

**STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH**

DOCKET NO. W-992, SUB 8  
DOCKET NO. W-1328, SUB 4

In the Matter of  
Application by Red Bird Utility Operating )  
Company, LLC, 1650 Des Peres Road, Suite 303, )  
St. Louis, Missouri 63131, and Crosby Utilities, )  
Inc., 7536 NC Highway 39, Zebulon, North )  
Carolina 27597, for Authority to Transfer the )  
Baywood Forest Subdivision Water and Wastewater )  
Utility Systems and the Cottonwood Subdivision )  
Wastewater Utility System and Public Utility )  
Franchise in Wake County, North Carolina, and for )  
Approval of Rates

**REDACTED NON-CONFIDENTIAL DIRECT TESTIMONY OF JOSIAH COX  
ON BEHALF OF RED BIRD UTILITY OPERATING COMPANY, LLC**

**INTRODUCTION**

1 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

2 A. My name is Josiah Cox. My business address is 1630 Des Peres Road, Suite 140, St.  
3 Louis, Missouri, 63131.

4 **Q. WHAT IS YOUR POSITION WITH RED BIRD UTILITY OPERATING**  
5 **COMPANY, LLC (“RED BIRD” OR “COMPANY”)?**

6  
7 A. I am President of Red Bird Utility Operating Company, LLC (“Red Bird”). I also am  
8 President of CSWR, LLC, (“CSWR”) a Red Bird affiliate. Later in my testimony I will  
9 describe CSWR's relationship to Red Bird and discuss the role CSWR would play in Red  
10 Bird's future operations if the Commission approves the Joint Application for transfer of  
11 the water and wastewater systems owned by Crosby Utilities, Inc. ("Crosby") to Red Bird.

1 **Q. PLEASE DESCRIBE YOUR EDUCATIONAL AND PROFESSIONAL**  
2 **EXPERIENCE.**

3 A. I received a Bachelor of Science with a major in Environmental Science from the  
4 University of Kansas. Professionally, I worked at the Kansas state biological survey, where  
5 I performed a wildlife habitat study. I then worked at a civil engineering firm where I was  
6 involved in various facets of the land development process, including permitting,  
7 entitlement, civil design, project management, and construction management. I focused  
8 mainly on the water and wastewater side of the civil engineering business and participated  
9 in every part of that business from waste-load allocation studies (now known as the anti-  
10 degradation processes), design, permitting, project management, and construction  
11 management. I also ran the firm's environmental consulting division and was the second  
12 private consultant to submit a water quality impact study in the State of Missouri in 2003.  
13 I subsequently joined the engineering firm's executive leadership team and helped run all  
14 the firm's operations.

15 Beginning in 2005, I raised money from a group of investors and formed a full-  
16 service civil engineering, environmental consulting, general contracting, and construction  
17 management firm. I served as the Chief Operating Officer, and finally Chief Executive  
18 Officer of that firm. I obtained extensive experience with rural communities in every facet  
19 of the water and wastewater compliance process, including environmental assessment,  
20 permitting, design, construction, operation and community administration of the actual  
21 water and wastewater (sewerage) systems. The firm performed stream sampling and built  
22 waste-load allocation models to determine receiving water-body protective permit-able  
23 effluent pollutant loads. We did full engineering design of multiple whole community  
24 wastewater and water infrastructure systems including wells, water distribution, water

1 treatment, water storage, wastewater conveyance, and wastewater treatment plants, and  
2 then took those designs through federal and state administered permitting processes in  
3 Missouri. That engineering firm also administered the construction of water and  
4 wastewater systems from green field site selection all the way through system startup and  
5 final engineering sign-off.

6         During this time, I began the Master of Business Administration (“MBA”) program  
7 at Washington University in St. Louis, from which I graduated in 2007. In addition, starting  
8 in 2008, I took over the operation of an existing rural sewer district, and I still operate a  
9 system managing the functioning, testing, and maintenance of that system. I also act as the  
10 administrator for this municipal system, performing all the billing, emergency response,  
11 accounts payable/accounts receivable, collections, budgeting, customer service, and public  
12 town meetings required to service the community.

13         In late 2010, after working on several small, failing water and wastewater systems,  
14 I created a business plan to acquire and recapitalize failing systems as investor-owned  
15 regulated water and wastewater utility companies. In early 2011, I went to the capital  
16 markets to raise money to implement my plan. Over a period of approximately three years,  
17 I met with over 52 infrastructure investment groups trying to raise the necessary financing.  
18 By February 2014, I achieved my goal, and I used the debt and equity capital I was able to  
19 raise to start CSWR.

20         In 2018, I was able to attract an additional large institutional private equity investor,  
21 which allowed me to expand the scope of my business plan. This new investor is allowing  
22 CSWR to form companies for the purpose of acquiring water and wastewater systems in  
23 additional states. Since its formation, CSWR has acquired, and currently is operating

1 through various affiliates, more than 800 water or wastewater systems in Missouri,  
2 Kentucky, Louisiana, Texas, Tennessee, Mississippi, Arizona, Florida, South Carolina, and  
3 Arkansas, and, up to this point, one in North Carolina. In Missouri, those systems are  
4 regulated by the Missouri Public Service Commission; in Kentucky they are regulated by  
5 the Kentucky Public Service Commission; in Tennessee they are regulated by the  
6 Tennessee Public Utility Commission; in Louisiana they are regulated by the Louisiana  
7 Public Service Commission; in Texas they are regulated by the Public Utility Commission  
8 of Texas; in Mississippi they are regulated by the Mississippi Public Service Commission;  
9 in Arizona they are regulated by the Arizona Corporation Commission; in Florida they are  
10 regulated by the Florida Public Utilities Commission; in South Carolina they are regulated  
11 by the South Carolina Public Service Commission; and in Arkansas, the systems are  
12 outside the Arkansas Public Service Commission's jurisdiction due to the fact each system  
13 falls below annual revenue thresholds that trigger regulation in that state. Pursuant to the  
14 Commission's issuance of a Certificate of Public Convenience and Necessity to Red Bird  
15 for the Ocean Terrace and Pine Knoll Townes properties in Pine Knoll Shores, in December  
16 2021, Red Bird acquired its first systems in North Carolina.

17 **Q. WHAT IS THE PURPOSE OF YOUR DIRECT TESTIMONY IN THIS CASE?**

18 A. The purpose of my testimony is to support the Application for Transfer of Public Utility  
19 Franchise and for Approval of Rates filed in these dockets ("Joint Application"), which  
20 seeks Commission authority for Red Bird to acquire all utility assets currently used by  
21 Crosby and to provide water and/or wastewater utility services to customers in the  
22 Baywood Forest and Cottonwood Subdivisions. My testimony describes the proposed  
23 transaction and explains why both Red Bird and Crosby believe authorizing consummation

1 of the transaction is in the public interest. I also describe Red Bird's relationship to CSWR,  
2 the role CSWR would play in Red Bird's operation of the systems at issue in this case, and  
3 the benefits Red Bird's relationship with CSWR would bring to customers served by the  
4 Crosby systems.

5 My testimony also addresses rate base in the Crosby utility assets to be acquired  
6 and supports approval of an acquisition adjustment for a portion of the price Red Bird will  
7 pay for Crosby's utility assets, based on the condition of the Crosby systems, Crosby's  
8 compliance issues, and history.

