said?

24 MR. GENEST: No, ma'am. Thank you.

1                   COMMISSIONER BROWN-BLAND: Okay. All right.  
2 Well here's what we're going to do. I'm going to set  
3 a deadline of 30 days from today that you'll have  
4 filed with the Commission an executed settlement  
5 agreement regarding the outstanding matters in this  
6 docket, how you propose to proceed, and what you're  
7 going to hold each other accountable for. If you  
8 can't reach that agreement, then each party at that  
9 same 30-day time frame should submit a separate status  
10 report explaining why the settlement wasn't reached or  
11 what happened or whether you need more time, you know,  
12 indicating to the Commission what kind of progress or  
13 that some real progress is being made.

14                   You'll explain what issues remain and have  
15 not been resolved. And if you have resolved some,  
16 we'll be interested in hearing those as well. We  
17 would like to have some indication of when it's  
18 reasonable to have -- at least had conversations with  
19 the engineer and how that's going. We would like also  
20 to hear from you what's happening with the lender  
21 process in terms of the 20 percent that Harkers Island  
22 Utility has agreed to, to pursue. So we'd like to  
23 have indication that forms have been completed,  
24 submitted, and to whom they are being submitted or

1 from whom you've heard from. Unless there's some  
2 reason that it's inappropriate and you don't want us  
3 to know, indicate that as well and what the reasons  
4 for that are.

5 And if additional time is needed, also  
6 indicate that, what the reasons for that is. Ask the  
7 Commission for leave for additional time. I'm trying  
8 to think to be sure that we covered the bases here.  
9 We understand that when I'm setting these directives,  
10 I intend for this to be filed through the Commission's  
11 docket system so that we have an actual filing within  
12 30 days of today testimony.

13 Hold on just a minute. I'm going to take a  
14 five-minute recess to be sure that I have the bases  
15 covered here. Madam court reporter, five-minute  
16 recess. Everybody sit still. Hold on.

17 (Whereupon, a break was taken)

18 COMMISSIONER BROWN-BLAND: All right. I  
19 heard somebody has a low battery, so I'm going to try  
20 to get us wrapped up here. Mr. Genest, you indicated  
21 that some financial information had been submitted?  
22 So I want to be sure that I understand that. Do you  
23 think you submitted that to the Commission or to the  
24 Public Staff?

1 MR. GENEST: Madam Commissioner, based on  
2 what Mr. Laws stated earlier, I'm not sure that that  
3 has been submitted at this time.

4 COMMISSIONER BROWN-BLAND: All right.

5 MR. GENEST: I'll ask him to speak to that.

6 COMMISSIONER BROWN-BLAND: I'm asking  
7 because if you thought they had been, we have not  
8 received it. So I was going to ask for people to  
9 double-check and let's make sure that that's been  
10 cleared up. But Mr. Laws, did you have anything to  
11 add?

12 MR. LAWS: Yes. We did send a statement in  
13 just declaring that we would be pledging company  
14 assets. After reviewing the regulations, it seemed  
15 like that was a statement that needed to be made, and  
16 we did that on Monday. No, it was Tuesday. We  
17 overnighted it. It should be in process. It should  
18 be in possession of the Commission, of the Public  
19 Staff or the -- so that was done, and --

20 COMMISSIONER BROWN-BLAND: Do you know to  
21 whom it was addressed because we want to be able to  
22 track it down. Do you know to whom it addressed?

23 MR. LAWS: It would have been addressed to  
24 the chief clerk.

1 COMMISSIONER BROWN-BLAND: All right. Very  
2 good.

3 MR. LAWS: Yeah. And we also have spoken  
4 with and scheduled an appraisal under the direction of  
5 the lender.

6 COMMISSIONER BROWN-BLAND: Okay.

7 MR. LAWS: So the property as well as -- so  
8 the assets will be appraised to -- you know, to secure  
9 the loan for \$250,000. That was our projection of the  
10 cost of the plant, our 20 percent.

11 COMMISSIONER BROWN-BLAND: All right. So  
12 from what has been stated here on the record today, it  
13 does appear to me that the parties have been --  
14 attempted to take steps to act upon what was agreed  
15 upon when you left here. And that is a good thing,  
16 and the Commission is pleased with that. What the  
17 Commission is not pleased with was the failure to make  
18 sure that we are getting some regular updates. So in  
19 addition to what I've already stated with regard to 30  
20 days from today and what needs to come in after that,  
21 I'm going to impose every 45 days thereout, give us  
22 some indication of the steps that are being made to  
23 whatever you're able to agree upon, which we'll  
24 hopefully be learning about within 30 days. So the

1 first status report after the 30-day agreement comes  
2 in will be 45 days later. So in essence, it's 75 days  
3 from now, we'll begin a series of status reports.  
4 Stay tuned. The Commission may adjust. You may  
5 request the Commission to adjust that schedule of  
6 reporting, but we want to know that constant,  
7 consistent progress is being made to get this matter  
8 resolved and to get this Complaint dismissed.

