

1 PLACE: Dobbs Building, Raleigh, North Carolina

2 DATE: Monday, November 20, 2023

3 TIME: 1:00 p.m. - 5:59 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

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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 2

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

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NORTH CAROLINA UTILITIES COMMISSION

1	T A B L E O F C O N T E N T S	
2	E X A M I N A T I O N S	
3		PAGE
4	JOSIAH COX	
5	Direct Examination by Ms. McGrath.....	20
6	PREFILED DIRECT TESTIMONY OF JOSIAH COX.....	23
7	Cross Examination by Ms. Newell.....	55
8	Cross Examination by Mr. Bernier.....	105
9	Redirect Examination by Ms. McGrath.....	148
10	Examination by Commissioner McKissick.....	157
11	Examination by Commissioner Duffley.....	164
12	Examination by Commissioner Hughes.....	171
13	Examination by Commissioner Duffley.....	178
14	Examination by Ms. McGrath.....	178
15	LYNN FEASEL and D. MICHAEL FRANKLIN	
16	Direct Examination by Ms. Newell.....	188
17	PREFILED DIRECT TESTIMONY OF LYNN FEASEL.....	191
18	PREFILED DIRECT TESTIMONY OF D. MICHAEL FRANKLIN.	201
19	PREFILED DIRECT TESTIMONY OF JOHN R. HINTON.....	229
20	Cross Examination by Ms. McGrath.....	237
21	Redirect Examination by Mr. Bernier.....	243
22	Redirect Examination by Ms. Newell.....	247
23	Examination by Commissioner McKissick.....	248
24		

E X A M I N A T I O N S Cont'd:

	PAGE
Examination by Commissioner Hughes.....	255
JOSIAH COX, BRENT THIES, and JAMES BECKEMEIER	
Direct Examination by Ms. McGrath.....	259
PREFILED REBUTTAL TESTIMONY OF JOSIAH COX.....	265
PREFILED REBUTTAL TESTIMONY OF BRENT THIES.....	294
PREFILED REBUTTAL TESTIMONY OF JAMES BECKEMEIER..	306
Cross Examination by Ms. Newell.....	318
Cross Examination by Mr. Bernier.....	352

1	E X H I B I T S:	
2		IDENTIFIED/ADMITTED
3	Cox Direct Exhibits 1-4.....	21/183
4	Public Staff Hinton Exhibit 1.....	/184
5	Public Staff Cox Direct Cross.....	79/184
6	Exhibit 1	
7	Public Staff Cox Direct Cross.....	81/184
8	Exhibit 2	
9	Public Staff Cox Direct Cross.....	84/184
10	Exhibit 3	
11	Public Staff Cox Direct Cross.....	89/184
12	Exhibit 4	
13	Public Staff Cox Direct Cross.....	94/
14	Exhibit 5	
15	Public Staff Cox Direct Cross.....	103/184
16	Exhibit 6	
17	Public Staff Cox Direct Cross.....	106/184
18	Exhibit 7	
19	Public Staff Cox Direct Cross.....	108/184
20	Exhibit 8	
21	Public Staff Cox Direct Cross.....	112/184
22	Exhibit 9	
23	Public Staff Cox Direct Cross.....	114/184
24	Exhibit 10	
	Public Staff Cox Direct Cross.....	116/184
	Exhibit 11	
	Public Staff Cox Direct Cross.....	121/184
	Exhibit 12	
	Public Staff Cox Direct Cross.....	127/184
	Exhibit 13	

1	Confidential Public Staff Cox Direct.....	129/184
2	Cross Exhibit 14	
3	Confidential Public Staff Cox Direct.....	134/184
4	Cross Exhibit 15	
5	Public Staff Cox Direct Cross.....	140/184
6	Exhibit 16	
7	Public Staff Cox Direct Cross.....	143/184
8	Exhibit 17	
9	Application of Red Bird Water,.....	/185
10	Attachments, Supplemental Attachments, Updates, and Amendments	
11	Red Bird Utility Operating Company,.....	/185
12	LLC, Verified Report, Filed on November 15, 2023	
13	Feasel Exhibit I, Confidential II & III....	189/258
14	and Feasel Exhibit IV	
15	Public Staff Hinton Exhibit 1.....	/227
16	Cox Rebuttal Exhibits 1 & 2.....	/263
17	Amended Thies Rebuttal Exhibit 1.....	/293
18	Public Staff Panel Rebuttal Cross.....	330/
19	Examination Exhibit 1	
20	Public Staff Panel Rebuttal Cross.....	341/
21	Examination Exhibit 2	
22		
23		
24		

P R O C E E D I N G S

COMMISSIONER MCKISSICK: Good afternoon.

Let us come to order and go on the record. I'm Floyd B. McKissick Jr., a Commissioner with the North Carolina Utilities Commission, and I'll be presiding over this hearing. With me this afternoon are Commissioners Kimberly W. Duffley, and Jeffrey A. Hughes.

I now call for hearing Docket Numbers W-933, Sub 12, and W-1328, Sub 0, which is the Joint Application by Red Bird Utility Operating Company, LLC, doing business as Red Bird Water, hereinafter referred to at times as Red Bird or the Applicant and Etowah -- we'll get that name at a point where everybody -- we know what we're all talking about, notwithstanding the pronunciation -- a Sewer Company, hereinafter referred to at times as Etowah for Transfer of Public Utility Franchise and for Approval of Rates.

Before we proceed further, and as is required by the State Government Ethics Act, I remind members of the Commission of our duty to avoid conflicts of interest and inquire at this time as to whether any Commissioner has any known conflicts of

NORTH CAROLINA UTILITIES COMMISSION

1 interest with respect to these dockets.

2 (No response.)

3 COMMISSIONER MCKISSICK: Let the record
4 reflect that I have no such conflict and no such
5 conflicts have been identified by the other
6 Commissioners.

7 On October 8, 2020, Red Bird and Etowah
8 filed with the Commission an Application for Authority
9 to Transfer the Wastewater Utility System and Public
10 Utility Franchise serving the Etowah Community in
11 Hendersonville County, North Carolina, from the Etowah
12 to Red Bird and for Approval of Rates.

13 Red Bird filed with the Commission
14 supplemental and additional materials in support of
15 the Application on October 19th and 22nd, 2020. The
16 Transfer Application requests that the Commission
17 approve the transfer of the wastewater system assets,
18 approve the transfer of the public utility franchise
19 from the Etowah to Red Bird, and approve wastewater
20 rates as currently approved. The present wastewater
21 utility rates for the Etowah Community were approved
22 in Docket W-933, Sub 10, effective as of January 1,
23 2016.

24 On December 22, 2020, the Public Staff filed

1 a deficiency letter outlining information that was
2 needed to complete the Application.

3 On May 14, 2021; October 7, 2021; February
4 15, 2022; August, 18, 2022; and August 23, 2022, Red
5 Bird filed supplemental material to address
6 deficiencies identified by the Public Staff.

7 On June 14, 2023, Red Bird filed a letter
8 indicating that it considered the Application to be
9 complete.

10 On July 25, 2023, the Public Staff filed a
11 second deficiency letter outlining additional updated
12 information needed to complete the Application, and
13 recommended that the Commission determine that the
14 Application was incomplete.

15 On July 28, 2023, the Commission issued an
16 Order Finding Application Incomplete.

17 On August 22, 2023, the Public Staff filed a
18 letter with the Commission indicating that this docket
19 now includes all of the information required for a
20 complete Application.

21 On September 14, 2023, the Commission issued
22 an Order Finding Application Complete and Requiring
23 The Public Staff to Provide Specific Application Data.

24 On September, 21, 2023, the Public Staff

1 provided information requested in the Commission's
2 September 14, 2023, Order and notified the Commission
3 that additional information would be provided upon Red
4 Bird's response to Data Request Number 9.

5 On September 26, 2023, the Commission issued
6 an Order Scheduling Hearings, Establishing Discovery
7 Guidelines, and Requiring Customer Notice. The Order
8 scheduled a public witness hearing, which was held on
9 November 1, 2023, in Hendersonville, North Carolina,
10 as well as an expert witness hearing to be held at
11 this time and place for the purpose of receiving
12 expert witness testimony. This hearing will continue
13 as necessary until its conclusion.

14 On October 4, 2023, the Commission issued an
15 Order approving Red Bird's proposed customer notice.

16 On October 10, 2023, Red Bird filed the
17 confidential and public redacted direct testimony and
18 exhibits of Josiah Cox, consisting of 32 pages and 4
19 exhibits.

20 On October 19, 2023, the Public Staff filed
21 a motion to revise the Order scheduling discovery
22 guidelines, filing dates for prefiled testimony and
23 witness lists, and requiring reports.

24 On October 20, 2023, the Commission issued

1 an Order amending discovery guidelines and filing
2 dates for prefiled testimony.

3 On October 27, 2023, the Public Staff filed
4 the direct testimony of John R. Hinton, consisting of
5 five pages, one appendix, and one exhibit; the
6 confidential and public redacted testimony of D.
7 Michael Franklin, consisting of 25 pages and one
8 appendix; and the confidential and public redacted
9 direct testimony and exhibits of Lynn Feasel,
10 consisting of seven pages, one appendix, and four
11 exhibits.

12 The intervention and participation of the
13 Public Staff in this proceeding is recognized pursuant
14 to North Carolina § 62-15, Subsection D, and
15 Commission Rule R1-19, Subsection E.

16 On November 13, 2023, Red Bird filed
17 rebuttal testimony of Josiah Cox, consisting of 28
18 pages and two exhibits; rebuttal testimony of Brent G.
19 Thies, consisting of 10 pages and one exhibit; and
20 rebuttal testimony of James A. Beckemeier, consisting
21 of 12 pages and no exhibits.

22 On November 14, 2023, Red Bird filed
23 corrected, confidential, and redacted public testimony
24 of Brent G. Thies, consisting of 10 pages and one

1 exhibit.

2 That brings us to today. We are ready to
3 begin. I call upon counsel for the parties to
4 announce their appearance for the record, beginning
5 with the Applicant.

6 MS. MCGRATH: Good afternoon, Commissioners.
7 Mindy McGrath, with the Law Firm of Troutman Pepper.
8 I'm here today on behalf of Red Bird, and I'm here
9 with my colleague, Molly Jagannathan. Thank you.

10 COMMISSIONER MCKISSICK: Thank you.
11 Recognize the Public Staff.

12 MS. NEWELL: Good Afternoon, Commissioners.
13 Davia Newell, of the Public Staff representing the
14 Using and Consuming Public, and I'm joined at
15 counsel's table by James Berneir Jr., and Gina Holt.

16 COMMISSIONER MCKISSICK: Thank you.
17 Are there any preliminaries that we need to
18 address?

19 MS. NEWELL: Yes, Commissioner.

20 So first, the Public Staff would like to
21 move to dismiss witness John Hinton, unless the
22 Commission has questions of him. The filing party,
23 the Applicant, has no times reserved for cross
24 examination so we don't anticipate that -- unless the

1 Commission has questions -- that he will be needed for
2 the entirety of the hearing.

3 COMMISSIONER MCKISSICK: And I will
4 recognize the Applicant for a position.

5 MS. MCGRATH: No objection.

6 COMMISSIONER MCKISSICK: And I'll look to my
7 fellow Commissioners to see if they have any
8 objections.

9 (No response.)

10 Without objection, your motion is allowed.

11 MS. NEWELL: And, secondly, the parties are
12 asking me for -- the Public Staff is asking me to make
13 a brief opening statement and the Applicant has asked
14 for an opportunity to also make a statement.

15 COMMISSIONER MCKISSICK: Duly noted. It's
16 my understanding the Applicant concurs with what has
17 been stated on the record at this time?

18 MS. MCGRATH: Yes, that's correct. We would
19 just like an opportunity to respond.

20 COMMISSIONER MCKISSICK: Okay. We'll go
21 ahead and recognize you now for your opening
22 statement.

23 MS. NEWELL: Sure.

24 So, Presiding Commissioner McKissick, may it

1 please the Commission, you will hear today that the
2 Public Staff believes that the Company has the
3 technical, managerial, and financial capabilities to
4 operate the Etowah System, but those capabilities only
5 play a part in the Commission's determination that the
6 proposed transfer is in the public interest.

7 The Public Staff does not oppose the
8 transfer of the Etowah Wastewater System to Red Bird,
9 but determinations and limiting conditions are needed
10 to protect the Using and Consuming Public.

11 In this docket, Red Bird has paid an
12 exorbitance and price for the Etowah system and
13 intends to pass on that price for rate base to its
14 customers in the next rate case.

15 The threshold for whether Red Bird should be
16 allowed cost recovery of an acquisition adjustment has
17 been set appropriately high by the decisions of the
18 Commission and judges over the decades because it is
19 the exception and not the rule.

20 To further accentuate the problem, Red Bird
21 wants to push off to a future rate case the full
22 recovery it seeks of the large sums of expenses and
23 its due diligence cost.

24 It is the Public Staff's position that, an

1 increased level of scrutiny applies when a Company
2 asks customers to share costs that other utilities
3 have historically foregone.

4 The Public Staff is opposed to allowing Red
5 Bird to pass what we contend to be its cost of doing
6 business onto ratepayers.

7 Further, the ratepayers deserve transparency
8 in this process. As you've seen and heard from
9 customers, they want to know future potential rate
10 impacts. However, Red Bird has fought to avoid
11 forecasting rates that may be likely in the next three
12 years, even though we know that the amounts that have
13 been spent so far and we know what we expect --
14 expected expenditures in the coming years.

15 Red Bird seeks to constrain the scope of the
16 Commission's review of the transfer in its claim that
17 the newly passed statute requires a procedure that
18 diverges from the regulatory process in North
19 Carolina, which requires the Commission to take all
20 factors in considering whether the transfer is in the
21 public interest, including any acquisition adjustment
22 and due diligence cost.

23 The Public Staff disagrees and asks the
24 Commission to consider all appropriate facts and

1 circumstances in its consideration of whether the
2 transaction is in the public interest. The Public
3 Staff urges that approving the transfer without
4 deciding the issues of purchase acquisition
5 adjustments and due diligence is counter to the best
6 interest of the public and burdens the Public Staff
7 and the Commission with administrative inefficiencies.

8 On its face, it seems the Commission has a
9 simple decision to make the transfer at existing rates
10 to a professional utility whose business model is to
11 acquire and recapitalize failing systems. However,
12 there's more than meets the eye. This proposed
13 transfer presents unprecedented due diligence cost, a
14 large acquisition adjustment, and a multi-layer
15 corporate structure. Despite its request, the Company
16 has forwarded the Public Staff's attempt to gain
17 information by providing invoices with entire pages
18 redacted, providing evasive responses regarding
19 investors and its corporate structure, and not
20 providing support for its overinflated net book value.

21 The ratepayers of North Carolina deserve
22 transparency, clarity, and quality service at just and
23 reasonable rates.

24 The Public Staff endeavors, in this

NORTH CAROLINA UTILITIES COMMISSION

1 proceeding, to make the customers the heart of this.
2 Not a Company who seeks to bolster its profits beyond
3 what is allowable by the Commission at the expense of
4 customers.

5 Thank you.

6 COMMISSIONER MCKISSICK: Thank you.

7 I'll now recognize Attorney McGrath on
8 behalf of the Applicant.

9 MS. MCGRATH: Thank you, Commissioners.

10 Red Bird obviously takes a very different
11 position than the characterizations that Public Staff
12 just put forward.

13 We would contend that the issues before the
14 Commission today are not contested. Public Staff, as
15 they acknowledged, have testified that they do not
16 oppose the transfer Application. They've also
17 provided testimony that Red Bird has the technical,
18 managerial, and financial capabilities necessary to
19 provide public utility service. There's also no
20 dispute that Red Bird intends to continue charging
21 preexisting rates to Etowah's customers. Rates that
22 this Commission has found to be just and reasonable.

23 Everything that Public Staff seems to be
24 focusing on acquisition adjustment, due diligence

1 costs, effect to rate base, these are issues that are
2 properly -- that are most properly examined in the
3 context of a rate case hearing. That is not why we
4 are here today.

5 Red Bird is not requesting that the
6 Commission rule on rate base, or an Aquisition
7 Adjustment, or the appropriate amount of due diligence
8 costs, if any, to include. We think it's premature
9 for Public Staff to prejudge or speculate what those
10 costs may be.

11 The statute governing the transfer of public
12 utilities specifies three findings that this
13 Commission must make: Whether or not the transfer's
14 in the public interest; whether or not the transfer
15 will adversely effect service to the public under any
16 existing franchise; and whether the person acquiring
17 the franchise has the managerial, financial, and
18 technical capabilities, which is undisputed.

19 So again, at the time of a rate case, is
20 when issues that seem to be troubling to Public Staff
21 can be examined when all of the evidence is before
22 this Commission and the Public Staff and any
23 interested party who so wishes to intervene.

24 And we would ask that the Commission at that

1 time rule on those matters. Specifically, as to
2 whether or not an acquisition adjustment is in the
3 public interest or the amount of due diligence cost
4 that should be included in rate base.

5 And so, based on those considerations, we
6 would ask -- we would respectfully ask, that the
7 Commission rule in Red Bird's favor and approve the
8 Transfer Application for the Etowah facilities, which
9 what is currently pending before the Commission today.

10 And I would just pause and ask if my
11 colleague has any additional comments to make.

12 MS. JAGANNATHAN: No.

13 MS. MCGRATH: Okay. Thank you.

14 COMMISSIONER MCKISSICK: If there are no
15 additional comments, we are ready to begin.

16 You may call your first witness.

17 MS. MCGRATH: Thank you, Commissioner. At
18 this time, Red Bird would like to call Josiah Cox to
19 the stand.

20 THE WITNESS: I apologize.

21 COMMISSIONER MCKISSICK: That's okay. If
22 you could place your left hand on the Bible and raise
23 your right hand.

24 JOSIAH COX;

1 having been duly sworn,

2 testified as follows:

3 DIRECT EXAMINATION BY MS. MCGRATH:

4 Q Good afternoon, Mr. Cox. Can you please state
5 your name and your business address for the
6 record?

7 A My name is Josiah Cox. It's 1630 Des Peres Road,
8 Suite 140, St. Louis, Missouri 63131.

9 Q And by whom are you employed, and in what
10 capacity?

11 A So I'm the President of Red Bird Utilities, but
12 I'm also the President and Founder of Central
13 State's Water Resources.

14 Q Mr. Cox, on October 10, 2023, did you prepare and
15 cause to be prefiled in this docket direct
16 testimony, consisting of 32 pages and four
17 exhibits?

18 A I did.

19 Q And does your testimony contain any confidential
20 information?

21 A It does.

22 Q And do you have any corrections you need to make
23 to your prefiled testimony?

24 A I do not.

1 Q And if I were to ask you the same questions that
2 are set forth in your testimony while you are
3 under oath here today, would your answers be the
4 same?

5 A Yes.

6 MS. MCGRATH: Commissioner McKissick, at
7 this time, I would like to request that the prefiled
8 direct testimony of Mr. Cox be copied into the record
9 as if given orally from the stand and that his
10 Exhibits 1-4 be identified as marked when they were
11 prefiled.

12 COMMISSIONER MCKISSICK: The prefiled direct
13 testimony of Josiah Cox will be received into evidence
14 and treated as if given orally from the witness stand.
15 The attached exhibits, they appear to be four exhibits
16 as well as 32 pages of testimony, will become apart of
17 the record as it was prefiled and as it's been marked
18 and identified.

19 (WHEREUPON, Cox Direct
20 Exhibit 1-4 is identified.)
21 (WHEREUPON, the prefiled
22 direct testimony of JOSIAH
23 COX is copied into the
24 record as if given orally

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from the stand.)

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. W-933, SUB 12
DOCKET NO. W-1328, SUB 0

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of)
Application by Red Bird Utility Operating)
Company, LLC, and Etowah Sewer Company,)
Inc., for Transfer of Public Utility)
Franchise and for Approval of Rates)

**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 A. I am President of Red Bird Utility Operating Company, LLC. I also am President of
7 Central States Water Resources, Inc. (“Central States”) and CSWR, LLC, (“CSWR”), each
8 a Red Bird affiliate. Later in my testimony I describe CSWR's relationship to Red Bird and
9 discuss the role CSWR would play in Red Bird's future operations if the Commission
10 approves the Joint Application for transfer of the wastewater system owned by Etowah
11 Sewer Company, Inc. ("Etowah") to Red Bird. Later in my testimony I also describe
12 Central States' involvement in the proposed acquisition transaction.

13 **Q. PLEASE DESCRIBE YOUR EDUCATIONAL AND PROFESSIONAL**
14 **EXPERIENCE.**

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

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

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

5 During this time, I began the Master of Business Administration (“MBA”) program
6 at Washington University in St. Louis, from which I graduated in 2007. In addition, starting
7 in 2008, I took over the operation of an existing rural sewer district where I operated a
8 system managing the functioning, testing, and maintenance of that system. I also acted as
9 the administrator for this municipal system where I oversaw all the billing, emergency
10 response, accounts payable/accounts receivable, collections, budgeting, customer service,
11 and public town meetings required to service the community. I no longer provide those
12 services for the sewer district.

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.

1 Since its formation, CSWR has acquired, and currently is operating through various
2 affiliates, more than 800 water or wastewater systems in Missouri, Kentucky, Louisiana,
3 Texas, Tennessee, Mississippi, Arizona, Florida, South Carolina, and Arkansas, and, up to
4 this point, three in North Carolina. In Missouri, those systems are regulated by the Missouri
5 Public Service Commission; in Kentucky they are regulated by the Kentucky Public
6 Service Commission; in Tennessee they are regulated by the Tennessee Public Utility
7 Commission; in Louisiana they are regulated by the Louisiana Public Service Commission;
8 in Texas they are regulated by the Public Utility Commission of Texas; in Mississippi they
9 are regulated by the Mississippi Public Service Commission; in Arizona they are regulated
10 by the Arizona Corporation Commission; in Florida they are regulated by the Florida
11 Public Utilities Commission; in South Carolina they are regulated by the South Carolina
12 Public Service Commission; and in Arkansas, the systems are outside the Arkansas Public
13 Service Commission's jurisdiction due to the fact each system falls below annual revenue
14 thresholds that trigger regulation in that state.

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

16 A. The purpose of my testimony is to support the Joint Application for Transfer of Public
17 Utility Franchise and for Approval of Rates filed in these dockets ("Joint Application"),
18 which seeks Commission authority for Red Bird to acquire all utility assets currently used
19 by Etowah and to provide water and wastewater utility services to customers in Etowah's
20 service area located in Henderson County. My testimony describes the proposed
21 transaction and explains why both Red Bird and Etowah believe authorizing consummation
22 of the transaction is in the public interest. I also describe Red Bird's relationship to CSWR,
23 the role CSWR would play in Red Bird's operation of the system at issue in this case, and

1 the benefits Red Bird's relationship with CSWR would bring to customers served by the
2 Etowah system.

3 My testimony also addresses rate base in the utility assets to be acquired and
4 supports approval of an acquisition adjustment for a portion of the acquisition premium
5 Red Bird would pay for Etowah's utility assets, based on the condition of the Etowah
6 system, their compliance issues and history.

BACKGROUND INFORMATION REGARDING
RED BIRD AND ITS AFFILIATES

7 **Q. PLEASE PROVIDE SOME BACKGROUND INFORMATION ABOUT RED**
8 **BIRD AND CSWR.**

9 A. Red Bird is a North Carolina limited liability company formed to acquire water and
10 wastewater assets in this state and to operate those assets as a regulated public utility. In
11 Docket No. W-1328, Sub 7, the Commission authorized Red Bird to acquire and operate
12 the four wastewater systems previously owned by the Homeowners Associations,
13 respectively, of Ocean Terrace, Pine Knoll Townes I, II and II, all of which are located in
14 Pine Knoll Shores, North Carolina. In February 2023, the Commission authorized Red Bird
15 to acquire facilities previously owned by Bear Den Acres Development in Spruce Pine,
16 North Carolina. Most recently, the Commission approved Red Bird's acquisition of the
17 utility assets and franchise of Crosby Utilities, Inc. in Wake County, North Carolina. In
18 addition to the Joint Application in these dockets, Red Bird currently has Applications for
19 Transfer of Public Utility Franchise and for Approval of Rates pending before the
20 Commission in seven other dockets, as well as two pending applications for Certificates of
21 Public Convenience and Necessity. As is the case with the Etowah system, many of the
22 systems which Red Bird seeks to acquire in North Carolina are either distressed or troubled

1 systems, or they require the infusion of capital investment that the current owners are either
2 unable or unwilling to provide. If the Commission grants the Joint Application in this
3 docket, Red Bird will acquire, own, and operate the wastewater system currently owned by
4 Etowah.

5 Red Bird is an affiliate of CSWR, a Missouri limited liability company formed to
6 provide managerial, technical, and financial support to its utility operating affiliates. An
7 updated corporate organization chart illustrating that relationship was filed with the
8 Commission on December 12, 2022, in support of the Joint Application.

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

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

19 A. CSWR's business plan is to pursue the purchase and recapitalization of small water and
20 wastewater systems and to operate those systems as investor-owned regulated utilities.
21 Many of the systems CSWR hopes to acquire are not currently regulated. Of those that are
22 regulated, many, if not most, are out of compliance with utility commission rules and/or
23 with federal and/or state pollution, environmental and/or safety laws and regulations.
24 Indeed, many systems we acquire do not even have the federal or state permits required to

1 lawfully operate. We also have found that many regulated systems we acquire have not
2 increased their rates for a decade or more and, as a result, lack the financial resources
3 necessary to cover normal operating costs and/or to maintain and replace assets used to
4 provide service or bring their operations into compliance with rapidly changing
5 environmental and water quality regulations. Some systems we acquire are in receivership
6 and, therefore, lack the ability to raise the capital necessary to improve their systems.
7 Owners of other systems are unable or unwilling to provide the capital necessary to
8 maintain their systems. CSWR's business plan has been and continues to be making
9 investments in and taking the risks necessary to bring small water and wastewater systems
10 into compliance with current statutes, rules, and regulations. Through its affiliates, CSWR
11 has been able to acquire distressed, troubled or undercapitalized systems, invest capital
12 necessary to upgrade or repair physical facilities, and operate those systems in a way that
13 satisfies customers, regulators, and investors alike.