**BACKGROUND INFORMATION REGARDING**  
**RED BIRD AND ITS AFFILIATES**

9 **Q. PLEASE PROVIDE SOME BACKGROUND INFORMATION ABOUT RED**  
10 **BIRD AND CSWR.**

11 A. Red Bird is a limited liability company formed to acquire water and wastewater assets  
12 in North Carolina and to operate those assets as a regulated public utility. In Docket No.  
13 W-1328, Sub 7, the Commission authorized Red Bird to acquire and operate the four  
14 wastewater systems previously owned by the Homeowners Associations, respectively, of  
15 Ocean Terrace, Pine Knoll Townes I, II and II, all of which are located in Pine Knoll  
16 Shores, North Carolina. In addition to the Joint Application in this docket, Red Bird  
17 currently has Applications for Transfer of Public Utility Franchise and for Approval of  
18 Rates pending before the Commission in eleven other dockets, as well as one pending  
19 application for a Certificate of Public Convenience and Necessity. As is the case with the  
20 Crosby system, many of the systems which Red Bird seeks to acquire in North Carolina  
21 are either distressed or troubled, and all of them require the infusion of capital investment  
22 that the current owners are either unable or unwilling to provide. If the Commission grants

1 the Joint Application in this docket, Red Bird will acquire, own, and operate the wastewater  
2 and water system currently owned by Crosby.

3 Red Bird is an affiliate of CSWR, a Missouri limited liability company formed to  
4 provide managerial, technical, and financial support to its utility operating affiliates. A  
5 corporate organization chart illustrating that relationship is Attachment K to the Joint  
6 Application.

7 To date, CSWR-affiliated utility operating companies have acquired and are  
8 operating water and/or wastewater systems in Missouri, Kentucky, Louisiana, Texas,  
9 Tennessee, Mississippi, Arizona, Florida, South Carolina, and Arkansas, as well as the  
10 Ocean Terrace/Pine Knoll Townes systems in North Carolina. In addition to Red Bird's  
11 other Applications pending before the Commission, CSWR affiliates have applications to  
12 acquire more such systems pending in Mississippi, Florida, Louisiana, Tennessee,  
13 Arizona, Missouri, California and Texas.

14 **Q. WHAT IS CSWR'S BUSINESS PLAN WITH REGARD TO THE**  
15 **ACQUISITION AND OPERATION OF SMALL AND TROUBLED, DISTRESSED**  
16 **OR UNDERCAPITALIZED WATER AND WASTEWATER SYSTEMS?**

17 A. CSWR's business plan is to pursue the purchase and recapitalization of small water and  
18 wastewater systems and to operate those systems as investor-owned regulated utilities.  
19 Many of the systems CSWR hopes to acquire are not currently regulated. Of those that are  
20 regulated, many, if not most, are out of compliance with utility commission rules and/or  
21 with federal and/or state pollution, environmental and/or safety laws and regulations.  
22 Indeed, many systems we acquire do not even have federal or state permits required to  
23 lawfully operate. We also have found that many regulated systems we acquire have not  
24 increased their rates for a decade or more and, as a result, lack the financial resources

1 necessary to cover normal operating costs and/or to maintain and replace assets used to  
2 provide service or bring their operations into compliance with rapidly changing  
3 environmental and water quality regulations. Some systems we acquire are in receivership  
4 and, therefore, lack the ability to raise capital necessary to improve their systems. Owners  
5 of other systems are unable or unwilling to provide the capital necessary to maintain the  
6 systems. CSWR's business plan has been and continues to be investing in and taking the  
7 risks necessary to bring small water and wastewater systems into compliance with current  
8 statutes, rules, and regulations. CSWR, through its affiliates, has been able to acquire  
9 distressed, troubled or undercapitalized systems, invest capital necessary to upgrade or  
10 repair physical facilities, and operate those systems in a way that satisfies customers,  
11 regulators, and investors alike. Many of the systems Red Bird currently has under contract,  
12 including Crosby, continued to have environmental violations during the acquisition  
13 approval process, demonstrating why these utilities need to be acquired.

14 CSWR's business plan and the expertise its personnel provide to affiliates have  
15 convinced regulators in Missouri, Kentucky, Louisiana, Texas, Tennessee, Mississippi,  
16 Florida, South Carolina, and Arizona to allow those affiliates to acquire and operate  
17 numerous small water and wastewater systems in those states. In two of the states (Missouri  
18 and Louisiana) CSWR is the entity responsible for bringing more domestic water and/or  
19 sewer utilities back into compliance with the Clean Water Act than any other entity in state  
20 history. CSWR believes by the end of 2023 it will be the entity responsible for bringing  
21 more domestic wastewater systems from noncompliance to compliance with the Clean  
22 Water Act than any entity in US history. This Commission authorized Red Bird to acquire  
23 and serve four small systems in this state, and we are hopeful we will be authorized to

1 acquire additional systems here in the future. If the Commission authorizes Red Bird to  
2 acquire the Crosby water and wastewater systems, it will become part of the portfolio of  
3 systems the Company seeks to build in North Carolina. We hope the Commission will give  
4 Red Bird the same opportunity it did in the Ocean Terrace/Pine Knoll Townes docket so  
5 we can continue our efforts to replicate in North Carolina the record of success our affiliate  
6 group has achieved elsewhere.

7 **Q. PLEASE DESCRIBE RED BIRD'S AFFILIATES' EXPERIENCE WITH**  
8 **WATER AND WASTEWATER SYSTEMS.**

9 A. Red Bird is part of an affiliate group that currently owns and operates wastewater  
10 systems serving approximately 204,000 customers and drinking water systems serving  
11 approximately 131,850 customers in Missouri, Arkansas, Kentucky, Louisiana, Texas,  
12 Tennessee, Mississippi, Florida, South Carolina, North Carolina, and Arizona. Red Bird  
13 has the financial, technical, and managerial ability to acquire, own, and operate the Crosby  
14 water and wastewater systems in a manner that fully complies with applicable health,  
15 safety, and environmental protection laws and regulations, and to provide reliable, safe,  
16 and adequate service to customers.

17 On the wastewater side of the business, the CSWR affiliate group has purchased  
18 wastewater treatment plants with associated pressure systems and sewer pumping stations,  
19 gravity force mains, and gravity conveyance lines. With the approval of state wastewater  
20 regulatory authorities, since March 2015 CSWR-affiliated companies have designed,  
21 permitted, and completed construction of numerous sanitary sewer system improvements.  
22 These improvements include wastewater line repairs to eliminate infiltration and inflow,  
23 building numerous sewer main extensions, building and/or repairing hundreds of lift  
24 stations, the closure of a number of existing regulatory impaired wastewater systems,



1 building new or refurbishing over 150 activated sludge plants, constructing dozens of  
2 moving bed bio-reactor (“MBBR”) plants, converting multiple failing wastewater systems  
3 into sludge storage/flow equalization and treatment basins, converting failed mechanical  
4 systems to I-Fast systems, and constructing various other wastewater treatment supporting  
5 improvements.

6 On the water side of the business, since March 2015 the CSWR affiliate group has  
7 designed, permitted, and completed construction – with the approval of state regulatory  
8 authorities – upgrades and improvements to numerous drinking water systems. Those  
9 upgrades and improvements include construction of a large number of ground water  
10 storage tanks and drinking water pressurization pump assemblies, drilling water wells,  
11 erecting or rehabilitating well houses, closing failed wells, blasting/coating water storage  
12 tanks, replacing meter pits with new meters, replacing or repairing numerous water  
13 distribution lines, installing numerous isolation valve systems, installing a large number of  
14 flush hydrants, repairing hundreds of leaking lines, and constructing or rehabilitating  
15 various other improvements to existing drinking water systems.

16 The CSWR-affiliated group of companies is likely the most qualified utility in the  
17 United States to service Crosby’s North Carolina customers based on the number of  
18 systems we own, the number of systems that we have purchased, brought into, and kept in  
19 environmental compliance, and our personnel so much relevant experience running small  
20 utilities. Our affiliate group current owns and operates more than 800 water and wastewater  
21 plants within our eleven-state operational footprint. On a daily basis we deliver, on average,  
22 more than 14.6 million gallons of water daily to our more than 52,000 water connections  
23 and treat almost 20 million gallons of wastewater from our more than 81,000 sewer

1 connections. In Louisiana alone, our affiliate has removed fifty-nine (59) systems from  
2 Agreements on Consent with the Louisiana Department of Environmental Quality – the  
3 fastest timeframe ever for a large group of systems – and we are 100% compliant with  
4 environmental compliance agreements entered into with state regulators there. These  
5 agreements are necessary because of the extremely distressed nature of many systems our  
6 group acquired, and our record of compliance with and removal from these agreements is  
7 testament to our ability to own and operate such systems in a manner that complies with  
8 applicable laws and provides safe and reliable service to customers.

