

PUBLIC

INFORMATION SHEET

PRESIDING: Commissioner McKissick, Jr. Presiding, Commissioners Duffley and Hughes  
PLACE: Dobbs Building, Raleigh, NC  
DATE: Monday, November 20, 2023  
TIME: 6:05 p.m. to 6:55 p.m.  
DOCKET: W-933 Sub 12 and W-1328 Sub 0  
COMPANY: Red Bird Utility Operating Company, LLC  
and Etowah Sewer Company, Inc.

DESCRIPTION: In the Matter of Joint Application of Red Bird Utility Operating Company, LLC, d/b/a Red Bird Water and Etowah Sewer Company, Inc. for Authority to Transfer of Public Utility Franchise and for Approval of Rates

VOLUME 3

APPEARANCES

See attached

WITNESSES

See attached

EXHIBITS

REPORTED BY: KimMitchell  
TRANSCRIBED BY: Kim Mitchell  
DATE FILED: 12/22/2023

TRANSCRIBED PAGES: 43  
PREFILED PAGES: 0  
TOTAL PAGES: 43

1 PLACE: Dobbs Building, Raleigh, North Carolina

2 DATE: Monday, November 20, 2023

3 TIME: 6:05 p.m. - 6:55 p.m.

4 DOCKET: W-933, Sub 12 & W-1328, Sub 0

5 BEFORE: Commissioner Floyd B. McKissick, Jr.

6 Commissioner Kimberly W. Duffley

7 Commissioner Jeffrey A. Hughes

8

9

10

11

12 IN THE MATTER OF:

13 Joint Application by Red Bird Utility Operating

14 Company, LLC d/b/a Red Bird Water and Etowah Sewer

15 Company, Inc. for Transfer of Public Utility Franchise

16 and for Approval of Rates

17

18 VOLUME 3

19

20

21

22

23

24

1 A P P E A R A N C E S:

2 FOR RED BIRD UTILITY OPERATING COMPANY, LLC d/b/a

3 RED BIRD WATER AND ETOWAH SEWER COMPANY, INC.:

4 Melinda L. McGrath, Esq., Esq.

5 Molly McIntosh Jagannathan, Esq.

6 Troutman Pepper Hamilton Sanders LLP

7 301 South College Street, Suite 3400

8 Charlotte, North Carolina 28202

9

10 FOR THE USING AND CONSUMING PUBLIC

11 Davia Newell, Esq.

12 James Bernier, Esq.

13 Public Staff - North Carolina Utilities Commission

14 4326 Mail Service Center

15 Raleigh, North Carolina 27699-4326

16

17

18

19

20

21

22

23

24

NORTH CAROLINA UTILITIES COMMISSION

## T A B L E O F C O N T E N T S

## E X A M I N A T I O N S

	PAGE
JOSIAH COX, BRENT THIES, and JAMES BECKEMEIER	
Continued Cross Examination by Mr. Bernier .....	5
Cross Examination by Ms. Newell .....	20
Redirect Examination by Ms. Jagannathan .....	25
Examination by Commissioner McKissick .....	26
Examination by Commissioner Duffley .....	32

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

## E X H I B I T S

IDENTIFIED / ADMITTED

Public Staff Rebuttal Panel ..... / 24  
Cross Exhibit 1

Public Staff Rebuttal Panel ..... / 24  
Cross Exhibit 2

Public Staff Rebuttal Panel ..... 14 / 24  
Cross Exhibit 4

Public Staff Rebuttal Panel ..... 16 / 24  
Cross Exhibit 5

NORTH CAROLINA UTILITIES COMMISSION  
APPEARANCE SLIP

DATE: 11/1/2023 DOCKET NO.: W-1328 Sub O

ATTORNEY NAME and TITLE: KIRAN H. MEHTA

Melinda L. McBratney & Molly McIntosh Jagannathan

FIRM NAME: TROUTMAN ~~HAMILTON~~ PEPPER HAMILTON SANDERS, LLP

ADDRESS: 301 S. COLLEGE ST.

CITY: CHARLOTTE STATE: NC ZIP CODE: 28202

APPEARANCE ON BEHALF OF: RED BIRD

APPLICANT: ☒ COMPLAINANT: ☐ INTERVENOR: ☐

PROTESTANT: ☐ RESPONDENT: ☐ DEFENDANT: ☐

Non-confidential transcripts are located on the Commission's website. To view and/or print transcripts, go to <https://www.ncuc.net/>, hover over the Dockets tab, select Docket Search, enter the docket number, and click search, select the highlighted docket number and select Documents for a list of all documents filed.

**ONLY** fill out this portion if you have signed an NDA to receive **CONFIDENTIAL** transcripts and/or exhibits:

☒ Yes, I have signed the Confidentiality Agreement.

Email: kiran.mehta@troutman.com

SIGNATURE: [Signature]

(Signature Required for distribution of **CONFIDENTIAL** information)

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

DATE: November 1, 2023 DOCKET #: W-933, Sub 12  
W-1328, Sub 0

PUBLIC STAFF ATTORNEY: Gina Holt & Davia Newell  
James Bernier

TO REQUEST A **CONFIDENTIAL** TRANSCRIPT, PLEASE PROVIDE YOUR  
EMAIL ADDRESS BELOW:

ACCOUNTING: \_\_\_\_\_

CONSUMER SERVICES: \_\_\_\_\_

COMMUNICATIONS: \_\_\_\_\_

ENERGY: \_\_\_\_\_

ECONOMICS: \_\_\_\_\_

LEGAL: gina.holt@psncuc.nc.gov davia.newell@psncuc.nc.gov & james.bernier@

TRANSPORTATION: \_\_\_\_\_ psncuc.nc.gov

WATER: \_\_\_\_\_

Non-confidential transcripts are located on the  
Commission's website. To view and/or print, please access  
<https://ncuc.net>.

COUNSEL/MEMBER(S) REQUESTING A **CONFIDENTIAL** TRANSCRIPT  
WHO HAS SIGNED A CONFIDENTIALITY AGREEMENT WILL NEED TO  
SIGN BELOW.