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 more than 100 separate
18 orders – several involving the acquisition of multiple discrete systems – regulators in each
19 of those states have determined our affiliate group has the technical, managerial, and
20 financial qualifications necessary to acquire, own, and operate water and/or wastewater
21 systems. This Commission made the same determination when it authorized Red Bird, to
22 this point, to acquire and serve several small systems in this state, and we are hopeful we
23 will be authorized to acquire additional systems here in the future. If the Commission

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

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

8 A. Red Bird is part of an affiliate group that currently owns and operates wastewater
9 systems serving approximately 221,000 customers and drinking water systems serving
10 approximately 146,000 customers in Missouri, Arkansas, Kentucky, Louisiana, Texas,
11 Tennessee, Mississippi, Florida, South Carolina, North Carolina, and Arizona. By virtue
12 of that affiliation Red Bird has the financial, technical, and managerial ability to acquire,
13 own, and operate the Etowah wastewater system in a manner that fully complies with
14 applicable health, safety, environmental protection, and regulatory laws and regulations,
15 and to provide reliable, safe, and adequate service to customers.

16 On the wastewater side of the business, the CSWR affiliate group has purchased
17 wastewater treatment plants with associated pressure systems and sewer pumping stations,
18 gravity force mains, and gravity conveyance lines. With the approval of state wastewater
19 regulatory authorities, since March 2015 CSWR-affiliated companies have designed,
20 permitted, and completed construction of numerous sanitary sewer system improvements.
21 These improvements include wastewater line repairs to eliminate infiltration and inflow,
22 building numerous sewer main extensions, building and/or repairing hundreds of lift
23 stations, the closure of a number of existing regulatory impaired wastewater systems,
24 building new or refurbishing over 150 activated sludge plants, constructing dozens of

1 moving bed bio-reactor plants, converting multiple failing wastewater systems into sludge
2 storage/flow equalization and treatment basins, converting failed mechanical systems to I-
3 Fast systems, and constructing various other wastewater treatment supporting
4 improvements.

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

15 The CSWR-affiliated group of companies is likely the most qualified utility in the
16 United States to service Etowah’s customers based on the number of systems we own, the
17 number of systems we have purchased and brought into (and kept in) environmental
18 compliance, and our personnel having the most relevant experience running small water
19 and wastewater utilities. Our affiliate group currently owns and operates more than 800
20 water and wastewater plants within our eleven-state operational footprint. On a daily basis
21 we deliver, on average, more than 14.6 million gallons of water to our more than 58,000
22 water connections and treat almost 20 million gallons of wastewater from our more than
23 58,000 water connections. In Louisiana, alone, our affiliate has removed 59 systems from

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

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

10 A. Yes, it does, as evidenced by the fact CSWR already is providing those and other similar
11 services for water and wastewater systems in Missouri, Arkansas, Kentucky, Louisiana,
12 Texas, Tennessee, Mississippi, Florida, South Carolina, and Arizona as well as for the
13 Ocean Terrace/Pine Knoll Townes, Bear Den, and Crosby systems in North Carolina. I
14 already described my background and experience in the water and wastewater utility
15 industry. The other key members of CSWR's senior team who are involved in Red Bird's
16 operations are equally well-qualified to meet the demands and needs of Red Bird and its
17 customers and of this Commission and other regulators charged with overseeing Red Bird's
18 operations. The members of CSWR's senior team were identified in Attachment D to the
19 Joint Application. Because some of those individuals and their respective responsibilities
20 have changed since the Joint Application was filed on October 8, 2020, I provide an update
21 to that attachment as **Cox Direct Exhibit 1**.

22 CSWR provides Red Bird the same level of experience and expertise CSWR
23 currently provides to its affiliated systems located outside North Carolina. The types and
24 quality of services CSWR provides Red Bird are not usually available to small systems

such as the Etowah system involved here. CSWR's business model was developed to provide support, expertise, and experience to affiliates and to do so while achieving economies of scale attributable to CSWR's centralized management structure. Not only would CSWR and Red Bird provide current Etowah customers with expertise not generally available to a small sewer system, but it can realize economies of scale that would not be possible if Red Bird had to acquire or provide such expertise and support on a company or system-specific basis.

Q. PLEASE DESCRIBE THE ECONOMIES OF SCALE YOU JUST MENTIONED AND HOW THOSE WOULD BENEFIT ETOWAH'S CUSTOMERS.

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

- Commission and environmental regulatory reporting;
- Managerial and operational oversight;
- Utility asset planning;
- Engineering planning;
- Ongoing utility maintenance;
- Utility record keeping;
- Customer service responsiveness; and
- Access to capital required to repair and upgrade the Etowah system as necessary to ensure compliance with all health and environmental requirements and ensure service to customers remains safe and reliable.

CSWR/Red Bird believes that Etowah's customers would benefit from economies of scale and other advantages available through CSWR. While these economies would not

1 necessarily result in cost savings compared to Etowah's current operations expenses, the
2 advantages of this acquisition are reflected in CSWR's resources pertaining to customer
3 service, an advanced computerized maintenance management system, and personnel with
4 years of experience across over 800 plants in eleven states, making CSWR the largest
5 operator of small water and sewer systems in the United States. After owning and operating
6 the Etowah system for an initial period, Red Bird will be able to accurately assess needs
7 and costs to more accurately identify the actual operating needs and characteristics of this
8 system and address those needs.

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

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

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

1 dedicated email address to keep customers informed about their utility service. These types
2 of customer service and operational resources generally are typically not available to
3 customers served by small utilities like Etowah.

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

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

15 **Q. WHAT OTHER OPERATIONAL BENEFITS WOULD RED BIRD BRING TO**
16 **THE ETOWAH SYSTEM AND CUSTOMERS?**

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

23 The main benefit Utility Cloud offers is that the system is a highly configurable,
24 easy-to-use asset management tool that helps all parties distribute work, report on

1 maintenance, and streamline compliance reports. With the system being highly
2 configurable, Red Bird can build out systems efficiently and begin tracking maintenance
3 and improvements on day one of ownership. Most operators of this system require only a
4 short training session to be able to navigate, create and assign work, and complete Work
5 Orders. The ability to get Red Bird's contract operators trained on this system so quickly
6 speaks volumes as to how easy the system is to operate.

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

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

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

7 **Q. WHAT EVIDENCE CAN YOU PROVIDE TO SUPPORT YOUR CLAIMS**
8 **ABOUT THE ABILITY OF RED BIRD'S AFFILIATES TO PROVIDE THESE**
9 **SERVICES OUTSIDE NORTH CAROLINA?**

10 A. In Missouri, where CSWR-affiliated companies have operated since 2014, the Missouri
11 Public Service Commission and the Missouri Department of Natural Resources ("MDNR")
12 have recognized the solid track records of CSWR and its affiliates for acquiring,
13 rehabilitating, maintaining, and operating troubled water and wastewater systems in that
14 state. In its Order approving one of our acquisitions, the Missouri Commission noted
15 CSWR's Missouri affiliate's "sound track record in rehabilitating similarly situated [i.e.
16 troubled] systems" and its "ability to acquire, maintain, and operate the systems . . . to
17 ensure safe and adequate service."¹ And in a letter from MDNR in June 2023, Red Bird's
18 Missouri affiliate was praised for its

19 willingness to acquire systems with long-standing compliance issues [that]
20 has proven to be beneficial to human health and the environment by
21 bringing many of these systems into compliance with environmental laws.
22 The Department looks forward to continuing to work with [the Missouri
23 affiliate] as it continues to acquire wastewater and public water systems in
24 Missouri, in furtherance of the Department's initiative to encourage
25 regionalization and consolidation of the many private systems in Missouri
26 that are struggling to achieve compliance with laws for the protection of
27 public health and the environment.

¹ *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 A copy of the MDNR's letter is attached to this testimony as **Cox Direct Exhibit 2.**

2 Similar sentiments were expressed by the Mississippi State Department of Health
3 in a March 14, 2023, letter to Mississippi Public Service Commissioner Brent Bailey. In
4 that letter, the Department of Health stated:

5 As you may be aware, Great River Utility Company [Red Bird's Mississippi
6 affiliate] has recently acquired several drinking water systems across the
7 state. Great River Utility has worked closely with the [Bureau of Public
8 Water Supply's] compliance and field staff to maintain compliance with the
9 various rules and regulations of the Safe Drinking Water Act. A viable entity
10 such as Great River Utility desiring to help problematic drinking water
11 systems by investing in them for improved services to citizens is very
12 appreciated and supported by the Bureau.

13 A copy of that letter is attached to my testimony as **Cox Direct Exhibit 3.**

14 As further evidence of our affiliates' capabilities, regulators in Missouri, Texas,
15 Mississippi, Arizona, Louisiana, and California have asked CSWR and its utility affiliates
16 to assume emergency operational responsibilities for distressed water and wastewater
17 systems in those states. For example, in Texas CSWR-Texas acts as an emergency
18 manager trusted by the Texas Commission to take over some of the state's most troubled
19 utilities. In Louisiana, CSWR was named as the first emergency manager for a water
20 system by the Louisiana Department of Health, in addition to taking over more than a
21 hundred systems pursuant to a Louisiana Department of Environmental Quality agreed
22 Order addressing ongoing serious environmental compliance issues. In Arkansas and
23 Kentucky CSWR has been specifically requested to take over several distressed utilities by
24 those states' respective environmental regulators. In December 2021, the Arizona
25 Corporation Commission authorized a CSWR affiliate to acquire distressed utilities and
26 approved incentives (including the opportunity to recover all or a significant portion of the

1 difference between purchase price and net book value of acquired assets) for those
2 acquisitions.

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

5 A. Yes, Red Bird and CSWR have the financial capacity to finance, own, and operate the
6 system we propose to acquire from Etowah. 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, oftentimes distressed, water and
9 wastewater systems and then make investments necessary to bring those systems into
10 compliance with applicable health, safety, and environmental protection laws and
11 regulations. This investment commitment also includes providing working capital
12 necessary to operate the acquired systems until applications for compensatory rates can be
13 prepared and prosecuted. To date, CSWR, through its affiliates, has invested more than
14 \$450 million to purchase, upgrade, and operate water and wastewater systems. Although
15 those investments have been exclusively in the form of equity, at the appropriate time Red
16 Bird plans to pursue debt financing from non-affiliated commercial sources that would
17 allow the Company to balance its capital structure. Ultimately, Red Bird's objective is to
18 achieve a capital structure consisting of 50%-60% equity and 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 AREA SERVED BY ETOWAH?**

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

24 **Q. AFTER CLOSING, HOW DOES RED BIRD PROPOSE TO PROVIDE**
25 **SERVICE TO CUSTOMERS OF THE ETOWAH SYSTEM?**

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

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

22 Red Bird also uses a non-affiliated third-party customer service firm to handle
23 service-related billing questions. Customer service representatives employed by that third-

1 party firm would be available during normal business hours, would take messages twenty-
2 four hours a day, and all customer correspondence would be recorded and logged to
3 consumers' accounts to ensure the highest level of service. This arrangement currently is
4 in place for all CSWR-affiliated utilities, including Red Bird's current operations in North
5 Carolina.

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 St. Louis
12 office, with a proportional share of the cost for those services passed down to Red Bird.
13 CSWR personnel would also monitor the activities of the non-employee contractors to
14 make sure the Etowah system is being operated and maintained properly and customers'
15 needs are being met. As I previously mentioned, the resumes of senior CSWR personnel
16 who, in addition to me, would be responsible for providing services and/or oversight to
17 Red Bird's operation, are attached to my testimony as **Cox Direct Exhibit 1**.

DESCRIPTION OF THE PROPOSED TRANSACTION

18 **Q. PLEASE DESCRIBE THE SYSTEM RED BIRD PROPOSES TO ACQUIRE**
19 **FROM ETOWAH.**

20 A. Red Bird proposes to acquire the wastewater system owned by Etowah that serves
21 approximately 441 sewer customers in Henderson County.

22 Terms of the proposed asset purchase are governed by the *Agreement for the Sale*
23 *of Utility System* ("Agreement"), between Etowah and Central States. A copy of that

1 Agreement was filed as Confidential Attachment G to the Joint Application. Central States
2 entered into the Agreement with Etowah on August 23, 2019.

3 No closing date for the transaction has been set, but the Agreement identifies
4 various conditions precedent, including obtaining all required regulatory approvals, which
5 must be satisfied before the transaction can close. Section 7.04 of the Agreement also
6 authorizes Central States to assign all its rights to the acquired assets to an affiliated entity.
7 In accordance with that provision, Central States assigned its rights under the Agreement
8 to Red Bird.

9 **Q. PLEASE DESCRIBE THE CONTRACT TO PURCHASE ETOWAH'S**
10 **UTILITY ASSETS.**

11 A. Central States contracted to purchase all utility assets of Etowah for [BEGIN
12 CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]. As just noted, Central States
13 later assigned the Agreement to Red Bird.

14 **Q. PLEASE DESCRIBE THE ETOWAH SYSTEM?**

15 A. As is our normal practice, following execution of the asset purchase agreement and as
16 part of our due diligence efforts we engage a third-party engineering firm to perform a
17 preliminary survey and analysis of the water and/or wastewater system we propose to
18 acquire. Red Bird engaged McGill Associates, an engineering firm headquartered in
19 Asheville, North Carolina, to inspect and assess the Etowah system.

20 McGill surveyed the Etowah system and its initial Report was prepared in February
21 2020; that Report was filed as Confidential Attachment L to the Joint Application.
22 Etowah's wastewater service area consists of an estimated 3.6 square miles and includes
23 neighborhoods on Meadow Road, Sunset Ridge Road, Brickyard Road, Turnpike Road,
24 Pebble Creek, and Brandy mill Loop. The wastewater system serving this area consists of

1 both gravity and force main sewer lines, six lift stations, and a wastewater treatment plant
2 that is authorized by North Carolina National Pollutant Discharge Elimination System
3 (“NPDES”) permit NC0071323 to discharge up to 125,000 gallons per day of treated
4 wastewater to the French Broad River.

5 McGill’s preliminary assessment of the work required to address needs in the
6 Etowah system includes installing and replacing pump guide rails and chains on lift
7 stations, installing transfer switches for connection of lift stations to backup power
8 supplies, replacement of lift station pumps, and various other work as detailed below.
9 McGill’s estimate of the probable cost, as of February 2020, of addressing identified needs
10 in the Etowah system was filed with the Commission as Confidential Attachment L to the
11 Joint Application.

12 **Q. WHAT IS THE RATE BASE IN THE UTILITY ASSETS TO BE ACQUIRED**
13 **FROM ETOWAH?**

14 A. Based on our audit team’s review of Etowah’s supporting documentation as well as the
15 Company’s understanding of Public Staff’s valuation, we believe the rate base value of
16 assets to be acquired from Etowah is \$277,423.

17 **Q. WHAT REMEDIAL WORK ON THE ETOWAH SYSTEM DID MCGILL**
18 **RECOMMEND?**

19 A. McGill preliminarily identified serious deficiencies and needs in the Etowah wastewater
20 system. For example, their inspection revealed that of Etowah’s six lift stations, four do
21 not meet the state minimum design criteria for sewer pump stations outlined in 15A NCAC
22 02T .0305, which requires that pump stations have backup power supply with automatic
23 activation, and public restricted access to the site and pump equipment.

1 In order to address operational and/or compliance issues in Etowah's wastewater
2 treatment system, in February 2020 McGill's recommendations for work to be done
3 initially on this system were as follows:

- 4 1. Purchase portable davit crane or hoist to lift pumps for maintenance. (1-5 years)
- 5 2. Brandy Mills Lift Station
 - 6 a. Install transfer switches for connection to portable backup power supply (1-5
 - 7 Years)
 - 8 b. Replace pump guide rail and chains. (1-5 Years)
 - 9 c. Install baseplate for portable mounted pump hoist. (1-5 Years)
 - 10 d. Replace Myers 2 HP pumps (6-10 Years)
- 11 3. Jonathan Creek Lift Station
 - 12 a. Replace pump guide rail and chains. (6-10 Years)
 - 13 b. Install baseplate for portable mounted pump hoist. (6-10 Years)
 - 14 c. Replace Hydromatic 5 HP pumps. (6-10 Years)
- 15 4. Sunset Ridge Lift Station
 - 16 a. Install baseplate for portable mounted pump hoist. (1-5 Years)
 - 17 b. Replace pump guide rail and chains. (6-10 Years)
 - 18 c. Replace 2 HP pumps. (6-10 Years)
- 19 5. Meadows Lift Station
 - 20 a. Dewater and clean wet well. (1-5 Years)
 - 21 b. Install transfer switches for connection to portable backup power supply (1-5
 - 22 Years)
 - 23 c. Replace pump guide rail and chains. (1-5 Years)
 - 24 d. Replace control panel enclosures. (1-5 Years)
 - 25 e. Install baseplate for portable mounted pump hoist. (6-10 Years)
 - 26 f. Replace Myers 3 HP pumps. (6-10 Years)
- 27 6. Homeplace Lift Station
 - 28 a. Install transfer switches for connection to portable backup power supply (1-5
 - 29 Years)
 - 30 b. Replace pump guide rail and chains. (1-5 Years)
 - 31 c. Install baseplate for portable mounted pump hoist. (6-10 Years)
 - 32 d. Replace Myers 3 HP pumps. (6-10 Years)
- 33 7. Etowah Reach Lift Station
 - 34 a. Install transfer switches for connection to portable backup power supply (1-5
 - 35 Years)
 - 36 b. Replace pump guide rail and chains. (1-5 Years)
 - 37 c. Install baseplate for portable mounted pump hoist. (6-10 Years)
 - 38 d. Replace Hydromatic 3 HP pumps. (6-10 Years)

39 **Q. AFTER CLOSING, WHAT INVESTMENTS DOES RED BIRD PLAN TO**
40 **MAKE TO ADDRESS ISSUES IN THE ETOWAH SYSTEM?**

1 A. In February 2021, which is well over two years ago, McGill's estimate of the cost of
2 the work and capital requirements required to address problems and compliance issues with
3 the Etowah wastewater system was \$470,200, consisting of \$141,400 for work on the
4 collection system and \$328,800 for work on the wastewater treatment plant, as shown on
5 Confidential Attachments L, L.1 and L.2 to the Transfer Application filed in these dockets.

6 McGill's survey of the Etowah system was based on data provided by the seller,
7 information available from public records, and information gathered during a field survey
8 of visible, above-ground assets. McGill's field survey did not include detailed investigation
9 of system components, any system testing procedures, or an inspection or assessment of
10 pipelines, valves, or other below-ground facilities. For those reasons the survey and capital
11 estimates are preliminary.

12 Regarding the information just discussed, I want to emphasize – and the
13 Commission should keep clearly in mind – these capital estimates are approaching three
14 years old and are still preliminary. If our affiliate group's ownership and operation of more
15 than 800 water and wastewater systems in ten other states has taught us anything, it's that
16 we can never be sure exactly what capital investment will be required for repairs and
17 upgrades until we have a chance to operate the systems we acquire. Only then can we truly
18 determine the nature and full extent of the problems those systems face and the most cost-
19 effective ways to address and remedy those problems. I'm certain we will find that true for
20 the Etowah system as well. Whatever problems ultimately are determined to exist and
21 require remediation – problems that equally confront the current owner selling the Etowah
22 system as well as Red Bird or any other party seeking to acquire the Etowah system – Red
23 Bird will fix those problems in the most cost-effective way possible. Our track record

1 outside North Carolina is clear – CSWR does not invest capital it's not required to invest,
2 and it doesn't "gold plate" the systems it owns and operates. We invest the capital needed
3 to provide safe, reliable, and environmentally compliant water and wastewater service.
4 That's the same attitude and track record we will bring to the Etowah system as well.

5 **Q. WHAT IS THE COMPLIANCE HISTORY OF THE ETOWAH SYSTEM?**

6 A. McGill's report noted that the Etowah "WWTP has received a number of Notices of
7 Violation ("NOVs") for either failure to meet effluent limits or failure to monitor effluent
8 parameters at the frequency specified in the NPDES permit." McGill's report noted that
9 the Etowah WWTP received NOVs in 2017 for Inflow and Infiltration and Severe Natural
10 Condition of the Influent Pump Station; in 2018 for a pipe break and exceeding effluent
11 limits; and another NOV in 2019 for an exceedance of effluent limits. Additionally,
12 according to the EPA's ECHO database, the system is currently in a state of Significant
13 Noncompliance and has been out of compliance for 11 of the last 12 quarters. The system
14 has had 5 informal enforcement actions against it in the last five years with the most recent
15 being in June of this year. The ECHO database also indicates that the facility has most
16 recently exceeded its BOD limits in Q2 2023 and its fecal coliform limits in Q1 2023.

17 **Q. DOES RED BIRD REQUEST APPROVAL OF AN ACQUISITION**
18 **ADJUSTMENT IN CONNECTION WITH ITS PROPOSED ACQUISITION OF**
19 **THE ETOWAH SYSTEM?**

20 A. Yes. Under the Agreement with Etowah, CSWR agreed to pay [BEGIN

21 CONFIDENTIAL] [REDACTED]

22 [REDACTED]

23 [REDACTED]. [END CONFIDENTIAL] Given the

24 historic and apparently continuing compliance issues with the Etowah system and the

benefits accruing to Etowah's customers from Red Bird's anticipated estimated investment likely in excess of \$470,200 in the Etowah system, we believe that it is in the best interest of the Etowah customers that the Commission approve the transfer of this system to Red Bird and approve an acquisition adjustment for a reasonable portion of the amount of the purchase price above net book value of the acquired assets.

Q. WHAT IS YOUR UNDERSTANDING OF THE STANDARD FOR APPROVAL OF AN ACQUISITION ADJUSTMENT RELATING TO THE ETOWAH SYSTEM?

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

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

1 Distilled to its essence, I understand that this Commission's standard is that to
2 secure rate base treatment of an acquisition adjustment the purchasing utility must establish
3 "that the price to be paid for the acquired utility is prudent and that both the existing
4 customers of the acquiring utility and the customers of the acquired utility would be better
5 off [or at least no worse off] with the proposed transfer, including rate base treatment of
6 any acquisition adjustment, than would otherwise be the case. (UI Order p. 27).

7 **Q, DOES THE ACQUISITION ADJUSTMENT YOU PROPOSE HERE SATISFY**
8 **THAT STANDARD?**

9 A. Yes. The price to be paid for the Etowah system was negotiated at arm's length
10 between totally unrelated parties. Etowah would not sell its system to us for any less. The
11 purchase price we agreed to pay is prudent.

12 We also do not seek an acquisition adjustment for the entire purchase price, but
13 rather only for a reasonable portion of the amount of the purchase price that exceeds
14 Etowah's rate base in the assets to be acquired – which is an acquisition premium in the
15 amount of [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL].

16 Etowah's customers will be better off if this transaction closes with approval of an
17 acquisition adjustment, because Red Bird is able to invest the capital necessary to address
18 both near term and long term needs in the Etowah system. Those customers will also get
19 the benefit of ownership and operation of this system by an adequately capitalized and
20 professionally run utility.

21 **Q. IF THE COMMISSION APPROVES THE JOINT APPLICATION, IS RED**
22 **BIRD WILLING AND ABLE TO MAKE ANY IMPROVEMENTS NECESSARY**
23 **TO BRING ETOWAH'S SYSTEM UP TO STANDARD AND INTO**
24 **COMPLIANCE WITH APPLICABLE REGULATIONS?**

1 A. Yes. If the Commission grants Red Bird the approval sought in the Joint Application,
2 Red Bird and CSWR are willing and able to invest capital necessary to bring the Etowah
3 system up to standard and into compliance with applicable regulatory and legal
4 requirements. As I described previously, the affiliate group of which Red Bird and CSWR
5 are part has access to the capital necessary to address needs and deficiencies in the Etowah
6 system and to operate that system in a manner that is in the public interest and complies
7 with applicable statutes, rules, and regulations.

8 **Q. WHAT RATES, RULES, AND REGULATIONS WOULD BE IN EFFECT FOR**
9 **THE ETOWAH SYSTEM THAT ARE THE SUBJECT OF THESE DOCKETS?**

10 A. Initially, Red Bird proposes to adopt the tariffs, rules, and rates currently in effect for
11 the Etowah system. However, if the rates for that system prove to be inadequate to cover
12 reasonable and prudent operating costs and provide the opportunity to earn a fair rate of
13 return on our investment in this system - as will likely be the case given that Etowah's rates
14 were set in April 2002, and then reduced effective January 1, 2017, in Dockets W-938, Sub
15 5 and M-100, Sub 138 due to the reduction in the State corporate income tax rate from 4%
16 to 3% - and given that additional capital investment will be needed to address system needs
17 – then Red Bird will petition the Commission to increase rates. Red Bird may also seek
18 authority to eventually consolidate rates of the system that is the subject of these dockets
19 with those of other water and wastewater systems it hopes to acquire and operate in North
20 Carolina.