9 **Q. DOES CSWR HAVE PERSONNEL QUALIFIED TO PERFORM THE**  
10 **SERVICES YOU IDENTIFIED IN YOUR PRECEDING ANSWER?**

11 A. Yes it does, as evidenced by the fact CSWR already is providing those and other similar  
12 services for water and wastewater systems in Missouri, Arkansas, Kentucky, Louisiana,  
13 Texas, Tennessee, Mississippi, Florida, South Carolina, and Arizona as well as for the  
14 Ocean Terrace/Pine Knoll Townes systems in North Carolina. I already described my  
15 background and experience in the water and wastewater utility industry. The other key  
16 members of CSWR's senior team who would be involved in Red Bird's operations are  
17 well-qualified to meet the demands and needs of Red Bird and its customers and of this  
18 Commission and other regulators charged with overseeing Red Bird's operations. CSWR  
19 will provide Red Bird the same level of experience and expertise CSWR currently provides  
20 to its affiliated systems located within and outside North Carolina. The types and quality  
21 of services CSWR provides Red Bird are not usually available to small systems such as  
22 Crosby, as evidenced by Crosby's performance over the years here. CSWR's business  
23 model was developed to provide support, expertise and experience to affiliates and to do  
24 so while achieving economies of scale attributable to CSWR's centralized management

1 structure. Not only would CSWR and Red Bird provide current Crosby customers with  
2 expertise not generally available to small water and sewer systems, but it can realize  
3 economies of scale that would not be possible if Red Bird had to acquire or provide such  
4 expertise and support on a company or system-specific basis. The violations and  
5 compliance issues in the Crosby systems which we are aware of through our due diligence,  
6 including those which were either issued or remain unresolved during the period this  
7 transfer application has been pending before the Commission, speak directly to the need  
8 for the Crosby systems, and others like them, to be purchased by a qualified utility.

9 **Q. PLEASE DESCRIBE THE ECONOMIES OF SCALE YOU JUST MENTIONED**  
10 **AND HOW THOSE WOULD BENEFIT CROSBY'S CUSTOMERS.**

11 A. CSWR's size and its consolidation of many small systems under one financing and  
12 managerial entity will result in cost efficiencies in the operation of Crosby's water and  
13 wastewater systems, particularly in the areas of:

- 14 • Commission and environmental regulatory reporting;
- 15 • Managerial and operational oversight;
- 16 • Utility asset planning;
- 17 • Engineering planning;
- 18 • Ongoing utility maintenance;
- 19 • Utility record keeping;
- 20 • Customer service responsiveness; and
- 21 • Access to capital necessary to repair and upgrade the Crosby systems as necessary  
22 to ensure compliance with all health and environmental requirements and ensure  
23 service to customers remains safe and reliable.

24 CSWR/Red Bird believes that Crosby's customers will benefit from economies of scale

1 and other advantages available through CSWR. While this does not necessarily reflect cost  
2 savings compared to Crosby's current operations expenses, the advantages of this  
3 acquisition are reflected in CSWR's resources pertaining to customer service, an advanced  
4 computerized maintenance management system, and personnel with years of experience  
5 across over 800 plants in eleven states, making CSWR one of the single largest operators  
6 of small water and sewer systems in the United States. After owning and operating the  
7 Crosby systems for an initial period of time, Red Bird will be able to accurately assess  
8 needs and costs to more accurately reflect the actual operating needs and characteristics of  
9 these systems.

10 **Q. HAVE THE CSWR AFFILIATED COMPANIES TAKEN STEPS TO**  
11 **IMPROVE SERVICES AT THE SYSTEMS THEY NOW OPERATE?**

12 A. Yes. In addition to the capital improvements made on systems our affiliate group has  
13 acquired, we have built from scratch and implemented customer service systems that meet  
14 or exceed regulatory commission rules and provide numerous benefits to the customers.

15 If the Joint Application is approved, Red Bird would implement operational  
16 changes to improve and enhance service to Crosby's current customers. For example, those  
17 customers would have access to a 24-hour phone line to report any utility service issues.  
18 Those calls initially would be answered by emergency service personnel who are required  
19 to respond to emergency service calls within prescribed time limits. Those calls would then  
20 be transferred into the computerized maintenance management system and converted into  
21 work orders, which create a historical record of all reported service issues. The work order  
22 also will ensure contracted customer service personnel can commence work required to  
23 deal quickly and efficiently with any customer service issues. In addition, Red Bird would  
24 ensure customers have access to customer service representatives during normal business

1 hours to talk about any customer concerns, and has established a utility-specific webpage  
2 and dedicated email address to keep customers informed about their utility service. These  
3 types of customer service and operational resources generally are not available to  
4 customers served by small utilities like Crosby.

5 Information available on Red Bird’s website, which is updated regularly, would  
6 include dissemination of state-mandated information, up-to-date website bulletins about  
7 service issues, and procedures for service initiation or discontinuance. Mirroring relevant  
8 utility homepage information, Red Bird provides a dedicated social media page to offer  
9 another avenue of communication with customers about utility matters. The social media  
10 account is manned by customer service representatives that can answer customer questions.  
11 These resources also would provide customers with bulletins on current service status and  
12 educational information relevant to their utility service. Finally, Red Bird’s platforms offer  
13 online bill paying options to customers, including e-checks, debit card, and credit cards.

14 Because of the resources I just described, Red Bird believes the overall quality of  
15 customer service will improve if Red Bird is authorized to acquire Crosby’s utility assets.

16 **Q. WHAT OTHER OPERATIONAL BENEFITS WOULD RED BIRD BRING TO**  
17 **THE CROSBY SYSTEMS AND CUSTOMERS?**

18 A. CSWR uses the Computerized Maintenance Management System (“CMMS”) program  
19 called Utility Cloud to facilitate field work, inspections, maintenance schedules, and  
20 reporting for all facilities. This allows CSWR to manage data, work, and compliance across  
21 plant and distributed field assets. We have implemented Utility Cloud in other jurisdictions  
22 to assist in avoiding compliance and equipment failures with real-time data monitoring  
23 across people, machines, and sensors throughout all our service areas.

1           The main benefit Utility Cloud offers is that the system is a highly configurable,  
2 easy-to-use asset management tool that helps all parties distribute work, report on  
3 maintenance, and streamline compliance reports. With the system being highly  
4 configurable, Red Bird can build out systems efficiently and begin tracking maintenance  
5 and improvements on day one of ownership. Most operators of this system require only a  
6 short training session to be able to navigate, create and assign work, and complete Work  
7 Orders. The ability to get Red Bird's contract operators trained on this system so quickly  
8 speaks volumes as to how easy the system is to operate.

9           Features of Utility Cloud that CSWR would implement, and that have been  
10 beneficial to the operations of its utility affiliates and have streamlined time-consuming  
11 processes include:

- 12           • Automating the completion and submission of compliance reports using the exact  
13           field data crews collect;
- 14           • Using custom accounts, security roles, and user rights to maintain the separation  
15           between projects and managing multiple contractors while storing all CSWR's data  
16           in one database;
- 17           • Managing and tracking maintenance history on all assets to assist in identifying  
18           potential capital improvement projects;
- 19           • Creating custom alerts to trigger as issues arise;
- 20           • Leveraging digital standard operating procedures, manuals, and layouts helping to  
21           standardize complex work and meet regulatory and OSHA requirements;
- 22           • Creating powerful workflows and reports for our compliance objectives;

1       • Integrating with the survey database to create a useable asset for field work  
2 tracking; and

3       • Using real-time data and leveraging analytical tools to trend plant performance.

