

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

DOCKET NO. W-1125 Sub 9

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

Complainant

v.

Outer Banks/Kinnakeet Associates, LLC,

Defendant

DOCKET NO. W-1125 Sub 10

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

Complainant

v.

Outer Banks/Kinnakeet Associates, LLC,

Defendant

BY THE CHAIR: On June 28, 2022, the Commission issued an order in the above-referenced dockets directing Outer Banks/Kinnakeet Associates, LLC (OBKA), to appear before the Commission on Friday, July 22, 2022, at 10:00 a.m. in Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, and show cause why the Commission should not exercise its authority under N.C. Gen. Stat. § 62-116(b) to appoint an emergency operator to furnish sewer utility service to the Kinnakeet Shores subdivision in Dare County, North Carolina.¹

¹ In the order granting this franchise to OBKA and approving rates in Docket No. W-1125, Sub 0, the service area includes the Kinnakeet Shores subdivision and nearby commercial development, including Hatteras Plaza, Sun Coast Realty Office, U.S. Post Office – Avon, and Kinnakeet Shores Clubhouse, in Dare County. Any reference to the Kinnakeet Shores service area and abbreviations for same in this Order includes those commercial properties and any additional commercial properties currently serviced by the Kinnakeet Shores wastewater treatment plant (WWTP).

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

On July 22, 2022, following the show cause and expert witness hearing, the Commission issued an Order Declaring an Emergency and Directing Public Staff to Identify Emergency Operator (Order Declaring Emergency). The Order Declaring Emergency finds

that a real emergency exists at the [wastewater treatment plant (WWTP)], as the WWTP is in very poor condition and in need of significant repair, is in non-compliance with its permits, is not treating wastewater received, is not providing customers adequate service, and as OBKA does not have the technical, managerial, and financial capacity to become compliant with its obligations.

Order Declaring Emergency at 3.

In the Order Declaring Emergency, the Commission instructed the Public Staff to (1) confirm whether Carolina Water Service, Inc., of North Carolina (CWSNC) is willing to serve as emergency operator to furnish sewer utility service to the Kinnakeet Shores subdivision and, if so, pursuant to what conditions; (2) confirm whether OBKA consents to the appointment of an emergency operator; and (3) report to the Commission as soon as possible, but no later than noon on Friday, July 29, 2022, on the foregoing matters.

On July 29, 2022, the Public Staff filed its report stating that Ray E. Hollowell, Jr., sole company official and managing member of OBKA, had yet to confirm whether OBKA consents to the appointment of an emergency operator. Additionally, the Public Staff's report states that CWSNC is willing to serve as the emergency operator of the OBKA-owned Kinnakeet Shores WWTP and Kinnakeet Shores Collection System, subject to certain conditions.

On August 3, 2022, the Commission issued an order appointing CWSNC as the emergency operator, approving rates, requiring customer notice, and requiring submission of customer information (Order Appointing Emergency Operator). In its Order Appointing Emergency Operator, the Commission concluded, among other things, that OBKA's failure and continued refusal to alleviate the emergency situation existing in the Kinnakeet Shores service area has reached such an egregious level as to constitute an abandonment of the Kinnakeet Shores WWTP and Kinnakeet Shores Collection System in Dare County. The Commission further concluded that OBKA had been provided more than ample opportunity to correct the problems on its own or surrender the system to allow a viable operator to alleviate the emergency, yet had refused to do so. Thus, the Commission determined that the appointment of CWSNC as an emergency operator, pursuant to N.C.G.S. § 62-116(b), was necessary to take control of and operate the public utility system of the Kinnakeet Shores service area in order to alleviate the existing emergency and assure the operation of the sewer utility system in an adequate, sufficient manner.

The Order Appointing Emergency Operator noted that the Public Staff anticipated CWSNC's spending no less than \$1,000,000 for necessary replacements and upgrades to the WWTP, based on the Public Staff's review of the records of the North Carolina Department of Environmental Quality (DEQ), Division of Water Resources (DWR), as well as its own due diligence. The order noted that CWSNC identified the immediate needs that must be addressed to alleviate the emergency, and materially improve the operation of the WWTP, as repairing or replacing: (a) the existing irrigation system for effluent disposal; (b) critical pumps, motors, and blowers; (c) electrical systems; (d) emergency generator; (e) UV disinfection system; (f) stairs and walkways; (g) building roof; and (h) tank coatings. The order noted that CWSNC agreed to immediately invest its own funds to expedite the system improvements, alleviate the emergency, and bring the system closer to providing adequate, sufficient service upon its assumption of emergency operator responsibility for the Kinnakeet Shores service area.