21 **Q. WHAT IS YOUR UNDERSTANDING REGARDING DETERMINATIONS**
22 **THE COMMISSION TYPICALLY MAKES IN A TRANSFER DOCKET LIKE**
23 **THIS, BEYOND THE ISSUE OF WHETHER RED BIRD HAS THE FINANCIAL,**
24 **TECHNICAL, AND MANAGERIAL ABILITY NECESSARY TO BE ALLOWED**
25 **TO ACQUIRE, OWN AND OPERATE THE ETOWAH SYSTEM?**

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

12 I also note the law applicable to water and wastewater acquisitions recently changed
13 since the Commission decided the Ocean Terrace / Pine Knoll Townes and Bear Den cases.
14 Changes to N.C.G.S. § 62-111 enacted by the General Assembly during the current
15 legislative session now provide that the Commission "shall issue an order approving an
16 application" to acquire water and wastewater system assets if the proposed acquisition "is
17 in the public interest, will not adversely affect service to the public under any existing
18 franchise, and the person acquiring said franchise . . . has the technical, managerial, and
19 financial capabilities necessary to provide public utility service to the public." By limiting
20 the focus of the Commission's inquiry in acquisition cases I believe the General Assembly
21 has signaled that extraneous issues – such as whether an acquisition adjustment should be
22 approved – should be deferred to a rate case or other post-acquisition proceedings.

1 **Q. WHAT COSTS HAS RED BIRD INCURRED IN CONDUCTING ITS DUE**
2 **DILIGENCE INQUIRY AND INVESTIGATION RELATING TO THE ETOWAH**
3 **SYSTEM?**

4 A. We won't know the total due diligence and transactional costs associated with this (or
5 any other) acquisition until the purchase actually closes. Our experience is that smaller
6 systems often require more due diligence work than larger, better managed systems,
7 because the document management, record keeping, and regulatory compliance tendencies
8 associated with smaller systems tends to be poor and often incomplete, requiring additional
9 efforts to attempt to accurately determine what exists in the ground and in areas that
10 sometimes have not been maintained for decades.

11 The due diligence activities undertaken by Red Bird in connection with the
12 acquisition of the Etowah system included surveying work, legal title work, preliminary
13 civil engineering work, environmental compliance site surveys, and accounting due
14 diligence. As shown on **Cox Direct Exhibit 4**, as of the date of my testimony Red Bird
15 has incurred costs totaling \$317,269.22 for due diligence, transactional and regulatory
16 work related to acquisition of the Etowah system.

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

19 A. Due diligence efforts provide preliminary insight to a potential purchaser as to the
20 condition of a utility system and the problems and issues that must be addressed. As noted
21 above, the full scope and scale of those problems cannot be truly known until we have
22 acquired and begun to operate a system. Due diligence is not a process that is limited to
23 utility acquisitions. Any business considering a significant acquisition routinely conducts
24 due diligence to determine the condition of the assets it proposes to acquire, to confirm that

1 clear title to those assets can be acquired, and to estimate the nature and extent of required
2 future capital investments.

3 The Commission should encourage due diligence in reviewing possible utility
4 acquisitions with the knowledge that not every system that is reviewed will be acquired.
5 This is especially the case with regard to troubled and distressed systems, where investment
6 is required in order to address problems and bring systems into compliance. Without due
7 diligence it would be impossible for Red Bird to acquire systems with a reasonable
8 understanding of what will be required to operate the system in a manner that ensures
9 customers receive safe and reliable utility service provision. Without the basic knowledge
10 our due diligence activities provide about systems we acquire, achieving the objective I
11 just mentioned would be extremely difficult if not impossible. CSWR prudently
12 investigates acquisition opportunities that present themselves and this analysis necessarily
13 involves the expenditure of time by properly trained employees and the use of consulting
14 engineers, lawyers, accountants, and other experts. There are some potential acquisitions
15 which, after proper due diligence, are shown to be not in the best interests of CSWR or its
16 operating subsidiary's ratepayers. Nonetheless, these are legitimate business expenses and
17 this type "opportunity cost" should be shared with ratepayers, just as the benefits of
18 completed acquisitions are shared. These efforts are necessary in order to make prudent
19 acquisition decisions and are a reasonable and necessary part of this process. They also
20 provide information useful in determining whether an acquisition application should be
21 approved. For these and other reasons, Red Bird believes it is reasonable and appropriate
22 that the Company's due diligence costs associated with investigating the Etowah system

1 and transactional costs incurred to this point, as shown in **Cox Direct Exhibit 4**, be
2 included in rate base, subject to being recovered in the Company's first general rate case.

3 Establishing a regulatory policy that such costs are unrecoverable in rates would
4 create a significant disincentive for future acquisitions in North Carolina, including those
5 of troubled and distressed water and/or wastewater systems whose acquisition by
6 competent and adequately capitalized companies like Red Bird clearly is in the public
7 interest. Finally, as for regulatory costs, those are unavoidable because Commission review
8 and approval of public utility acquisitions is required by law. As further evidence of how
9 "mainstream" due diligence and regulatory costs are to transactions such as the one
10 currently under consideration, I note the Uniform System of Accounts for small water and
11 wastewater companies, which was created by NARUC, expressly provides for the
12 capitalization of those costs.

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

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

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

23 A. To provide the financial security required by the Commission's rules, Red Bird will
24 post its own bond, to be secured by a corporate surety bond in a form that complies with
25 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 wastewater system currently
4 owned and operated by Etowah will be consistent with and would promote the public
5 interest. Transfer of this system to a well-capitalized enterprise that is a professional utility,
6 will be in the best interest of the Etowah customers. Red Bird and CSWR are fully
7 qualified, in all respects, to own and operate this system and to otherwise provide safe and
8 adequate service.

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

10 A. Yes.

1 MS. MCGRATH: Thank you. Commissioner
2 McKissick, Mr. Cox, is now available for cross
3 examination and questions from the Commission.

4 I would just note that Mr. Cox will be back
5 on rebuttal as part of a panel.

6 COMMISSIONER MCKISSICK: Thank you.

7 MS. MCGRATH: Thank you.

8 COMMISSIONER MCKISSICK: We'll recognize the
9 Public Staff.

10 MS. NEWELL: Thank you, Commissioner.

11 CROSS EXAMINATION BY MS. NEWELL:

12 Q All right. Good afternoon, Mr. Cox.

13 A Good afternoon.

14 Q So I have a few questions for you, and hopefully
15 they are not overly --

16 COMMISSIONER MCKISSICK: You might want to
17 move the microphone a little closer to you.

18 MS. NEWELL: Sure.

19 COMMISSIONER MCKISSICK: Or speak a little
20 louder, perhaps.

21 MS. NEWELL: Can you hear me now?

22 THE WITNESS: Yes, ma'am.

23 Q So on Page 5, Line 21 of your direct testimony,
24 you contend that the Etowah System is either

1 distressed, troubled, or requires an infusion of
2 capital investment that the current owners are
3 either unable or unwilling to provide. Can you
4 tell us what your definition of a troubled system
5 is and, what criteria you use to determine that a
6 system is troubled?

7 A Yeah, absolutely. In fact, in my rebuttal
8 testimony, I go through great detail where we
9 talk about the other states and their policies
10 and how they determine whether or not a system is
11 troubled or in distress. And I would use those
12 words synonymously, actually.

13 I go into detail here, you know, think the
14 Etowah System. So in the Etowah System, in the
15 last five years have only had one quarter where
16 they have not had noncompliance where they've had
17 compliance. So they've been out of compliance
18 for almost the entirety of the last five years.
19 Since the time we signed this contract in 2020
20 till today, there've been 11 notices of violation
21 and many more instances of noncompliance.

22 So in addition to that, you can tell over
23 the last five years have been no additions to
24 plant in service, basically. And the utility has

1 lost money for almost every single year in the
2 last five years. And, especially -- and there's
3 some contention in the accounting currently about
4 tap-on fees, whether or not those are
5 contributions that aid capital, or whether or not
6 those are actually just cash payments. And since
7 they recorded the annual reports as cash
8 payments, the actual operating loss on the system
9 is significantly higher that's even stated in the
10 annual report.

11 In addition to that, the owners have,
12 themselves, said, "Hey. We're not supposed to be
13 in the utility business. We don't have the
14 capital or the expertise to really upgrade or run
15 this system." Which is evidenced by, I mean,
16 earlier this year I got a call from the
17 Department of Environmental Quality. They had a
18 lift station that was overflowing for, I think,
19 two weeks. And, you know, they recorded a
20 sanitary sewer overflow of 600 gallons. That was
21 a single day's overflow. It's actually much more
22 than that. We think that the lift station been
23 overflowing for much longer period. And, you
24 know, the thing for us, as a Company, when we see

1 sanitary sewer overflows, consistent violations
2 of permit limits, especially stuff like fecal
3 coliform, which is an indication of human health
4 pathogens being, you know, led into surrounding
5 water bodies. Literally, what you're doing is --
6 there's 20,000 residents below this wastewater
7 treatment plant -- you're releasing potentially,
8 you know, human health-impacting, you know,
9 pathogens. This is the kind of stuff that causes
10 disease.

11 So those are all very clear indications.
12 Plus the fact the sellers do not have a clear --
13 they don't have a clear succession plan. You
14 know, we've done all the work to have the -- they
15 didn't have existing site maps, line maps, you
16 know, existing plant records. I mean, all those
17 things are indications of a troubled, you know,
18 distressed utility.

19 Q And what is the significance of your
20 determination, that the system is distressed or
21 troubled as it relates to this proceeding? And
22 the follow-up to that is, can you point to an
23 Order that allows an acquisition adjustment on
24 that basis?

1 A So repeat the first question, if you don't mind,
2 ma'am.

3 Q So the first question is: What is the
4 significance of the determination, or your
5 determination that the system is distressed or
6 troubled?

7 A I mean, the significance is, that these owners
8 pose a human health risk, and a collapse of
9 service risk to the customers is the big point.
10 I mean, we see this, you know, think, so we're
11 the largest owner of individual domestic
12 wastewater treatment plants in the United States,
13 and we've come to states with the highest amount
14 of fragmentations, the most amount of small
15 systems, and the highest amount of noncompliance
16 and North Carolina fits in both those categories.
17 And these are the type of systems; the Etowah
18 System is indicative of systems we own hundreds
19 of across the country. And, really, these are
20 the people that are putting human health at risk
21 that really need out of the business. And so
22 that distressed determination, which in fact, I
23 think North Carolina Waterside has some specific
24 language of what they consider distressed in a

1 roadmap that I have in my testimony. And, you
2 know, this system falls right down the, you know,
3 the median for a system that needs to be -- it
4 needs to be professionally managed, operated,
5 investment in over a long period of time.

6 Q And can you tell me, sort of, what is the
7 significance of that as it relates to a potential
8 acquisition adjustment?

9 A So we think that these -- these owners need out
10 of the business. And, you know, this is
11 interesting. We see this in the regulatory world
12 all over the country. So, for example, the
13 Etowah owner-- the Etowah owners, they are paying
14 themselves a salary, they have Company trucks,
15 they're, you know, there's economic value coming
16 out of this system even though they've had, you
17 know, four and a half years of noncompliance.
18 And, really, what we see is a cross. We're here
19 at the intersection of where, if you're an
20 environmental regulator, every dollar of fine
21 money you take out of an owner is another dollar
22 that doesn't go into plant, that doesn't go into
23 lines. Right? And then, you know, the economic
24 regulators are not pressing for these people to

1 get in-- get rate cases. In fact, Etowah's
2 proven they really have the technical, managerial
3 ability to do a rate case. I mean, the last rate
4 case, I believe, was a rate case on margin of
5 expenses rather on rate base, which is
6 interesting that we're arguing about rate base
7 right now because I don't think that's been set
8 for, you know, close to 20 years. So the reason
9 why that matters is these people have an economic
10 benefit out of this system. They have to be paid
11 for it. And they're distressed. So there needs
12 to be some consideration that it's better for the
13 public for them to be taken out of the business.

14 Q Right. But what does that have to do with your
15 Company getting the acquisition adjustment?

16 A Because the only price that they would sell for
17 is the price that we negotiated to. And they
18 need out of the business.

19 Q So I guess, I'll just -- bear with me, because
20 you said the only price that they will accept is
21 what -- or the price you paid is the price
22 that -- the only price they'd accept to get out
23 of the business?

24 A It's the lowest negotiated price we could get,

1 correct.

2 Q So if I tell you that you're in the business of
3 selling pens, for instance. And I say, "I'm
4 willing to sell you this pen for \$1,000," what
5 would be your response?

6 A That pen's not dumping human pathogens through a
7 receiving water body that has 20,000 people
8 downstream.

9 Q But it's the only price that I'm willing to
10 accept.

11 A 20,000 people are in danger because of that pen.

12 Q Yeah. A pen, 20,000 people are in danger; what
13 am I doing with the pen? Or what are you
14 proposing to do with this pen?

15 A Fix it, so all those people are not in danger
16 anymore.

17 Q But I think we can tell from this exercise,
18 right, just because that is the only price I'm
19 willing to accept for the pen, does not mean that
20 it's a reasonable purchase price; wouldn't you
21 agree?

22 A No. Because the pen's causing you \$80,000 of
23 revenue a year.

24 Q So because it's the only price I will accept, you

1 think it's reasonable and prudent to pay that
2 amount for this pen?

3 A I think it's reasonable and prudent to knock a
4 person out that's putting 20,000 people in danger
5 who is pulling an income out and has residual
6 value, yes.

7 Q So your Company has been acquiring numerous
8 systems in North Carolina and in various other
9 jurisdictions, and you've made promises to
10 improve those systems; have you not?

11 A Yes.

12 Q Have you been upholding your portion of the deal
13 regarding those promises?

14 A Yes. We've never violated an agreement I
15 consent -- or agreed Order in Company history.

16 Q Okay. So is the wastewater treatment plant at
17 Pine Knoll Townes II still in service?

18 A It is.

19 Q And is the septic system servicing Pine Knolls I
20 and III still in service?

21 A I don't know the answer to that question. I know
22 we put an emergency FEMA system in there to
23 process the waste because the septic system had
24 failed.

1 Q But, subject to check, would you agree, or would
2 you accept, that it is still in service?

3 A I don't know the answer to that.

4 Q Did you represent to this Commission, that the
5 planned improvements would result in these being
6 taken out of service and decommissioned? And
7 I'll refer you back to your response in the Pine
8 Knolls II question.

9 A So I think you're confusing the issue because the
10 septic tanks now run into a wastewater treatment
11 plant. So they're no longer acting as a septic
12 field.

13 Q So I'm referring to Pine Knolls Towne II, because
14 you indicated in response to my question, that
15 that wastewater treatment plant was still in
16 service?

17 A I believe, ma'am, that's running into a -- it's
18 running into an extended aeration plant after
19 being collected in the septic.

20 Q Did you represent to this Commission that the
21 planned improvements would result in these being
22 taken out of service and decommissioned?

23 A No. We represented we would make sure that the
24 waste is being treated. It's no longer being --

1 because it was a failed septic leach field that
2 we put into a discharging treatment plant.

3 Q And what about the new plant that you promised?

4 A We installed the plant on site. It was one of
5 the first things we did in that system. We had
6 to bring an emergency plant in because the septic
7 field had failed completely. In fact, we have
8 another Application that we're -- have not gotten
9 sufficiency yet because of the detailed
10 engineering work that your staff would like who
11 are trying to do a centralized plant in that
12 whole area. That would be the Sugarloaf System.

13 Q So you installed a temporary plant?

14 A It's an actual treatment plant that we installed.

15 Q Is it a temporary plant?

16 A I wouldn't call it a temporary plant. It's
17 meeting limits.

18 Q So it's meeting limits, but is it the new plant
19 that you promised? Was that the intention of the
20 new plant?

21 A We're actually looking to do a larger plant now
22 in that area.

23 Q Yes. Thank you for finally getting to the
24 answer. So clearly, as we're seeing demonstrated

1 here, you talk a big game, but how do we have any
2 assurances that your Company is actually going to
3 fulfill what you've promised us?

4 A Ma'am, we've turned around 180 plants. We're on
5 track by the end of next year to turn more plants
6 around -- wastewater treatment plants -- than any
7 company since the passage of the Clean Water Act.
8 There's no one better to turn around these small
9 plants than our Company.

10 Q So is it your testimony here today, that all
11 those plant systems, or those systems, are
12 connected to the temporary plant?

13 A I don't know what you're talking about. What are
14 you saying? Which system? Can you clarify for
15 me?

16 Q In Pine Knoll Townes.

17 A Ma'am, I don't remember.

18 Q And Ocean Terrace?

19 A I don't remember. Wasn't prepared to testify on
20 that today.

21 Q Well, are you prepared to acknowledge that you
22 haven't, in fact, completed all the work that
23 you've promised in those systems?

24 A I don't -- you know, I don't have those problems.

1 I don't have those in front of me, ma'am.

2 Q I'll move on. So we've already talked a little
3 bit about the prudent purchase price, right?

4 That just because that's the amount that they
5 were willing to accept, just as if I offered to
6 sell you a pen for \$1,00 and that's the lowest
7 amount I'll accept, that you think that is
8 prudent?

9 A Again, your pen's not putting 20,000 people in
10 danger and throwing out \$80,000 a year in cash to
11 the owners. So I don't -- I think that analogy
12 falls apart.

13 Q So let's talk about this a little bit further.
14 You testified in your direct testimony, Page 26,
15 Lines 9 to 11, and I quote: "The price to be paid
16 for the Etowah System was negotiated at arm's
17 length between totally unrelated parties. Etowah
18 would not sell the system to us for any less.
19 The purchase price we agreed to pay is prudent."
20 Correct?

21 A Correct. I see that in my testimony.

22 Q Yes. And you've discussed publicly a database of
23 water and wastewater systems that CSWR has
24 compiled; is that also correct?

1 A Correct.

2 Q Okay. And did you identify the Etowah System
3 using that database?

4 A That's why we came to North Carolina.

5 Q And did Red Bird initiate contact with Etowah?

6 A Yes, we did.

7 Q And what was the initial offer to Etowah?

8 A Normally, we start with \$1.

9 MS. MCGRATH: Excuse me, I'm sorry, I think
10 we're getting into some confidential -- weighting into
11 -- the purchase price has been marked as confidential,
12 so I just want to flag for the Commission's
13 consideration.

14 COMMISSIONER MCKISSICK: If we're moving
15 into this confidential ground, we need to go into
16 closing session.

17 MS. NEWELL: That's not necessary at this
18 time, Commissioner.

19 Q I would just note, the Public Staff asked in
20 DR-14, question seven, "What was the amount of
21 the purchase price." And, would you agree that
22 the response to that discovery request was that,
23 "Red Bird has no information responsive to this
24 request."?

1 A I -- I don't. Could you say that all over again?

2 Q In response to that question --

3 A To what question?

4 Q The amount and date of the initial purchase price
5 offer made for the Etowah system.

6 A Okay.

7 Q That Red Bird's response was, "Red Bird has no
8 information responsive to this request."

9 A What's your question, ma'am?

10 Q Was that your response?

11 A If that was in the DR, yes.

12 Q Okay. So if you have no information regarding
13 the -- you're saying that you've been -- you
14 negotiated and that was the lowest price, but
15 you've provided no information to the Public
16 Staff in that regard; is that correct?

17 A That is the answer to the DR, correct.

18 Q And you agreed to the purchase price on August
19 23, 2019?

20 A That sounds accurate.

21 Q And has the purchase price changed since that
22 time?

23 A Not that I'm aware of.

24 Q Are you familiar with the concept of

1 depreciation?

2 A I am.

3 Q So do we agree that the plant has depreciated
4 since that time?

5 A It depends on what other investments were made
6 after that and whether or not those -- those
7 tap-on fees were capital or were they cash.

8 Q You indicated in your testimony previously in
9 this proceeding, that the Company is distressed.
10 That the -- they're, you know, no improvements in
11 plant. So much so, that you're willing to pay
12 any amount of money that they're asking for in
13 its purchase price, but you don't believe that
14 the plant or the assets have depreciated?

15 A I'm not -- I'm not saying that. I mean, in fact,
16 I would say, you know, to your original question,
17 you know, these sellers are mom-and-pop outfits
18 who are scared of regulation. They not been able
19 to file rate cases. They have a failing plant.
20 So, you know, some of these people don't --
21 they're not sophisticated. They're not big email
22 people. So this is a very relational sale. Our
23 business developers are trying to get the lowest
24 possible price.

1 Q And so, do you think, by virtue of being a mom
2 and pop operation, they should get whatever price
3 they ask for?

4 A No. But they're -- they understand that they're
5 pulling money out and it has economic residual
6 value.

7 Q And do you recognize that the plants would
8 continue to depreciate anyway?

9 A I'm sorry. What was the question?

10 Q Well, because you indicated that you didn't
11 necessarily believe that the plants would
12 depreciate?

13 A No. Plants always depreciate.

14 Q Yes. And I guess a follow-up to that is, given
15 the accumulated depreciation, wouldn't the net
16 value be reduced?

17 A You know, when we signed this contract in 2019, I
18 never thought it would be 2023 and we're still
19 going through the acquisition case. So I don't
20 think it was ever contemplated inside the sales
21 contract.

22 Q So I'm going to take that to mean that you
23 haven't made any attempts to renegotiate the
24 purchase price?

1 A It's actually the opposite. It's been very hard
2 to keep the contract alive, because the sellers
3 are so frustrated with how long the process has
4 taken.

5 MS. NEWELL: Commissioner, I am going into a
6 line of questioning regarding a confidential filing to
7 the Joint Application.

8 COMMISSIONER MCKISSICK: Okay. Well, let's
9 see who is in the hearing room at this time that would
10 need to leave so that we can go into confidential
11 session. I'll depend upon the attorneys to identify
12 those that are unnecessary.

13 Let the record reflect that we are now going
14 into confidential session to deal with confidential
15 exhibits that have been prefiled with the Commission.

16 (WHEREUPON, the following
17 pages are confidential and
18 shall be filed under seal.)

19 [REDACTED]
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[REDACTED]

(WHEREUPON, the
confidential session has
ended.)

MS. NEWELL: Sure.

COMMISSIONER MCKISSICK: Before I do that,
one second. I did not provide the Applicant an
opportunity if they have any questions at this time
for the confidential provisions.

MS. MCGRATH: No, Commissioner. No
questions. Thank you.

COMMISSIONER MCKISSICK: Okay. All right.

MS. NEWELL: So, Presiding Commissioner
McKissick, at this time, I would like to introduce a
cross examination exhibit. This is an invoice for 21
Design Group provided in the Company's response to the

1 Public Staff Data Request. And I'd like to have it
2 marked as Public Staff Cox Direct Testimony
3 Examination Exhibit 1.

4 COMMISSIONER MCKISSICK: Okay. Do you have
5 copies of that?

6 MS. NEWELL: I do.

7 COMMISSIONER MCKISSICK: Please distribute
8 it. What we will do is identify this as Public Staff
9 Cox Direct Cross Exhibit 1, for the record.

10 And I don't see any objections at this time.

11 MS. MCGRATH: No objection.

12 COMMISSIONER MCKISSICK: Okay. You may
13 proceed.

14 (WHEREUPON, Public Staff
15 Cox Direct Cross Exhibit 1
16 is identified.)

17 Q So according to your testimony, on Page 19, Lines
18 15 to 17, you and CSWR personnel are responsible
19 for providing services and/or oversight to Red
20 Bird's operation, correct?

21 A Correct.

22 Q And does that include reviewing contractor
23 invoices prior to payment?

24 A Yes.

1 Q So I'd like you to take a look at the invoice for
2 21 Design. And can you tell from the invoice
3 what work they've completed?

4 A You mean from the blacked out version can tell I
5 what they've done?

6 Q (No verbal response.)

7 A I cannot. I know what they do, in general.

8 Q Right. Okay. So you would agree that you can't
9 tell from this invoice what work they did, the
10 Public Staff would not be able to tell from these
11 invoices what work they did?

12 A I don't -- we don't approve redacted invoices.

13 Q Okay. So I'm going to point you to the invoice
14 that is listed as Number 10976.

15 A I see it.

16 Q So if you look at the bill to portion, it doesn't
17 look that this invoice is related to the Etowah
18 system; is it?

19 A It does not appear to be.

20 Q So we've got blacked-out redacted invoices and
21 figures and charges that are not related to
22 Etowah?

23 A Seems like this was a mistake.

24 MS. NEWELL: And, Commissioner McKissick, at

1 this time I would like to introduce a second cross
2 examination exhibit, and this is the invoice for
3 Burns, Day & Presnell. And I'd like to have that be
4 marked as Cox' Cross Examination 2.

5 COMMISSIONER MCKISSICK: Okay. Public Staff
6 Cox Examination 2.

7 Are there any objections?

8 MS. MCGRATH: No objection.

9 COMMISSIONER MCKISSICK: Okay. You may
10 proceed. It's allowed.

11 (WHEREUPON, Public Staff
12 Cox Direct Cross Exhibit 2
13 is identified.)

14 Q If you look at the description listed on the
15 first page, dated March 29, 2022, and if you can
16 read the description of the work?

17 A Which invoice are you on, ma'am?

18 Q I'm looking at the invoice for Burns, Day &
19 Presnell.

20 A Which invoice number?

21 Q Oh. The invoice number is 72562.

22 A I have it.

23 Q And then the date, March 29, 2022.

24 A I see that.

1 Q Okay. And can you read that description?

2 A Email to and email from T. Thomas; email to D.
3 Drooz regarding meeting with Tribute; email from
4 and email to Drooz; email to client personnel.

5 Q And is that related to the Etowah system?

6 A I have no idea.

7 Q And if you will also look at Invoice Number 72943
8 and 73126, there's work performed on June 29th,
9 June 28th, and dates in July, respectively. And
10 can you look at the description of work listed on
11 those items?

12 A I see it.

13 Q And are those related to the Etowah system?

14 A I have no idea.

15 Q So you'll see from the description, it references
16 the Tribute RV development plans and the Tribute
17 RV Park development plans; do you know what those
18 are in reference to?