4       Utility Cloud is pivotal in the operation and maintenance of our utility facilities.

5       The ability to create custom workflows gives us the ability to collect asset and task-specific  
6 data quickly and efficiently. Using this system allows CSWR’s utility affiliates to quickly  
7 implement new processes that apply to all our sites across the country with the click of a  
8 button. This is the type of configuration scalability that CSWR requires, and Utility Cloud  
9 delivers on behalf of our utility affiliates and their customers.

10       **Q. WHAT EVIDENCE CAN YOU PROVIDE TO SUPPORT YOUR CLAIMS**  
11       **ABOUT THE ABILITY OF RED BIRD’S AFFILIATES TO PROVIDE THESE**  
12       **SERVICES OUTSIDE NORTH CAROLINA?**

13       A. In Missouri, where CSWR-affiliated companies have operated since 2014, the Missouri  
14 Public Service Commission and the Missouri Department of Natural Resources have  
15 recognized the solid track records of CSWR and its affiliates for acquiring, rehabilitating,  
16 maintaining, and operating troubled water and wastewater systems in that state. In its  
17 Order approving one of our acquisitions, the Missouri Commission noted CSWR’s  
18 Missouri affiliate’s “sound track record in rehabilitating similarly situated [i.e. troubled]  
19 systems” and its “ability to acquire, maintain, and operate the systems . . . to ensure safe  
20 and adequate service.”<sup>1</sup> Indeed, for each of the acquisitions made in a state where a CSWR-  
21 affiliated utility operating company has been approved to acquire a water or wastewater  
22 system, regulators have found that a member of the CSWR affiliate group has the financial,  
23 technical, and managerial ability necessary to provide, own and operate water and/or

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<sup>1</sup> *Order Approving Stipulation and Agreement and Granting Certificates of Convenience and Necessity*, Missouri Public Service Commission File No. WM-2018-0116 (February 4, 2019), at p. 6.

1 wastewater facilities in a manner that ensures compliance with applicable health and  
2 environmental regulations and reasonable service to the public.

3           As further evidence of our affiliates’ capabilities, regulators in Missouri, Texas,  
4 Mississippi, Arizona, and Louisiana have asked CSWR and its utility affiliates to assume  
5 emergency operational responsibilities for distressed water and wastewater systems in  
6 those states. For example, in Texas CSWR acts as an emergency manager trusted by the  
7 Texas Commission to take over some of the state’s most troubled utilities, and was  
8 specifically asked to purchase 49 utilities in the state. In Louisiana CSWR was named as  
9 the first emergency manager for a water system by the Louisiana Department of Health, in  
10 addition to taking more than a hundred systems over pursuant to a Louisiana Department  
11 of Environmental Quality agreed order addressing ongoing serious environmental  
12 compliance issues. Again, in Louisiana CSWR recently reached an agreement and  
13 subsequently closed on 178 systems pursuant to a consent decree with the United States  
14 Department of Justice and the Environmental Protection Agency moving these  
15 communities toward environmental compliance after twenty plus years of state and federal  
16 noncompliance. In Arkansas and Kentucky CSWR has been specifically requested to take  
17 over a number of distressed utilities by those states’ respective environmental regulators,  
18 including stepping into an emergency wastewater pump and haul situation in central  
19 Arkansas, as specifically requested by the Arkansas Department of Environmental Quality.  
20 In December 2021 the Arizona Corporation Commission authorized a CSWR affiliate to  
21 acquire distressed utilities and also approved incentives (including the opportunity to  
22 recover all or a significant portion of the difference between purchase price and net book



1 value of acquired assets) for those acquisitions, which was the second time in state history  
2 that Arizona's distressed utility regulatory mechanism was utilized.

3 **Q. DO RED BIRD AND CSWR HAVE THE FINANCIAL CAPACITY TO**  
4 **ACQUIRE, OWN, AND OPERATE THE CROSBY SYSTEMS?**

5 A. Yes, Red Bird and CSWR have the financial capacity to finance, own, and operate the  
6 systems we propose to acquire from Crosby. The affiliate group of which Red Bird is a  
7 member has been able to secure an ongoing commitment from a Wall Street private equity  
8 firm, to provide capital necessary to purchase small, often distressed, water and wastewater  
9 systems and then make investments necessary to bring those systems into compliance with  
10 applicable health, safety, and environmental protection laws and regulations. This  
11 investment commitment also includes working capital necessary to operate until  
12 applications for compensatory rates can be prepared and prosecuted. To date, through its  
13 affiliates CSWR has invested nearly \$400 million to purchase, upgrade, and operate water  
14 and wastewater systems. Although those investments have been almost exclusively in the  
15 form of equity, at the appropriate time Red Bird plans to pursue debt financing from non-  
16 affiliated commercial sources that would allow the company to balance its capital structure.  
17 Ultimately, Red Bird's objective is a capital structure consisting of 50%-60% equity and  
18 40%-50% debt.

19 **Q. IF THE AUTHORIZATION REQUESTED IN THE JOINT APPLICATION IS**  
20 **GRANTED, WOULD RED BIRD HIRE CURRENT EMPLOYEES TO PROVIDE**  
21 **SERVICE IN THE AREAS SERVED BY CROSBY?**

22 A. No, Red Bird does not plan to hire any current employees Crosby may have to perform  
23 any services after closing.

1 **Q. AFTER CLOSING, HOW DOES RED BIRD PROPOSE TO PROVIDE**  
2 **SERVICE TO CUSTOMERS OF THOSE SYSTEMS?**

3 A. If the Joint Application is approved, Red Bird intends to hire a local, non-affiliated  
4 third-party Operations and Maintenance (“O&M”) firm that has knowledgeable and  
5 experienced personnel, carries required state licenses, and has the insurance coverage  
6 necessary to manage daily operations of the Crosby systems. These contracts are  
7 competitively bid to ensure that the O&M services Red Bird requires are obtained at a  
8 reasonable price. This is what Red Bird has done for the Ocean Terrace/Pine Knoll Townes  
9 wastewater systems. It also is the approach that Red Bird’s affiliated utility operating  
10 companies have successfully employed in every state where CSWR affiliates operate water  
11 and/or wastewater systems.

12 In addition to its service obligations during normal business hours, the O&M firm  
13 would be required to have a 24-hour emergency service line to deal with customers  
14 experiencing service disruptions. However, notice of all service disruption calls would be  
15 forwarded to me, as CSWR’s manager and the executive ultimately responsible for service  
16 in the areas served by each of CSWR’s utility affiliates. CSWR uses the Utility Cloud  
17 centralized computerized maintenance management system to monitor the performance of  
18 our drinking water and wastewater systems, which also allows us to track ongoing  
19 maintenance and testing work performed by the O&M contractors we employ at each of  
20 our facilities. In addition, CSWR uses geographic information system (“GIS”) survey  
21 information to accurately map all infrastructure assets, which allows the company to  
22 specifically target ongoing infrastructure re-investment as part of the overall managerial  
23 and technical support CSWR provides each of its utility operating affiliates.

1 Red Bird also would use a non-affiliated third-party customer service firm to handle  
2 service-related billing questions. Customer service representatives employed by a third-  
3 party firm would be available during normal business hours, would take messages twenty-  
4 four hours a day, and all customer correspondence would be recorded and logged to  
5 consumers' accounts to ensure the highest level of service.

6 While day-to-day operational and customer service functions would be provided by  
7 non-employee contractors, all management, financial reporting, underground utility safety  
8 and location services, Commission regulatory reporting, environmental regulatory  
9 reporting and management, operations oversight, utility asset planning, engineering  
10 planning, ongoing utility maintenance planning, utility record keeping, billing, and final  
11 customer dispute management would be performed by personnel at CSWR's corporate  
12 office, with a proportional share of costs for those services passed down to Red Bird.  
13 CSWR personnel also would monitor the activities of the non-employee contractors to  
14 make sure the systems are being operated and maintained properly and customers' needs  
15 are being met. The resumes of senior CSWR personnel who, in addition to me, would be  
16 responsible for providing services or oversight to Red Bird's operation, are Attachment B  
17 to the Joint Application.

