

INFORMATION SHEET

PRESIDING: Commissioner ToNola D. Brown-Bland, Chair Charlotte A. Mitchell, Commissioner Jeffrey A. Hughes

PLACE: Dobbs Building, Raleigh, NC

DATE: Monday, March 28, 2022

TIME: 3:05 p.m. – 3:55 p.m.

DOCKET NOS.: W-1328, Sub 4 and W-1040, Sub 10

COMPANY: Red Bird Utility Operating Company, LLC

DESCRIPTION: In the Matter of Application by Red Bird Utility Operating Company, LLC, for Authority to Transfer the Bear Den Acres Development Water System and Public Utility Franchise in McDowell County, North Carolina, and for Approval of Rates

VOLUME NUMBER: 2

APPEARANCES

See Attached

WITNESSES

See Attached

EXHIBITS

See Attached

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**CONFIDENTIAL COPIES OF TRANSCRIPTS AND EXHIBITS ORDERED BY:**

REPORTED BY: Kim Mitchell

TRANSCRIBED BY: Kim Mitchell

DATE FILED: April 19, 2022

TRANSCRIPT PAGES: 44

PREFILED PAGES: 11

TOTAL PAGES: 55

1 PLACE: Dobbs Building, Raleigh, North Carolina  
2 DATE: Monday, March 28, 2022  
3 DOCKET NO.: W-1328, Sub 4  
4 W-1040, Sub 10  
5 TIME: 3:05 p.m. - 3:55 p.m.  
6 BEFORE: Commissioner ToNola D. Brown-Bland, Presiding  
7 Chair Charlotte A. Mitchell  
8 Commissioner Jeffrey A. Hughes  
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11

12 IN THE MATTER OF:  
13 Application by Red Bird Utility Operating Company,  
14 LLC, 1650 Des Peres Road, Suite 303, St. Louis,  
15 Missouri 63131, and Bear Den Acres Development,  
16 Inc., 600 Bear Den Mountain Road, Spruce Pine, North  
17 Carolina 28777, for Authority to Transfer the Bear  
18 Den Acres Development Water System and Public  
19 Utility Franchise in McDowell County, North  
20 Carolina, and for Approval of Rates  
21

22 VOLUME 2  
23  
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NORTH CAROLINA UTILITIES COMMISSION

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A P P E A R A N C E S:  
FOR RED BIRD UTILITY OPERATING COMPANY, LLC:  
Daniel C. Higgins, Esq.  
Burns Day & Presnell, PA  
Post Office Box 10867  
Raleigh, North Carolina 27608  
  
FOR THE USING AND CONSUMING PUBLIC:  
Megan Jost, Esq.  
Public Staff - North Carolina Utilities Commission  
4326 Mail Service Center  
Raleigh, North Carolina 27699-4300

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Apr 20 2022

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**NORTH CAROLINA UTILITIES COMMISSION**  
**PUBLIC STAFF - APPEARANCE SLIP**

DATE March 28, 2022

DOCKET Nos.: W-1040, Sub 10 &  
W-1328, Sub 4

PUBLIC STAFF ATTORNEY Megan Jost

ORDER FOR TRANSCRIPT OF TESTIMONY TO BE **E-MAILED** TO THE PUBLIC STAFF - PLEASE INDICATE YOUR DIVISION AS WELL AS YOUR E-MAIL ADDRESS BELOW:

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ECONOMICS \_\_\_\_\_  
LEGAL megan.jost@psncuc.nc.gov  
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COUNSEL/MEMBER(S) REQUESTING A **CONFIDENTIAL** TRANSCRIPT WHO HAS SIGNED A CONFIDENTIALITY AGREEMENT WILL NEED TO SIGN BELOW.

Megan Jost  
s/Megan Jost  
Signature of Public Staff Attorney

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Apr 20 2022

NORTH CAROLINA UTILITIES COMMISSION  
APPEARANCE SLIP

DATE: 3/28/2022 DOCKET NO.: W-1328 SUB 4  
ATTORNEY NAME and TITLE: JANIE L. HIGGINS

FIRM NAME: BURNS, RAY & PRESNELL, PA

ADDRESS: PO BOX 10867

CITY: RANDOLPH STATE: NC ZIP CODE: 27608

APPEARANCE ON BEHALF OF: RED BIRD UTILITY OPERATING  
COMPANY, LLC

APPLICANT:  COMPLAINANT:  INTERVENOR:

PROTESTANT:  RESPONDENT:  DEFENDANT:

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To receive an electronic **CONFIDENTIAL** transcript, please complete the following:

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Email: jhiggins@brpnc.com

SIGNATURE: Janie L. Higgins

(Required for distribution of **CONFIDENTIAL** transcript)

**BEFORE THE NORTH CAROLINA UTILITIES COMMISSION**

DOCKET NO. W-1040, SUB 10  
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 Bear Den	)	
Acres Development, Inc., 600 Bear Den	)	SETTLEMENT AGREEMENT
Mountain Road, Spruce Pine, North Carolina	)	AND STIPULATION
28777, for Authority to Transfer the Bear Den	)	
Acres Development Water System and Public	)	
Utility Franchise in McDowell County, North	)	
Carolina, and for Approval of Rates	)	

Red Bird Utility Operating Company, LLC (Red Bird or Company), and the Public Staff – North Carolina Utilities Commission (Public Staff) (collectively the Stipulating Parties), through counsel and pursuant to N.C. Gen. Stat. § 62-69 and Rule R1-24(c) of the Rules and Regulations of the North Carolina Utilities Commission (Commission), respectfully submit the following Settlement Agreement and Stipulation (Stipulation) for consideration by the Commission in this proceeding. The Stipulating Parties hereby stipulate and agree as follows:

**I. BACKGROUND**

A. On December 4, 2020, Red Bird and Bear Den Acres Development, Inc. (Bear Den), filed with the Commission an Application for Transfer of Public Utility Franchise and for Approval of Rates (Application) seeking authority to transfer the water utility system and public utility franchise serving Bear Den Acres Development in McDowell County, North Carolina, from Bear Den to Red Bird and approval of rates. Red Bird filed with the Commission supplemental and additional

materials in support of its Application on March 29, April 19, April 20, and October 6, 2021.

B. On January 5, 2022, the Commission issued its Order Scheduling Hearing, Establishing Discovery Guidelines, and Requiring Customer Notice (Scheduling Order). The Commission attached as Appendix A to its Scheduling Order a Notice to Customers stating that a public witness hearing has not yet been scheduled and that the Commission may decide the matter without a public witness hearing if no significant protests are received within 45 days of the date of the notice.

C. On January 21, 2022, Red Bird filed a certificate of service stating that the Notice to Customers was mailed or hand delivered to all affected customers by the date specified in the Scheduling Order, January 19, 2022.

D. On February 4, 2022, Red Bird filed a Notice of Supplemental Service of Notice to Customers. Red Bird stated that the Notice to Customers was originally mailed to the service addresses rather than the billing addresses of at least some Bear Den customers, and that the Company had also mailed the Notice to Customers to the billing addresses of all Bear Den customers on January 31, 2022, to ensure that all customers are properly notified.

E. On February 11, 2022, Red Bird filed the direct testimony of Josiah Cox, President of Red Bird Utility Operating Company, LLC, and CSWR, LLC, a Missouri limited liability company formed to provide managerial, technical, and financial support to its utility operating affiliates, including Red Bird. Witness Cox



included as Exhibit Cox 1 a table of the categories of costs associated with the transfer, along with the estimated and actual costs incurred by Red Bird. The estimated costs listed in Exhibit Cox 1 are \$40,000 for diligence costs, \$30,000 for transactional costs, and \$14,000 for regulatory costs, adding up to a total of \$84,000. The actual costs incurred to date total \$57,851.

F. Subsequent to the filing of Red Bird's Application in this docket, the Public Staff engaged in substantial discovery of Red Bird regarding the matters addressed by the Company's Application and supplemental and additional materials filed with the Commission in support of its Application.

G. After settlement negotiations, in which concessions from their litigation positions were made by both parties, the Stipulating Parties were ultimately able to arrive at a settlement, the terms of which are reflected in the following sections of this Stipulation.

## **II. STIPULATION AND AGREEMENT OF THE STIPULATING PARTIES**

The Stipulating Parties agree and stipulate as follows:

A. Red Bird agrees to post a bond in the amount of \$75,000 for the Bear Den Acres service area on or before March 18, 2022.

B. The transfer of the Bear Den system to Red Bird should be approved.

C. The Company agrees not to pursue an acquisition adjustment related to the Bear Den system in this or any future proceeding.