19 A I do not.

20 Q Okay. So have you reviewed these invoices?

21 A I don't approve legal invoices.

22 Q So you're responsible for oversight and due
23 diligence, but you don't approve the invoices,
24 payments of which you're authorizing and

1 ultimately seeking to transfer to cost payers?

2 A I'm the CEO of the 11th largest investor-owned
3 water and wastewater utility company in the
4 United States. I don't approve every legal
5 invoice.

6 Q Who -- who does approve these invoices?

7 A That would be our general counsel.

8 Q Okay. And then, do you have any oversight of the
9 people who work under you?

10 A Yes, I do.

11 Q Exactly. So I'm going to turn now to the McGill
12 invoices we received.

13 MS. NEWELL: And at this time, Commissioner,
14 I would like to introduce the McGill invoice as a
15 cross exhibit.

16 COMMISSIONER MCKISSICK: Okay. We will
17 introduce it as Public Staff Cox Direct Cross
18 Examination Exhibit 3. The preceding one would have
19 been Public Staff Cox Direct Cross Examination 2.

20 Have you had a chance to review that? Do
21 you have any objections?

22 MS. MCGRATH: No objections.

23 COMMISSIONER MCKISSICK: Okay. Exhibit
24 introduction is allowed. You may proceed.

1 (WHEREUPON, Public Staff
2 Cox Direct Cross Exhibit 3
3 is identified.)

4 MS. NEWELL: Thank you, Commissioner.

5 Q So, Mr. Cox, if you can turn to Invoice Number --
6 let's see -- 12320. So it's the invoice that's
7 dated, August 15, 2021.

8 A They're both -- both sides are dated August 15th.

9 Q So the invoice number ending in 12320.

10 A I see it.

11 Q Can you -- it says on here it's an Engineering
12 Permitting; do you see that?

13 A I do.

14 Q Okay. And can you describe for us what
15 engineering permitting was required for a system
16 that you have yet to purchase?

17 A That \$9,200 fee matches the preliminarily
18 engineering report that was done by them.

19 Q So it says, engineering permitting.

20 A It's a engineering firm. Their billing codes
21 don't match up to what they do necessarily.

22 Q Okay. So you don't actually know what that is in
23 reference to?

24 MS. MCGRATH: Objection. That's not what he

1 testified to.

2 COMMISSIONER MCKISSICK: Sustained. You
3 might want to reask the question.

4 MS. NEWELL: Sure.

5 Q This engineering permitting that's listed on the
6 invoice, you don't know what it's referring to?

7 A I assume it's for the preliminary engineering
8 work they did.

9 Q Okay. So is this the level of oversight that is
10 used to determine the expenditures and ultimately
11 what customers will be liable for paying?

12 A Absolutely not. We have an engineering director
13 that goes through all those, and a vice president
14 who goes through those as well.

15 Q But all we know from this proceeding is, that all
16 of the invoices so far that I've referenced
17 you've identified mistakes, you've identified
18 invoices that don't have anything to do with
19 Etowah, and you've identified invoices with work
20 that you have no idea what's being done?

21 MS. MCGRATH: Objection. Again, I would say
22 that that's a mischaracterization of Mr. Cox'
23 testimony thus far.

24 COMMISSIONER MCKISSICK: Would you like to

1 be heard?

2 MS. NEWELL: Your -- Commissioner, I don't
3 believe it's a mischaracterization. He doesn't know
4 what work is being done. He specifically said that it
5 didn't refer to the Etowah system, and he also said
6 that he believes that there were mistakes. I'm not
7 sure how that's a mischaracterization of the testimony
8 that he's giving on the stand.

9 COMMISSIONER MCKISSICK: Objection's
10 overruled.

11 MS. NEWELL: And just one second,
12 Commissioner, while I -- I have a few other exhibits
13 to introduce, and they are a sampling of invoices that
14 the Public Staff has received.

15 COMMISSIONER MCKISSICK: Do you want to
16 introduce them individually or as a group?

17 MS. NEWELL: I will introduce them as a
18 group. So for Beckemeier LeMoine, Black Slaughter --

19 MS. MCGRATH: Commissioner McKissick, if I
20 may?

21 COMMISSIONER MCKISSICK: Sure. It may be
22 more challenging doing it as a group as opposed to
23 individual?

24 MS. MCGRATH: Well, my -- maybe I'll frame

1 it as an objection. I would just reiterate, for this
2 Commission's consideration, that Red Bird is not
3 seeking a ruling on due diligence costs or proposing
4 to recover any due diligence costs as part of this
5 transfer proceeding. And so I've, you know, allowed
6 the handful of exhibits to be admitted thus far, but
7 at some point in time I just question the relevance of
8 this line of questioning and the introduction of
9 multiple exhibits consisting of due diligence
10 invoices.

11 COMMISSIONER MCKISSICK: Understood. I'm
12 going to give her a little latitude to see where she's
13 going with this, since the due diligence and the
14 amount of the due diligence cost and issues are before
15 us as apart of the issues for consideration by the
16 Commission.

17 MS. MCGRATH: Thank you.

18 COMMISSIONER MCKISSICK: Now, I assume you
19 want us to introduce these documents collectively as a
20 group, which would be Public Staff Cross Direct
21 Examination Exhibits Number 4. And what I see,
22 including among them is a invoice 75-41, dated August
23 8, 2022, from Beckemeier Law; an additional statement
24 or invoice, dated August 15, 2020, Statement Number

1 208686 from Black Slaughter Law; as well as a -- what
2 appears to be an invoice dated September [sic] 7,
3 2020, Statement Number 228780 from Law Firm Carolinas.
4 I'm just realizing, you have some things printed on
5 the back of the these; don't you? They're not just
6 one-sided exhibits. And as well as a document from
7 Valbridge Property Advisors, invoice dated September
8 27, 2019. Do I need to identify what's on the back
9 side of these as well? No. All right. So that is
10 what we have before us. Would you like to be heard?

11 MS. MCGRATH: Commissioner McKissick, I
12 would just ask, so are we admitting these as a
13 composite exhibit or individually? And were these
14 provided in response -- or with the Application, or in
15 response to a data response -- or request I should
16 say?

17 COMMISSIONER MCKISSICK: If you could
18 clarify what the source of these invoices are, so it's
19 clear for the record.

20 MS. NEWELL: Sure. These invoices were
21 provided in response to a data request.

22 MS. MCGRATH: And could you specify which
23 one?

24 COMMISSIONER MCKISSICK: And I think that's

1 appropriate.

2 MS. NEWELL: Sure. One moment,
3 Commissioner.

4 Data Request 9.

5 COMMISSIONER MCKISSICK: Data Request 9.
6 Are there any objections?

7 MS. MCGRATH: No objections.

8 COMMISSIONER MCKISSICK: Without objection,
9 the introduction of exhibit is allowed.

10 (WHEREUPON, Public Staff
11 Cox Direct Cross Exhibit 4
12 is identified.)

13 COMMISSIONER MCKISSICK: In the future, if
14 you could put a clip on these things so we can keep
15 them together.

16 MS. NEWELL: Sure. Certainly.

17 Q So, Mr. Cox, I've provided a sampling of invoices
18 that have been provided to the Public Staff. And
19 if you can take a look at these invoices; can you
20 tell me anything regarding the work that was
21 done?

22 A I can't see through the redaction.

23 Q Okay. And is this generally indicative of the
24 level of oversight that you've provided in this

1 proceeding or regarding the work that has been
2 done?

3 A Is what?

4 Q Because, looking at these invoices, you can't
5 tell what's been done, correct?

6 A The redacted version, no, I cannot.

7 Q And, I guess, a follow-up to that is, if you
8 can't tell, how would the Public Staff?

9 A It's a legal invoice redacted. I agree.

10 MS. MCGRATH: Objection. Again, we are not
11 seeking recovery or inclusion of due diligence costs
12 as part of this proceeding.

13 COMMISSIONER MCKISSICK: Would you like to
14 be heard?

15 MS. NEWELL: Yes, Commissioner. So the
16 Public Staff has taken the position that the due
17 diligence cost acquisition adjustments are all
18 information that the Commission gets to decide in this
19 proceeding. All of these considerations impact future
20 rates, they impact costs that are going to be absorbed
21 by ratepayers, and I think it's important that we
22 discuss it here and we make those determinations, as
23 it is the Commission's authority and purview to do and
24 has long-standing been the practice of this

1 Commission.

2 COMMISSIONER MCKISSICK: And could you
3 restate your question?

4 MS. NEWELL: Sure.

5 Q Is this indicative of the level of oversight you
6 have provided in regards to these costs?

7 A No.

8 COMMISSIONER MCKISSICK: Objection's
9 overruled.

10 THE WITNESS: In fact, in some future rate
11 proceeding, we would have to produce more detailed
12 documentation that shows how the title, defects, the
13 lack of easements, lack of property information, all
14 impacts our ability to provide service. And that's
15 what we would do to in a future rate proceeding. So
16 this has nothing to do with our level of oversight.

17 Q But, in this proceeding, the Public Staff asked
18 for this documentation and this is what was
19 provided. What would be different?

20 A We'd give you more detailed costs for anything
21 that we wanted to get through to ratepayers.
22 This is not the time -- we don't believe this is
23 the time to settle those issues.

24 Q So you take the position that it's not the time

1 to settle the issues, so you think you can
2 circumvent our auditing process?

3 A Absolutely not. We know we are held to the same
4 auditing process in the future.

5 Q And just quick question: How much time was spent
6 redacting all of these documents?

7 A I have no idea.

8 Q Are you planning to bill customers for that, too?

9 A No.

10 Q So I guess you can enlighten me. If the
11 information is redacted, you've provided no
12 privilege logs, no explanation of the work
13 performed; how exactly is the Public Staff or the
14 Commission supposed to determine the
15 reasonableness or the prudence of the cost
16 incurred?

17 A We -- two-fold. One, I said in my testimony you
18 all require us to prove that the seller has the
19 ability to convey the title. So we had to do the
20 legal work. And we don't believe now is the time
21 to determine whether this is prudent or not. So
22 that has been our position consistent through
23 this case.

24 Q But you've authorized these payments. When do

1 you determine whether those payments are prudent?
2 Not at the time that you're paying them for
3 services?

4 A No. We believe they're prudent the whole way
5 through.

6 Q Do you have contracts with these vendors?

7 A It depends on the vendor. Some, yes. Some is
8 the time, materials basis. It depends on the
9 service being given.

10 Q Okay. Well, let's talk about McGill and 21
11 Design. They're largely responsible for some of
12 these due diligence costs. So did you have
13 written contracts with any of those vendors?

14 A I believe McGill we're in contract with. 21
15 Design does our quarterback work for the GIS
16 mapping, due diligence materials. I mean, think,
17 this system is a great example of a system that
18 has no -- it doesn't have any utility mapping
19 done, nor do they an accurate categorization of
20 their utility assets. We had to build all our
21 own maps and all our own, you know, kind of
22 compilation of the assets as they stand.

23 MS. NEWELL: And, Commissioner McKissick, at
24 this time I'd like to introduce another cross

1 examination exhibit. It's an email dated, October 18,
2 2023, between the Public Staff Attorney Megan Jost and
3 Red Bird's Counsel, Dan Higgins.

4 COMMISSIONER MCKISSICK: We'll mark that as
5 Public Staff Cross Direct Examination Exhibit 5.
6 We'll wait for it to get circulated.

7 Have you had an opportunity to review the
8 exhibit?

9 MS. MCGRATH: No objection.

10 COMMISSIONER MCKISSICK: Without objection,
11 the introduction is allowed.

12 (WHEREUPON, Public Staff
13 Cox Direct Cross Exhibit 5
14 is identified.)

15 Q So, Mr. Cox, please see the email from Dan
16 Higgins to Megan, dated October 18; can you read
17 sort of that first line in the email?

18 A I can't. Will you give me a copy?

19 MS. NEWELL: Okay.

20 MS. MCGRATH: Commissioner --

21 COMMISSIONER MCKISSICK: Yes.

22 MS. MCGRATH: Commissioner McKissick, it was
23 just brought to my attention that this -- the subject
24 line reads: 401 Correspondence, so I'm not sure where

1 your line of questioning is going, but I believe that
2 this is settlement communication.

3 MS. NEWELL: No.

4 COMMISSIONER MCKISSICK: You might want to
5 address that, because if it is --

6 MS. NEWELL: I'm -- I'm addressing
7 information that has nothing to do with the
8 settlement.

9 MS. MCGRATH: Well, it's included in an
10 email. And, again, I'm not the attorney on this, and
11 I have not even had a chance to read through the whole
12 email, but I would just note that the subject line
13 does specify that it a settlement communication. So
14 on that basis, I would object.

15 COMMISSIONER MCKISSICK: And the exhibit
16 clearly states that on the subject line that it's Rule
17 401 Correspondence Communication.

18 MS. MCGRATH: And, again -- and
19 additionally, I would note that it is referencing
20 TESI, which is a separate proceeding.

21 COMMISSIONER MCKISSICK: I'm going to
22 sustain your objection.

23 MS. MCGRATH: Thank you.

24 Q Has Red Bird indicated to the Public Staff that

1 they have no written contracts with either McGill
2 or 21 Design?

3 A I don't know.

4 Q Do you know if those contracts exist?

5 A I -- I don't -- I'm not in charge of approving
6 McGill or 21 Design invoices with my engineering
7 staff.

8 Q I asked regarding the contracts.

9 A The contracts are the same as invoices. They all
10 go together.

11 Q Okay. So because they all go together, you
12 didn't bother to review either; is that your
13 statement --

14 MS. MCGRATH: Objection.

15 MS. NEWELL: -- or testimony --

16 MS. MCGRATH: He didn't testify that he
17 didn't bother to review. I think his testimony was,
18 that that did not fall within his job
19 responsibilities.

20 COMMISSIONER MCKISSICK: Would you like to
21 restate your question?

22 MS. NEWELL: Sure.

23 Q Did you review any contracts associated with the
24 work?

1 A I don't review engineering contracts.

2 Q So with little to no detail on the invoices and
3 no contracts, how does Red Bird control the scope
4 and cost of the work performed by these
5 companies?

6 A I disagree with both of those. We have lots of
7 detailed invoices, it just happens to be redacted
8 here. And we have contracts with various
9 parties.

10 Q That you also didn't bother to provide to the
11 Public Staff in these proceedings?

12 A I have no idea if you requested that or if we
13 provided it.

14 Q So on Page 30, Lines 16 to 17, you state that due
15 diligence expenses are legitimate business
16 expenses and this type opportunity cost should be
17 shared with ratepayers. Can you explain what you
18 mean by opportunity cost?

19 A Yes. That mapping these systems, coming up with
20 engineering plans in order to determine what
21 needs to be done to fix the systems, curing title
22 defects, making sure that we have legitimate
23 access to be able to operate these systems, all
24 those things are a net benefit to the ratepayers.

1 Q But you provided no oversight for any of these
2 costs?

3 A We provide direct oversight for all those costs.

4 Q And what do you mean by oversight?

5 A We have individuals responsible inside the
6 Company running each one of these vendors.

7 Q But no contracts?

8 A It depends on the vendor.

9 Q And limited information regarding the work that
10 was performed?

11 A We don't have limited information. We have exact
12 information, including maps, title research,
13 easements, all that.

14 Q But invoices that contain errors?

15 A We have one invoice and thousands of invoices for
16 errors, sure. We had an error, correct.

17 Q And invoices for work performed not related to
18 the Etowah system?

19 A That was one error, correct.

20 Q And since you state that due diligence cost
21 should be shared, can you provide, out of the 317
22 thousand dollars and 269 cents [sic] of due
23 diligence expenses identified in Exhibit 4 of
24 your direct testimony, what portion should be the

1 Company's share of those expenses?

2 MS. MCGRATH: Objection. That issue is not
3 before this Commission today, and I don't think that
4 that's anything my witness is prepared to testify to
5 today.

6 COMMISSIONER MCKISSICK: Could you restate
7 the question so I can make a determination?

8 MS. NEWELL: Sure. And I would just note,
9 that this is in the witness's direct testimony.

10 Q You state that diligence cost should be shared.
11 Can you provide out of the \$317,269 of due
12 diligence expenses identified in Exhibit 4 of
13 your direct testimony, what portion should be the
14 Company's share of those expenses?

15 COMMISSIONER MCKISSICK: Okay. I'm going to
16 allow that question. Overrule the objection. It is
17 referred to in the direct testimony.

18 THE WITNESS: I would say all of the
19 expenses relate directly to service to ratepayers. So
20 it would be engineering, that would be GIS mapping,
21 asset inventories, plans, all those.

22 Q So is your response, then, all of it?

23 A I don't have -- I was not prepared today to say
24 that every single one of those invoices, but the

1 vast majority. I would say in the ten other
2 states that we own utilities, we've never had a
3 dollar of due diligence or legal costs disallowed
4 for rate-making purposes.

5 Q So it is your position, that the customers should
6 be responsible for all of these expenses?

7 MS. MCGRATH: Objection. Again,
8 mischaracterizing the testimony.

9 COMMISSIONER MCKISSICK: I'm going to
10 sustain the objection. If you want to restate your
11 question.

12 MS. NEWELL: Sure.

13 Q If the ratepayers pay all, then how is that a
14 shared cost?

15 A If the ratepayers pay all. The -- I believe, the
16 ratepayers should pay all the costs that are
17 beneficial to them as customers of the utility.

18 Q But you don't agree that the ratepayers should
19 have transparency in this proceeding and know
20 what the impact of those rates are?

21 A I think we've been very transparent about what
22 the numbers are. And we disagree with the way
23 you calculated rate -- rates.

24 Q How are all of these redacted invoices

1 transparent?

2 A We gave you the dollar figures. That's what you
3 asked me about.

4 Q And no information about the work that was done
5 and how that benefits customers?

6 A What's your question, ma'am?

7 Q I'll move on. So let's talk a little bit further
8 about this rate sharing, or cost sharing, as you
9 mentioned. Can you tell me a little bit about
10 why Red Bird is buying these systems?

11 A It's our mission, as a Company, to bring safe,
12 reliable, and environmentally sustainable water
13 resources to every community in the U.S. So
14 systems like Etowah, the ones that lack access to
15 water resources as evidenced by their long
16 history of, you know, NOV's and compliance
17 incidents. So they fit right into the kind of
18 systems that we buy as a Company and turn around.

19 Q Is a part of the reason also that it's
20 profitable?

21 A 100 percent. We're an investor-owned utility.
22 We love what we do, but we do not run on love.

23 Q So do you agree that, with any business venture,
24 or with this -- any business venture, there are

1 certain costs associated with doing business?

2 A All business ventures have costs.

3 Q And do you agree with Mr. Beckemeier's response
4 to Public Staff Data Request Number 13, question
5 1B, that due diligence benefits the Company?

6 MS. MCGRATH: Objection. Can you please
7 read the entire data request and the full response, or
8 at least provide a copy of that for the witness?

9 COMMISSIONER MCKISSICK: I think that would
10 be helpful and insightful. If you could refer to it
11 explicitly so that it's apart of the record. We want
12 to make sure that that's clear. We don't want
13 anything taken out of context.

14 MS. NEWELL: Sure.

15 MS. MCGRATH: And, Commissioner McKissick, I
16 would also note that Jim Beckemeier is a rebuttal
17 witness, and so I would just question whether this is
18 appropriate for direct or perhaps on rebuttal.

19 COMMISSIONER MCKISSICK: Okay. I'll give
20 her a little leeway here, but, she is correct, he will
21 be here on rebuttal. So you might want to limit the
22 scope.

23 MS. NEWELL: Sure. I will. And,
24 Commissioner, at this time I would also like to

1 exhibit -- introduce this as Public Staff's Cross Exam
2 Exhibit --

3 COMMISSIONER MCKISSICK: It would be Public
4 Staff Cross Direct Exhibit Number 6; however, let the
5 record reflect that we sustained the objection on
6 Cross Examination Exhibit Number 5.

7 (WHEREUPON, Public Staff
8 Cox Direct Cross Exhibit 6
9 is identified.)

10 MS. NEWELL: One second, Commissioner.
11 Commissioner, just a moment. I think the wrong
12 exhibit got handed out.

13 COMMISSIONER MCKISSICK: Okay. We'll be at
14 ease for a few minutes.

15 (Brief recess.)

16 MS. NEWELL: Commissioner, I apologize. I
17 will continue this line of questioning on rebuttal.

18 COMMISSIONER MCKISSICK: Okay. Go back on
19 the record. You proceed with the witness. This
20 exhibit, as understood, will be used on rebuttal. You
21 might want to reintroduce it then, but.

22 MS. NEWELL: And thank you for your
23 patience, Commissioner.

24 COMMISSIONER MCKISSICK: It's not a problem.

1 Q And just a quick follow-up to our previous line
2 of questioning, it is your position that
3 customers should share costs and your costs of
4 doing business, correct?

5 A It's my position that any costs that are
6 beneficial to customers that they should share,
7 correct.

8 Q Are customers willing to share your profits?

9 A This is a regulated utility. The improvements
10 that serve the public are entitled to a just and
11 reasonable return. That's the way this is done
12 across the country.

13 MS. NEWELL: All right.

14 Nothing further for me, Commissioner.

15 COMMISSIONER MCKISSICK: All right. We'll
16 recognize Attorney Mc --

17 MS. NEWELL: Sorry --

18 MR. BERNIER: When we switch gears to
19 questions, I just want to -- I have a set of questions
20 as well for Mr. Cox.

21 COMMISSIONER MCKISSICK: It's not time to --
22 go right ahead if you additional questions on behalf
23 of the Public Staff.

24 MR. BERNIER: Yes. Thank you.

1 COMMISSIONER MCKISSICK: Just make sure you
2 identify yourself, for the record.

3 MR. BERNIER: Yes. Attorney James Bernier,
4 Jr., with the Public Staff Attorney -- Public Staff.

5 CROSS EXAMINATION BY MR. BERNIER:

6 Q Good afternoon, Mr. Cox.

7 A Good afternoon.

8 Q Are you -- I think you testified that you're
9 currently the president of Central Water
10 Resources, Inc.?

11 A Central States Water Resources, Inc. CSWR, LLC.

12 Q Okay. Central States Water Resources Inc., a
13 corporation? Is it a corporation?

14 A Correct.

15 Q All right. And you testified that you were also
16 the founder of Central States Water Resources,
17 Inc.?

18 A Yeah. I'm the founder of CSWR, LLC, Central
19 States Water --

20 Q Okay. Well, just Central Water State -- Central
21 States Water Resources Inc., is what I'm asking
22 about right now. When was that founded by you?

23 A I don't remember the corporation date of that.

24 Q Estimate for me?

1 A Nine years ago.

2 Q Nine years ago. Okay. Were there any other
3 founders other than you?

4 A I had investors.

5 Q Okay. So no other founders?

6 A That's correct.

7 MR. BERNIER: Presiding Commissioner
8 McKissick, at this time, I would like to introduce
9 cross examination exhibit.

10 COMMISSIONER MCKISSICK: Okay. We're going
11 to identify this as Public Staff Cross Direct Exhibit
12 Number 7.

13 Q Do you have the Exhibit 7 in front of you?

14 COMMISSIONER MCKISSICK: Hold on one second.
15 Let's see if there are any objections. She needs a
16 chance to review it.

17 MS. MCGRATH: No objection.

18 (WHEREUPON, Public Staff
19 Cox Direct Cross Exhibit 7
20 is identified.)

21 Q Mr. Cox, do you have Exhibit 7 in front of you?

22 A I do.

23 Q Are you familiar with this document?

24 A I see what it is.

1 Q Have you seen this document before today?

2 A Sure.

3 Q What is it? Just briefly. One sentence.

4 A It's the Annual Registration Report.

5 Q For?

6 A Central States Water Resources, Inc.

7 Q Okay. And in this document, if you go to Box A,
8 you are identified as the President; is that
9 correct? Josiah M. Cox.

10 A That is correct.

11 Q All right. And in Box B, you are also identified
12 as a director?

13 A That is correct.

14 Q Okay. Also directors are Daniel Standen, Tom
15 Rooney, and John Rigas?

16 A That is correct.

17 Q Did I pronounce those names correctly?

18 A Close enough.

19 MR. BERNIER: Commissioner -- Presiding
20 Commissioner McKissick, at this time, I'd like to
21 introduce -- this is an exhibit from the testimony of
22 John Hinton, which has been admitted into evidence
23 already.

24 COMMISSIONER MCKISSICK: All right. And

1 this would be --

2 MR. BERNIER: It's Public Staff Hinton
3 Exhibit 1.

4 MS. MCGRATH: Commissioner --

5 COMMISSIONER MCKISSICK: Yes.

6 MS. MCGRATH: -- McKissick, has it -- has
7 Mr. Hinton's testimony been admitted?

8 MR. BERNIER: Yes. He was excused on a
9 motion. I believe the --

10 MS. MCGRATH: Okay. But I don't --

11 COMMISSIONER MCKISSICK: I don't think we
12 admitted his testimony at that time.

13 MR. BERNIER: Well, we could use this as
14 Public Staff's Cross -- Direct Cross Examination
15 Exhibit 8.

16 COMMISSIONER MCKISSICK: That would be
17 correct. That would be permissible.

18 MR. BERNIER: Thank you.

19 MS. MCGRATH: No objection.

20 COMMISSIONER MCKISSICK: Okay. Introduction
21 is allowed.

22 (WHEREUPON, Public Staff
23 Cox Direct Cross Exhibit 8
24 is identified.)