### **DESCRIPTION OF THE PROPOSED TRANSACTION**

18 **Q. PLEASE DESCRIBE THE SYSTEMS RED BIRD PROPOSES TO ACQUIRE**  
19 **FROM CROSBY.**

20 A. Red Bird proposes to acquire the water and wastewater systems owned by Crosby,  
21 which serve the Baywood Forest and Cottonwood Subdivisions in Wake County. The  
22 Crosby systems currently serve approximately 210 water customers and 290 sewer  
23 customers.

1 Terms of the proposed asset purchase are governed by the *Agreement for the Sale*  
2 *of Utility System* ("Agreement"), between Crosby and CSWR. A copy of that Agreement  
3 and the two amendments to it were filed as Confidential Attachments G, G.1, G.2 and G.3  
4 to the Joint Application. CSWR entered into the Agreement with Crosby on September  
5 18, 2019. It took four months for Crosby and CSWR to reach an arm's length transaction  
6 agreement on the terms of the Agreement.

7 No closing date for the transaction has been set, but the Agreement identifies  
8 various conditions precedent, including obtaining all required regulatory approvals, which  
9 must be satisfied before the transaction can close. Section 18 of the Agreement also  
10 authorizes CSWR to assign all its rights to the acquired assets to an affiliated entity. In  
11 accordance with that section, CSWR assigned its rights under that Agreement to Red Bird.  
12 A copy of the document by which CSWR's contract with Crosby was assigned to Red Bird  
13 was filed as Attachment G.1 to the Joint Application.

14 **Q. PLEASE DESCRIBE THE CONTRACT TO PURCHASE CROSBY'S UTILITY**  
15 **ASSETS.**

16 A. In September 2019 CSWR entered into an asset purchase agreement with Crosby  
17 whereby it contracted to purchase all utility assets of Crosby for [BEGIN  
18 CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]. CSWR later assigned that  
19 agreement to Red Bird.

20 **Q. PLEASE DESCRIBE THE CROSBY SYSTEMS.**

21 A. As is our normal practice, following execution of the asset purchase agreement and as  
22 part of our due diligence efforts, we engage a third-party engineering firm to perform a  
23 preliminary survey and analysis of the water and/or wastewater system we propose to

1 acquire. Red Bird engaged McGill Associates, an engineering firm headquartered in  
2 Asheville, North Carolina, to inspect and assess the Crosby systems.

3 McGill's Report reflects that Crosby's water service area consists of the developed  
4 parcels covering 37.8 acres in the Baywood Forest subdivision. Crosby's water system  
5 consists of three wells, only two of which (Wells 2 and 3) are currently in operation,  
6 producing potable water for 210 customers. The system includes a network of  
7 approximately 7,390 LF of 6-inch, 2,500 LF of 4-inch PVC water mains and 210 ¾-inch  
8 water meters installed between 1991 and 1994, one 10,000 gallon and one 1,000 gallon  
9 pneumatic tank, and an anion/cation exchange system for radium and uranium removal.  
10 There are no fire hydrants in the water system. Crosby's operator advised McGill that  
11 uranium is present in raw water from Well 1 during longer runtimes and suggested that a  
12 treatment system would be necessary if that well is to be used regularly.

13 McGill's Report also reflects that Crosby's sewer service area includes the  
14 developed parcels in Baywood Forest subdivision as well as the developed parcels in the  
15 Cottonwood subdivision for a total of 54.8 acres of wastewater collection service area.  
16 Crosby serves 290 sewer service customers. Crosby's wastewater system consists of an 8-  
17 inch diameter gravity collection system, two lift stations with 2½-inch force mains, and  
18 290 4-inch sanitary sewer service taps. Crosby's wastewater treatment system is a 57,500  
19 gpd extended aeration package plant with single-train aeration, duplex clarifiers, and  
20 tertiary sand filters.

21 **Q. WHAT IS THE RATE BASE IN THE UTILITY ASSETS TO BE ACQUIRED**  
22 **FROM CROSBY?**

23 A. Based on our audit team's review of all supporting documentation provided by Crosby,  
24 and depreciation of its evidenced investment, we believe the rate base in assets to be

1 acquired from Crosby is \$250,933.68. A spreadsheet reflecting our audit of Crosby's  
2 documentation is attached as Confidential Cox Direct Exhibit 1 – this was previously  
3 provided to Public Staff as part of a supplemental response to its Data Request Number 4.

4 **Q. WHAT REMEDIAL WORK ON THE CROSBY SYSTEMS DID MCGILL**  
5 **RECOMMEND?**

6 A. McGill's Report identified deficiencies and needs in the Crosby systems. For example,  
7 in 2019 McGill's inspection revealed that Crosby's lift stations do not meet the state  
8 minimum design criteria outlined in 15A NCAC 02T .0305, which require that sewer pump  
9 stations have backup power supply with automatic activation if design capacity exceeds  
10 15,000 gpd or that an appropriately sized portable power supply be available for smaller  
11 pump stations.

12 While McGill originally recommended a broader scope of remedial work on the  
13 Crosby systems based on its inspection in 2019, our approach is to prioritize actions that  
14 will bring systems back into regulatory compliance and facilitate adequate service.  
15 McGill's revised recommendations for work for the initial work on these systems was as  
16 follows:

17 (a) For the water system:

- 18 Replace 10 HP pump, install monitoring at Well 2
- 19 Replace 15 HP pump, install monitoring at Well 3
- 20 Upgrade Well Controls for Automatic Alternation
- 21 Clean, repair and repaint 10,000 gallon tank

22  
23 (b) For the wastewater system:

- 24 Purchase and install 30 kW Portable Diesel Generator for Use at Lift Station 2
- 25 Purchase and install 40 kW Standby Generator at Lift Station 1
- 26 Replace Pump Guide Rails at Lift Station 1
- 27 Replace Valve Vault Drain at Lift Station 1
- 28 Install Hoist for Trash Basket Retrieval
- 29 Replace Aeration and Sludge Holding Tank Diffusers and Drop Pipes
- 30 Replace Electrical Equipment at Flow Equalization Tank
- 31 Partially Rehabilitate and Recoat Main Aeration Tank

1 **Q. AFTER CLOSING, WHAT INVESTMENTS DOES RED BIRD PLAN TO**  
2 **MAKE TO ADDRESS ISSUES IN THE CROSBY SYSTEMS?**

3  
4 A. Based on McGill's survey, in order to address problems and compliance issues with  
5 these systems we currently estimate capital investment of at least \$262,300 will be  
6 required, consisting of (i) approximately \$160,300 for the work on the wastewater system  
7 listed in my prior answer; and (ii) approximately \$102,000 for the work on the water  
8 production system listed in my prior answer. McGill's reports and the associated estimates  
9 of capital requirements were Confidential Attachment L to the Joint Application, which  
10 were subsequently updated and revised in supplemental filings labeled as Confidential  
11 Attachments L.1 and L.2.

12 As stated in McGill's engineering report, its survey of the Crosby systems was  
13 based on data provided by the seller, available public records, and a field survey of visible,  
14 above-ground assets. McGill's field survey did not include detailed investigation of system  
15 components, any system testing procedures, or an inspection or assessment of pipelines,  
16 valves, or other below-ground facilities. For those reasons the survey and capital estimate  
17 are preliminary.

18 McGill's initial proposed scope of work and the associated estimates projected for  
19 capital expenditure were originally higher. As a practical matter it is difficult to accurately  
20 predict the extent of the required capital investment, given that McGill surveyed these  
21 systems more than three years ago and the transfer Application was filed more than two  
22 years ago. Our experience outside North Carolina has shown that the longer the interval  
23 between when a sale contract is signed (and the initial engineering due diligence is  
24 completed), and final approval of an acquisition application the more preliminary capital  
25 estimates change. We have continued to review the work that must be done on these

1 systems in the near term with an eye to delaying investment that can be deferred; our first  
2 priority is to do the work necessary to bring systems into compliance. McGill initially  
3 estimated that investment of \$296,900 for the water production and distribution systems  
4 and \$245,600 for wastewater collection and treatment systems was necessary. Decisions to  
5 defer replacement of the 210 water meters, and to do a partial rehabilitation on the aeration  
6 tank rather than a full rehabilitation, played a significant role in reducing our preliminary  
7 capital estimates.