/s/Gina Holt

/s/Davia Newell

**Red Bird Utility Operating Company, LLC**  
**Docket No. W-1328, Sub 0**  
**Etowah Sewer Company, Inc.**  
**Docket No. W-933, Sub 12**  
**Public Staff Data Request No. 14**  
**Date Sent: November 13, 2023**  
**Date Due: November 16, 2023**

**Public Staff Technical Contact:**

**Lynn Feasel**  
**Phone: (919) 733-0943**  
**E-Mail: [lynn.feasel@psncuc.nc.gov](mailto:lynn.feasel@psncuc.nc.gov)**

**Windley Henry**  
**Phone: (919) 733-0949**  
**Email: [windley.henry@psncuc.nc.gov](mailto:windley.henry@psncuc.nc.gov)**

**Mike Franklin**  
**Phone: (919) 715-2666**  
**E-Mail: [mike.franklin@psncuc.nc.gov](mailto:mike.franklin@psncuc.nc.gov)**

**Public Staff Legal Contact:**

**James Bernier, Jr.**  
**Phone: (919) 733-0976**  
**Email: [james.bernier@psncuc.nc.gov](mailto:james.bernier@psncuc.nc.gov)**

**Davia Newell**  
**Phone: (919) 733-0977**  
**Email: [davia.newell@psncuc.nc.gov](mailto:davia.newell@psncuc.nc.gov)**

**Gina Holt**  
**Phone: (919) 733-0971**  
**E-Mail: [gina.holt@psncuc.nc.gov](mailto:gina.holt@psncuc.nc.gov)**

**Jessica Heironimus**  
**Phone: (919) 733-0969**  
**Email: [jessica.heironimus@psncuc.nc.gov](mailto:jessica.heironimus@psncuc.nc.gov)**

**Erica Jones**  
**Phone: (919) 733-6113**  
**Email: [erica.jones@psncuc.nc.gov](mailto:erica.jones@psncuc.nc.gov)**

**Subject of Data Request: Public Cox Rebuttal Testimony – Accounting and Engineering**

**Please provide all responses to this request in searchable native electronic format (e.g., Excel, Word, or PDF files). If in Excel format, please include all working**



formulas. In addition, please include (1) the name and title of the individual who has the responsibility for the subject matter addressed therein, and (2) the identity of the person making the response by name, occupation, and job title. Please also refer to Public Staff Data Request 1 for instructions for responding to this and all other Data Requests served on the Company by the Public Staff in the above-captioned proceedings.

1. **Preliminary survey and analysis:** On page 5, lines 6-11 of his rebuttal testimony, witness Cox describes the work Red Bird commissioned. Please provide the following information:
  - a. Identify which repairs, improvements, and upgrades are required;
    - i. If required, are Mr. Cox and Red Bird committing to making those required repairs, improvements, and upgrades? When, in terms of months or years after closing?
  - b. Explanation of the distinction between distressed and troubled; and
  - c. Explanation of the contended significance of a system being designated distressed or troubled to this proceeding, including approval of transfer and approval of an acquisition adjustment.

#### **RESPONSE:**

1. Red Bird has not “commissioned” any work to date and will not until receiving a Commission order approving the proposed acquisition and a final design phase can occur in conjunction with a period of operational observation to verify that the recommended improvements from the third-party engineering partner (McGill) are both necessary and adequate for the system to provide safe, reliable, and environmentally compliant service to customers. At this stage of due diligence, the list of improvements and estimates of probable cost in the previously submitted engineering memorandum are the informed opinions of a third-party engineering firm with extensive experience in the state of North Carolina, not a finalized design, bid, proposal, or commissioning of work to be performed. Further design work or evaluation does not occur until after closing.

a. In the event that the Commission grants approves Red Bird’s application to acquire the Etowah system, Red Bird is committed to making necessary improvements to ensure that the Etowah sewer system can provide safe, reliable, environmentally compliant service to customers. As previously described, the project approach and the design phase will not occur until after closing when a final design phase can occur in conjunction with a period of operational observation to verify that the recommended improvements from the third-party engineering partner are both necessary and adequate for the system to provide safe, reliable, and environmentally compliant service to customers. The initial improvement phase for design

finalization, permitting, bidding, and construction is expected to be completed within 3 years of closing on the system, though this could change depending on the scope of the final improvement plan, the related permitting requirements, and supply chain issues related to equipment critical to improvement plans. Generally, CSWR/Red Bird anticipates that projects will be completed within 2-3 years within closing on a distressed utility.

b. The terms “distressed” and “troubled” are considered to be synonymous and are used interchangeably.

c. It is Red Bird’s belief that whether the selling utility is financially or operationally “troubled” is factor that is considered by the Commission when determining whether an acquisition adjustment should be authorized.

2. **Accurate assessment:** On page 5, lines 13-16 of his rebuttal testimony, witness Cox testifies that, “An accurate assessment of the condition of wastewater systems typically requires not just a visual inspection, but a physical inspection, which can uncover structural issues and those that may be cosmetically hidden.” Please provide the following information:

- a. What a physical inspection entails and describe how it differs from visual inspection.
- b. Whether Mr. Cox has personally conducted both visual and physical inspections of the Etowah WWTP and collection system; and
  - i. If yes, please provide the date(s) and any associated notes, pictures, memorandum, and/or reports;
- c. Whether Red Bird or its contractors, including but not limited to McGill, have conducted a physical inspection of the Etowah WWTP and collection system;
  - i. If yes, please provide the date(s) and any associated notes, pictures, memorandum, and/or reports.

**RESPONSE:**

a. A physical inspection would include an inspection of the facility to determine characteristics such as its functionality and the extent of defects identified in a visual inspection. A visual inspection is nothing more than an observation of the physical characteristics of a facility or piece of equipment that can be seen by the naked eye.

b. No, Mr. Cox has not personally conducted a visual or physical inspection of the Etowah wastewater treatment plant or collection system.

c. Yes, Red Bird’s third-party engineering partner (McGill) performed a site assessment on 12/4/2019 culminating in the previously provided engineering memorandum and the photos attached in the zip archive “DR 14.2c. McGill Etowah Photos.zip.” McGill associates also visited the sites to complete

survey work on 6/25/2020, 6/26/2020, 7/1/2020, 7/2/2020, 7/10/2020, and 2/22/2023 and produced the attached ALTA surveys, "DR 14.2c. Etowah ALTA Survey.pdf." CSWR's Director of Engineering Mr. Jacob Freeman also visited the site on 7/30/2019 as part of a preliminary site visit with CSWR's Regional Director Utility Acquisitions Sandy Neal. However, no photos of reports were taken on that visit.