1 EXAMINATION BY MR. BERNIER:

2 Q Mr. Cox, are you familiar with this document,
3 Exhibit 8?

4 A I don't have a copy.

5 Q Oh. I apologize. Do you have a copy now?

6 A I do.

7 Q And do you recognize this document?

8 A I do.

9 Q Did you prepare this document?

10 A This -- it was prepared -- there's a mistake on
11 this.

12 Q Let's start with, did you prepare it?

13 A I don't remember if I prepared this. I mean,
14 I've seen this organizational chart multiple
15 times.

16 Q Okay. But this came -- this organizational
17 chart, Exhibit 8, was produced by Red Bird?

18 A Correct.

19 Q Okay. Now, what's the mistake that needs to be
20 corrected?

21 A There's a line. The line's misplaced from
22 Central States Water Resources Inc.; that should
23 be to CSWR, LLC.

24 Q Instead of U.S. Water?

1 A That's correct.

2 Q Okay. I'd like to draw your attention in this
3 organizational chart to the North Carolina
4 branch; do you see it?

5 A I do.

6 Q Now, at the bottom of that branch, it's listed
7 Red Bird UOC, LLC; do you see that box?

8 A I do.

9 Q That is Red Bird Utilities Operating Company,
10 LLC?

11 A Correct.

12 Q All right. Next on the branch is Red Bird UHC,
13 LLC; is that Red Bird Utility Holding Company,
14 LLC?

15 A It is, correct.

16 Q And one step up -- actually, let me take a step
17 back. Red Bird Utility Holding Company is a sole
18 member of Red Bird Utility Operating Company; is
19 that correct?

20 A That is correct.

21 Q All right. Now, we go to the next step in the
22 branch. It says North Carolina CSWR, LLC, is
23 that Central States -- sorry -- North Carolina
24 Central States Water Resources, LLC?

1 A That's correct.

2 Q Is it registered named as I just said it or does
3 it have -- does it abbreviate CSWR?

4 A I don't know the answer to that. I believe it
5 just abbreviates CSWR, but I may be incorrect.

6 Q Okay. And is North Carolina Central States Water
7 Resources, LLC, the sole member of Red Bird
8 Utility Holding Company, LLC?

9 A It is.

10 MR. BERNIER: Presiding Commissioner
11 McKissick, at this time, I'd like to introduce cross
12 examination -- Direct Cross Examination Exhibit 8.

13 COMMISSIONER MCKISSICK: I think this would
14 be Number 9.

15 MR. BERNIER: Oh, yes. I'm sorry.

16 COMMISSIONER MCKISSICK: Public Staff Direct
17 Cross Exhibit 9.

18 MR. BERNIER: And it consists of three
19 documents.

20 COMMISSIONER MCKISSICK: All right. Let
21 everybody receive a copy and review it.

22 Ms. McGrath, do you have a copy?

23 MS. MCGRATH: No objection.

24 COMMISSIONER MCKISSICK: All right.

1 Introduction's allowed.

2 MR. BERNIER: Thank you.

3 (WHEREUPON, Public Staff
4 Cox Direct Cross Exhibit 9
5 is identified.)

6 Q Mr. Cox, do you have Exhibit 9, and it consists
7 of three pages, single print side?

8 A I do.

9 Q Do you recognize these three documents?

10 A I see what they are. Correct, yes.

11 Q Have you seen them before today?

12 A Sure.

13 Q All right. The first page of Exhibit 9 is the
14 annual -- the 2022 Annual Registration Report for
15 Red Bird Utility Operating Company, LLC; is that
16 correct?

17 A Yes.

18 Q All right. Turn to the second page. Is that the
19 2022 Annual Report for Red Bird Utility Holding
20 Company, LLC?

21 A Yes.

22 Q And, finally the third page, is that the 2023
23 Annual Report for North Carolina Central States
24 Water Resources, LLC?

1 A Yes.

2 Q And these three are North Carolina, LLC; is that
3 correct?

4 A Yes, I believe that is correct.

5 Q And if you look on each of the three pages,
6 Central States Water Resources Inc. is identified
7 as the manager of each; is that correct?

8 A That is correct.

9 Q And is that the same Central States Water
10 Resources Inc. for which you are the president
11 and director?

12 A Yes, it is.

13 Q Is -- turning back to the organizational chart,
14 the next step up on the chart is CSWR, LLC; do
15 you see that?

16 A I do.

17 Q And that is a separate entity from Central States
18 Water Resources, Inc.?

19 A That is correct.

20 Q And is CSWR, LLC, the sole member of North
21 Carolina Central States Water Resources, LLC?

22 A I believe it is.

23 Q And is Central States Water Resources Inc. the
24 manager of CSWR, LLC?

1 A It is.

2 Q Are you the president of CSWR, LLC?

3 A I am.

4 MR. BERNIER: Commissioner, I'd like to
5 introduce cross -- the next cross examination exhibit,
6 which I guess would be 10?

7 COMMISSIONER MCKISSICK: It should be number
8 10, yes. Without objection, the introduction's
9 allowed.

10 (WHEREUPON, Public Staff
11 Cox Direct Cross Exhibit 10
12 is identified.)

13 Q Mr. Cox, do you have a copy of Exhibit 10 in
14 front of you?

15 A I do.

16 Q Do you recognize that document?

17 A I do.

18 Q What is that document?

19 A It's a name change document.

20 Q And it's the State of Missouri.

21 A That is correct.

22 Q And for what company is the name change for?

23 A CSWR, LLC.

24 Q Okay. And CSWR, LLC, is the same sole member of

1 Central State's -- sorry -- I had the wrong. Is
2 the same sole member of North Carolina Central
3 States water Resources, LLC?

4 A Say it one more time for me. I apologize.

5 Q That was a horrible sentence, so I'll definitely
6 restate it. The Company, the LLC referenced in
7 Exhibit 10, that is the sole member of North
8 Carolina Central States Water Resources, LLC?

9 A Yes, I believe that's correct.

10 Q All right. And the name change was from First
11 Round CSWR, LLC, to CSWR, LLC?

12 A That is correct.

13 MR. BERNIER: Presiding Commissioner
14 McKissick, I'd like to introduce Public Staff's next
15 cross examination exhibit, which would be 11. The --
16 this is the testimony Mr. Cox filed in a different
17 Docket W-1328, Sub 10. It's the filed document in the
18 docket, so therefore a public document.

19 COMMISSIONER MCKISSICK: Okay. So this is
20 in a separate proceeding?

21 MR. BERNIER: Correct. In Docket Numbers
22 11 -- W-1146, Sub 13, and W-1328, Sub 10.

23 COMMISSIONER MCKISSICK: Both of which are
24 here in North Carolina?

1 MR. BERNIER: Yes. This is Red Bird and the
2 TESI transfer docket.

3 COMMISSIONER MCKISSICK: Thank you for
4 clarifying that for purposes of the record.

5 MR. BERNIER: Yes.

6 COMMISSIONER MCKISSICK: Are there any
7 objections?

8 Without objection, introduction's allowed.

9 (WHEREUPON, Public Staff
10 Cox Direct Cross Exhibit 11
11 is identified.)

12 Q Mr. Cox, do you have a copy of Exhibit 11 in
13 front of you?

14 A I do.

15 Q Can you turn to the last page, which is Exhibit 1
16 to that supplemental testimony? There towards
17 the -- in, I believe, the last paragraph you
18 testify through this exhibit: "Central State's
19 Water Resources Inc., is a designated manager of
20 all affiliated limited liability companies both
21 inside and outside North Carolina, and exists
22 solely for that purpose." Then it says, "Central
23 States Water Resources, Inc., has no assets or
24 paid employees and performs all its managerial

1 responsibilities using CSWR personnel."

2 So I have a couple questions: First, do you
3 recognize that statement?

4 A Yes.

5 Q Second question, the reference CSWR personnel,
6 which Company is that in reference to?

7 A CSWR, LLC.

8 Q Okay. Now the next question, if Central States
9 Water Resources Inc. -- well, actually, do you
10 stand by this statement today under oath?

11 A Yes.

12 Q If Central States Water Resources Inc., has no
13 assets or paid employees and performs all its
14 managerial responsibilities using personnel of
15 CSWR, LLC, then aren't they one in the same, but
16 for name?

17 A Except my board of directors sits in Central
18 States Water Resources Inc.

19 Q I'm sorry. Can you explain that for me
20 differently?

21 A Yeah. Absolutely. So my board of directors you
22 brought in the previous exhibit, they all sit in
23 Central States Water Resources Inc. There are no
24 paid directors. They all sit there in a managing

1 entity.

2 Q Okay. Do those board of directors -- since -- do
3 those board of directors have any input on the
4 personnel of CSWR, LLC, that are being utilized
5 to perform the functions of -- the managerial
6 functions of Central States Water Resources,
7 Inc.?

8 A I mean, they're my board of directors. So they,
9 you know.

10 Q So the answer is, yes?

11 A I would say, yes.

12 Q Okay. And I include you, because you are also on
13 the board of directors.

14 A That is correct.

15 Q So isn't it -- well, let me rephrase it. So
16 isn't CSWR, LLC, the de facto managing entity of
17 the three North Carolina LLCs that we've covered?

18 A It's the owner, correct.

19 MS. MCGRATH: Objection. I believe these
20 are seeking legal opinions.

21 MR. BERNIER: I disagree. He's testified
22 he's the president. He's the board of director and
23 that he have the authority and testified as to the
24 personnel being -- being one in the same. So I think

1 this is within his purview. I'm not asking for a
2 legal interpretation. I'm asking if its functioning
3 as that.

4 COMMISSIONER MCKISSICK: I'm going to
5 overrule the objection. The witness may answer the
6 question, to the extent he has knowledge relating to
7 what has been requested.

8 THE WITNESS: Could you ask again, sir?

9 Q Sure. Isn't CSWR, LLC, the de facto managing
10 entity of the three LLCs that we've talked --
11 North Carolina LLCs that we've talked about
12 today?

13 A I don't know what you mean by de facto. But
14 CSWR, LLC, is the economic owner of the three
15 North Carolina LLCs.

16 MR. BERNIER: Okay. Presiding Commissioner
17 McKissick, my next few questions go into confidential
18 information and confidential documents.

19 COMMISSIONER MCKISSICK: Okay. What we'll
20 do is look to see if anybody who's not supposed to be
21 in the hearing room when the confidential testimony is
22 received could leave at this time.

23 It looks as if everybody here is, according
24 to counsel, are people permitted to be here in the

1 hearing room at this time.

2 Let the record reflect that we are going
3 into a confidential testimony, and when we are coming
4 out of that confidential testimony, please, alert me
5 as soon as that line of questioning is concluded.

6 (WHEREUPON, the following
7 pages are confidential and
8 shall be filed under seal.)

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NORTH CAROLINA UTILITIES COMMISSION

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3	48	75
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16	8	91
17	8	81
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9	Small bar at left edge and medium bar starting further right.
10	Small bar at left edge and long bar starting further right.
11	Medium bar starting further right.
12	Small bar at left edge and medium bar starting further right.
13	Two medium bars, one starting further right and one starting further right again.
14	Single long bar starting at left edge.
15	Single medium bar starting at left edge.
16	Two medium bars, one starting further right and one starting further right again.
17	Single long bar starting at left edge.
18	Single long bar starting at left edge.
19	Single medium bar starting at left edge.
20	Single long bar starting further right.
21	Single long bar starting at left edge.
22	Two medium bars, one starting further right and one starting further right again.
23	Single medium bar starting at left edge.
24	Two medium bars, one starting further right and one starting further right again.

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(WHEREUPON, the
confidential session has
ended.)

COMMISSIONER MCKISSICK: Yes. Would you
like to be recognized, sir, for introduction of this
potential exhibit?

MR. BERNIER: Yes. This Exhibit 17 is a web
capture of the website for Scienswater.com/aboutus.
It was taken on November 7, 2023, and it talks about
the identification of the investment team on the
website.

COMMISSIONER MCKISSICK: All right. And
this would be Public Staff Cox Direct Cross
Examination Exhibit 17?

MR. BERNIER: Yes.

COMMISSIONER MCKISSICK: I and just want to
make sure, Ms. McGrath.

MS. MCGRATH: No objection.

COMMISSIONER MCKISSICK: No objections.
Introduction's allowed.

(WHEREUPON, Public Staff
Cox Direct Cross Exhibit 17

1 is identified.)

2 Q Mr. Cox, have you seen the website that's
3 depicted on Exhibit 17 before?

4 A I don't know if I've been on their website so,
5 not that I remember getting on their website, no.

6 Q Now, you did -- John Rigas is identified on the
7 website as the chairman and chief executive
8 officer of the Sciens Water Opportunity Fund
9 Investment team; do you see that?

10 A I do.

11 Q To your knowledge, is that correct?

12 A I'm not privy to that. I don't know about their
13 Water Opportunity Fund.

14 Q Is John Rigas -- does he hold a position, as far
15 as you know, with Sciens Water Opportunity Fund?

16 A I don't know about the Sciens Water Opportunity
17 Fund.

18 Q Okay. What about Sciens Water Management, LLC?

19 A Yes. So, excuse me, no. Sciens Water
20 Management, no. I know Sciens Capital
21 Management.

22 Q Oh, sorry. Sciens Capital Management, LLC. On
23 the website on Exhibit 17, Daniel Standen is
24 listed as a partner in the Sciens Opportunity

1 Fund Investment team. Same question; do you know
2 if this is correct?

3 A I don't know. I'm not privy to Sciens Water
4 Opportunity Fund.

5 Q Okay. Do you know if Daniel Standen holds a
6 position with Sciens Capital Management, LLC?

7 A Yes.

8 Q What is that position?

9 A I don't know. I just know he's a partner in the
10 firm.

11 Q Okay. The website also identified Alex
12 Loucopoulos -- forgive my pronunciation -- I
13 guess your answer's the same; you don't know
14 about Opportunity Fund; is that correct?

15 A That is correct.

16 Q Do you know of his role with Sciens Capital
17 Management, LLC?

18 A I believe he's a partner there as well.

19 Q Next is Tom Rooney on the website; do you know of
20 his role of any -- if any, with Sciens Capital
21 Management, LLC?

22 A I don't know his role in Sciens Capital
23 Management. I know his role as a board member
24 for myself.

1 Q In the response to the DR that I read and you
2 agreed with, you said that Sciens Capital
3 Management, LLC, is an independent investment
4 firm; what do you mean by independent?

5 A Can you say -- just -- just want to make sure I
6 answer your question accurately. Say it one more
7 time for me.

8 Q Sure. The -- your response in the DR that we
9 read, you said: Sciens Capital Management, LLC,
10 is an independent investment firm that provides
11 various investment opportunities, et cetera. And
12 the question is, independent. When you say
13 independent investment firm, what do you mean by
14 independent?

15 A Yes. That means it's owned by the partners who
16 raise money.

17 Q Do you know the partners are?

18 A I -- I -- I know that Dan Standen and -- of the
19 Sciens Capital Management, I know those partners.
20 That's who I originally raised money from.

21 Q And Dan Standen is one of them?

22 A That is correct.

23 Q Do you know the others?

24 A I don't know all the other partners in the firm.

1 They're the ones that I've dealt with for the
2 most part, and Alex Loucopoulos I knew ancillary.

3 Q As far as you are aware, does Sciens Capital
4 Management, LLC, influence the decisions of any
5 of the entities on the organizational chart? So
6 Red Bird Utility, Red Bird Holding, CSS- -- CSWR,
7 LLC?

8 A The only -- the only oversight we get is from our
9 board in U.S. Water Systems, LLC.

10 Q Does Alex Loucopoulos have any connections to
11 North Carolina Central States Water Resources,
12 LLC?

13 A None.

14 Q How about U.S. Water Systems, LLC.

15 A None that I'm aware of.

16 Q What about CSWR, LLC?

17 A None. No.

18 Q If I said, that Mr. Loucopoulos said on a Podcast
19 that Central Water Resources Inc., owns Central
20 States Water -- I'm sorry. I had that backwards.
21 I apologize. If I said that, Mr. Loucopoulos
22 said on a Podcast that Sciens Capital Management,
23 LLC, owns and directs the -- drives the strategy
24 of Central States Waterer Resources Inc., or

1 CSWR, LLC, would you consider that to be an
2 incorrect statement?

3 A Yes. I would call that a boasting sales guy.

4 Q I'm sorry. You would call that what?

5 A Call that a boasting sales guy.

6 MR. BERNIER: Commissioner McKissick, if I
7 could have a moment to confer with co-counsel?

8 COMMISSIONER MCKISSICK: Take a minute.

9 MR. BERNIER: Thank you very much. The
10 Public Staff doesn't have any other direct
11 questions -- direct cross questions.

12 COMMISSIONER MCKISSICK: Okay. Thank you.
13 Ms. McGrath?

14 MS. MCGRATH: Yes. Thank you. Just a few
15 questions.

16 REDIRECT EXAMINATION BY MS. MCGRATH:

17 Q Mr. Cox, when you started out, Ms. Newell asked
18 you a number of questions related to an
19 acquisition adjustment; do you remember those
20 questions?

21 A I do.

22 Q As part of this proceeding, is it -- is Red Bird
23 seeking approval of an acquisition adjustment?

24 A No, we are not.

1 Q You were also asked a number of questions by Ms.
2 Newell. I think they were related to the Pinole
3 Towne II System and some violations associated
4 with that system that perhaps may currently still
5 be in existence; do you remember that line of
6 questioning?

7 A I remember her asking about those systems, yes.
8 Correct.

9 Q Okay. And is it is accurate to say that CSWR's
10 business model is to purchase distressed
11 facilities, facilities that may have a number of
12 violations?

13 A Yes. I believe 98 or 99 percent of all systems
14 that we've bought have some form of distress.

15 Q And does it take time to remedy those conditions?

16 A Absolutely, it does.

17 Q And when you acquire a facility that is currently
18 in distress and has a number of violations, is it
19 accurate to say that you begin taking steps as
20 soon as possible to begin remediating those
21 conditions?

22 A Absolutely. We go kind of through two phases of
23 investment. We do what we, essentially call
24 triage work. So we'll bring the systems back

1 into just operational -- operational -- just
2 operating. The electrics fail, mechanicals fail,
3 there's safety hazards. So we're trying to
4 remedy all that as quickly as humanly possible,
5 and then that kicks off a whole nother set of
6 permitting and final engineering design. That
7 kind of stuff to bring a final remedy to each
8 system.

9 Q So it would be virtually impossible on day one of
10 acquiring a facility to bring it into compliance?

11 A That's correct. So our agreements with various
12 environmental regulators stip -- they stipulate
13 typically, you know, 24 to 48 months to bring
14 them into compliance.

15 Q Ms. Newell asked you a handful of questions
16 related to the purchase price of the Etowah
17 system and whether or not that purchase price was
18 prudent. And she also suggested, that since the
19 agreement was entered into in 2019, that those
20 facilities would have depreciated; do you
21 remember that line of questioning?

22 A I do.

23 Q Okay. Would it also be fair to say that with the
24 passage of time, that there would be additional

1 issues that would require attention that would
2 need improvements, perhaps additional due
3 diligence costs that would be incurred that may
4 impact a purchase price?

5 A Absolutely. I mean, definitely a due diligence
6 point. I think I mentioned this earlier, you
7 know, since we signed the purchase contract,
8 there's been 11 notices of violation with this
9 system. In fact, the Department of Environmental
10 Quality called us about a continuous sanitary
11 sewer overflow, so there -- a lot of things
12 happens with the passage of time.

13 Q And do -- does C- -- or does Red Bird -- does Red
14 Bird buy systems at net book value or market
15 value?

16 A Market value is what we buy systems, we believe.

17 Q And does market value depreciate?

18 A Market value does not depreciate.

19 Q So I'm going to turn to some of the questions
20 that Mr. Bernier asked related to the corporate
21 structure. And he -- one of the exhibits he
22 provided you is Cross Exhibit Number 8, and that
23 is the organizational chart; do you have that
24 handy?

1 A I have a couple organizational charts, so what
2 was the front of that?

3 Q This is just a one-pager blue chart.

4 A I have it.

5 Q I can actually just talk you through this. Do
6 you recall testifying that you thought that there
7 was a mistake on this organizational chart?

8 A Yes, because I believe Central States Water
9 Resources Inc. is the manager of CSWR, LLC, was
10 the thing I was trying to clarify in this.

11 Q And if I -- if I said that, subject to check,
12 that perhaps this may not be a mistake, would --
13 would you accept that statement?

14 A Sure. If this was a ownership chart rather than
15 management chart, then I would agree.

16 Q And that perhaps Mr. Beckemeier may be able to
17 clarify if there's a mistake on here or not?

18 A I love when the attorneys clarify. Yes, please.

19 Q Okay. You were also -- you were asked a number
20 of questions and shown a number of exhibits
21 related to the corporate structure. One of those
22 exhibits is Number 11, and that was the
23 supplemental -- your supplemental testimony that
24 you filed in the TESI matter; do you recall that

1 testimony in that particular exhibit?

2 A I do.

3 Q Okay. And do you recall the purpose of -- or one
4 of the primary purposes of filing this
5 supplemental testimony in that proceeding?

6 A Yeah. That was filed to sup--

7 MR. BERNIER: You guys, I think going into
8 the purposes of filing -- I'm sorry. I would object.
9 I think the purpose -- going into the purpose of
10 filing goes into settlement discussions, and if
11 counsel wants to open the door to settlement
12 discussions, then I'm all for that, but at this point,
13 I would rather object.

14 COMMISSIONER MCKISSICK: Okay. If you will
15 restate your question, please.

16 MS. MCGRATH: Sure. Sure.

17 Q Can I refer you to Page 4 of your supplemental
18 testimony filed in the TESI matter?

19 A I have it.

20 Q Okay. And at the top of Page 4, the question
21 reads: Did Public Staff request that Red Bird
22 address certain issues in this supplemental
23 testimony? And you respond. And you say, yes,
24 you know, in the next several QA's, I present

1 this information; is that right?

2 A That is correct.

3 Q Okay. And the first question says, please
4 describe the relationship between Sciens Water
5 and/or Sciens Capital Management, LLC, and U.S.
6 Water Systems, LLC; do you see that?

7 A I do.

8 Q And you provide information about the various
9 ownership and structure in the next handful of
10 questions; is that accurate to say that?

11 A That is correct.

12 Q Okay. And you were at that hearing, were you
13 not, Mr. Cox?

14 A Sitting right here.

15 Q And did you hear Mr. Hinton testify in that
16 proceeding?

17 A I did.

18 Q Would it be accurate to say that Mr. Hinton
19 concluded that Red Bird did, in fact, have the
20 technical, managerial, and operational
21 qualifications necessary to own a public utility
22 system?

23 A That is correct. That is what he said in my
24 hearing.

1 Q And that any concerns Public Staff may have had
2 about the structure of CSWR, or the funding, or
3 confusion about the corporate structure that
4 those concerns were alleviated?

5 A That's what he said.

6 MR. BERNIER: Objection.

7 COMMISSIONER MCKISSICK: Okay.

8 MR. BERNIER: I think to substantiate that,
9 we would need the testimony from that hearing,
10 otherwise I challenge the accuracy of counsel's
11 characterization of that testimony.

12 COMMISSIONER MCKISSICK: I'm gonna overrule
13 your objection at this time.

14 MS. MCGRATH: Thank you, Commissioner. We
15 could also take judicial notice of that transcript.

16 COMMISSIONER MCKISSICK: We can do so. And
17 that would be duly noted.

18 MS. MCGRATH: Thank you.

19 Q Mr. Cox, I'm going to go back to some of Ms.
20 Newell's questions about the invoices that we
21 went through. And I think you acknowledged, that
22 on at least one of those invoices, there may have
23 been an inadvertent inclusion of a different
24 matter; is that accurate to say?

1 A I believe that's accurate, yes.

2 Q Okay. And at the time of a rate case proceeding
3 when you are seeking recovery of -- of costs, is
4 it accurate to say that if any error was brought
5 to your attention, that you would make whatever
6 corrections were necessary?

7 A Absolutely.

8 Q And remove any expenses that were inadvertently
9 included?

10 A Yeah. Absolutely.

11 Q And if Public Staff were to request unredacted
12 versions of any invoices, would Red Bird oppose
13 providing this to Public Staff?

14 A Not if we expected to get the included rate base.

15 Q On Public Staff Direct Cross Exhibit Number 2,
16 this is an invoice from the Burns, Day &
17 Presnell. Ms. Newell asked you about some
18 references to Tribute, and I think another
19 reference was to Tribute RV development plans.
20 Are you aware of some of the consumer concerns
21 that were filed at the public hearing in this
22 matter?

23 A I am.

24 Q And did a number of those concerns relate to a

1 proposed development?

2 A They did.

3 Q Do you recall what that development was called?

4 A In retrospect, I believe it may have been this
5 Tribute Park.

6 Q Okay. And so that would be related to the Etowah
7 system?

8 A That is correct.

9 Q Okay. So to close the loop on that, that would
10 mean that this invoice is actually accurate?

11 A That is correct.

12 Q Okay.

13 MS. MCGRATH: Nothing further. Thank you.

14 COMMISSIONER MCKISSICK: All right. We have
15 a few questions here.

16 EXAMINATION BY COMMISSIONER MCKISSICK:

17 Q Let me first ask you, Mr. Cox, some questions
18 that are from Commission Staff related to your
19 testimony, your direct testimony. Now, on Page
20 28 of your direct testimony, in support of your
21 argument that the Commission need not decide rate
22 base, you argue that such deferral is analogous
23 to the treatment of Red Bird's interim cost in
24 the Ocean Terrace/Pine Knoll Townes' docket. Do

1 you have any precedent of the Commission
2 deferring the issue of rate base itself?

3 A I'm sorry. Commissioner, I'm not an attorney. I
4 don't know the answer to that question.

5 Q Okay. That's fair enough. Let me ask you a few
6 questions about the -- what is referred to as
7 kind of the capital structure and financing
8 that's proposed as it relates to this proposed
9 transaction. In your direct testimony on Page
10 17, you state: "The Company has invested more
11 than 450 million in systems through equity and
12 that you plan to pursue debt financing at the
13 appropriate time." When do you contemplate the
14 appropriate time may be?