8       Regarding the information just discussed, I want to emphasize – and the  
9 Commission should keep clearly in mind – all capital estimates prepared thus far are still  
10 preliminary. If our affiliate group’s ownership and operation of more than 800 water and  
11 wastewater systems in ten other states has taught us anything, it’s that we can never be sure  
12 exactly what capital investment will be required for repairs and upgrades until we have a  
13 chance to actually operate the systems we acquire. This is especially true given the duration  
14 of the acquisition approval process Red Bird has experienced. Only when we close can we  
15 truly determine the nature and full extent of the problems those systems face and the most  
16 cost-effective ways to address and remedy those problems. I’m certain we will find that  
17 true for Crosby as well. Whatever problems ultimately are determined to exist and require  
18 remediation – problems that equally confront the current owner selling the Crosby systems,  
19 as well as Red Bird or any other party seeking to acquire the Crosby systems– Red Bird  
20 will fix those problems in the most cost-effective way possible. Our track record outside  
21 North Carolina is clear – CSWR does not invest capital it’s not required to invest, and it  
22 doesn’t “gold plate” the systems it owns and operates. We invest the capital needed to  
23 provide safe, reliable, and environmentally compliant water and sewerage service. That



1 targeted infrastructure mantra is the same attitude and track record we will bring to the  
2 Crosby systems and this state as well. The need for investment is demonstrated by  
3 Crosby's noncompliance.

4 **Q. WHAT IS THE COMPLIANCE HISTORY OF THE CROSBY SYSTEMS?**

5  
6 A. McGill's report noted that the Crosby "WWTP has received a number of Notices of  
7 Violation (NOVs) for either failure to meet effluent limits, failure to monitor effluent  
8 parameters at the frequency specified in the NPDES permit, or failure to pass NCDEQ  
9 inspection." Per McGill's Report, nine NOVs were issued to Crosby by NCDEQ between  
10 June 25, 2017 and August 26, 2019. According to Crosby, during this acquisition process  
11 another NOV was issued to it by DEQ in November 2022 for exceeding permitted BOD  
12 limits.

13 I am aware that the Recommended Order issued on June 6, 2008, in Crosby's last  
14 rate case reflected the existence of compliance issues, including DEH having graded the  
15 status of Crosby's water supply system as "Non-Compliance-Major," and ordered Crosby  
16 to "make agreed-upon improvements in the areas of (1) tracking of expenses, (2) regulatory  
17 compliance, and (3) customer complaint tracking, as detailed herein."<sup>2</sup> As reflected by the  
18 issuance of 10 NOVs to Crosby since June 2017, despite Crosby's efforts since its last rate  
19 case it has continued to have compliance issues.

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<sup>2</sup> *In the Matter of Application of Crosby Utilities, Inc. for Authority to Increase Rates for Water and Sewer Utility Service, Recommended Order Granting Partial Rate Increase And Requiring Customer Notice, Docket W-992, Sub 8 (June 6, 2008), at pp. 6, 18.*

1 **Q. DOES RED BIRD REQUEST APPROVAL OF AN ACQUISITION**  
2 **ADJUSTMENT, AS I UNDERSTAND THAT TERM IS USED IN NORTH**  
3 **CAROLINA, IN CONNECTION WITH ITS PROPOSED ACQUISITION OF THE**  
4 **CROSBY SYSTEMS?**

5 A. Yes. Under the Agreement with Crosby, CSWR agreed to pay [BEGIN  
6 CONFIDENTIAL] 489,533

7 [REDACTED]

8 [REDACTED]. [END CONFIDENTIAL]

9 Given the historic and apparently continuing compliance issues with the Crosby systems,  
10 and the benefits accruing to the Crosby customers from Red Bird's anticipated investment  
11 of at least \$262,300 in the Crosby systems, we believe that it is in the best interest of the  
12 Crosby customers that the Commission approve the transfer of these systems to Red Bird  
13 and approve an acquisition adjustment of \$238,599.32, which is the portion of the purchase  
14 price above the net book value of the assets to be acquired, especially in light of Crosby's  
15 history of noncompliance, need for reinvestment, and lack of ongoing investment over the  
16 last decade.

17 **Q. WHAT IS YOUR UNDERSTANDING OF THE STANDARD FOR APPROVAL**  
18 **OF AN ACQUISITION ADJUSTMENT RELATING TO THE CROSBY SYSTEMS?**

19 A. I understand from our counsel that the standard set by the Commission in *In the Matter*  
20 *of Utilities, Inc.*, Order Approving Transfer And Denying Acquisition Adjustment, Docket  
21 W-1000, Sub 5 (January 6, 2000) ("UI Order"), is that approval of an acquisition  
22 adjustment case requires the party seeking rate base treatment for an acquisition adjustment  
23 to establish that the agreed upon purchase price is prudent and that the benefits of including  
24 the acquisition adjustment in rate base outweigh any resulting burden to ratepayers.

1 I further understand that the Order in that docket recognized that “**a wide range of factors**  
2 **have been considered relevant in attempting to resolve this question**, including the  
3 prudence of the purchase price paid by the acquiring utility; the extent to which the size of  
4 the acquisition adjustment resulted from an arm’s length transaction; the extent to which  
5 the selling utility is financially or operationally "troubled;" the extent to which the purchase  
6 will facilitate system improvements; the size of the acquisition adjustment; the impact of  
7 including the acquisition adjustment in rate base on the rates paid by customers of the  
8 acquired and acquiring utilities; the desirability of transferring small systems to  
9 professional operators; and a wide range of other factors, none of which have been deemed  
10 universally dispositive.” (UI Order p. 27).

11 Distilled to its essence, I understand that this Commission’s standard is that to  
12 secure rate base treatment of an acquisition adjustment the purchasing utility must establish  
13 “that the price to be paid for the acquired utility is prudent and that both the existing  
14 customers of the acquiring utility and the customers of the acquired utility would be better  
15 off [or at least no worse off] with the proposed transfer, including rate base treatment of  
16 any acquisition adjustment, than would otherwise be the case. (UI Order p. 27).

17 **Q, DOES THE ACQUISITION ADJUSTMENT YOU PROPOSE HERE SATISFY**  
18 **THAT STANDARD?**

19 A. Yes. The price to be paid for the Crosby systems was negotiated at arm’s length between  
20 totally unrelated parties. It took us four months to reach agreement with Crosby on the  
21 purchase price, and Crosby would not sell its systems to us for a lower price. The purchase  
22 price we agreed to pay is prudent.

1           We also do not seek an acquisition adjustment for the entire purchase price, but  
2 rather only for the \$238,599.32 of the purchase price that exceeds the rate base value of  
3 Crosby's assets to be acquired.

4           Crosby's customers will be better off if this transaction closes with approval of an  
5 acquisition adjustment, because Red Bird is able to invest the capital necessary to address  
6 the near term and long term needs in the Crosby systems. Those customers will also get  
7 the benefit of ownership and operation of these systems by an adequately-capitalized and  
8 professionally-run utility.

9           In addition, I understand that the Crosby has unresolved violations that are currently  
10 outstanding. Unfortunately, for small water and sewer systems noncompliance is  
11 sometimes viewed as normative, with DEQ violations not resulting in fines because  
12 environmental regulators are faced with the dilemma that every dollar spent on fines does  
13 not go into fixing acute issues in a non-compliant system. In addition, as shown in this  
14 case specifically, standard Commission regulatory requirements like annual report filings  
15 are often ignored by the existing utility owners. We want to be clear; every environmental  
16 violation is potentially indicative of a human health risk either by ingestion in the case of  
17 drinking water, or exposure to environmental containments by surrounding community  
18 members in receiving waterbodies. Every missed Commission deadline illustrates a  
19 managerial deficit that in CSWR's experience eventually leads to service disruptions.  
20 These are the type of companies that need to be acquired by adequately capitalized  
21 professional utilities, and they present the scenarios which acquisition adjustments are  
22 designed for.