3. Regarding the rebuttal testimony of witness Cox on page 6, line 1, please identify the page and line number of Mr. Franklin's testimony which witness Cox contends "simply dismisses [NOVs] as having no consequence."

**RESPONSE:**

Witness Franklin describes the NOVs on page 5, line 4 through page 7 line 14. On page 9, lines 5 through 16, witness Franklin quantifies system compliance using a percentage of days in compliance. And on page 11, line 22 through page 12, line 2, witness Franklin testifies "While the system has recently been issued NOVs, the NOVs associated with the WWTP are closed and Etowah has addressed the collection system violations identified in the January 2023 Compliance Inspection Report." Witness Franklin's testimony makes no impression of the severity of the NOVs received nor does it mention potential human and environmental health impacts that result from violations, such as sanitary system overflows.

4. On page 7, lines 11-18 of his rebuttal testimony, witness Cox discusses the seriousness and public health risks associated with violations, specifically fecal coliform limits and sanitary system overflows. Please provide a list of all exceedances and violations by CSWR and its subsidiaries that Red Bird considers very serious and significant public health risks.

**RESPONSE:** Red Bird objects to this request on the grounds that it unreasonably burdensome, irrelevant to the subject matter of this proceeding, and not reasonably calculated to lead to the discovery of admissible evidence in this proceeding pending in North Carolina. Subject to and notwithstanding these objections, and without waiver thereof, Red Bird responds as follows: The Company considers all violations serious. CSWR acquires troubled systems in every jurisdiction in which it operates and frequently enters into voluntary enforcement agreements with the regulatory enforcement agencies in each state. Please refer to the responses to DR 14.6 for more information on CSWR's cooperation with the Missouri Department of Natural Resources regarding the Berkshire Glenn wastewater treatment facility.


5. **ACC's criteria:** On page 12, lines 3-7 of his rebuttal testimony, witness Cox describes "indicia" that Etowah is "non-viable" and "distressed." Please provide the following information:
- Explanation of the distinction between non-viable and distressed; and
  - Explanation of the contended significance of a system being designated non-viable or distressed to this proceeding, including approval of transfer and approval of an acquisition adjustment.

a. Please see Red Bird's response to Request 1-b.

b. Please see Red Bird's response to Request 1-c.

6. **Compliance:** On page 12, lines 15-19 of his rebuttal testimony, witness Cox testifies that, "During that same time frame, Etowah has continued to receive NOV's, and, according to the United States Environmental Protection Agency's enforcement and compliance history online database, Etowah has been in a state of noncompliance for eleven of the last twelve quarters." Please provide the following information:
- Is Confluence Rivers Utility Operating Company, Inc. (Confluence Rivers) a subsidiary of CSWR and affiliate of Red Bird?
  - Does Confluence Rivers own and operate the Berkshire Glenn WWTF?
  - Based on your personal knowledge and the screenshots provided below from the referenced United States Environmental Protection Agency's enforcement and compliance history online database, has Berkshire Glenn been in a state of noncompliance for twelve of the last twelve quarters?

**Facility Summary**



**CONFLUENCE RIVERS - BERKSHIRE GLENN WWTF**  
**NE 120TH ST, KEARNEY, MO 64060**

FRS ID: 110022551709  
 EPA Region: 07  
 Latitude: 39.310496  
 Longitude: -94.404614  
 Locational Data Source: NPDES  
 Industries: --  
 Indian Country: N

**Related Reports**

- Enforcement Case Report
- CWA Pollutant Loading Report
- CWA Effluent Charts
- CWA DMR Exceedances Report
- [View Envirofacts Reports](#)

**Enforcement and Compliance Summary**

Statute	Compliance Monitoring Activities (5 years)	Date of Last Compliance Monitoring Activity	Compliance Status	Qtrs with NC (of 12)	Qtrs with Significant Violation	Informal Enforcement Actions (5 years)	Formal Enforcement Actions (5 years)	Penalties from Formal Enforcement Actions (5 years)	EPA Cases (5 years)	Penalties from EPA Cases (5 years)
CWA	1	07/08/2019	Significant/Category I Noncompliance	12	11	--	1	\$0	--	--

### Compliance Summary Data

Statute	Source ID	Current SNC/HPV	Current As Of	Qtrs with NC (of 12)	Data Last Refreshed
CWA	MO0128511	Yes	06/30/2023	12	11/03/2023

### Three-Year Compliance History by Quarter

[Download Data](#)

QTR 2	QTR 3	QTR 4	QTR 5	QTR 6	QTR 7	QTR 8	QTR 9	QTR 10	QTR 11	QTR 12	QTR 13+
12/31/20	01/01-03/31/21	04/01-06/30/21	07/01-09/30/21	10/01-12/31/21	01/01-03/31/22	04/01-06/30/22	07/01-09/30/22	10/01-12/31/22	01/01-03/31/23	04/01-06/30/23	07/01-11/03/23
Compliance	Significant/Category I Noncompliance	Significant/Category I Noncompliance	Significant/Category I Noncompliance	Significant/Category I Noncompliance	Significant/Category I Noncompliance	Significant/Category I Noncompliance	No Violation Identified	Significant/Category I Noncompliance	Significant/Category I Noncompliance	Significant/Category I Noncompliance	Violation Identified
- Monthly Average Limit	Effluent - Monthly Average Limit	Effluent - Monthly Average Limit	Effluent - Monthly Average Limit	Effluent - Monthly Average Limit	Effluent - Monthly Average Limit	Effluent - Monthly Average Limit	Resolved - Pending	Effluent - Monthly Average Limit	Effluent - Monthly Average Limit	Effluent - Monthly Average Limit	

a. Yes.

b. Yes.

c. Yes. Similar to the water and wastewater facilities that Red Bird is seeking to acquire in North Carolina, the Berkshire Glen wastewater treatment facility was a poorly operated and maintained facility under previous ownership. Confluence Rivers entered into a voluntary Abatement on Consent Order (“AOC”) with the Missouri Department of Natural Resources (MODNR) on 10/28/2021 to formally work with the MODNR to restore the facility. The initial rehabilitation of the facility is not complete (in part due to permitting delays and delays related to supply chain and construction interruption during the COVID-19 pandemic, which are still causing delays in construction work) and the facility is still in a state of noncompliance as a result of the poor operations and maintenance of the system prior to ownership by Confluence Rivers.