15 A Yeah. So Etowah's a great example. So think
16 Etowah's losing cash every year. And Etowah also
17 has compliance issues. So they're effectively
18 unbankable. So no commercial financing,
19 institutional loan money to Etowah. So what
20 we've done historically is, you know, do the
21 improvements necessary to bring safe, reliable
22 service to the systems, come in for compensatory
23 rates, and then once we get rates, we go and get
24 debt financing after we go through the debt, you

1 know, financing approval with the Commission, but
2 that's how that works for us.

3 Q And I believe in your testimony you refer to,
4 perhaps if this acquisition is allowed and
5 permitted, that about 33 months out you would
6 anticipate petitioning for uniform rates?

7 A That's correct. I mean, depending, obviously, on
8 the length of time this acquisition case is, but
9 we're a number of years out before we come back
10 for rates just because we have to do all the
11 improvements necessary to bring the service back
12 into compliance.

13 Q Okay. Now, Red Bird says that ultimately the
14 capital structure will be 50 percent to
15 60 percent equity and 40 percent, 50 percent
16 debt. When do you anticipate that will occur?

17 A Once the rates are in place and we have cash
18 flows to support commercial financing.

19 Q So that would be, perhaps, somewhere beyond this
20 33 months that we're talking about?

21 A That's correct. It would be after a future rate
22 case.

23 Q All right. Can you provide the Commission some
24 insight into the Company's business plans in need

1 for external financing?

2 A Yeah. That goes back, Commissioner, we talked
3 about, we don't get external financing. We fund
4 it all with equity. So -- and we've done that in
5 a number of states. Once we finish ratemaking,
6 we go and get debt for the individual state
7 utilities.

8 Q All right. Now, how long will the Company's
9 current plans and contracted acquisitions
10 continue to require equity infusions from Sciens
11 or?

12 A So U.S. Water Systems will have to keep putting
13 cash into all these systems. We'll have to keep
14 doing cash until we get compensatory rates. So a
15 number of years out just because the -- all the
16 operations are cash flow negative in the State of
17 North Carolina.

18 Q And can you speak to the nature of the capital
19 Sciens has access to? Is it a committed pool
20 with a long life? A life long enough to see
21 through these investments, and are investors able
22 to withdraw in on demand?

23 A This is long-term capital. It's institutional
24 investors, and we've shown that we've been in

1 business -- I mean, you know, we're almost 10
2 years old as Company, and been partnered with
3 Sciens for about five years. So we've, you know,
4 invested \$400 million in buying and improving
5 systems and spent \$50 million covering the
6 operating loss you're referring to, Commissioner.

7 Q All right. Now, on Page 28 of your testimony,
8 you state that, changes to North Carolina §
9 62-111, enacted by the General Assembly during
10 the last legislative session now provide that the
11 Commission shall issue an Order approving an
12 Application to acquire water and wastewater
13 system assets if the proposed acquisition
14 adjustment is in the public interest will not
15 adversely affect service to the public under any
16 existing franchise and the person acquiring said
17 franchise has the technical, managerial, and
18 financial capabilities necessary to provide
19 public utility service to the public. By
20 limiting the focus of the Commission's inquiry to
21 acquisition cases I believe the General Assembly
22 has signaled that extraneous issues such as
23 whether an acquisition adjustment should be
24 approved should be deferred to rate and other

1 post-acquisition proceedings. So let me ask you
2 this: What is your objection to the Commission
3 determining the rate base and whether any
4 acquisition adjustment should be allowed in this
5 proceeding?

6 A I think it's the same, sir, as we talked about
7 with the due diligence cost. We'll have to prove
8 all of that. That each of the -- each thing was
9 in the customer's benefit. Your know, for
10 example, if we bought Etowah and we didn't do
11 what we've done historically all over the
12 country, didn't turn the system around,
13 obviously, we would not be entitled to any type
14 of premium, you know, much less recovery of any
15 costs. So that -- that's the way we view that.

16 Q And I believe in your direct testimony,
17 initially, you sought a portion of an acquisition
18 adjustment in this proceeding, but you changed
19 that later; is that correct?

20 A I think.

21 Q Subject to check.

22 A Subject to check. We're no longer asking for
23 that in this hearing, I believe. Correct.

24 Q So is there a reason why the Commission should

1 not determine the rate base is proceeding? Is
2 there a reason Commission shouldn't establish
3 rate base in this proceeding?

4 A We don't believe all the details are in on -- on
5 this.

6 Q Do you believe that Red Bird would be adversely
7 affected by the Commission making that
8 determination in this proceeding?

9 A We believe it would hurt us to demonstrate that
10 we can provide a significant public benefit in
11 the future.

12 Q And can you point to any language in the statute
13 or elsewhere that indicates that the General
14 Assembly didn't intend the Commission to
15 determine the rate base and any acquisition
16 adjustment in a transfer proceeding?

17 A So I'm a simple man here, Commissioner. So I
18 just -- my plain reading, that statute seems to
19 say it's all about not adversely impacting the
20 customers in the near term, not changing rates,
21 and showing that you have a qualified utility
22 that would be good for the customers to have.

23 Q You cannot point to the any other language?

24 A I'm not an attorney, sir. That's -- that's my.

1 Q I respect that. And, lastly, in terms of the
2 Application in this case -- Red Bird's
3 Application, you know, it came in, but then there
4 were a number of occasions where there were
5 deficiencies and supplemental documents were
6 submitted. Now, as I recall, the Application was
7 deemed complete on September 14, 2023; is that
8 consistent with your recollections, subject to
9 check?

10 A Yeah. I believe that's the first time that we
11 were told that it was complete, correct.

12 COMMISSIONER MCKISSICK: Okay. Let me see
13 if Commissioner Duffley or Hughes have questions of
14 you.

15 COMMISSIONER DUFFLEY: I just have a couple.

16 EXAMINATION BY COMMISSIONER DUFFLEY:

17 Q Good afternoon.

18 A Good afternoon.

19 Q So I wanted to follow up on a question that
20 Public Staff was asking of you regarding the -- I
21 don't know if it was confidential, but a number
22 of due diligent cost. And she was asking whether
23 those were going to be put into rate base. And
24 your response was something to the extent of --

1 and she was talking about shared costs, so these
2 due diligence costs when you finally seek them
3 would be shared. And she was trying to obtain
4 what percentage was shared. And you stated that,
5 obviously, in your opinion, if it was beneficial
6 to the ratepayers, then you would seek to recover
7 them from the ratepayers. So what -- sitting
8 here today, what percentage are we talking about?
9 Is it 50 percent, 10 percent, 5 percent,
10 typically, that you've seen with your past
11 experience that -- that would be shared by the
12 Company?

13 A Yeah. So that would be -- so thank you, I
14 understand, Commissioner. So the majority of
15 those costs, because they relate to specific
16 improvements, we -- we typically put in to rate
17 base. So imagine, we do a GIS map of all the
18 distribution lines and then we use it for
19 providing service. We capitalize that with the
20 distribution system, for example. The costs that
21 we don't share will be pure administrative costs.
22 So you think, contract formation or anything like
23 that, you know, or, you know, review meetings
24 that are not specifically tied to an improvement

1 or a, you know, the transaction for the customers
2 themselves.

3 Q Okay. And based upon your past experience,
4 typically is it 5 percent of total cost,
5 10 percent, that the Company would not pass onto
6 ratepayers?

7 A Yeah. I would say we don't even submit, you
8 know, 10 to 15 percent of the costs when it all
9 shakes out.

10 Q Okay. Thank you. And then, Commissioner
11 McKissick was talking with you about how
12 initially the Company, you know, sought an
13 acquisition adjustment decision, but now you're
14 saying that it's going to be within the next rate
15 case, but initially, you had talked about the
16 approval of an acquisition adjustment for a
17 reasonable portion of that premium. And so
18 typically, what -- and so I'm not saying the
19 number, but you know that -- that premium pay
20 typically, what does reasonable portion mean to
21 you? Is it 25 percent, 50 percent, 75 percent?

22 A You know, it's interesting, Commissioner, when we
23 first came to the state, one of the things that
24 attracted us to the state was a previous deal.

1 It was Heater Utilities was acquired by Aqua
2 America, which is now Essential Utilities. And
3 when Aqua acquired Heater, there was this
4 agreement for, you know, recovery of acquisition
5 adjustments, and it had to do with how many
6 dollars were invested by Aqua in the Heater
7 Utilities. They had some formula if I recall --
8 don't quote me on this. Again, I'm not an
9 attorney, so, but just as a business, you know,
10 leader in this Company -- that seemed like a
11 really fair way to view it. So the dollars we're
12 putting into the ground directly correlated to
13 dollars we could recover on an adjustment,
14 because it showed they were a direct benefit to
15 the customers. So that's one of the examples
16 that we saw coming into North Carolina.

17 Q Okay. Thank you for that response. I appreciate
18 that. And then you also mentioned in one of your
19 answers to Commissioner McKissick, you know, the
20 standard of what do you consider adverse impacts
21 to customers? And the Public Staff has concerns
22 it looks like about the increase of rates.
23 Understanding rates may have not been increased
24 for a period of time, but do you consider

1 increased rates -- or significant increase in
2 rates to ratepayers, would that be considered
3 adverse impact to customers and if so, or if not,
4 at what point does it become -- if you're going
5 to say, "No, it's not an adverse impact," at what
6 point does it become an adverse impact customers?

7 A Great question, Commissioner. I would say -- so
8 I'll get to the adverse thing, because I have a
9 direct answer on that. I think one of the things
10 that's, for us, frustrating as a Company,
11 unfortunately, everyone's sitting around this
12 table, you know, majority of the work is electric
13 and gas, you know, the majority of those
14 customers are investor-owned. And the percentage
15 is much smaller on the -- for water companies.
16 And I think that the level of service that's
17 tolerated for water and sewer companies, because
18 it's kind of the backwater of the regulatory
19 world is so low. And that's not just in North
20 Carolina. It's across the country. And just
21 because so few of these issues get brought before
22 commissions. And so when we say things like
23 human pathogens are released into the
24 environment. Right? That's a huge deal. I

1 mean, you know, if you look at the World Health
2 Organization, centralized sewer is the greatest
3 contributor to increase in human life expectancy
4 in world history. Right? Because we removed all
5 these pathogens from the natural environment. So
6 people quit getting sick. So for us, like, what
7 is the human health benefit to all our customers?
8 Or the stability to service. It's a lot. I
9 think anyone would say, if you don't flush your
10 toilet and be safe, and turn on their faucet, is
11 worth a lot of money. So there's that. For us,
12 we use for an adverse impact, so the EPA has
13 guidance on what they say is a -- Oh, gosh. I'm
14 getting the verbiage wrong. It's not adversity.
15 The word will come to me -- but basically, the
16 EPA has said that two and a half percent of
17 median income is -- if the water rate is above
18 two and a half percent of median income, then
19 it's a hardship. And on the sewer side, it's
20 2 percent of median income. So that's the way we
21 look at the world, because we want to be beneath
22 those impacts so we're not adversely getting our
23 customers.

24 Q Okay. Thank you. And then, you had a

1 conversation with Public Staff about the risk.
2 Right? So -- and tell me if I'm getting into
3 confidential information -- is it just the
4 numbers of the APA that are confidential, not the
5 terms?

6 A That's correct, ma'am.

7 Q So there was some discussion about when the buyer
8 could basically back out of the deal. But I
9 think once you close, the deal is done, right?

10 A That is correct.

11 Q And so under how you have it right now, all of
12 the risk will be on Red Bird in a future rate
13 case; is that accurate?

14 A That is correct, Commissioner. And that's one of
15 the primary benefits I think we bring to, you
16 know, to a community is we are shouldering all of
17 that risk. And it's our belief that years from
18 now, in a future a proceeding, that the quality
19 of service will be so improved that everyone will
20 recognize the benefits that we brought. And
21 that's the experience we've had in all the other
22 states we operate in today.

23 Q Okay. And, hypothetically, let's say that a
24 future Commission not -- maybe not even made up

1 of this panel sitting here today -- denies all of
2 your due diligence costs and denies all of the
3 acquisition premium; what's your recourse?

4 A There is none. The investors would bear that
5 loss. The only -- honestly, the only thing that
6 happens in that scenario is that future
7 investment in North Carolina would be looked on
8 more skeptically, but nothing happens in terms of
9 benefits to customers, nothing happens to quality
10 service, any of those items.

11 Q Okay. Thank you. And circling back to the
12 adverse impacts to customers. So you're saying
13 that the customers will -- let me make sure I
14 understood your answer. You're saying that the
15 customers will have adverse impacts if their
16 sewer bill is 2 per- -- greater than 2 percent of
17 their take-home?

18 A That is correct, ma'am. That's the way we've --
19 we've used EPA's guidance on that.

20 COMMISSIONER DUFFLEY: Okay. Okay. Thank
21 you. Nothing further.

22 COMMISSIONER MCKISSICK: Commissioner
23 Hughes.

24 EXAMINATION BY COMMISSIONER HUGHES:

1 Q Thank you. I think I'm just trying to put
2 together all the pieces of what you said and make
3 sure I'm understanding. There's a lot of subtle
4 language we're using.

5 The due diligence discussion about shared or
6 what -- you were pretty adamant that -- and I
7 think you used a phrase, not a single dollar had
8 been denied in all your other, kind of,
9 experience -- is it -- that's a single dollar of
10 due diligence that you, the Company, has
11 determined in a rate case that is worthy that
12 you've presented for? Is that what you're
13 saying?

14 A Thank you for clarifying, Commissioner. That is
15 correct. That we applied for in -- in a rate
16 proceeding.

17 Q Okay. And then to piece that together, what you
18 told Commissioner Duffley, you know, in general,
19 the bulk of the due diligence that's floating
20 around is presented as being beneficial to
21 customers, whether it's 85 percent, or 90
22 percent, or 95 percent, but just the bulk?

23 A That is correct, sir.

24 Q Okay. And then, again, since you, you know, you

1 brought up in a number of statements how other
2 states deal with Red Bird, or Central States, and
3 how that kind of went into your risk equation.
4 On the acquisition adjustment, have -- have other
5 states been open to the same type of acquisition
6 adjustment approach that you put in your
7 testimony early on? I know you pulled back a
8 little bit from that, but I think you used the
9 term reasonable portion. Again, I don't have
10 specifics, I just have all these adjectives, but
11 in other states, is that -- I mean, would you say
12 that no state's denied a dollar of your
13 "reasonable acquisition adjustment," or has that
14 been a little bit different?

15 A I mean, we're pretty close, Commissioner, on
16 that. You know, obviously, you know, this is
17 interesting, you know, I -- we would postulatee,
18 and we even said this when we first came to North
19 Carolina and, you know, we got shut down
20 immediately -- you know, we -- we, you know, we
21 think the books and records of these companies
22 are terrible. Right? They're not reflective of
23 what's actually in the ground. We've proposed
24 using, you know, net original cost studies. You

1 know, that's why we brought real estate
2 appraisals because real properties typically
3 never been included in rate base and should have
4 been in the inception of the utility, a bunch of
5 other factors like that. So everyone hates the
6 word acquisition adjustment, so do I. I
7 understand that. The other states have things
8 like deferred debits. Probably Commission's
9 familiar with fair market value legislation we've
10 utilized, but then we've also utilized
11 alternative -- alternative evaluations of the --
12 of the purchase cost. But to answer your
13 question directly, yes, the vast majority --
14 maybe 95, 98 percent of our acquisition
15 adjustment -- the dollars paid to sellers have
16 been recognized for ratemaking purposes.

17 Q And has that generally been done at the time of
18 closure, or has that been done, you know, at the
19 time of rate case?

20 A Always the time of rate case. Fair market's
21 different, because they give you -- so -- excuse
22 me, I want to correct that statement. You know,
23 fair market is set at the time of closing, and I
24 think the only state we're using fair market in

1 is Texas. Arizona is deferred debit is an
2 indication which future leaning, and all the rest
3 have been done in a rate proceeding.

4 Q Well, now pull it all together. I think there's
5 also been debate about what's meant by public
6 interest. Would you agree, that -- that the
7 public is quite interested in what their longtime
8 payment for water and sewer services are going to
9 be? That that is something that they're at least
10 interested in.

11 A Absolutely, sir.

12 Q So it would seem, given all of this, that your
13 expectation when you looked at this as a
14 financial endeavor and the risk is, that whether
15 it's done now or done in three or four years,
16 that the "acquisition adjustment" would be
17 incorporated into rates and the due diligence
18 cost would be incorporated into rates. That
19 was -- that was at least an expectation based on
20 past experience?

21 A Yeah. I refer back to the Heater thing that I
22 talked about earlier --

23 Q And even in --

24 A Yeah. And I would say also, Commissioner, we've

1 never had anyone try to bring due diligence costs
2 in an acquisition proceeding ever. So,
3 obviously, purchase costs I understand, but
4 acquisition -- the due diligence costs associated
5 because we just assume that all the real property
6 and engineering has to be tied to assets in
7 providing a benefit.

8 Q So with all of that said, if we're not looking
9 for -- if I'm not looking for an exact number but
10 I'm trying to figure out three or four years down
11 the road, a rough range so I can do that
12 calculation you discussed, or any other
13 calculation, the Public Staff went to a fair
14 amount of effort to convert a hypothetical
15 acquisition adjustment and a hypothetical due
16 diligence cost impact on -- on rates using the
17 way we set rates; have you seen those numbers in
18 their testimony?

19 A I have.

20 Q Okay. So is it -- are those numbers reasonable
21 shot in the dark things to pull into our
22 understanding of what the rates might look like
23 moving forward under your expectation?

24 A Can I -- so I'll answer that kind of twofold. I

1 would say, one, you know, consolidated rates are
2 really important we think for small water and
3 sewer in particular because, you know, system A
4 may have more improvement cost today because they
5 are in a greater sense of distress, but system B
6 is going to have the same improvement cost over a
7 ten-year time period. And all the costs even out
8 for all the customers. That mitigates rate
9 impacts.

10 I would say, you know, Commissioner, our
11 rates across the country, you know, range from --
12 and this is post-improvements, they range from,
13 you know, \$45 to \$75. You know, I think my
14 most -- I think my hi- -- somewhere in that range
15 is, I believe is correct in terms of what we're,
16 you know, what we're seeing final rates on a
17 consolidated basis across the state come in to --
18 come in at.

19 Q Last question: I appreciate all of it. So you
20 brought up consolidated rates, have all of these
21 other Central Water States comparison group that
22 you're using to assess your risk; how many do you
23 have consolidated rates in?

24 A We have consolidated rates in five states

1 currently. And then we've got, I think, we're
2 soon to be awarded a sixth state that's kind of
3 in process.

4 COMMISSIONER HUGHES: Okay. Thank you.

5 COMMISSIONER MCKISSICK: Commissioner
6 Duffley.

7 | EXAMINATION BY COMMISSIONER DUFFLEY:

8 Q So you mentioned small water companies. Let's
9 assume that all of the pending transfers go
10 through; will you still be considered a small
11 water company?

12 A No. We don't believe in some future case we
13 would be considered a small water company.

14 COMMISSIONER HUGHES: Okay. Thank you.

15 COMMISSIONER MCKISSICK: Anyone have
16 questions on Commissioner questions?

17	(No response.)
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18 MS. NEWELL: Nothing from the Public Staff.

19 COMMISSIONER MCKISSICK: Nothing from the
20 Public Staff.

21 MS. MCGRATH: I have a couple, Commissioner
22 McKissick.

23 COMMISSIONER MCKISSICK: Okay.

24 EXAMINATION BY MS. MCGRATH:

1 Q Mr. Cox, Commissioner McKissick asked a question
2 about whether or not you were aware of any
3 precedent of deferring a determination on rate
4 base; do you recall that question?

5 A I do.

6 Q And you're familiar with the recent statutory
7 change in North Carolina; are you not?

8 A I am.

9 Q Okay. And so, perhaps given the recency of that
10 statutory change, would it be fair to say that,
11 perhaps, the Commission's assessment of a
12 Transfer Application would be different and not
13 address rate base?

14 A I believe that's the way -- why we refiled it the
15 way we did.

16 Q And you were also asked questions about, you
17 know, if you had any, you know, what -- what is
18 Red Bird's objection to making -- to deferring a
19 determination on rate base, or due diligence
20 costs, or an acquisition adjustment. Sitting
21 here today, pre-closing, do you have -- well,
22 first of all, you don't own the system, correct?

23 A That is correct.

24 Q And do you have all of the information you need

1 in order to put a value on those types of issues?

2 A No. We don't -- we have incomplete information
3 at best.

4 Q And at the time of a rate case proceeding,
5 post-closing, when you are the owner of the
6 Etowah system, would it be fair to say that you
7 would have additional information and that the
8 record would be more complete?

9 A That's my experience in all of the systems we
10 buy.

11 Q And you were here at the outset of the hearing
12 during Public Staff's opening remarks; were you
13 not?

14 A I was.

15 Q And many of those opening remarks were focused on
16 the value of the acquisition adjustment, and the
17 rate base, and the cost of due diligence costs;
18 were they not?

19 A They were.

20 MS. NEWELL: I'm objecting to this line of
21 questioning, Commissioner.

22 COMMISSIONER MCKISSICK: You want to state
23 the basis for your objection?

24 MS. NEWELL: I don't see the correlation

1 between the line of questioning and the Commission's
2 questions.

3 COMMISSIONER MCKISSICK: Can you restate
4 your question?

5 MS. MCGRATH: Yes, Commissioner.

6 Q You were asked a question by the Commission about
7 maybe questioning why, if we're not seeking
8 approval of an acquisition adjustment or approval
9 of due diligence costs in this proceeding, why
10 your testimony provided some discussion of these
11 matters; do you recall that question and forgive
12 me for paraphrasing?

13 MS. NEWELL: Objection. I don't recall that
14 question from the Commission.

15 Ms. McGrath: It was paraphrasing the
16 question, but I believe that there was a line of
17 questioning about how the testimony included
18 information about the acquisition adjustment and the
19 due diligence costs despite the fact that we are not
20 seeking recovery of those in this proceeding.

21 COMMISSIONER MCKISSICK: That would be
22 correct, so I'm going to overrule your objection at
23 this time. But let's try to keep it pretty focused.

24 MS. MCGRATH: Yes.

1 COMMISSIONER MCKISSICK: We're going to try
2 to conclude this hearing today.

3 Q My only question is, is would it be accurate to
4 say that Public Staff's opening remarks were
5 focused on these issues?

6 A Yes.

7 Q Okay. And so knowing that that was an issue that
8 Public Staff had, would it be accurate to say
9 that, that is why we included some information in
10 your direct testimony?

11 A That is correct. That's why we have that in the
12 direct testimony.

13 MS. MCGRATH: Thank you. Nothing further.

14 COMMISSIONER MCKISSICK: Okay. It's my
15 understanding at this time, this is the only witness
16 the Applicant has for direct.

17 MS. MCGRATH: Correct.

18 COMMISSIONER MCKISSICK: All right. Are
19 there any motions that need to be made at this time?

20 (No response.)

21 COMMISSIONER MCKISSICK: I believe you moved
22 his testimony into the record --

23 MS. MCGRATH: I was just going to check.

24 COMMISSIONER MCKISSICK: -- but let's just

1 make sure.

2 MS. MCGRATH: Okay. I was going to do the
3 -- at this time, Red Bird would like to move into the
4 record Cox Direct Exhibits 1 through 4 into
5 evidence -- excuse me.

6 COMMISSIONER MCKISSICK: Without objection,
7 it's allowed. I think we did earlier, but as a
8 precautionary measure, we'll make certain that is the
9 case.

10 (WHEREUPON, Cox Direct
11 Exhibits 1-4 are received
12 into evidence.)

13 MS. MCGRATH: Thank you. Nothing further.

14 COMMISSIONER MCKISSICK: Thank you. Public
15 Staff?

16 MR. BERNIER: The Public Staff -- Public
17 Staff moves to admit in the record Public Staff's
18 Direct Exam Exhibits 1 through, I think, 17.
19 Seventeen. Yes.

20 COMMISSIONER MCKISSICK: Okay.

21 MS. MCGRATH: And, Commissioner McKissick,
22 was it number five I think, was overruled?

23 COMMISSIONER MCKISSICK: We did overrule,
24 and I will go back and see which one that was.

1 MR. BERNIER: It was number 5.

2 MS. MCGRATH: Okay.

3 COMMISSIONER MCKISSICK: Yep. It was number
4 5, and I believe number 6 was one that was going to be
5 probably readmitted on rebuttal; is that right?

6 MS. NEWELL: Yes.

7 COMMISSIONER MCKISSICK: Without objection,
8 motion's allowed.

9 MR. BERNIER: Thank you.

10 (WHEREUPON, Public Staff
11 Cox Direct Cross Exhibits
12 1-4, 6-11, 13, 16, 17, and
13 Confidential Exhibits 12,
14 14, 15 are received into
15 evidence.)

16 COMMISSIONER MCKISSICK: You may step down
17 from the witness stand. Watch your step.

18 THE WITNESS: Thank you.

19 COMMISSIONER MCKISSICK: Okay. Let me ask
20 one thing: In terms of the Application in the Company
21 report, we probably should have those officially
22 admitted. If you would like to make a motion to do
23 so.

24 MS. MCGRATH: Yes, Commissioner. We would

1 like to move the Application along with the
2 supplements to the Application.

3 COMMISSIONER MCKISSICK: I remember some
4 Company reports being in the record.

5 MS. MCGRATH: Yes. And, I'm sorry. One --
6 one additional thing, the Verified Report for the
7 public hearing, we would like to move into the record.