23 **Q. IF THE COMMISSION APPROVES THE JOINT APPLICATION, IS RED**  
24 **BIRD WILLING AND ABLE TO MAKE ANY IMPROVEMENTS NECESSARY**

1 **TO BRING CROSBY’S WATER SYSTEM UP TO STANDARD AND INTO**  
2 **COMPLIANCE WITH APPLICABLE REGULATIONS?**

3 A. Yes. If the Commission grants Red Bird the approval sought in the Joint Application,  
4 Red Bird and CSWR are willing and able to invest capital necessary to bring the Crosby  
5 systems up to standard and into compliance with applicable regulatory and legal  
6 requirements. As I described previously, the affiliate group of which Red Bird and CSWR  
7 are part has access to the capital necessary to address needs and deficiencies in the Crosby  
8 systems and to operate those systems in a manner that is in the public interest and complies  
9 with applicable statutes, rules, and regulations. CSWR has proven its ability to make  
10 investment across the county, in multiple states, to address some of the most extreme  
11 circumstances facing domestic water and wastewater utilities in the US.

12 **Q. WHAT RATES, RULES, AND REGULATIONS WOULD BE IN EFFECT FOR**  
13 **THE CROSBY SYSTEMS THAT ARE THE SUBJECT OF THIS DOCKET?**

14 A. Initially, Red Bird proposes to adopt the tariffs, rules, and rates currently in effect for  
15 the Crosby systems. However, if the rates for those systems prove to be inadequate to cover  
16 reasonable and prudent operating costs and provide the opportunity to earn a fair rate of  
17 return on our investment in the systems, then Red Bird will petition the Commission to  
18 increase rates. This will likely be the case here, given that Crosby’s last rate case was filed  
19 in 2007 (an over 15-year gap that demonstrates why this utility needs to be acquired), and  
20 given that additional capital investment will be needed to address needs in the Crosby  
21 systems. Red Bird may also seek authority to eventually consolidate rates of the systems  
22 that are the subject of these dockets with those of other water and wastewater systems it  
23 hopes to acquire and operate in North Carolina.

24 **Q. WHAT IS YOUR UNDERSTANDING REGARDING DETERMINATIONS**  
25 **THE COMMISSION TYPICALLY MAKES IN A TRANSFER DOCKET LIKE**  
26 **THIS, BEYOND THE ISSUE OF WHETHER RED BIRD HAS THE FINANCIAL,**

1 **TECHNICAL, AND MANAGERIAL ABILITY NECESSARY TO BE ALLOWED**  
2 **TO ACQUIRE, OWN AND OPERATE THE CROSBY SYSTEMS?**

3 A. I was surprised to learn that the practice here, when the purchasing utility will adopt  
4 the purchased utility's rates, terms and conditions for service, as Red Bird will do with the  
5 Crosby systems, is that the Commission typically goes beyond that threshold issue of  
6 competence and establishes rate base in the acquired assets, as well as the purchaser's due  
7 diligence costs associated with the acquisition. Based on our experience in other  
8 jurisdictions, and since the approval of this proposed transfer is not a rate making  
9 proceeding, I would have expected those issues to be deferred to the Company's initial  
10 post-acquisition rate case. That type of deferral is, in effect, what the Commission did  
11 when it deferred issues as to Red Bird's interim operating costs in the Ocean Terrace / Pine  
12 Knoll Townes docket (W-1328, Sub 7), and would seem to be an appropriate approach in  
13 a transfer proceeding such as this one.

14 **Q. WHAT COSTS HAS RED BIRD INCURRED IN CONDUCTING ITS DUE**  
15 **DILIGENCE INQUIRY AND INVESTIGATION RELATING TO THE CROSBY**  
16 **SYSTEMS?**

17 A. We won't know the total due diligence and transactional costs associated with this (or  
18 any other) acquisition until the purchase actually closes. This is especially true when the  
19 acquisition approval process takes as much time as the Crosby case has. Our experience is  
20 that smaller systems often require more due diligence work than larger, better managed  
21 systems, as the document management, record keeping and regulatory compliance  
22 tendencies associated with smaller systems tends to be poor and often incomplete, requiring  
23 additional efforts in order to accurately determine what exists in the ground and in areas  
24 that sometimes have not been maintained for decades.

1 The due diligence activities undertaken by Red Bird in connection with the  
2 acquisition of the Crosby systems included surveying work, legal title work, preliminary  
3 civil engineering work, environmental compliance site surveys, and accounting due-  
4 diligence. As shown on Confidential Cox Direct Exhibit 2, as of the date of my testimony  
5 Red Bird has incurred costs [BEGIN CONFIDENTIAL] [REDACTED]

6 [REDACTED]  
7 [REDACTED] [END CONFIDENTIAL]

8 **Q. WHAT IS THE ROLE OF DUE DILIGENCE INVESTIGATIONS IN**  
9 **CONNECTION WITH EVALUATION OF POTENTIAL ACQUISITIONS?**

10 A. Due diligence efforts provide preliminary insight to a potential purchaser as to the  
11 condition of a utility system and the problems and issues that must be addressed. As noted  
12 above, the full scope and scale of those problems cannot be truly known until we have  
13 acquired and begun to operate a system. Due diligence is not a process that is limited to  
14 utility acquisitions. Any business considering a significant acquisition routinely conducts  
15 due diligence to determine the condition of the assets it proposes to acquire, to confirm that  
16 clear title to those assets can be acquired, and to estimate the nature and extent of required  
17 future capital investments.

18 The Commission should encourage due diligence in reviewing possible utility  
19 acquisitions with the knowledge that not every system that is reviewed will be acquired.  
20 This is especially the case with regard to troubled and distressed systems, where investment  
21 is required in order to address problems and bring systems into compliance. Without due  
22 diligence it would be impossible for Red Bird to acquire systems with a reasonable  
23 understanding of what will be required to operate the system in a manner that ensures  
24 customers receive safe and reliable utility service provision. Without the basic knowledge

1 our due diligence activities provide about systems we acquire, achieving the objective I  
2 just mentioned would be extremely difficult if not impossible. CSWR prudently  
3 investigates acquisition opportunities that present themselves and this analysis necessarily  
4 involves the expenditure of time by properly trained employees and the use of consulting  
5 engineers, lawyers, accountants, and other experts. There are some potential acquisitions  
6 which, after proper due diligence, are shown to be not in the best interests of CSWR or its  
7 operating subsidiary's ratepayers. However, these are legitimate business expenses and this  
8 type "opportunity cost" should be shared with ratepayers, just as the benefits are shared.

9 Finally, without due diligence we would be unable to provide some of the  
10 information required to prepare and submit a transfer application. Likewise, without the  
11 information acquired through the due diligence process we would be unable to respond to  
12 many of the data requests posed by Public Staff over the life of this acquisition docket.

13 Reasonable due diligence efforts are necessary to make prudent acquisition  
14 decisions and are a reasonable and necessary part of this process and therefore should be  
15 recoverable. It is reasonable and appropriate that the Company's due diligence costs  
16 associated with investigating the Crosby systems and transactional costs incurred to this  
17 point, as shown in Confidential Cox Direct Exhibit 2, be included in rate base, subject to  
18 being recovered in the Company's first general rate case.

