

HARKERS ISLAND SEWER COMPANY

DOCKET NO. W-1297, SUB 14

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

October 15, 2021

1. Q. DID YOU HAVE AN OPPORTUNITY TO REVIEW THE TESIMONY OF
MR. LAWS AND MR. FORMAN?

2. A. Yes.

3. Q. HOW WOULD YOU LIKE TO RESPOND?

4. A. I think it's important to point out the several items HISCO opted not to address. Initially,
5. HISCO, either through Mr. Laws or Mr. Forman, did not address how the James Creek Phase I
6. plat map came to be recorded in the public land records. Mr. Laws has admitted signing it, but it
7. clearly states that a new sewer system "has been" installed and that the lots shown on the plat "will
8. be served by Harkers Island Sewer Company." Mr. Laws' testimony focused on the technical
9. aspects of HISCO's current capacity and on the change in circumstance following Bank of NC's
10. foreclosure on BLE Development. However, the representation on the face of that plat map, which
11. was consistent with the representations HISCO made to the Utilities Commission, cannot change
12. based on a change in ownership of the subdivision. After all, HISCO did not own any portion of
13. the James Creek Subdivision when applications were filed with the Utilities Commission; HISCO
14. did not own any portion of the James Creek Subdivision when the plat map was filed; and HISCO
15. did not own any portion of the James Creek Subdivision when permits were obtained to provide
16. wastewater treatment services to various territories on Harkers Island. The same goes for the

1. representations made in the Declarations and Restrictive Covenants recorded in connection with
2. the James Creek Subdivision by Mr. Laws. Those Declarations and Restrictive Covenants
3. explicitly provide that the sewer company started by Mr. Laws has constructed a treatment plant
4. outside of the James Creek subdivision, and reserved the right to construct a new treatment plant
5. in the future. HISCO and its predecessor in interest made representations that they have ignored.
6. Clearly the future construction of a treatment plant within the James Creek Subdivision was
7. contemplated, but it does not alter the representations made that sewer service was available to
8. James Creek prior to its construction. The foregoing highlights that HISCO's representations
9. regarding having to cancel the permit for construction of a treatment plan in the James Creek
10. Subdivision is disingenuous at best. HISCO never owned any of the James Creek Subdivision
11. property that was foreclosed upon. A change in ownership from BLE Development to Bank of NC
12. in no way required cancellation of a permit to construct such a facility. Rather, it was a vindictive
13. act not made in good faith, and was for the sole purpose of harming Bank of NC.

14. Next, Mr. Laws' testimony regarding the raising of funds to construct the new treatment plant
15. confirms that sewer service was readily available to serve, at a minimum, James Creek Phase 1.
16. According to Mr. Laws, BLE Development (Mr. Laws' development company), was going to set
17. aside \$10,000.00 for every lot sold out of James Creek. Those funds, in addition to the tap fees,
18. were anticipated to raise the capital necessary to build the new wastewater treatment plant. The
19. permitting for the Westbay treatment plant also confirms such. Westbay Phase I was and is
20. permitted to treat approximately 10,000 gpd of actual flows, at which point Westbay would be
21. upgraded to Phase II to allow it to treat up to 20,000 gpd of actual flows. At that point, construction
22. of a new WWTP was to begin to serve the rest of the James Creek buildout and other areas. There
23. was at all relevant times infrastructure in place to begin serving James Creek, including

1. immediately following the foreclosure of such. The foreclosure of James Creek did not change
2. those facts and, under any circumstance, HISCO had a duty to serve James Creek based on the
3. representations that were made in the public record and the infrastructure that it had in place. It
4. still has that duty.