CWSNC began operating the Kinnakeet Shores WWTP and Kinnakeet Shores Collection System as the emergency operator effective August 17, 2022. CWSNC files quarterly reports with the Commission in these dockets, which provide various financial information concerning plant improvements, revenues, expenses, and reserve balances. As most recently reported in its quarterly Construction Status Report for the calendar quarter January – March 2024, filed on April 30, 2024, CWSNC has completed plant in service improvements to date totaling \$1,217,007 (net of \$6,667 in contributions in aid of construction) and has incurred costs related to construction work in progress of \$2,257,812 related to the necessary renovations and replacements to the Kinnakeet Shores WWTP and Kinnakeet Shores Collection System to alleviate the emergency and to bring the system closer to providing adequate, sufficient service.

North Carolina General Statutes Section 62-110.3(a) and Commission Rule R10-24 obligate a sewer utility company to furnish a bond to the Commission conditioned upon providing adequate and sufficient service within the company's service area. Pursuant to this statutory and regulatory obligation, OBKA has furnished to the Commission multiple bonds totaling \$110,000, which have accrued interest, for the Kinnakeet Shores service area.² Based on information of record, the costs associated with the completed plant improvements and the construction work-in-process expended by CWSNC through March 31, 2024, required to alleviate the emergency and to bring the system closer to providing adequate, sufficient service, far exceed the total amount of bond funds furnished to the Commission by OBKA for the Kinnakeet Shores service area.

² Three bonds, currently effective, have been furnished to the Commission for the provision of service in the Kinnakeet Shores service area: (1) a cash bond, furnished in Docket No. W-1125, Sub 6 on November 5, 2015, which obligates OBKA in the amount of \$75,000, secured by a certificate of deposit issued on September 18, 2020 and maturing on September 18, 2025 held by First Horizon Bank; (2) a cash bond, furnished in Docket No. W1125, Sub 2 on September 22, 2003, which obligates OBKA in the amount of \$25,000, secured by a certificate of deposit renewed on March 17, 2024 and maturing on September 17, 2024 held by Truist; and (3) a cash bond, furnished in Docket No. W-1125, Sub 1, on May 21, 2002, which obligates OBKA in the amount of \$10,000, secured by a certificate of deposit renewed on May 21, 2023 and maturing on September 21, 2025 held by Truist.

North Carolina General Statutes Section 62-110.3(d) provides that

The appointment of an emergency operator, either by the superior court in accordance with G.S. 62-118(b) or by the Commission in accordance with G.S. 62-116(b), operates to forfeit the bond required by this section. The court or Commission, as appropriate, shall determine the amount of money needed to alleviate the emergency and shall order that amount of the bond to be paid to the Commission as trustee for the water or sewer system.

Based on the entirety of the record, the Chair concludes that, in accordance with N.C.G.S. § 62-110.3(d), the appointment of an emergency operator for the Kinnakeet Shores service area operates to forfeit the bond funds furnished by OBKA to the Commission for the Kinnakeet Shores service area. Because of the cost incurred by the emergency operator to alleviate the emergency and to bring the system closer to providing adequate, sufficient service, the entirety of bond funds held by the Commission for the Kinnakeet Shores service area, which includes \$110,000, plus accrued interest, shall be paid to the Commission as trustee for the Kinnakeet Shores WWTP and Kinnakeet Shores Collection System.

IT IS, THEREFORE, ORDERED, as follows:

1. That for the reasons set forth herein, the full amount of \$110,000, plus accrued interest, in cash bond funds furnished to the Commission by OBKA for the Kinnakeet Shores service area in Dare County shall be, and hereby is, declared forfeited; and

2. That the Commission's Bond Administrator shall denote in the Commission's files that OBKA's bond funds in the amount of \$110,000 for the Kinnakeet Shores service area are forfeited and held in trust by the Commission pending further order by the Commission after a future review and audit by the Public Staff of CWSNC's receipts and disbursements as emergency operator of the Kinnakeet Shores service area; and

3. That the Chief Clerk shall file a copy of this Order in Docket No. W-1125, Subs 1, 2, and 6.

ISSUED BY ORDER OF THE COMMISSION.

This the 3rd day of July, 2024.

NORTH CAROLINA UTILITIES COMMISSION

A handwritten signature in dark ink, appearing to read "A. Shonta Dunston". The signature is fluid and cursive, with the first name "A." and last name "Dunston" clearly distinguishable.

A. Shonta Dunston, Chief Clerk