19 **Q. THE NOTICE TO CUSTOMERS ATTACHED TO THE PROCEDURAL**  
20 **ORDER ISSUED IN THIS CASE ESTIMATED A MONTHLY RATE IMPACT OF**  
21 **\$33.13 PER CUSTOMER THAT WAS ATTRIBUTED TO THE PURCHASE**  
22 **PRICE RED BIRD WOULD PAY FOR THE CROSBY ASSETS, THE DUE**  
23 **DILIGENCE COSTS IT WOULD INCUR, AND THE CAPITAL**  
24 **IMPROVEMENTS IT BELIEVES WOULD BE REQUIRED AFTER CLOSING.**  
25 **WHAT ARE YOUR THOUGHTS REGARDING THAT ESTIMATE?**



1 A. Let me begin by saying I do not believe it is possible at this time to accurately estimate  
2 the future impact on rates of any cost that might be incurred to consummate Red Bird's  
3 proposed acquisition of the Crosby systems. For one thing, the final amounts of the costs  
4 referenced in the procedural order won't be known until sometime after the transaction is  
5 complete. For another thing, the estimate assumes future rates for the customers served by  
6 the Crosby systems will be set on a stand-alone basis, which is not how CSWR hopes rates  
7 will be set in the future. In its initial North Carolina rate cases, Red Bird intends to propose  
8 consolidated, statewide rates, which means the costs of acquiring the Crosby assets would  
9 be mixed with similar costs for all other systems Red Bird acquires in North Carolina.  
10 Spreading costs over a significantly larger customer base – Crosby has only 210 water  
11 customers and 290 sewer customers – can significantly reduce the per customer impact of  
12 acquisition-related costs. Because no one can currently know the amount of transaction-  
13 related costs relating to acquisition of the Crosby systems caused by to the length of the  
14 transfer approval process, how those costs would be treated for ratemaking purposes, or  
15 what rate design would be approved to recover such costs, no reliable estimate of future  
16 rates for Crosby customers is possible.

17 Beyond those general concerns, I believe the estimate included in the procedural  
18 order significantly overstates the likely impact Red Bird's proposed acquisition would have  
19 on customer rates. First, it assumes a standalone rate which is a significant driver. Second,  
20 this estimate is based on preliminary engineering which can only be confirmed after actual  
21 operation begin, as stated above. Third, it ignores the economies of scale CSWR has  
22 proven it is able to achieve in individual states once acquisitions begin.

1           The estimated rate is also overstated because it assumes all post-closing capital  
2 improvements are attributable to and specific to Red Bird’s acquisition of the Crosby  
3 systems. In fact, most if not all capital improvements we have identified thus far will be  
4 required to ensure the Crosby systems are compliant with applicable health and  
5 environmental regulations and capable of providing safe and reliable service to customers.  
6 Therefore, no matter who owns the system – Crosby, Red Bird, or some third party – capital  
7 necessary to upgrade and improve facilities must be invested to address such issues and  
8 that investment will impact future rates. Crosby is a failing utility and it needs reinvestment  
9 and new management to provide safe and reliable service. Point being that the issues in  
10 the Crosby systems will have to addressed, either by Red Bird or someone else, if those  
11 systems are to be brought into compliance.

12           Regarding the final cost element included in the rate impact estimate – due  
13 diligence costs associated with the transaction – I think the Commission would be making  
14 a mistake if it concludes that reasonable due diligence, transactional, and regulatory costs  
15 can’t be recovered because they likely would cause an increase in future service rates. I say  
16 this for several reasons. First, as previously explained this system poses a potential human  
17 health risk to the customers and surrounding residents. Second, as I explained earlier in  
18 my testimony, due diligence and other transaction-related costs are part of every acquisition  
19 transaction and are not unique to this case. As mentioned previously, due diligence is  
20 required to provide Red Bird basic information about a system it proposes to acquire so  
21 that when we acquire the system we are able to operate it in a manner that ensures we are  
22 able to provide service to our customers. Establishing a regulatory policy that such costs  
23 are unrecoverable in rates would create a significant disincentive for future acquisitions in

1 North Carolina, including those of troubled and distressed water and/or wastewater systems  
2 whose acquisition by competent and adequately capitalized companies like Red Bird  
3 clearly is in the public interest. Furthermore, disallowing those costs would rob the  
4 Commission of its ability to understand the unique challenges small water and sewer  
5 service providers face in terms of even providing basic service. As for regulatory costs,  
6 those are unavoidable because Commission review and approval of public utility  
7 acquisitions is required by law. The costs are highlighted by the amount of time the Crosby  
8 transfer application has been pending. As further evidence of how “mainstream” due  
9 diligence and regulatory costs are to transactions such as the one currently under  
10 consideration, I note the Uniform System of Accounts for small water and wastewater  
11 companies, which was created by NARUC, expressly provides for the capitalization of  
12 those costs. I therefore would not expect the Commission to deny Red Bird the right to  
13 seek recovery of those costs in a future rate case.

14 **Q. ARE RED BIRD AND CSWR FAMILIAR WITH THE COMMISSION'S**  
15 **RULES AND REGULATIONS GOVERNING WATER UTILITIES AND DO**  
16 **THOSE COMPANIES PLEDGE TO OPERATE THE SYSTEM AT ISSUE IN THIS**  
17 **DOCKET IN A MANNER THAT COMPLIES WITH THOSE RULES AND**  
18 **REGULATIONS?**

19 A. Yes, CSWR and Red Bird are familiar with the Commission's rules and regulations and  
20 pledge to operate the Crosby systems in a manner that complies with all Commission  
21 requirements and all applicable state statutes and regulations.

22 **Q. HOW DOES RED BIRD PROPOSE TO SATISFY THE FINANCIAL**  
23 **SECURITY REQUIREMENTS IMPOSED BY COMMISSION RULE R7-37?**

24 A. To provide the financial security required by the Commission’s rules, Red Bird will  
25 post its own bond, to be secured by a corporate surety bond in the amount recommended  
26 by Public Staff, in a form that complies with Commission Rule R7-37.

1 **Q. DO YOU BELIEVE THE PROPOSED TRANSACTION IS IN THE PUBLIC**  
2 **INTEREST?**

3 A. Yes. I believe Red Bird's proposed acquisition of the water and wastewater systems  
4 currently owned and operated by Crosby will be consistent with and would promote the  
5 public interest. Transfer of these systems to a well-capitalized enterprise that is a  
6 professional utility, will be in the best interest of the Crosby customers. Red Bird and  
7 CSWR are fully qualified, in all respects, to own and operate those systems and to  
8 otherwise provide safe and adequate service.

9 **Q. DOES THIS CONCLUDE YOUR TESTIMONY AT THIS TIME?**

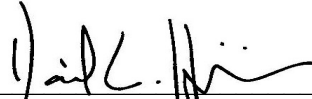
10 A. Yes.

**CERTIFICATE OF SERVICE**

I hereby certify that a true and exact copy of the redacted public version of the foregoing document, has been served on all counsel of record for all parties in this docket, if any, and the Public Staff, by either depositing same in a depository of the United States Postal Service, first-class postage prepaid and mailed by the means specified below, or by electronic delivery.

This the 2<sup>nd</sup> day of February, 2023.

BURNS, DAY & PRESNELL, P.A.



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**STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH**

**DOCKET NO. W-992, Sub 8  
DOCKET NO. W-1028, Sub 9**

In the Matter of  
Application by Red Bird Utility Operating )  
Company, LLC, 1650 Des Peres Road, )  
Suite 303, St. Louis, Missouri, 63131, and )  
Crosby Utilities, Inc., 7536 NC Highway 39, )  
Zebulon, North Carolina 27597, for Authority )  
To Transfer the Baywood Forest Subdivision )  
Water and Wastewater Utility Systems and )  
the Cottonwood Subdivision Wastewater )  
Utility System and Public Utility Franchise )  
in Wake County, North Carolina, and for )  
Approval of Rates )

**CONFIDENTIAL EXHIBIT 1 TO DIRECT TESTIMONY OF JOSIAH COX**

Rate base calculation

**FILED UNDER SEAL**

**STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
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Approval of Rates )

**CONFIDENTIAL EXHIBIT 2 TO DIRECT TESTIMONY OF JOSIAH COX**

Due diligence expense

**FILED UNDER SEAL**