5. From a practical standpoint, I take Mr. Laws' and Mr. Foreman's testimony regarding
6. HISCO's present capacity (or lack thereof) to serve James Creek at face value. We stipulate that
7. HISCO has very little, if any, "excess" unallocated capacity. With that said, the current lack of
8. capacity is an issue created entirely by HISCO in violation of its duty as a public utility. Once
9. again, Mr. Laws' testimony highlights that fact. Attached to Mr. Laws' testimony is a November
10. 4, 2014 letter from Mr. Laws to Lance Miller at Bank of North Carolina. In that letter, Mr. Laws
11. demands certain concessions, or the new owner of the James Creek subdivision (Bank of NC)
12. would have to construct its own plant at the cost of \$950,000.00. That is, and has at all times been,
13. an insincere demand. HISCO acquired the Harkers Village Wastewater Treatment Plant in March
14. of 2014 – before the letter to Bank of NC was ever written or sent. We also know that HISCO had
15. capacity to commence providing wastewater treatment services to James Creek immediately
16. following its acquisition of the Harkers Village Wastewater Treatment Plant. After the
17. aforementioned November 4, 2014 letter was sent to Bank of NC, HISCO commenced service to
18. several new territories, customers, and lots. Two very large examples are the 25-lot subdivision of
19. Cape Pointe Subdivision and the 126-unit site for Harker's Island RV Resort. HISCO extended
20. service to these two large developments in 2016, at a time when HISCO was refusing to provide
21. any service to James Creek unless the owner of James Creek agreed to construct a new wastewater
22. treatment facility. Based on the documentation in the NCUC files and provided in connection with
23. Mr. Laws' testimony, those two developers had to pay for the costs to connect to HISCO's

1. treatment plant (including an onsite wastewater system, offsite sewer mains and a lift station), but
2. neither was required to construct a wastewater treatment plant. I can only surmise that Mr. Laws
3. intentionally chose to make use of HISCO's capacity in a manner that was intended harm the
4. owner of James Creek subdivision. Again, this is a violation of the duty of a public utility.

5. HISCO had a duty to serve James Creek. HISCO also had a duty to not serve other, newer
6. territories while intentionally denying service to James Creek Subdivision unless and until the
7. owner of James Creek agreed to construct a new plant. HISCO has a duty as a public utility, but it
8. also has a duty based on the representations that were made to the Utilities Commission, as well
9. as based on the multiple representations made to the future owners within the James Creek
10. subdivision in the public record. That duty has not abated solely because HISCO made the immoral
11. decision to use up all of its capacity at the expense of James Creek.

12. Q. WHAT ARE YOU ASKING THE COMMISSION TO DO IN THIS CASE?

13. A. HISCO's system is not an appropriate commercial utility system. It's essentially a
14. subdivision system that Mr. Laws cobbled together after his subdivision (James Creek) got
15. foreclosed upon. HISCO's discovery responses confirm that the existing plant run by
16. HISCO is at the end of its life. HISCO has no plans to expand capacity of the existing plant,
17. or to construct a new, larger plant. The existing plant is not even presently in compliance
18. with NCDHHS requirements based on recent communications from NCDHHS. HISCO has
19. not operated in the best interests of its existing territories and customer base – it has acted
20. in its own self-interest. As a result, I believe it has forfeited its right to operate. HISCO
21. needs to provide wastewater treatment services to James Creek. If it can't, it needs to be
22. fined for non-compliance. If it still cannot come into compliance, an Emergency Operator
23. needs to be appointed to address all of these concerns, otherwise the whole island will find

1. itself without wastewater treatment services altogether.
2. Q. ARE YOU ASKING TO BE PROVIDED WASTEWATER TREATMENT SERVICES
3. FOR JAMES CREEK FREE OF CHARGE?
4. A . No. Aside from the tap fees, MRT-1 is more than willing to pay its fair share to establish
5. the capacity necessary to serve James Creek. But that's never been offered to us.
6. Q. DOES THIS COMPLETE YOUR TESTIMONY AT THIS TIME?
7. 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:

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This the ____th day of October, 2021.

Electronically submitted

/s/ Andrew D. Irby, NCSB # 35353
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