Furthermore, this system has the additional complication of having not been initially designed to meet the ammonia limits that were implemented at some point following the construction of the facility. This means that significant process change improvements are required at the facility to ensure consistent compliance. That being said, the operation of the facility has improved since its acquisition by Confluence Rivers, as illustrated by the improved compliance with BOD and TSS limits with no violations of BOD limits in the last 6 quarters, and a single TSS limit exceedance of only 1%. Furthermore, the previous owners had a history of reporting no discharge from the facility when discharges were in fact occurring, thus obscuring the degree of effluent exceedances under previous ownership.

A new attached growth treatment process and a new disinfection system are slated as improvements at this facility which will address the ongoing E.coli and Ammonia exceedances. Confluence Rivers is currently awaiting approval from the Missouri Department of Natural Resources. It is worth noting that Confluence Rivers has maintained good standing with the voluntary AOC, showing good faith efforts and progress on the rehabilitation process, and is regarded as in good standing with the Missouri Department of Natural Resources and EPA as a result. The AOC acknowledges that

ongoing limit exceedances are the result the facility's conditional and design shortcomings due to the failure of the previous owners of the system, and that Confluence Rivers is working to make improvements to resolve those issues.

7. **Necessary improvements:** On page 12, lines 19-21 of his rebuttal testimony, witness Cox testifies that, "All the while the necessary investments identified by McGill's preliminary engineering assessment, which includes required investments and upgrades of almost half a million dollars, have not been completed." Based on the quoted testimony above and contentions of deferred maintenance, please provide supporting documentation that the purchase price was and still is prudent and the following information:
- a. The amount and date of the initial purchase price offer made for the Etowah system;
  - b. The amounts and dates of subsequent offers and counteroffers made by the buyer and seller; and
  - c. Whether witness Cox contends that the value of the system is the same as it was when the purchase price was offered.

**RESPONSE:**

- a. Red Bird has no information responsive to this request.
  - b. Red Bird has no information responsive to this request.
  - c. Red Bird objects to this request on the basis that the meaning of the term "value" as used in this request is vague and ambiguous. Subject to and without waiver of this objection, Red Bird has not conducted or performed any studies to determine the current "value" of the system as compared to its "value" at the time the purchase agreement was executed.
8. **Acquisition adjustment:** Beginning on page 13, line 13 and continuing through page 15, line 5 of his rebuttal testimony, witness Cox discusses the reasons for why an acquisition adjustment should be deferred to the first rate case. Please provide the following information:
- a. The Company's understanding of how an acquisition adjustment should be calculated;
  - b. A complete list of the "requisite information" to determine the amount of the proposed acquisition adjustment;
  - c. The basis for witness Cox's belief that the recent changes to the statute narrowed the scope of the Commission's inquiry;



- d. Whether CSWR, Red Bird, or its affiliates lobbied for the recent changes to the statute and the intention of those lobbying efforts;
- e. Whether CSWR, Red Bird, or its affiliates attempted to or intended to narrow or limit the Commission's inquiry, discretion, and/or regulatory authority;
- f. Definition of "purely speculative";
- g. Identify "deficiencies in the current record regarding [sic] the reasonableness of the purchase price"; and
- h. Whether the Company expects the purchase price will be changed or renegotiated from what is listed in the purchase agreement, if so, please provide a detailed explanation for the reason.

## RESPONSE

**a. It is the Red Bird's understanding an acquisition adjustment should be calculated as the difference between the price paid to purchase assets and the selling utility's Net Book Value. Red Bird is aware that the Commission may approve a partial acquisition adjustment consisting of a portion of that difference.**

**b. It is the Red Bird's understanding that Purchase Price and Net Book Value are the necessary pieces of information. It is CSWR's experience, as explained throughout this docket, that the Net Book Value of smaller utilities is difficult to determine due to faulty accounting records and the lack of regular rate cases. As such, the Company has worked extensively with the seller and with Public Staff to produce the necessary information to calculate a Net Book Value. However, testimony in this case shows that Red Bird and Public Staff do not agree on the Net Book Value amount, which is one reason Red Bird proposes the Commission defer any decision on an acquisition adjustment until the first rate case involving the Etowah system.**

**c. See Cox Direct Testimony at page 27, line 21 through page 28, line 22 and Cox Rebuttal Testimony at page 13, line 10 through page 15, line 5.**

**d. CSWR and Red Bird lobbied for and supported changes to N.C. Gen. Stat. § 62-111 enacted during the 2023 legislative session.**

**e. Red Bird has no specific knowledge regarding the state legislature's intent when it enacted changes to N.C. Gen. Stat. § 62-111 during the 2023 legislative session. However, Red Bird believes the statute the legislature passed speaks for itself regarding issues the Commission can consider in water and wastewater acquisition cases.**

**f. As used on page 14, line 15 of Mr. Cox's Rebuttal Testimony, the phrase "purely speculative" means that the future rate impacts of authorizing an**

acquisition adjustment cannot currently be accurately determined because there are too many variables affecting rates that are unknown.

g. The only evidence presented by the parties regarding the purchase price is that it was the result of arms-length negotiations between non-affiliated parties and it exceeds the net book value of the assets being acquired. If the Commission requires additional evidence to determine whether the purchase price is “reasonable,” the lack of such evidence means there are deficiencies in the current evidentiary record.

h. Red Bird has no evidence that would lead it to conclude the current purchase price will be changed or renegotiated.

9. Regarding the rebuttal testimony of witness Cox on page 17, lines 21-24, please indicate whether as of August 15, 2023, November 10, 2023, or another date, Red Bird has established that “the seller owns or otherwise controls and is able to convey to the purchaser all real property and easements, etc., required for operation of the utility system.” In addition, has Red Bird or its contractors identified any issues with regard to the seller’s ability to convey ownership and/or control of any part of the system?