8 COMMISSIONER MCKISSICK: Exactly.

9 MS. MCGRATH: Thank you.

10 COMMISSIONER MCKISSICK: Without objection,
11 that motion is allowed.

12 (WHEREUPON, Application of
13 Red Bird Water,
14 Attachments, Supplemental
15 Attachments, Updates, and
16 Amendments is received into
17 evidence.)

18 (WHEREUPON, Red Bird
19 Utility Operating Company,
20 LLC, Verified Report, Filed
21 on November 15, 2023 is
22 received into evidence.)

23 COMMISSIONER MCKISSICK: Okay. Recognize
24 the Public Staff. You have a panel.

1 MS. NEWELL: The Public Staff calls Lynn
2 Feasel and Michael Franklin as a panel.

3 COMMISSIONER MCKISSICK: Now let me ask one
4 question at this point. I know, we as Commissioners,
5 I understand that the attorneys don't have a problem
6 continuing today to conclude this matter, I did not
7 ask that question of our court reporter if we go on
8 beyond 5 or 5:30; is that a problem for our Court
9 Reporter?

10 MADAM COURT REPORTER: No.

11 COMMISSIONER MCKISSICK: It is not. And I
12 don't see where any staff or anybody in the room is
13 stating any problems, so we're just going to go ahead
14 and conclude this case today.

15 All right. You may proceed.

16 MS. NEWELL: Commissioner, if I may, before
17 we proceed, just sort of in terms of time that we had.

18 COMMISSIONER MCKISSICK: I believe you --
19 yes, go ahead.

20 MS. NEWELL: So I was just sort of making --
21 getting a sense of how much more time we would be
22 proceeding today, because I believe we've got 40
23 minutes reserved for the cross of this panel.

24 MS. MCGRATH: We need maybe 10 minutes.

1 COMMISSIONER MCKISSICK: Okay. It's only 10
2 minutes. That's good. And I'm seeing for rebuttal is
3 120 minutes.

4 MR. BERNIER: It would be less now.

5 MS. NEWELL: We can cool it down.

6 COMMISSIONER MCKISSICK: Okay. That's why I
7 was concerned earlier. You know, we certainly want to
8 conclude this before midnight or 9 p.m. Okay. I
9 don't mind, you know, keep it going for a while, but
10 not for two hours of rebuttal unless that's absolutely
11 essential, in which case we will come back tomorrow.

12 MR. BERNIER: We had -- we had originally
13 budgeted some of the questions on the structure in the
14 rebuttal, and then we thought it best to do it in
15 direct, so the rebuttal would be substantially less
16 than 120.

17 COMMISSIONER MCKISSICK: Thus is the reason
18 you name one of your exhibits rebuttal?

19 MR. BERNIER: Yes. Indeed.

20 COMMISSIONER MCKISSICK: Understood. I
21 think we're operating under the same set of
22 assumptions, so you may go ahead and proceed.

23 MS. NEWELL: Ms. Feasel, can you just --

24 COMMISSIONER MCKISSICK: Let me do one

1 thing. Let me get you under oath. If you both could
2 put your left hand on the Bible, raise your right.

3 LYNN FEASEL and D. MICHAEL FRANKLIN;

4 having been duly sworn,

5 testified as follows:

6 DIRECT EXAMINATION BY MS. NEWELL:

7 Q So I'll start with Ms. Feasel. Can you state
8 your name, business address, and position for the
9 record, please?

10 A (Ms. Feasel) My name is Lynn Feasel. Business
11 address is 430 North Salisbury Street, Raleigh,
12 North Carolina. I'm the Public Utility
13 Regulatory Manager of the Water, Sewer, and
14 Telecommunication Section with Accounting
15 Division of the Public Staff.

16 Q And, Ms. Feasel, on October 27, 2023, did you
17 prepare and cause to be filed in this docket
18 testimony, a public and confidential version,
19 consisting of seven pages an Appendix A, and four
20 exhibits each with schedules herein, marked
21 Public Staff Feasel Exhibits 1 through 4?

22 A Yes.

23 Q And do you have any changes or corrections to
24 your testimony?

1 A No.

2 Q And if I were to ask you those same questions
3 today, would your answers be the same as in
4 you're prefiled testimony?

5 A Yes.

6 MS. NEWELL: And, Presiding Commissioner
7 McKissick, I move that Ms. Feasel's direct testimony
8 be copied into the record as if given orally from the
9 stand and that Ms. Feasel's appendix and Exhibits I
10 through IV be identified as marked when filed.

11 COMMISSIONER MCKISSICK: The prefiled direct
12 testimony of witness Feasel will be received into
13 evidence and treated as if it was given orally from
14 the witness stand. The attached exhibits in her
15 prefiled direct testimony will be identified as it was
16 marked when prefiled.

17 (WHEREUPON, Feasel Exhibit
18 I, Confidential II & III,
19 and Exhibit IV are
20 identified.)

21 (WHEREUPON, the prefiled
22 direct testimony of LYNN
23 FEASEL is copied into the
24 record as if given orally

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from the stand.)

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. W-933, SUB 12

DOCKET NO. W-1328, SUB 0

In the Matter of
Application by Red Bird Utility Operating)
Company, LLC, 1650 Des Peres Road,)
Suite 303, St. Louis, Missouri 63131, and)
Etowah Sewer Company Inc, P.O. Box)
1659 Etowah, NC 28729-1659, for)
Authority to Transfer the Sewer Utility)
Systems and Public Utility Franchise in)
Henderson County, North Carolina, and)
for Approval of Rates)

**TESTIMONY OF
LYNN FEASEL
PUBLIC STAFF –
NORTH CAROLINA
UTILITIES COMMISSION**

October 27, 2023

OFFICIAL COPY

Oct 22 2023

1 **Q. Please state your name, business address, and present**
2 **position.**

3 A. My name is Lynn Feasel. My business address is 430 North
4 Salisbury Street, Dobbs Building, Raleigh, North Carolina. I am the
5 Public Utilities Regulatory Manager of the Water, Sewer, and
6 Telecommunications Sections with the Accounting Division of the
7 Public Staff – North Carolina Utilities Commission (Public Staff).

8 **Q. Briefly state your qualifications and experience.**

9 A. My qualifications and experience are included in Appendix A.

10 **Q. What is the purpose of your testimony?**

11 A. The purpose of my testimony in this proceeding is to present the
12 results of my investigation of the application filed by Etowah Sewer
13 Company Inc (Etowah), and Red Bird Utility Operating Company,
14 LLC (Red Bird), for authority to transfer the wastewater systems and
15 public utility franchise in Henderson County from Etowah to Red Bird
16 and approval of rates. Specifically, I discuss (1) my calculation of
17 original cost rate base for the Etowah systems; (2) my calculation of
18 the acquisition adjustment Red Bird seeks to include in rate base; (3)
19 my calculation of the amounts for future improvements and due
20 diligence expenses; and (4) the estimated revenue requirements
21 associated with the proposed acquisition adjustment, due diligence
22 expenses, and future improvements.

1 In his testimony, Public Staff witness D. Michael Franklin, a Public
2 Utilities Engineer with the Water, Sewer, and Telephone Division of
3 the Public Staff, discusses anticipated increases in wastewater base
4 rates that would result from the revenue requirements I calculated,
5 as well as the Public Staff's recommendation regarding the proposed
6 transfer.

7 **Q. Briefly describe the presentation of your testimony and**
8 **exhibits.**

9 A. My testimony discusses each issue identified through my
10 investigation, and my exhibits consist of schedules detailing the
11 calculation of rate base, net operating income, return, and revenue
12 requirement based on the Public Staff's recommendations described
13 later in my testimony. Schedule 1 represents the return calculated for
14 wastewater operations; Schedule 2 and its associated sub schedules
15 represent the rate base calculated for wastewater operations;
16 Schedule 3 and its associated sub schedules represent the net
17 operating income calculated for wastewater operations. Revenue
18 requirement for wastewater is also contained in Schedule 3 and its
19 associated sub schedules.

1 **Q. Please explain your calculation of the original cost rate base**
2 **and how it compares to the amount calculated by Red Bird.**

3 A. In order to calculate the original cost rate base for this proceeding, I
4 first reviewed the net book value approved in prior rate case
5 proceedings regarding Etowah Sewer Company, in Docket Nos. W-
6 933 Sub 7 (Sub 7), and Sub 9 (Sub 9). I updated accumulated
7 depreciation through December 31, 2023, for the plant balance
8 approved in the prior rate cases. Next, I included plant additions
9 since the last rate case for which supporting documentation was
10 provided, and removed items that should have been expensed
11 instead of capitalized based on Public Staff witness Franklin's
12 recommendation. Next, I added contributions in aid of construction
13 (CIAC) the Company received since Sub 9. Finally, I updated
14 accumulated depreciation through December 31, 2023, utilizing the
15 depreciation rates recommended by witness Franklin and the
16 amortization rates approved by the Commission in Sub 7 and Sub 9.
17 Based on this calculation, the Public Staff's recommended original
18 cost rate base is (\$282,207), a negative amount. My calculations are
19 shown in Feasel Exhibit I.

20 On page 21, lines 14-16 of his direct testimony, Red Bird witness
21 Josiah Cox states that, based on the Red Bird audit team's review of
22 Etowah's supporting documentation and the Company's

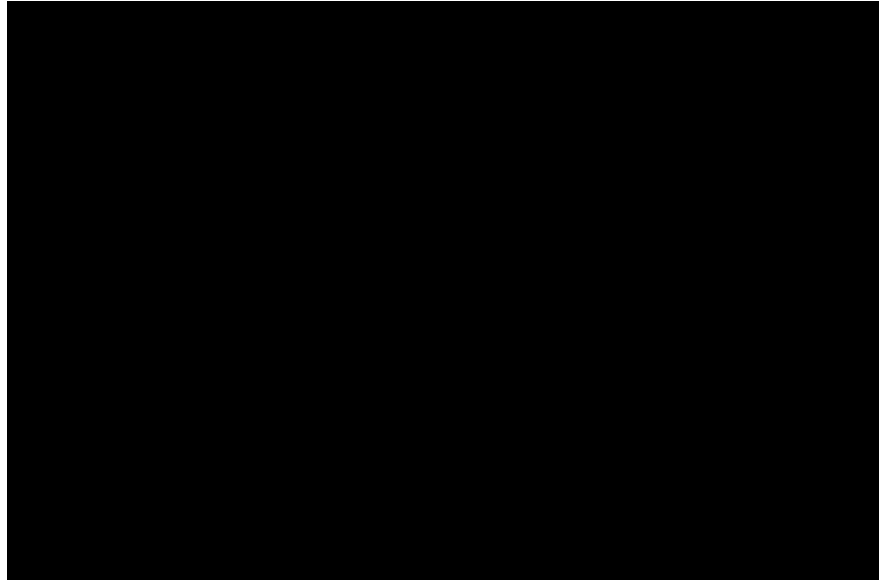
1 understanding of the Public Staff's valuation of the assets, Red Bird
2 believes residual rate base in the Etowah utility assets is \$277,423.
3 The Company's valuation of \$277,423 differs from my valuation of
4 (\$282,207) for several reasons. The Public Staff sent Red Bird its
5 evaluation of the residual plant value on May 25, 2023. On that
6 evaluation, the plant value was inadvertently listed as a positive
7 \$277,423, but it should have been listed as a negative (\$277,423).
8 From this amount, I removed plant additions for which supporting
9 documentation was not provided, removed plant items that should
10 have been expensed, and included additional CIAC received since
11 Sub 9. The result is the Public Staff's recommended rate base of
12 (\$282,207).

13 **Q. Please explain your calculation of the acquisition adjustment**
14 **Red Bird seeks to recover.**

15 A. As discussed above, the Public Staff's calculation of the original cost
16 rate base is (\$282,207), and the purchase price for the wastewater
17 system is [BEGIN CONFIDENTIAL] [REDACTED] [END
18 CONFIDENTIAL], resulting in an acquisition adjustment of [BEGIN
19 CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]. The
20 associated accumulated amortization of the acquisition adjustment
21 is [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]. A

1 comparison of the Public Staff's and Red Bird's acquisition
2 adjustment calculations are shown below:

[BEGIN CONFIDENTIAL]



3 **[END CONFIDENTIAL]**

4 **Q. Have you calculated the estimated revenue requirement**
5 **associated with the acquisition adjustment and due diligence**
6 **expenses?**

7 A. Yes. If the acquisition adjustment as calculated by the Public Staff is
8 included in rate base, the estimated revenue requirement is
9 \$129,356.

10 If the full due diligence expenses requested by the Company are
11 included in rate base, the estimated revenue requirement is \$37,370.
12 Witness Franklin recommends that the amount of due diligence costs

1 the Company can recover be limited to \$10,000. Witness Franklin
2 provides a detailed discussion of due diligence costs in his testimony.

3 The Public Staff utilized a composite depreciation rate for plant in
4 service to calculate the estimated revenue requirement for both the
5 acquisition adjustment and due diligence expenses.

6 **Q. Have you calculated the estimated revenue requirement**
7 **associated with future improvements to the Etowah sewer**
8 **system?**

9 A. Yes. **[BEGIN CONFIDENTIAL]** [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED] **[END CONFIDENTIAL]**. My
16 calculations are shown in Feasel Exhibit IV.

17 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

18 A. Yes, it does.

APPENDIX A

QUALIFICATIONS AND EXPERIENCE

LYNN FEASEL

I am a graduate of Baldwin Wallace University with a Master of Business Administration degree in Accounting. I am a Certified Public Accountant licensed in the State of North Carolina. Prior to joining the Public Staff, I was employed by Franklin International in Columbus, Ohio until June 2013. Additionally, I worked for ABB Inc. from September 2013 until October 2016. I joined the Public Staff as a Staff Accountant in November 2016, and I was promoted to Financial Manager in July 2022. Since joining the Public Staff, I have worked on rate cases involving water and sewer and natural gas companies, filed testimony and affidavits in various general rate cases, calculated quarterly earnings for Carolina Water Service, Inc. of North Carolina and Aqua North Carolina, Inc., calculated quarterly earnings for various natural gas companies, calculated refunds to consumers from AH4R and Progress Residential, and reviewed new franchise, transfer, and contiguous extension filings for multiple water and sewer companies.

1 MS. NEWELL: Thank you, Commissioner.

2 Q And, Mr. Franklin, will you state your name,
3 position, and business address for the record?

4 A (Mr. Franklin) Yeah. My name is D. Michael
5 Franklin. I'm an Engineer with the Public Staff
6 Water, Sewer, and Telephone Division. My work
7 address is 430 North Salisbury Street, Raleigh,
8 North Carolina.

9 Q And, Mr. Franklin, on October 27, 2023, did you
10 prepare and cause to be filed in this docket
11 testimony, a public and confidential version,
12 consisting of 25 pages and an Appendix A?

13 A Yes.

14 Q Do you have any changes or corrections to your
15 testimony?

16 A No.

17 Q And if I were to ask you those same questions
18 today, would your answers be the same as in
19 you're prefiled testimony?

20 A I do have an addition related to Page 8, Line 7
21 of my testimony -- prefiled direct testimony, and
22 it has to do with the Public Staff receiving any
23 consumer statements of position. At the time, my
24 testimony was filed on October 27th, since then

1 we have received seven additional consumer
2 statements. In fact, two were received today,
3 actually. All express concerns over future rate
4 increases as a result of the transfer with one
5 expressing an additional concern regarding the
6 new subdivision being planned that included a
7 possible new wastewater treatment plant, and the
8 impact that would have on the community.

9 COMMISSIONER MCKISSICK: All right. The
10 prefiled direct testimony of Mr. Franklin, as amended
11 and notated through his testimony today, will be
12 received into evidence and treated as if given orally
13 from the witness stand. The attached exhibits [sic]
14 to his prefiled direct testimony will be identified as
15 it was marked when prefiled.

16 (WHEREUPON, the prefiled
17 direct testimony of D.
18 MICHAEL FRANKLIN is copied
19 into the record as if given
20 orally from the stand.)
21
22
23
24

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. W-933, SUB 12

DOCKET NO. W-1328, SUB 0

In the Matter of)	
Application of Red Bird Utility Operating)	
Company, LLC, 1650 Des Peres Road,)	
Suite 303, St. Louis, Missouri 63131, and)	
Etowah Sewer Company, Inc., P.O. Box)	
1659, Etowah, NC 28729-1659, for)	
Authority to Transfer the Sewer Utility)	TESTIMONY OF
Systems and Public Utility Franchise in)	D. MICHAEL FRANKLIN
Henderson County, North Carolina, and)	PUBLIC STAFF –
for Approval of Rates)	NORTH CAROLINA
		UTILITIES COMMISSION

October 27, 2023

OFFICIAL COPY

Oct 22 2023

1 **Q. Please state your name, business address, and present position.**

2 A. My name is D. Michael Franklin. My business address is 430 North
3 Salisbury Street, Dobbs Building, Raleigh, North Carolina. I am a Public
4 Utilities Engineer with the Water, Sewer, and Telephone Division of the
5 Public Staff – North Carolina Utilities Commission (Public Staff).

6 **Q. Briefly state your qualifications and duties.**

7 A. My qualifications and duties are included in Appendix A.

8 **Q. What is the purpose of your testimony?**

9 A. The purpose of my testimony is to provide the North Carolina Utilities
10 Commission (Commission) with the results of my investigation of specific
11 areas of the application filed on October 8, 2020, by Red Bird Utility
12 Operating Company, LLC (Red Bird), in Docket No. W-1328, Sub 0, and
13 Etowah Sewer Company, Inc. (Etowah), in Docket No. W-933, Sub 12, for
14 transfer of public utility franchise and for approval of rates (Joint
15 Application)¹. I also discuss whether the transfer is in the best interest of
16 the using and consuming public.

17 The specific areas of my investigation include customer complaints, along
18 with Notices of Violation and Notices of Deficiency issued by the North
19 Carolina Department of Environmental Quality (DEQ). I also assisted the

¹ Red Bird supplemented the Joint Application through filings made on October 22, 2020, May 14 and October 7, 2021, February 15, August 17, and August 23, 2022, and August 15, 2023.

1 Accounting Division of the Public Staff with reviewing expenses and plant
2 in service.

3 **Q. Please describe the Etowah service area and wastewater utility**
4 **system.**

5 A. The Etowah service area is located in Henderson County and is comprised
6 of both residential and commercial customers. In response to Public Staff
7 Data Request No. 9, Question 1, Red Bird stated that based on recent billing
8 information, Etowah has 485 wastewater customers, 440 of which are
9 residential wastewater customers. The Etowah wastewater system consists
10 of 0.125 million gallons per day wastewater collection, treatment, and
11 extended aeration discharge facilities. The wastewater collection facilities
12 consist of gravity sewer lines, six pump stations with duplex grinder pumps,
13 and force main. The wastewater treatment facilities consist of a duplex
14 influent lift station, manual bar screen, 31,250-gallon flow equalization tank,
15 flow control splitter box, dual manual bar screens, 60,000- and 65,000-
16 gallon diffused air aeration tanks, dual 10,877-gallon rectangular clarifiers
17 with skimmers and sludge returns, 4,000- and 10,000-gallon aerobic
18 digesters, dual tablet chlorination units with 1,354-gallon chlorine contact
19 chambers, and flow meters. The two effluent lines discharge to the concrete
20 wet well at the duplex effluent lift station, where an automatic sampler
21 collects effluent samples. Effluent is pumped by force main approximately
22 one mile from the duplex effluent lift station to a gravity outfall into the
23 French Broad River. The wastewater treatment site has an emergency

1 power generator with capacity to fully power the treatment facilities and
2 automatic transfer switch.

3 **Q. Have you conducted a site visit of the Etowah wastewater system and,**
4 **if so, what were your observations?**

5 A. On October 12, 2023, I visually inspected the wastewater system while
6 accompanied by a representative of Etowah's maintenance contractor, A &
7 D Maintenance, Inc. The wastewater system appears to be in fair condition.
8 In general, I agree with the condition of the wastewater system as stated in
9 the Confidential Attachment L of the Joint Application, McGill Associates
10 Engineering Memorandum, Appendices A-1 and A-2, which was based on
11 inspections performed on December 4, 2019. While there are areas of the
12 wastewater collection and treatment system that need improvement, most
13 areas were determined by me and McGill to be in either good or average
14 condition. At the wastewater treatment plant (WWTP) these areas include
15 the duplex influent pump station, the flow equalization basin with duplex
16 blowers and control panel, the dual train aeration basins with two blowers,
17 clarifiers and airlift pumps, the sampling station, the duplex effluent pump
18 station, and the standby diesel generator.

19 At five of the six lift stations, the lift station structure and pumps, control
20 panels, and overall site were determined to be either in good or average
21 condition. I was unable to inspect the remaining lift station, but according to
22 McGill's Engineering Memorandum, Appendix A-1, **[BEGIN**

1 **CONFIDENTIAL]** [REDACTED]
2 [REDACTED]
3 [REDACTED] **[END CONFIDENTIAL].**

4 **Q. Briefly describe the results of your investigation of DEQ Notices of**
5 **Violation and Civil Penalties.**

6 A. The Etowah wastewater system operates under two DEQ permits. Permit
7 NC0071323 is the National Pollutant Discharge Elimination System
8 (NPDES) permit and is applicable to the wastewater treatment plant
9 (WWTP) and its discharges. Permit WQCSD0135 is for the wastewater
10 collection system where wastewater is collected from the wastewater
11 sources and conveyed to the WWTP for treatment through system mains
12 and lift stations. The last inspection of the WWTP system was performed by
13 DEQ on March 22, 2019. The inspection concluded that the wastewater
14 facility appeared to be operating well but indicated that several minor repairs
15 were needed, which included the repair of the audio and visual alarms at
16 both the influent and effluent pump stations and the replacement of
17 collapsed grating.

18 WWTP

19 Between September 1, 2020, and October 1, 2023, the Etowah WWTP
20 received eight Notices of Violation (NOV). Two NOVs were issued for Daily
21 Maximum Exceedance of Coliform, Fecal Membrane Filtration (MF), and
22 Membrane Filtration Method (MFC) Broth, one in 2021 and the second in

2023. Six additional NOV's were issued with one issued in 2021 and again in 2022 for Daily Maximum Exceedance of Biochemical Oxygen Demand, 5-Day Concentration (BOD5). In 2023, the remaining four NOV's were issued for Daily Maximum Exceedance of BOD5, two of which also included a Monthly Average Exceedance of the same parameter. On September 11, 2023, Etowah was assessed a civil penalty of \$1,073.66 based on the limit exceedances identified in NOV-2023-LV-0442 for the Daily Maximum Exceedances of BOD5 that occurred twice in May 2023 and the Monthly Average Exceedance of BOD5 that occurred once in May 2023. According to the DEQ Asheville Regional Office, none of the NOV's issued for Permit NC0071323 remain open.

Collection System

Between September 1, 2020, and October 1, 2023, Etowah was issued three NOV's, all in 2023, for the wastewater collection system. One NOV was issued for a sanitary system overflow (SSO) that occurred on July 19, 2022, due to the City of Hendersonville striking an unmarked wastewater line resulting in the discharge of 808 gallons of wastewater. The additional two NOV's were the result of a SSO that occurred on January 9, 2023. One NOV was issued for the actual SSO event that resulted in the inadvertent discharge of 600 gallons, and a second NOV was issued based on the results of the DEQ Compliance Inspection performed on January 10, 2023, due to the January 9, 2023, SSO event. The Compliance Inspection

1 identified five violations for the lift station where the SSO event occurred.

2 These violations are as follows:

- 3 1. A blown capacitor in the lift station control panel;
- 4 2. The autodialer not working for approximately one year;
- 5 3. The lift station sign not having phone numbers for the current
- 6 emergency personnel;
- 7 4. One lift station pump not working for approximately a month; and
- 8 5. Failure to meet the required daily visitation frequency for a lift station
- 9 without functional telemetry.

10 On February 9, 2023, Etowah responded, as required by DEQ, to the five
11 violations identified in the Compliance Inspection Report and stated the
12 violations have been addressed. According to DEQ's Asheville Regional
13 Office, as of October 24, 2023, the two NOVs related to the January 2023
14 SSO event remain open.

15 **Q. Did Red Bird provide Notice to Customers of the Joint Application?**

16 A. Yes. On October 4, 2023, the Commission issued the Order Approving
17 Notice to Customers (Notice Order). The Notice Order directed Red Bird to
18 provide the notice to customers no later than three days after the date of
19 the Notice Order and to submit a signed and notarized certificate of service
20 stating the notice had been provided as required by the Notice Order. On
21 October 10, 2023, Red Bird filed a Certificate of Service stating that the

1 notice was mailed or hand delivered by the date specified in the Notice
2 Order.

3 **Q. Has the Public Staff received any customer complaints?**

4 A. Between October 1, 2020, and October 9, 2023, the Public Staff Consumer
5 Services Division did not receive any customer complaints from Etowah
6 wastewater customers.

7 **Q. Has the Public Staff received any consumer statement of position?**

8 A. As of October 27, 2023, the Public Staff has received six consumer
9 statements of position. Five of the consumer statements of position
10 expressed concerns regarding the approval of a 200-unit subdivision on the
11 site of the Etowah Valley Country Club, and whether the Etowah wastewater
12 system can provide adequate service with the additional wastewater load
13 from the new subdivision or whether the new subdivision would necessitate
14 an additional WWTP. These five consumer statements of position
15 expressed concerns on the impacts to the community if the existing WWTP
16 is expanded or an additional WWTP is built. Two consumers expressed
17 concerns on the impact on Etowah wastewater rates, with one of these
18 consumers also having concerns over the cost of Red Bird's planned
19 improvements and the other consumer having concerns regarding Red
20 Bird's ability to serve their existing customers.

