

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. W-1328, SUB 11

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Application by Red Bird Utility Operating)
Company, LLC d/b/a Red Bird Water)
for a Certificate of Public Convenience)
and Necessity to Provide Water and)
Sewer Utility Service to Pine Mountain)
Lakes Subdivision in Burke County,)
North Carolina and for Approval of Rates)
	ORDER SCHEDULING HEARINGS, ESTABLISHING DISCOVERY GUIDELINES, AND REQUIRING CUSTOMER NOTICE

BY THE COMMISSION: On September 30, 2021, Red Bird Utility Operating Company, LLC d/b/a Red Bird Water (Red Bird) filed with the Commission an Application for a Certificate of Public Convenience and Necessity and for Approval of Rates (Application) seeking to provide water and sewer utility service to Pine Mountain Lakes subdivision in Burke County, North Carolina in accordance with N.C. Gen. Stat. § 62-110. Red Bird proposes to serve 131 customers in total consisting of 95 residential water customers, two commercial water customers, and 34 sewer customers.

Upon acquisition, Red Bird plans to make approximately \$753,950 in capital improvements to the water utility system, including installing SCADA; replacing pump controllers, valves, and distribution panelboards; repairing wellhouse No. 7, the concrete structure supporting a motor in North Ridge Pump Station No. 1, and the access road to North Ridge Pump Station; installing security fencing, new roofs on pump stations No. 1, 2, and 3, centrifugal pumps with new piping in all pump stations, a new storage tank at the Nutbush site, and a redundant pump in North Ridge stations; and installing a chlorine booster station at each North Ridge station.¹

Red Bird also plans to make approximately \$522,000 in capital improvements to the wastewater utility system, including replacing walkways and stairs, and suction lift pumps; installing a new influent screen, new standby generator, a SCADA system, a new gravel access road, and new security fencing; and rehabilitating the package plant's exterior steel surface.²

¹ Information provided in Attachment F to the Application – Pine Mountain Water System Summary.

² Information provided in Attachment F to the Application – Pine Mountain Wastewater System Summary.

Pine Mountain Lakes is not currently regulated by the Commission. The water and sewer utility systems are currently owned and operated by the property owners association (POA). The current POA rates are:

- Residential water flat-rate per month: \$ 35.56
- Commercial water flat-rate per month: \$400.00
- Sewer flat rate per month: \$ 27.72 per toilet

On November 1, 2021, the Public Staff filed a deficiency letter outlining information that was needed to complete the Application. On November 3, 2021, and February 3, 2023, Red Bird filed supplemental material to address deficiencies identified by the Public Staff.

On July 25, 2023, the Public Staff filed a second deficiency letter outlining additional, updated information needed to complete the Application and recommended that the Commission determine that the Application is incomplete. On July 31, 2023, the Commission issued an Order Finding Application Incomplete and Request for Additional Information.

Pursuant to the Commission's Order, on October 19, 2023, Red Bird filed additional information to address the issues identified in the Public Staff's July 25, 2023, letter.

On November 2, 2023, the Public Staff filed a third deficiency letter outlining remaining information still needed to complete the Application and recommended that the Commission determine that the Application is incomplete. On November 3, 2023, the Commission issued a Second Order Determining Application Incomplete.

On December 15, 2023, Red Bird filed additional information to address the issues identified in the Public Staff's November 2, 2023, letter.

On January 3, 2024, the Public Staff filed a letter with the Commission indicating that this docket now includes all the information required for a complete Application.

On January 5, 2024, the Commission issued an Order Finding Application Complete and Requiring the Public Staff to Provide Specific Application Data. On January 12, 2024, the Public Staff provided the information requested in the Commission's January 5, 2024 Order.

Based upon the foregoing, and the recommendation of the Public Staff, the Commission hereby establishes the procedural schedule, including filing requirements of Red Bird, the Public Staff, and other parties, and requires that Red Bird provide public notice to all affected customers of the Application, including the applied for rates and the scheduled hearings.

The guidelines regarding discovery in this docket, subject to modification for good cause shown, are as follows:

1. Any deposition which a party desires to take shall be taken before the deadline for filing of the Public Staff and intervenor testimony. Notice of deposition shall be served on all parties at least 7 days prior to the taking of the deposition. Notice of deposition and all other discovery notices, requests and motions shall be served on the appropriate parties by hand delivery or facsimile, or by electronic delivery if the receiving party has agreed to receipt by electronic delivery.

2. Any motion for subpoena of a witness to appear at the expert witness hearing shall be filed with the Commission before the deadline for the filing of the Public Staff and intervenor testimony, shall be served by hand delivery or facsimile to the person sought to be subpoenaed at or before the time of filing with the Commission, and shall make a reasonable showing that the evidence of such person will be material and relevant to an issue in the proceeding. See N.C. Gen. Stat. § 62-62. Unless an objection is filed, the Chief Clerk shall issue the requested subpoena 24 hours after such motion is filed.

3. Formal discovery requests related to the Application and Red Bird's prefiled direct testimony shall be served on Red Bird not later than 5 business days prior to the deadline for filing of the Public Staff and intervenor testimony. The party served shall have up to 3 business days to file with the Commission objections to discovery requests on an item-by-item basis.