**RESPONSE:** Red Bird is satisfied the seller, Etowah Sewer Company, Inc., owns or otherwise controls and is able to convey all real property and other assets required for operation of the utility system, and neither Red Bird nor its contractors have identified any issues that would prevent the seller from transferring title to such assets. However, should such an issue arise prior to closing, the purchase agreement includes a closing condition that obligates the seller to transfer clear, unencumbered title to all assets and the transaction will not close unless and until that condition is satisfied.

c. Red Bird has not completed a formal cost-benefit analysis to quantify and compare the rate impact of stand-alone vs. consolidated rates. Such a study would be difficult, if not impossible, to prepare because results would vary based on facts used for the study and no standardized, one-size-fits-all set of facts exists. Red Bird’s affiliate groups have experience with consolidation in the states of Kentucky, Missouri, and Louisiana and Mr. Cox’s statements in his rebuttal testimony are based on that experience.

10. On page 18, lines 11-14 of his rebuttal testimony, witness Cox discusses an appraisal for the utility assets being purchased. Please provide explanations for how the appraisal benefits customers and how an appraisal is relevant evidence, including claims of legal precedents, to the Commission’s decisions whether to grant a CPCN, establish rate base, and approve an acquisition adjustment.



**RESPONSE:** Appraisals can be beneficial in many ways, including but not limited to assisting the Commission in determining whether the purchase price paid for Etowah's assets is reasonable.

11. **Effect of Proposed Acquisition on Customer Rates:** Beginning on page 21, line 4 of his rebuttal testimony, witness Cox discusses the Company's belief about the benefits consolidated rates will bring to the ratepayers. Please provide the following information:
- a. Any analysis the Company has done to compare the benefits and cost of consolidated rates and stand-alone rates; and the rate impact for ratepayers under consolidated rates and stand-alone rates respectively. Please provide the detailed workpaper with working formulas intact along with supporting documentation. If the Company has not done such an analysis, please provide a detailed explanation of why that analysis has not been done.
  - b. A detailed explanation of the factors the Company already knows and relied upon to determine that consolidated rates are better for ratepayers than stand-alone rates. Instead of providing a general statement describing the Company's belief, please provide workpapers with working formulas intact to show the comparison of the rate impact under each circumstance. If such workpapers are not available, please provide a detailed explanation of why the Company determines that consolidated rates are in the public interest without number comparisons as support.
  - c. Beginning from Page 21, line 14, witness Cox stated, "The impact on future rates of Red Bird's acquisition of the Etowah system is not known and measurable, so it would be inappropriate and unreasonable for the Commission to consider that issue in the current proceeding." Please explain why the Company determines consolidated rates are in the public interest when the Company believes the impact on future rates is not known and measurable.

**RESPONSE:**

a. Red Bird has not completed a formal cost benefit analysis to quantify and compare the rate impact of stand-alone vs. consolidated rates. Such a study would be difficult, if not impossible, to prepare because differences would vary based on facts used for the study and no standardized, one-size-fits-all set of facts exists. Red Bird's affiliate groups have experience with consolidation in the states of Kentucky, Missouri, Mississippi, and Louisiana and statements made in rebuttal testimony are based on that experience.

b. See response to subpart a. In addition, for years it has been recognized that single tariff pricing and the consolidation of rates encourages the consolidation of small water and wastewater systems into larger utilities.

For instance, in a 2008 report, the National Regulatory Research Institute stated:

**“Single tariff pricing is another way to encourage mergers. Enabling a uniform rate structure or consolidated rates for systems owned by the same entity may encourage a corporate utility to grow its business by acquiring – whether contiguous or interconnected or not – other systems. With consolidated pricing, customers pay the same price even though their individual system may have unique operating characteristics and needs. Single tariff 1 pricing makes it easier to share costs among larger numbers of customers.”**

Some have criticized consolidated rates as requiring “better” systems to support those that currently require greater than average capital investment, and while this may appear to be true in the short run, it is not necessarily true when taking a longer-term view. In each of the communities served by utilities in our affiliate group, all the distribution and treatment systems will eventually require major repairs and replacements. Some of those systems require more urgent investments that require upgrades and improvements today. However, over time all systems will require those same or similar investments. So, whatever short-term support may flow initially to systems that require more capital investment, that situation will inevitably reverse over time.

It also should be noted that cross-subsidies in utility rates are the rule rather than the exception. For example, although it may cost an electric or gas utility much more to serve some customers than it does to serve others, electric and gas utilities have for decades had uniform rates for all customers within each rate class. Red Bird believes consolidated rates would reflect the common benefits all its North Carolina customers would receive from being served by a single company—e.g., services that are provided more cost-effectively by consolidating systems to realize economies of scale. Moreover, we believe system-specific rates would, in effect, punish customers of the most challenged systems by requiring today investments each community will certainly require in the future.

c. Please refer to Red Bird’s response to part b of this request.

**Red Bird Utility Operating Company, LLC  
Docket No. W-1328, Sub 0**

**Etowah Sewer Company Inc.  
Docket No. W-933, Sub 12**

**Public Staff Data Request No. 13  
Date Sent: November 13, 2023  
Date Due: November 16, 2023**

**Public Staff Technical Contacts:** Mike Franklin  
Phone: (919) 715-2666  
E-Mail: [mike.franklin@psncuc.nc.gov](mailto:mike.franklin@psncuc.nc.gov)

Lynn Feasel  
Phone: (919) 733-0943  
Email: [lynn.feasel@psncuc.nc.gov](mailto:lynn.feasel@psncuc.nc.gov)

Windley Henry  
Phone: (919) 733-0949  
Email: [windley.henry@psncuc.nc.gov](mailto:windley.henry@psncuc.nc.gov)

**Public Staff Legal Contacts:** Davia Newell  
Phone: (919) 733-0977  
Email: [davia.newell@psncuc.nc.gov](mailto:davia.newell@psncuc.nc.gov)

Gina Holt  
Phone: (919) 733-0971  
E-Mail: [gina.holt@psncuc.nc.gov](mailto:gina.holt@psncuc.nc.gov)

James Bernier, Jr.  
Phone: (919) 733-0976  
Email: [james.bernier@psncuc.nc.gov](mailto:james.bernier@psncuc.nc.gov)

**Subject of Data Request: Beckemeier Rebuttal Testimony**

**Please provide all responses to this request in searchable native electronic format (e.g., Excel, Word, or PDF files). If in Excel format, please include all working formulas. In addition, please include (1) the name and title of the individual who has the responsibility for the subject matter addressed therein, and (2) the identity of the person making the response by name, occupation, and job title. Please also refer to Public Staff Data Request 1 for instructions for responding to this and all other Data Requests served on the Company by the Public Staff in the above-captioned proceedings.**

1. Starting on page 3, line 13 of his rebuttal testimony, witness Beckemeier testifies about why Red Bird conducts due diligence and the contended benefits of such activities.
  - a. When is due diligence conducted? Please describe the timing of each aspect of due diligence and how the Company utilizes the information obtained.
  - b. Does due diligence benefit the Company?
    - i. If yes, provide examples.
    - ii. If no, provide an explanation why not.
  - c. Does due diligence inform the Company and its owners about the earning potential of the acquisition?
  - d. Does due diligence inform the negotiation of the purchase price?