9 So I'll say thank you-all for continuing to  
10 work in the background. Just be sure in the future to  
11 keep us informed. And Mr. Genest and -- well, all  
12 three of counsel. Genest, Mr. Irby, and Mr. Little,  
13 you have the e-mail of our staff attorney. And if you  
14 need to make contact specifically with the Commission,  
15 you got unanswered questions, you can start there with  
16 the Staff Attorney, Lynn Jarvis, and you'll get some  
17 guidance about the next step you need to take, but  
18 otherwise, we expect you to abide by what's been  
19 stated here.

20 Are there any questions? Is there any  
21 confusion? Let's clear it up now.

22 MR. IRBY: Madam Commissioner, I just have  
23 one question just to make sure we're all on the same  
24 page regarding the arithmetic. Mr. Laws just made

1 reference to \$250,000 to cover their 20 percent, but  
2 that would build a plant that's only 28,800 gallons,  
3 not a larger plant to replace all of the existing  
4 capacity. So if we can hammer down what HISCO's plans  
5 are for building a new plant, my arithmetic shows that  
6 in order to build a system larger than the 28,800 that  
7 would serve just James Creek, I think it would be  
8 substantially more than \$250,000.

9 COMMISSIONER BROWN-BLAND: Yes, Mr. Irby,  
10 but the way that I read what you submitted as the  
11 Consent Order, which was a rehash of the agreement in  
12 principle, I believe the 20 percent did pertain to the  
13 28,800 gallons. There would be other financing though  
14 needed for the plant. I'll let Mr. Genest speak to  
15 that. And if it does concern the plant in full, I  
16 would ask that you work with that in terms of the  
17 agreement that you're trying to hammer out. But  
18 Mr. Genest, do you have a response?

19 MR. GENEST: I believe the Commission is  
20 correct on that point that the 20 percent that is  
21 required to move forward is -- as with the 80 percent  
22 wired from MRT, both of those numbers apply only to  
23 their respective portion of the 28-day to be reserved  
24 for James Creek. It is my understanding that there's

1 also, you know, total replacement of the plant. For  
2 additional capacity beyond that is the responsibility  
3 of HISCO and is outside of the scope of this  
4 agreement. If Mr. Laws meant that number differently,  
5 I invite him to correct me here on the record.

6 MR. LAWS: I agree with you, Mr. Genest, and  
7 I agree with the Commission. We are all under the  
8 same understanding. I just didn't know if HISCO would  
9 need to provide an application for that additional  
10 expansion, the additional funding beyond 28,800 or if  
11 they're allowed to borrow money without submitting  
12 that application.

13 COMMISSIONER BROWN-BLAND: I think any time  
14 that the -- that the Utility is seeking to take on  
15 additional debt, they do come to the Commission for  
16 approval. But again, that's a separate part of this  
17 Complaint. If you need that to be addressed in your  
18 agreement, again, I believe that's something that  
19 you-all can hammer out as you work your settlement  
20 agreement.

21 MR. IRBY: I understand, ma'am. Thank you.

22 COMMISSIONER BROWN-BLAND: Any other  
23 questions about what you need to do? Gentlemen, I  
24 want everybody -- I don't mean to over-harp on this,

1 but this case has been out here for a while and there  
2 have been a number of continuances for different  
3 reasons. The Commission made its own decisions about  
4 whether to allow those, so we're not stepping down or  
5 back from those. But I do, going forward, want you to  
6 take this Commission seriously and understand that  
7 failure to abide by valid orders of this Commission  
8 can result in penalties and sanctions. We hope not to  
9 go there, we don't expect to go there, but I want you  
10 to understand the forum with which you're dealing.  
11 Any questions?

12 MR. GENEST: No, Madam Commissioner. Thank  
13 you very much.

14 COMMISSIONER BROWN-BLAND: The  
15 Commission --

16 MR. IRBY: Nothing from MRT.

17 COMMISSIONER BROWN-BLAND: Very good. The  
18 Commission is under the impression that overall, since  
19 this docket was filed and including since August 17th,  
20 it's been lenient with you because again, we agree  
21 with you. We would like to see you-all come to your  
22 own resolution and get this matter resolved.

23 If there's nothing further at this time --  
24 Commissioner Hughes, we did not hear from you. Since

1 you're not here in the room with me, did you have  
2 anything that you needed to add?

3 COMMISSIONER HUGHES: You covered it all,  
4 Commissioner ToNola Brown-Bland. We're good.

5 COMMISSIONER BROWN-BLAND: And Commissioner  
6 McKissick, did you have anything that you needed to  
7 add?

8 COMMISSIONER McKISSICK: Nothing I needed to  
9 add, Commissioner Brown-Bland. I think things that we  
10 discussed were included within your Order.

11 COMMISSIONER BROWN-BLAND: All right. We  
12 thank you for your time and we will be adjourned.

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14 (The proceedings were adjourned)

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## C E R T I F I C A T E

I, TONJA VINES, DO HEREBY CERTIFY that the proceedings in the above-captioned matter were taken before me, that I did report in stenographic shorthand the Proceedings set forth herein, and the foregoing pages are a true and correct transcription to the best of my ability.



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Tonja Vines