4. Formal discovery requests of the Public Staff or intervenors shall be served not later than 5 calendar days after such testimony is filed. The party served shall have up to 3 business days to file with the Commission objections to the discovery requests on an item-by-item basis.

5. Formal discovery requests related to the Red Bird's prefiled rebuttal testimony shall be served on the Red Bird not later than 3 business days after such testimony is filed. The party served shall have up to 3 calendar days to file with the Commission objections to the discovery requests on an item-by-item basis, but in no event shall objections be filed later than 6 calendar days after rebuttal testimony was filed. Discovery related to rebuttal testimony shall be limited to new material introduced in such rebuttal testimony and will be carefully scrutinized upon objection that such discovery should have been sought during the initial period of discovery.

6. Discovery requests need not be filed with the Commission when served; however, any party filing objections shall attach a copy of the relevant discovery request to the objections. Each discovery request, or part thereof, to which no objection is filed shall be answered by the time objections are due, subject to other agreement of the affected parties or other order of the Commission. Upon the filing of objections, the party seeking discovery shall have 2 calendar days to file a motion to compel with the Commission, and the party objecting to discovery shall have 1 calendar day thereafter to file a response. All

objections, motions to compel, and responses shall be served on the other affected party at or before the time of filing with the Commission.

7. A party shall not be granted an extension of time to pursue discovery because of that party's late intervention or other delay in initiating discovery.

The Commission recognizes that in the past most discovery has been conducted in an informal manner without the need for Commission involvement or enforcement, and that such has been generally successful. The above guidelines are without prejudice to the parties conducting informal discovery or exchanging information by agreement at any time with the understanding that such will not be enforceable by the Commission if outside the guidelines.

Further, the Commission finds good cause to require Red Bird and all other parties who file exhibits and workpapers that include tables of numbers and calculations to provide the Commission Staff, the Public Staff, and any other party upon request from such party an electronic version of all such exhibits and workpapers, with formulas intact.

IT IS, THEREFORE, ORDERED as follows:

1. That a hearing for the purpose of receiving public witness testimony on Red Bird Application shall be, and is hereby, scheduled to begin at 7:00 p.m. on Tuesday, February 20, 2024, in the Burke County Courthouse, 201 South Green Street, Courtroom 1, Morganton, North Carolina 28655. *That the Commission may cancel the public witness hearing if no significant protests are received on or before Tuesday, February 13, 2024;*

2. That the public witness hearing will be conducted solely for the purpose of receiving the testimony of customers in accordance with Commission Rule R1-21(g). The Commission reserves the right to limit testimony at the public witness hearing pursuant to Commission Rule R1-21(g)(5);

3. That Red Bird is required to file a verified report addressing all customer service and service quality complaints expressed during the customer hearing held on Tuesday, February 20, 2024, within 14 days of the conclusion of the customer hearing. The Public Staff shall, and other intervenors may, file a verified response and any comments to Red Bird's report on or before Friday, March 15, 2024;

4. That a hearing for the purpose of receiving expert witness testimony on Red Bird's Application is scheduled to begin at 1:00 p.m. on Monday, March 25, 2024, and continuing as necessary until conclusion. The hearing will be held in Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina 27603;

5. That the parties shall comply with the discovery guidelines established herein and shall work in a cooperative manner as to discovery;

6. That petitions to intervene in this proceeding shall be filed pursuant to Commission Rules R1-5 and R1-19 not later than Monday, February 26, 2024;

7. That Red Bird's prefiled direct testimony and exhibits shall be filed on or before Friday, February 9, 2024;

8. That the Public Staff and other intervenors' prefiled direct testimony and exhibits shall be filed on or before Monday, February 26, 2024;

9. That Red Bird's prefiled rebuttal testimony and exhibits, if any, shall be filed on or before Monday, March 11, 2024;

10. That an officer or representative from Red Bird is required to appear before the Commission at the time and place of the expert witness hearing to testify concerning any of the information contained in the Application;

11. That any parties filing supporting exhibits in PDF format shall provide the Commission Staff electronic versions of the exhibits filed in native Excel format via email at NCUCexhibits@ncuc.net, including all of the supporting tabs and formulas, within three days of the filing of such exhibits (or within three days of the issuance of this order if already filed with the Commission); and that any parties filing exhibits and workpapers that include tables of numbers and calculations shall provide the Public Staff and any other party upon request an electronic version of all such exhibits and workpapers, with formulas intact;

12. That Red Bird shall consult with all other parties and file, no later than Wednesday, March 20, 2024, a list of witnesses to be called at the expert witness hearing, the order of witnesses, and each party's estimated time for cross-examination. If the parties cannot agree, the remaining parties shall, no later than noon on Friday, March 22, 2024, make a filing indicating their points of disagreement with the Red Bird's filing; and

13. That Red Bird shall consult with the Public Staff to develop a Notice to Customers to be delivered to all affected customers and shall file the proposed Notice to Customers for approval by the Commission no later than three business days after the date of this Order.

ISSUED BY ORDER OF THE COMMISSION.

This the 16th day of January, 2024.

NORTH CAROLINA UTILITIES COMMISSION



Tamika D. Conyers, Deputy Clerk