**RESPONSE:**

**1a. Due diligence on a particular acquisition begins within a week or two weeks after the Purchase Agreement is executed and concludes prior to closing an acquisition. The primary benefit to conducting extensive due diligence prior to closing an acquisition is to identify any defects in the system assets in order to plan for the capital improvements that will be needed to properly operate the system. In addition, conducting due diligence enables potential purchaser to identify any deficient real property rights that could inhibit the ability to properly operate the system. Identifying such deficiencies allows a purchaser such as Red Bird to take steps to cure such defects and deficiencies as soon as practicable, either prior to or after the closing to avoid disruptions in the proper operations of the system.**

**With respect to the Etowah system, the Valbridge appraisal was completed on August 5, 2019. McGill Associates, P.A. ("McGill") conducted its on-site inspections on December 4, 2019, and the reports were prepared thereafter. The initial title due diligence began soon after the Purchase and Sale Agreement was fully executed in August of 2019. GIS work and surveys were launched in December of 2019. The first title research results were produced in November of 2019, and the initial title commitment was issued on March 26, 2020. Survey and GIS drafts were generated in mid-2020. Updated title, GIS, and survey work continued through December 2022, in that the title work was updated multiple times due to discovery of new title matters once survey work occurred and also due to the delay in the closing timeline on this transaction.**

**In 2023, there has been minimal title work performed on this project. However, once a closing date is set, all title work will need to be updated to the closing date and the surveys will also need to be updated due to the delay in the closing date from when the surveys were performed.**

**1b. Yes. Refer to response to PS DR13-1a. In addition, due diligence provides clarity on where the system components are located and if proper ownership rights exist for the seller to transfer the same. Due diligence also determines if there are judgments or other liens against the property being acquired. And finally, due diligence assures there is good, legal access to the components of the system to facilitate operations after the closing.**

**1c. No.**

**1d. Due diligence does not inform the Company on the initial purchase price. However, in some instances, the discovery of material defects in the due diligence process has resulted in a reduction to the purchase price to accommodate the costs associated with curing the defects. This did not occur with respect to the Etowah transaction.**

2. On page 4, lines 16-18 of his rebuttal testimony, witness Beckemeier testifies that, "Based on the foregoing activities, we determined that there are material defects in the title rights impacting Etowah that need to be cured prior to the closing or shortly thereafter." Please provide the following information:
  - a. The definition of "material defects in title rights";
  - b. List of material defects;
  - c. When the material defects identified in the title rights will be cured;
  - d. The estimated time and cost by vendor to cure the material defects identified;
  - e. Whether the Company intends to seek recovery of the additional costs to cure the material defects identified.

## **RESPONSE:**

**2a. Any defect that does or could inhibit the use or operations of the system after closing.**

**2b. There were two sites in which the legal right to access was in question and required significant title research and survey work to resolve. One access issue remains and an easement right will need to be acquired from a third party either before or after the closing to address this defect. In addition, the legal descriptions of multiple sites of real property being acquired included defects and/or errors that needed to be updated with new survey work. Many of the easement rights necessary to access the service lines set forth within the covenants, conditions and restrictions (aka Indentures) within the service area property were not clearly described requiring title and survey work to ascertain the specific location of the easement rights. Moreover, the seller owns additional utility easement rights within**

the service area that were not clearly described, which required survey work to determine their actual location.

**2c. Many of the above-referenced defects have been clarified or cured during due diligence and the remaining items should be cured prior to the closing date.**

**2d. We do not itemize costs related to curing each specific defect.**

**2e. Yes. Red Bird intends to seek recovery of the additional costs in its first rate case proceeding.**

3. On page 5, lines 8-9 of his rebuttal testimony, witness Beckemeier testifies that, “For a potential purchaser to properly assess the feasibility of acquiring a utility system it is incumbent upon the purchasing utility company to perform due diligence.” He goes on to list three areas that due diligence generally consists of. Please provide the following information:
  - a. The date each of these three areas of due diligence were completed for the Etowah system:
    - i. Engineering review;
    - ii. Valuation of the system assets; and
    - iii. Real property rights;
  - b. The factors used by the Company to “assess the feasibility of acquiring a utility system”; and
  - c. The factors used by the Company to assess the business need for the acquisition, including any cost-benefit analysis, forecasting, or evaluation.

**RESPONSE:**

**3a. See Answer 13-1.a. above.**

**3ai. The preliminary engineering report was prepared in February 2020.**

**3aii. The Valbridge valuation study was submitted in August 2019.**

**3aiii. The determination of real property rights is ongoing.**

**3b. CSWR does not “assess the feasibility of acquiring a utility system” other than identifying any legal impediments to owning and operating a system.**

**3c. “Business need” is not a consideration.**

4. On page 6, lines 12-15 of his rebuttal testimony, witness Beckemeier testifies that, “Therefore, even if engineering due diligence were not standard practice in a deal like this, which we think it is, at least part of the expense associated

with McGill's report was required to be incurred in order for Red Bird to complete its acquisition application." Please quantify the expense associated with the McGill report that was required to be incurred in order for Red Bird to complete its application.

**RESPONSE:**

**4. The cost of the McGill study has been provided to Public Staff in the due diligence invoices.**

5. On page 6, lines 18-21 of his rebuttal testimony, witness Beckemeier testifies regarding the need for and reasonableness of the appraisal. Please provide the following:
  - a. Statute, rule, and/or Commission order supporting the use of an appraisal to determine whether to grant a CPCN or establish rate base and
  - b. The benefit to customers of an appraisal.