D. The Stipulating Parties agree that rate base for the Bear Den Acres system should be \$3,153, plus up to \$5,000 for closing costs. The actual amount of the closing costs should be determined in Red Bird's next general rate case.

E. The Stipulating Parties agree that Red Bird may request recovery of the remaining costs associated with the transfer of the Bear Den Acres system to Red Bird up to \$25,496 for engineering due diligence work in its next general rate case, provided that the resulting work results in reasonable and prudent capital investments to improve the Bear Den Acres system. Any portion of the \$25,496 associated with reasonable and prudent improvements should be included as utility plant in service in the Company's next general rate case filed after the improvements become used and useful in providing service.

F. Red Bird agrees not to seek recovery of any additional costs associated with the transfer, including due diligence, transactional, and regulatory costs, other than those listed in Paragraphs II.D. and II.E. above.

### **III. AGREEMENT TO SUPPORT SETTLEMENT; NON-WAIVER.**

A. The Stipulating Parties, and their agents, witnesses, and representatives, will act in good faith to support the reasonableness of this Stipulation in any hearing before the Commission and any proposed order or brief in this docket; provided, however, that the settlement of any issue pursuant to this Stipulation shall not be cited as precedent by any of the Stipulating Parties in any other proceeding or docket before this Commission or on appeal before the North Carolina Court of Appeals or North Carolina Supreme Court. The provisions of this Stipulation do not necessarily reflect any position asserted by any of the Stipulating

Parties. Rather, they reflect settlement among the Stipulating Parties as to all issues and, notwithstanding the items agreed and stipulated to in Section II.A.-F. above, no Stipulating Party waives the right to assert any position on any issue in any future docket before the Commission. The Stipulating Parties further agree that this Stipulation is in the public interest because it reflects a give-and-take settlement of contested issues.

B. This Stipulation is a product of negotiation among the Stipulating Parties, and no provision of this Stipulation shall be strictly construed in favor of or against any Party.

#### **IV. Introduction of Testimony and Waiver of Cross-Examination.**

A. The Stipulating Parties agree that all pre-filed testimony and exhibits of the Stipulating Parties, including any supplemental testimony filed in support of this Stipulation, may be received in evidence without objection, and each Stipulating Party waives all right to cross examine all of the Stipulating Parties' witnesses with respect to pre-filed testimony and exhibits. If, however, questions are asked by any Commissioner or non-Stipulating Party, then any Stipulating Party may respond to such questions by presenting testimony or exhibits and cross-examining any witness with respect to such testimony and exhibits; provided, however, that such testimony and/or exhibits shall not be inconsistent with this Stipulation. There are no intervenors in these dockets and unless the Commission has questions for a Stipulating Party, the Stipulating Parties agree and request that the hearing scheduled for March 28, 2022, be cancelled.

## **V. STIPULATION BINDING ONLY IF ACCEPTED IN ITS ENTIRETY**

This Stipulation is the product of negotiation and compromise of a complex set of issues, and no portion of this Stipulation is or will be binding on any of the Parties unless the entire Settlement Agreement and Stipulation is accepted by the Commission. If the Commission rejects any part of this Stipulation or approves this Stipulation subject to any change or condition, or if the Commission's approval of this Stipulation is rejected or conditioned by a reviewing court, the Stipulating Parties agree to meet and discuss the applicable Commission or court order within five business days of its issuance and to attempt in good faith to determine if they are willing to modify the Stipulation consistent with the order. No Party shall withdraw from the Stipulation prior to complying with the foregoing sentence. If any Party withdraws from the Stipulation, each Party retains the right to seek additional procedures before the Commission, including cross-examination of witnesses, with respect to issues addressed by the Stipulation and shall not be bound or prejudiced by the terms and conditions of the Stipulation.

## **VI. COUNTERPARTS**

This Stipulation may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute the same instrument. Execution by facsimile signature shall be deemed to be, and shall have the same effect as, execution by original signature.

The foregoing is agreed and stipulated to this the 28th day of February, 2022.

Red Bird Utility Operating Company, LLC

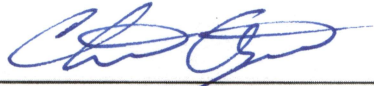
By:



\_\_\_\_\_  
Josiah Cox, Manager

Public Staff – North Carolina Utilities  
Commission

By:



\_\_\_\_\_  
Christopher J. Ayers  
Executive Director