**RESPONSE:**

**5a. Witness Beckemeier did not conduct any research to determine whether there is a statute, rule, or Commission decision governing the use of an appraisal to determine whether to grant a CPCN or to determine rate base. This Commission has previously determined that Red Bird has the technical, managerial, and financial qualifications to own and operate a water and wastewater utility in North Carolina, and believes a similar conclusion is justified in this case.**

**5b. The primary benefit of an appraisal is to assist the Commission in determining the fair market value of the assets being acquired and to determine if the purchase price is reasonable.**

6. On page 10, lines 4-11 of his rebuttal testimony, witness Beckemeier testifies about the need to update due diligence because of delays in the regulatory process in North Carolina. Please provide the following information:
  - a. The meaning of "closing time frame" as it is used on page 10, line 8 of witness Beckemeier's testimony including the starting and ending points and all other specific milestones;
  - b. Does "closing time frame" have the same meaning, starting and ending points, and other milestones in other jurisdictions in which CSWR affiliates have sought approval of acquisitions or transfers of water or wastewater systems?
  - c. List of transactions closed by CSWR affiliates including:
    - i. State;
    - ii. Regulator;

- iii. Name of system;
- iv. Closing time frame;
  - 1. Start date; and
  - 2. End date.
- v. Amount of due diligence costs incurred; and
- vi. Amount of due diligence costs allowed for recovery in rates.
- d. For each CPCN or transfer application filed by Red Bird with the Commission, invoices for updated due diligence necessitated by the delay in the process of approving the transactions.

**6a. The average purchase timeline of a utility system by a CSWR entity in states other than NC from when the purchase agreement is fully executed to the closing is approximately one year. The specific milestones are purchase agreement formation, completion of engineering and title due diligence, regulatory approval, and closing.**

**6b. Yes. The standard milestones and process in states where CSWR has closed transactions is the same; however, the outlier in NC is the timeframe for regulatory review and approval.**

**6c. Red Bird objects to this request to the extent it requires the Company to undertake legal analysis, research, and/or the compilation of new studies. Red Bird also objects to this request on the basis that it is unduly burdensome as this data cannot be easily queried from our systems to provide a comprehensive response in the given timeframe. Subject to and notwithstanding these objections, Red Bird will provide a list of all acquisition cases by state and docket number.**

**6d. Red Bird objects to this request to the extent it requires the Company to undertake legal analysis, research, and/or the compilation of new studies. Red Bird also objects to this request on the basis that it is unduly burdensome as this data cannot be easily queried from our systems to provide a comprehensive response in the given timeframe. Subject to and notwithstanding these objections, Red Bird will supplement this response and provide a list of all acquisition cases by state and docket number.**



I/A

**Red Bird Utility Operating Company, LLC**  
**Docket No. W-1328, Sub 0**  
**Etowah Sewer Company, Inc.**  
**Docket No. W-933, Sub 12**  
**Public Staff Data Request No. 15**  
**Date Sent: November 13, 2023**  
**Date Due: November 16, 2023**

**Public Staff Technical Contact:**

**Lynn Feasel**  
**Phone: (919) 733-0943**  
**E-Mail: [lynn.feasel@psncuc.nc.gov](mailto:lynn.feasel@psncuc.nc.gov)**

**Windley Henry**  
**Phone: (919) 733-0949**  
**Email: [windley.henry@psncuc.nc.gov](mailto:windley.henry@psncuc.nc.gov)**

**Public Staff Legal Contact:**

**James Bernier, Jr.**  
**Phone: (919) 733-0976**  
**Email: [james.bernier@psncuc.nc.gov](mailto:james.bernier@psncuc.nc.gov)**

**Davia Newell**  
**Phone: (919) 733-0977**  
**Email: [davia.newell@psncuc.nc.gov](mailto:davia.newell@psncuc.nc.gov)**

**Gina Holt**  
**Phone: (919) 733-0971**  
**E-Mail: [gina.holt@psncuc.nc.gov](mailto:gina.holt@psncuc.nc.gov)**

**Jessica Heironimus**  
**Phone: (919) 733-0969**  
**Email: [jessica.heironimus@psncuc.nc.gov](mailto:jessica.heironimus@psncuc.nc.gov)**

**Erica Jones**  
**Phone: (919) 733-6113**  
**Email: [erica.jones@psncuc.nc.gov](mailto:erica.jones@psncuc.nc.gov)**

**Subject of Data Request: Public Thies Rebuttal Testimony - Accounting**

Please provide all responses to this request in searchable native electronic format (e.g., Excel, Word, or PDF files). If in Excel format, please include all working formulas. In addition, please include (1) the name and title of the individual who has the responsibility for the subject matter addressed therein, and (2) the identity of the person making the response by name, occupation, and job title. Please also refer to Public Staff Data Request 1 for instructions for responding to this and all

OFFICIAL COPY

Jan 12 2024

other Data Requests served on the Company by the Public Staff in the above-captioned proceedings.

1. **Rate Base:** Beginning on page 5, line 4 of his rebuttal testimony, witness Thies discusses the Company's belief of how rate base should be calculated. Please provide the following:
  - a. The workpaper with working formulas intact to show the calculation of plant in service, accumulated depreciation, and CIAC in the table on page 5.
  - b. A detailed explanation of where and how the Company gets the data to calculate \$2,159,338 for plant in service and \$1,585,928 for accumulated depreciation.
  - c. A detailed explanation of whether the \$2,159,338 plant in service and \$1,585,928 accumulated depreciation is shown in any of the Company's responses to the Public Staff's data request. If so, please refer to the data request numbers. If not, please explain why the Company did not provide information as requested by the Public Staff.

**RESPONSE:**

a. Note that the accumulated depreciation amount was incorrect on page 5 of Mr. Thies' testimony. The total accumulated depreciation should have been listed as \$1,304,796. This correction is reflected in the Corrected Rebuttal Testimony of Witness Thies, filed on November 15, 2023. Please see the attached document entitled Confidential DR 15.1a – Rate Base Calculation for the correction as well as the support that makes up Red Bird's rate base calculation.

b. Please see the response to DR 15.1a.

c. No, the referenced amounts are not included in any of Red Bird's responses to Public Staff's data requests because Red Bird had not received the most up to date financial information from the seller until shortly before filing rebuttal testimony. Again, please note that \$1,585,928 was incorrectly used, and the correct accumulated depreciation number should be \$1,304,796.

2. **UPIS Values and their relation to the addition of CIAC:** Beginning on page 6, line 11 of his rebuttal testimony, witness Thies discusses the Company's belief regarding the relationship between CIAC and UPIS. Please provide the following:
- Please verify whether the Company adds \$1,180,645 on top of the Public Staff's calculated gross plant in service of \$973,930. If so, please explain and reconcile the variance between the plant in service amount of \$2,159,338 on page 5 versus the total calculated plant in service amount of \$2,154,575.
  - Please verify whether the Company adds \$753,559 on top of the Public Staff's calculated accumulated depreciation of \$825,156. If so, please explain and reconcile the variance between the accumulated depreciation amount of \$1,585,928 on page 5 versus the total calculated accumulated depreciation amount of \$1,578,715.
  - Has the Company included UPIS value associated with tap-on fees since the last rate case in the plant evaluation excel file titled "DR6 - Etowah NBV Summary" in response to the Public Staff data request 6.
  - If the Company replies yes to item c above, please identify the line numbers and the total sum amount from those lines. If the total amount from those lines does not equal the total amount of the associated tap-on fees provided in response to the Public Staff data request 5, please explain why in detail and reconcile the variance. If the total amount from those lines equals the total amount of the associated tap-on fees provided in response to the Public Staff data request 5, please verify whether the Company has provided invoices to support the UPIS value and identify the data request numbers containing the invoice information.
  - If the Company replies no to item c above, please explain in detail why the Company did not include UPIS value associated with tap-on fees since the last rate case in response to the Public Staff data request 6, but instead, include the amount in Thies rebuttal testimony only.

**RESPONSE:**

a. Red Bird did not make any adjustments to Public Staff's rate base numbers. Instead, the plant in service amount of \$2,159,338 is Red Bird's own calculation of UPIS included in the document provided in response to Data Request 15.1a. \$2,154,575 is the UPIS calculated by Public Staff in Witness Feasel's Exhibit 1, Schedule 2, \$973,930, plus the \$1,180,645 of CIAC additions. Public Staff did not account for the \$1,180,645 in CIAC additions in UPIS.

b. Red Bird did not make any adjustments to Public Staff's rate base numbers. See the document provided in response to Data Request 15.1a for details on Red Bird's corrected Accumulated Depreciation calculation of \$1,304,796. Public Staff Feasel's Exhibit 1, Schedule 2 Accumulated

Depreciation amount is \$825,156, plus the addition of the CIAC UPIS Accumulated Depreciation amount of \$753,559, totaling to \$1,578,715. Public Staff failed to include the Accumulated Depreciation associated with the CIAC additions.

c. No.

d. N/A

e. Red Bird was not provided with tap-in information from the selling entity. Red Bird utilized Public Staff Feasel's CIAC number provided in Line 4, Column C of Feasel Exhibit 1 Schedule 2.

3. **CIAC:** Beginning on page 6, lines 21-22 of his rebuttal testimony, witness Thies testifies that, "Thus, according to the Commission's own Annual Report template, CIAC is a payment of cash or property that results in an additional component of UPIS." Please provide the following information:
- Citation from the Annual Report Form that requires "an additional component of UPIS" to be booked with CIAC additions;
  - Whether CIAC additions can offset existing UPIS; and
  - The legal or accounting basis, including statute, rule, standard, or Commission, for the addition of undocumented UPIS to offset CIAC additions.

**RESPONSE:**

a. Please see page 9 of the attached document titled DR 15.3a - Etowah 2022 Annual Report.

b. Yes.

c. See attachment DR 15.3c NARUC USOA- Sewer Accounts, page 72, 271.A, which states "...which is utilized to offset the acquisition, improvement, or construction cost of the utility's property, facilities, or equipment..."

4. **Impact of the proposed acquisition on future rates in this proceeding:** Beginning on page 7, line 21 of his rebuttal testimony, witness Thies discusses the Company's belief that there can be a significant difference between rates set on a stand-alone basis and those set on a consolidated basis. Please provide the analysis and cost benefit analysis the Company has done to quantify the comparison of the rate impact on a stand-alone basis and consolidated basis, respectively.

**RESPONSE:**

Red Bird has not quantified the rate impact of stand-alone vs. consolidated rates. Such an analysis would be impossible to prepare because results would vary based on facts and assumptions used for the study (some of which are not currently known) and no standardized, one-size-fits-all set of facts exists. As stated in Mr. Thies' testimony, Red Bird's affiliate groups have experience with consolidation in the states of Kentucky, Missouri, and Louisiana and statements made in his rebuttal testimony are based on that experience.

5. **Amortization period:** Beginning on page 9, lines 6-16 of his rebuttal testimony, witness Thies discusses amortization periods for acquisition adjustments and due diligence costs. Please provide the following:
- Citation, including page number, from the Depreciation Practices for Small Water Utilities for the proposed 50-year amortization; and
  - Calculation of the 50-year amortization, including assumptions and working formulas, based on average useful lives of assets comprising water distribution systems and sewer collection systems.

**RESPONSE:**

a. In the Depreciation Practices for Small Water Utilities, page 11, Account 343, Transmission and Distribution Mains, average life is 50-75 years.

b. Please see the attached document entitled Confidential DR 15.5b Estimated 50 Year Amort.

6. **Amortization period comparison:** Beginning on page 10, lines 4-12 of his rebuttal testimony, witness Thies contends a 50-year amortization period is more reasonable than the depreciation period associated with the assets. Please provide the following information:
- Explanation for how the "common estimate" of 50 years more closely matches the assets than the composite of the depreciation rates of the Etowah UPIS used by Public Staff witness Feasel; and
  - Whether a longer amortization period has any benefits to Red Bird;
    - If yes, please provide a list of the benefits to Red Bird.

**RESPONSE:**

a. Fifty years is a common estimate for the useful lives of pipes and similar assets comprising sewer collection systems, as shown in the Depreciation Practices for Small Water Utilities.

b. Customers, not Red Bird, are the primary beneficiaries of a longer amortization period because the rate impact is spread over more years, thus reducing the annual revenue requirement. Another benefit of a longer amortization period for Red Bird (and its customers) is that the asset remains in rate base for a longer period of time. However, any value derived from holding an asset on Red Bird's books longer is minimized or even negated by the time value of money.