21 Additionally, the Public Staff received a phone call from Senator Berger's
22 office and an email from Senator Moffitt on behalf of his constituents asking

1 that the public hearing go forward as planned. Senator Moffit also
2 expressed concern over potential future rate increases that were not
3 reflected in the notice to customers.

4 **Q. Is Etowah providing safe and reliable service?**

5 A. Yes. As described in more detail above, I reviewed NOVs and penalties
6 issued by DEQ between September 1, 2020, and October 1, 2023. During
7 that period, the WWTP had a rate of 90.85% for the number of days in
8 regulatory compliance, and the wastewater collection system had a rate of
9 96.8% for the number of days in regulatory compliance. While two NOVs
10 remain open as a result of the January 9, 2023, SSO event, Etowah's
11 response to DEQ's Compliance Inspection identifies actions taken to
12 address the violations identified at the lift station where the SSO occurred.
13 Also, the Public Staff Consumer Services Division did not receive any
14 customer complaints between October 1, 2020, and October 9, 2023.
15 Based on these factors, I conclude that Etowah is providing adequate
16 service to its wastewater customers.

17 **Q. What are the present and proposed water and wastewater utility**
18 **service rates?**

19 A. Etowah's present rates, fees, and additional charges were approved in
20 Docket Nos. W-933, Sub 10 and M-100, Sub 138, and have been in effect
21 since January 1, 2016. Upon acquisition of the system, Red Bird proposes

1 to charge these approved rates, fees, and additional charges for the Etowah
 2 service area. The present and proposed rates are as follows:

3 Monthly Wastewater Utility Service:

4 Present and Proposed

5 Residential Flat Rate \$ 26.33

6 Commercial Customers (metered rates)

7 Base Charge, zero usage \$ 26.33

8 Usage Charge, per 1,000 gallons \$ 4.05

9 Connection Charge:

10 Residential \$2,300 per connection

11 Commercial \$2,300, minimum per
 12 connection, plus \$6.97 per
 13 gallon of design flow over
 14 330 gallons per day

15
 16 Reconnection Charge:

17 If wastewater service cut off by

18 utility for good cause \$ 14.99

19 **Q. What is your recommendation regarding the requested approval of**
 20 **rates?**

21 A. The requested rates are the current Commission-approved rates for Etowah
 22 and are just and reasonable.

1 **Q. Based on your investigation, what is your opinion of Red Bird's ability**
2 **to own and operate Etowah's wastewater system?**

3 A. Public Staff witness John R. Hinton addresses Red Bird's financial ability to
4 own and operate the Etowah wastewater system. Based on our
5 investigation, Red Bird, a subsidiary of Central States Water Resources,
6 LLC, has the financial, technical, and managerial capabilities necessary to
7 provide wastewater utility service to customers in Etowah's service area.
8 Therefore, the Public Staff recommends the Commission approve the
9 transfer of the wastewater system from Etowah to Red Bird, subject to
10 certain conditions described below.

11 **Q. Do you agree with the prefiled direct testimony of Red Bird witness**
12 **Josiah Cox that the Etowah wastewater system is either distressed,**
13 **troubled, or in need of an infusion of capital investment that the**
14 **current owner is either unable or unwilling to provide?**

15 A. Based on the recent performance of the wastewater system, including the
16 lack of customer complaints, the routine maintenance performed and recent
17 improvements made by Etowah including replacement of pumps at Sunset
18 Ridge and the Main lift stations, installing shut off valves at Homeplace and
19 Jonathan Creek lift stations, and installation of additional diffuser leads to
20 drop pipes at the WWTP, I do not consider the Etowah wastewater system
21 to be distressed or troubled as described in Mr. Cox's prefiled direct
22 testimony. While the system has recently been issued NOVs, the NOVs
23 associated with the WWTP are closed and Etowah has addressed the

1 collection system violations identified in the January 2023 Compliance
2 Inspection Report.

3 **Q. What adjustments have you made to plant additions since the last rate**
4 **case?**

5 A. In response to Public Staff Data Request No. 6, Red Bird provided invoices
6 and depreciation estimates for plant additions made since Etowah's last rate
7 case in Docket No. W-933, Sub 9. My recommended adjustments to those
8 plant additions include reducing the service life of the diffusers on drop
9 pipes from 20 years to seven years. I also recommend that the service lives
10 of the new pumps at Sunset Ridge, the Main lift stations, and the pump
11 volute on the Sunset Ridge lift station pump No. 1 be reduced from ten years
12 to seven years. These adjustments are based on service lives from the
13 previous two Etowah rate cases in Docket No. W-933, Subs 7 and 9. I also
14 reduced the life of the generator battery from 20 years to three years, the
15 shutoff valves at the Homeplace and Jonathan Creek lift stations from 50
16 years to 20 years, and the check valve at blower No. 2 from 20 years to
17 seven years. Based on my Engineering background and experience, I
18 believe these lives are more appropriate and reasonable.

19 Furthermore, I recommend disallowing the inclusion of \$4,763 in expenses
20 identified as capital expenses by Red Bird in response to Public Staff Data
21 Request No. 6. These include \$1,996 in expenses for new wiring and
22 overload on pump No. 1, and a generator controller at Sunset Ridge lift

1 station. Red Bird failed to provide invoices supporting these expenses. The
2 remaining \$2,767 should be classified as operating and maintenance
3 expenses rather than capital investment. These include replacement of a
4 hydraulic hose for blower No. 2, sewer main and sewer tap repairs, and
5 refurbishment of the driveway.

6 **Q. What is your recommendation concerning an acquisition adjustment?**

7 A. The Public Staff does not support the requested acquisition adjustment. As
8 a general proposition, when a public utility buys assets that have previously
9 been dedicated to public service as utility property, the acquiring utility is
10 entitled to include in rate base the lesser of the purchase price or the net
11 original cost of the acquired facilities owned by the seller at the time of the
12 transfer. See Order Approving Transfer and Denying Acquisition
13 Adjustment, *Petition of Utilities, Inc. for Transfer of the Certificate of Public*
14 *Convenience and Necessity for Providing Sewer Utility Service on North*
15 *Topsail Island and Adjacent Mainland Areas in Onslow County from North*
16 *Topsail Water and Sewer, Inc. and for Temporary Operating Authority,*
17 Docket No. W-1000, Sub 5 (N.C.U.C. January 6, 2000) (W-1000, Sub 5
18 Order).

19 The Commission has indicated "a strong general policy against the
20 inclusion of acquisition adjustments in rate base subject to exceptions in
21 appropriate instances." *Id.* at 24. In the W-1000, Sub 5 Order, the

1 Commission discussed the circumstances when the rate base treatment of
2 acquisition adjustments is proper. The Commission stated:

3 As should be apparent from an analysis of the Commission's
4 previous Orders concerning this subject, a wide range of
5 factors have been considered relevant in attempting to
6 resolve this question, including the prudence of the purchase
7 price paid by the acquiring utility; the extent to which the size
8 of the acquisition adjustment resulted from an arm's length
9 transaction; the extent to which the selling utility is financially
10 or operationally "troubled;" the extent to which the purchase
11 will facilitate system improvements; the size of the acquisition
12 adjustment; the impact of including the acquisition adjustment
13 in rate base on the rates paid by customers of the acquired
14 and acquiring utilities; the desirability of transferring small
15 systems to professional operators; and a wide range of other
16 factors, none of which have been deemed universally
17 dispositive. Although the number of relevant considerations
18 seems virtually unlimited, all of them apparently relate to the
19 question of whether the acquiring utility paid too much for the
20 acquired utility and whether the customers of both the
21 acquired and acquiring utilities are better off after the transfer
22 than they were before that time. This method of analysis is
23 consistent with sound regulatory policy since it focuses on the
24 two truly relevant questions which ought to be considered in
25 any analysis of acquisition adjustment issues. It is also
26 consistent with the construction of G.S. 62-111 (a) adopted in
27 State ex rel. Utilities Commission v. Village of Pinehurst. 99
28 N.C App. 224,393 S.E.2d 111 (1990), affd 331 N.C. 278,415
29 S.E.2d 199 (1992), which seems to indicate that all relevant
30 factors must be considered in analyzing the appropriateness
31 of utility transfer applications. As a result, . . . the Commission
32 should refrain from allowing rate base treatment of an
33 acquisition adjustment unless the purchasing utility
34 establishes, by the greater weight of the evidence, that the
35 price the purchaser agreed to pay for the acquired utility was
36 prudent and that both the existing customers of the acquiring
37 utility and the customers of the acquired utility would be better
38 off [or at least no worse off] with the proposed transfer,
39 including rate base treatment of any acquisition adjustment,
40 than would otherwise be the case. *Id.* at 27.

1 The prefiled direct testimony of witness Cox demonstrates that he
2 understands that the customers of the acquired utility would need to be
3 better off or at least no worse off as a result of the proposed transfer,
4 including rate base treatment of any acquisition adjustment. Witness Cox
5 identifies improved customer service, asset management via Utility Cloud
6 software, professional operations, and access to capital as benefits that
7 would come with Red Bird's ownership and would support an acquisition
8 adjustment.

9 Witness Cox fails to acknowledge that customer service and professional
10 operation could both be contracted out to a third party by any current or
11 acquiring utility. Red Bird has stated that it intends to use both third-party
12 customer service and contract operators for its systems in North Carolina.
13 Witness Cox also outlined the benefits associated with Utility Cloud, a non-
14 affiliated company, with whom Etowah or a different purchaser could pursue
15 a contract. There is no evidence to suggest that Etowah customers would
16 be better off under Red Bird ownership with Red Bird hiring a contract
17 operator, third-party customer service firm, or obtaining a contract with
18 Utility Cloud, as compared to Etowah or a different purchaser doing the
19 same.

20 On pages 23 and 29 of his prefiled direct testimony, Red Bird witness Cox
21 testifies that the survey and capital estimates are preliminary, and the
22 existence of problems cannot be truly known until Red Bird has acquired

1 and begun to operate a system. This raises the question of whether, due to
2 the uncertainty as to the amount of capital investment that may be
3 necessary, Red Bird's willingness to make capital investments can actually
4 be considered a tangible benefit.

5 In this transfer proceeding, as previously stated, while DEQ has issued
6 NOVs for the Etowah WWTP and the Etowah wastewater collection system
7 in the last three years, none of the violations on the WWTP remain open.
8 While two NOVs on the Etowah wastewater collection system remain open
9 as a result of the January 9, 2023, SSO event, Etowah's response to DEQ's
10 Compliance Inspection identifies actions taken to address the violations
11 identified by DEQ. Therefore, the evidence demonstrates that while there
12 have been recent operational incidents at both the WWTP and the
13 wastewater collection system, Etowah has the willingness, ability, and
14 means to address them. Therefore, I do not conclude that the Etowah
15 system is troubled or distressed.

16 In the W-1000, Sub 5 Order, the Commission discussed the circumstances
17 when the rate base treatment of acquisition adjustments is proper. The
18 Commission stated:

19 The evidence supports the conclusion that NTWS
20 management routinely makes prudent use of its available
21 capital resources to provide an adequate quality of service to
22 its customers. Furthermore, the NTWS system does not suffer
23 from various system deficiencies, ongoing environmental
24 regulatory violations and frequent customer complaints that
25 typify operationally-troubled systems. The Commission finds

1 and concludes that the facilities owned and operated by
2 NTWS are in satisfactory condition and are currently sufficient
3 to provide sewer utility service to the customers. Without
4 some evidence of inadequate service currently or in the recent
5 past, the Commission cannot conclude that NTWS is
6 operationally troubled. The record in this case is devoid of
7 such evidence. Accordingly, the Commission concludes that
8 NTWS is not an operationally troubled system. *Id.* at 21.

9 The allowance of the requested acquisition adjustment based on the Joint
10 Application, and more specifically Mr. Cox's prefiled direct testimony, could
11 incentivize other current utility owners to accumulate environmental
12 violations and fail to properly operate and maintain systems in order to
13 receive an acquisition adjustment.

14 Furthermore, Red Bird has not quantified "the impact of including the
15 acquisition adjustment in rate base on the rates paid by customers of the
16 acquired and acquiring utilities." Inclusion in rate base of the Company's
17 requested acquisition adjustment to recover the entire difference between
18 the purchase price and the residual net plant in service, as calculated by
19 the Public Staff and provided in the prefiled testimony of Public Staff witness
20 Lynn Feasel, Regulatory Analyst Supervisor with the Accounting Division,
21 would equate to a \$22.23 increase in residential monthly wastewater flat
22 rates and commercial metered monthly base charge.² This is equivalent to

² Rate impact is determined by dividing the respective revenue requirement included in the prefiled testimony of Public Staff witness Lynn Feasel by the number of wastewater customers (485), and then by the number of months in a year and reflecting that amount in the residential wastewater flat rate and commercial metered wastewater base charge, zero usage rate.

1 an 84% increase in the residential wastewater monthly flat rate and
2 commercial metered wastewater monthly base charge, zero usage rate.

3 Approval of the proposed acquisition adjustment is not in the public interest.
4 Red Bird has not established by the greater weight of the evidence that the
5 benefits to Etowah's customers resulting from the allowance of rate base
6 treatment of an acquisition adjustment in this case would offset or exceed
7 the resulting burden or harm to customers associated therewith, including
8 but not limited to the future rate impact of the requested acquisition
9 adjustment and excessive due diligence expenses.

10 **Q. Briefly describe Red Bird's plans for capital improvements.**

11 A. After completing the purchase of the Etowah wastewater system, Red Bird
12 intends to [BEGIN CONFIDENTIAL] [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED] [END CONFIDENTIAL].

17 It will be incumbent upon Red Bird to ensure the capital improvements are
18 reasonable and prudent for the capital investment associated with the
19 improvements to be added to rate base and included in rates in a future rate
20 case proceeding. Inclusion of the currently planned improvements totaling
21 [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] for the
22 wastewater system and based on the resulting revenue requirements to

1 support the improvement costs as identified in the prefiled testimony of
2 Public Staff witness Feasel, would result in a \$16.29 per month increase in
3 residential wastewater flat rates and commercial metered wastewater base
4 charge, zero usage rates.³ This is equivalent to a 62% increase in the
5 residential wastewater monthly flat rate and commercial metered
6 wastewater monthly base charge, zero usage rate.

7 **Q. What is the Public Staff's recommendation for Red Bird's due**
8 **diligence expenses?**

9 A. In response to Public Staff Data Request No. 7, Red Bird provided invoices
10 dated between September 2019 and August 2023 from five law firms, two
11 engineering firms, and one commercial property appraiser to support its due
12 diligence expense of \$317,269. The invoices provided were heavily
13 redacted and the description of the work performed was either vague and
14 uninformative or contained no description beyond the name of the system.
15 Even with the lack of information provided in the redacted invoices, certain
16 expenses do not appear to be appropriately categorized as due diligence
17 expenses. Of the approximately 22 invoices from Engineering firm McGill
18 Associates, P.A. (McGill), as identified in Exhibit 4 of the prefiled direct
19 testimony of Red Bird witness Cox, 17 of those invoices were dated after
20 the February 2020 issuance of the Preliminary Opinion of Probable Cost

³ Rate impact is determined by dividing the respective revenue requirement included in the prefiled testimony of Public Staff witness Lynn Feasel by the number of wastewater customers (485) by the number of months in a year and reflecting that amount in the residential wastewater flat rate and commercial metered wastewater base charge, zero usage rate.

1 prepared by McGill and provided in the Joint Application, Confidential
2 Attachment L. Additionally, Red Bird's legal invoices from Burns, Day &
3 Presnell, P.A. are more likely expenses associated with this transfer
4 proceeding before the Commission and not due diligence.

5 Revenue requirements to support the due diligence costs requested by Red
6 Bird, as identified in the prefiled testimony of Public Staff witness Feasel,
7 would result in a \$6.42 per month increase in residential monthly
8 wastewater flat rates and commercial metered monthly wastewater base
9 charge, zero usage rates. This is equivalent to a 24% increase in residential
10 monthly wastewater flat rates and commercial metered monthly wastewater
11 base charge, zero usage rates.⁴ On page 29 of his prefiled direct testimony,
12 Red Bird witness Cox testifies that "some potential acquisitions which, after
13 proper due diligence, are shown to be not in the best interests of CSWR or
14 its operating subsidiary's ratepayers" and that due diligence expenses are
15 legitimate business expenses and this "opportunity cost" should be shared
16 with ratepayers, just as the benefits of completed acquisitions are shared.
17 The Public Staff recommends that the majority of these costs be absorbed
18 by Red Bird as a cost of doing business and not be included in rate base.

⁴ Rate impact is determined by dividing the respective revenue requirement included in the prefiled testimony of Public Staff witness Lynn Feasel by the number of wastewater customers (485) by the number of months in a year and reflecting that amount in the residential wastewater flat rate and commercial metered wastewater base charge, zero usage rate.

1 The Public Staff recommends limiting due diligence expenses to \$10,000 to
2 be included in rate base. Due diligence expenses are typically limited to
3 transaction closing costs and are generally less than \$10,000. This amount
4 is consistent with previous transfer applications, including those in Docket
5 No. W-354, Sub 396, where the Public Staff recommended due diligence
6 expenses of \$8,229 be included in rate base, and Docket No. W-218, Sub
7 527, where the Public Staff recommended, and the Commission approved,
8 the inclusion of \$4,000 in attorney fees in rate base.

9 **Q. Do you agree with Red Bird's assertion that allowance of an**
10 **acquisition adjustment and due diligence expenses should be**
11 **considered during the first rate case versus this transfer proceeding?**

12 A. No. Session Law 2023-67 provides that the Commission shall issue an
13 order approving the application upon finding that the proposed grant or
14 transfer, among other things, is in the public interest. The Commission
15 cannot determine if the transfer is in the public interest if it does not know
16 the impact to rate base and customer rates of the acquiring utility's
17 proposed acquisition adjustment and due diligence expenses. Additionally,
18 Red Bird has indicated that in its first rate case it would seek uniform rates.
19 Deferring the decision on acquisition adjustments and due diligence
20 expenses for multiple utility systems to a future rate case would unduly
21 complicate and encumber the rate case proceeding. The information
22 required for an acquisition adjustment decision is known, as are the majority
23 of the due diligence expenses. As a result, deferring to the future rate case

1 the decision on an acquisition adjustment and due diligence expenses
2 would not be in the public interest. Instead, those decisions should be made
3 as part of this transfer proceeding consistent with long established
4 procedure before the Commission, including but not limited to the
5 proceedings predating the precedent decision in Docket No. W-1000, Sub
6 5, such as Hardscrabble in Docket No. W-274, Sub 122, Carolina Water I
7 in Docket Nos. W-354, Subs 39, 40, and 41, Carolina Water II in Docket
8 Nos. W-354, Subs 74, 79, and 81, and Transylvania in Docket Nos. W-1012,
9 Subs 2 and 3.

10 **Q. Do you have concerns with Red Birds proposed operating expenses?**

11 A. Yes. In confidential attachment E.1 of the Joint Application, Red Bird
12 forecasts its total operation and maintenance expenses in Years 1 through
13 5 as [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]. Of that
14 amount [BEGIN CONFIDENTIAL] [REDACTED]
15 [REDACTED]
16 [REDACTED] [END CONFIDENTIAL].

17 In Etowah's last rate case, Docket W-933, Sub 9, contract labor expenses
18 of \$32,998 and administrative and office expenses of \$4,401 were approved
19 by the Commission. While it is unclear whether operation and maintenance
20 expenses provided in confidential attachment E.1 of the Joint Application
21 include any corporate allocation amount, the amount identified by Red Bird
22 is significantly more than the \$37,399 approved in Etowah's last rate case
23 for contract labor and administrative and office expenses. While future

1 operating expenses are not addressed in this proceeding, the Public Staff
2 will, in any future Red Bird rate case, audit these expenses to determine
3 whether they were reasonably and prudently incurred.

4 **Q. What is your recommendation concerning the bond for the water and**
5 **wastewater utility systems?**

6 A. North Carolina Session Law 2023-137, Section 24 revised North Carolina
7 General Statute § 62-110.3(a) to read that no franchise may be granted to
8 any water or sewer utility company “until the applicant furnishes a bond,
9 secured with sufficient surety as approved by the Commission, in an amount
10 not less than twenty-five thousand dollars (\$25,000).” In addition, the bond,
11 “shall be conditioned upon providing adequate and sufficient service within
12 all the applicant’s service areas.” Further, N.C.G.S. § 62-110.3(a) provides:

13 In setting the amount of a bond, the Commission shall
14 consider and make appropriate findings as to the following:

- 15 (1) Whether the applicant holds other water or
16 sewer franchises in this State, and if so its
17 record of operation,
18 (2) The number of customers the applicant now
19 serves and proposes to serve,
20 (3) The likelihood of future expansion needs of the
21 service,
22 (4) If the applicant is acquiring an existing
23 company, the age, condition, and type of the
24 equipment, and
25 (5) Any other relevant factors, including the design
26 of the system.

27 Commission Rules R7-37 and R10-24 restate and reaffirm most of these
28 provisions and requirements although the Commission Rules have not been

1 updated to reflect the revised bond amount required by N.C.G.S. § 62-
2 110.3. Bond is required to ensure the continued provision of adequate and
3 sufficient wastewater services in the event a wastewater utility is unable to
4 provide such service due to financial constraints, mismanagement, or other
5 factors. The factors and findings set forth in N.C.G.S. § 62-110.3(a)(1) – (5)
6 make clear that the bond amount depends heavily on the applicant's
7 financial, managerial, and technical expertise; the applicant's prior
8 performance where applicable; the number of current and projected future
9 wastewater customers; system expansion plans and needs; the complexity
10 of the applicant's system and facilities; and any other factors that bear upon
11 the risk of the applicant providing inadequate, inconsistent, and/or
12 insufficient wastewater services. Section 62-110.3 and Commission Rules
13 R7-37 and R10-24 make it clear that a higher risk of deficient wastewater
14 services necessitates a higher bond amount.

15 Red Bird does not have a history of operations and management in North
16 Carolina, and due to the large customer size, the improvements planned by
17 Red Bird, and size of the WWTP and wastewater collection system, I
18 recommend that a \$200,000 bond be posted by Red Bird.

19 **Q. What is your recommendation regarding the requested transfer of the**
20 **public utility franchise?**

21 A. While the Public Staff has found that Red Bird has the financial, technical,
22 and managerial ability to own and operate the Etowah wastewater system,

1 the Public Staff's support of the requested transfer is contingent on the
2 following conditions: (1) denying an acquisition adjustment; (2) including in
3 rate base no more than the net plant in-service amount of negative
4 (\$282,207) plus \$10,000 in due diligence expenses; and (3) requiring a
5 bond of \$200,000. As stated previously, the Public Staff does not consider
6 the Etowah wastewater system to be troubled. It is important for the
7 Commission to consider the impact the requested acquisition adjustment
8 and the due diligence expenses could have on the residential monthly
9 wastewater flat rates and commercial metered monthly wastewater base
10 charge, zero usage rates, an estimated increase of \$28.65 per month, or
11 108%. This would not include any increases in operating expenses
12 associated with Red Bird's operations and ownership. The Public Staff does
13 not believe that such an increase in customer rates would be in the best
14 interest of the Etowah wastewater system customers and would leave them
15 worse off.

16 **Q. Does this conclude your testimony?**

17 **A.** Yes, it does.

APPENDIX A

QUALIFICATIONS AND EXPERIENCE

D. MICHAEL FRANKLIN

I graduated from the University of South Carolina, earning a Bachelor of Science Degree in Engineering. I worked in the electric utility industry for 33 years prior to joining the Public Staff in June 2019. While employed by the Public Staff, I have worked on utility rate case proceedings, new franchise and transfer applications, customer complaints, and other aspects of utility regulation.

1 MS. NEWELL: Thank you, Commissioner. And
2 if I may take leave at this time to move the prefiled
3 testimony and exhibits --

4 COMMISSIONER MCKISSICK: Of Mr. Hinton?

5 MS. NEWELL: Of Mr. Hinton. Consisting of
6 five pages, an Appendix A, and one exhibit.

7 COMMISSIONER MCKISSICK: All right. And I
8 believe the Applicant had no objections to that.

9 MS. MCGRATH: No objection.

10 COMMISSIONER MCKISSICK: So we will admit
11 Mr. Hinton's prefiled testimony, consisting of five
12 pages; Appendix A, which is three pages; Exhibit 1,
13 which is two pages, and we will admit his prefiled
14 direct testimony into evidence, and it will be treated
15 as if given orally from the witness stand. The
16 attached exhibits to his prefiled testimony will be
17 identified as it was marked when prefiled.

18 (WHEREUPON, Public Staff
19 Hinton Exhibit 1 is
20 received into evidence.)
21 (WHEREUPON, the prefiled
22 direct testimony of JOHN R.
23 HINTON is copied into the
24 record as if given orally

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from the stand.)

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. W-933, SUB 12

DOCKET NO. W-1328, SUB 0

In the Matter of
Application by Red Bird Utility Operating)
Company, LLC, 1650 Des Peres Road,)
Suite 303, St. Louis, Missouri 63131, and)
Etowah Sewer Company Inc, P.O. Box)
1659 Etowah, NC 28729-1659, for)
Authority to Transfer the Sewer Utility)
Systems and Public Utility Franchise in)
Henderson County, North Carolina, and)
for Approval of Rates)

**TESTIMONY OF
JOHN R. HINTON
PUBLIC STAFF –
NORTH CAROLINA
UTILITIES COMMISSION**

October 27, 2023

OFFICIAL COPY

Oct 22 2023

1 **Q. Please state your name, business address, and present**
2 **position.**

3 A. My name is John R. Hinton, and my business address is 430 North
4 Salisbury Street, Raleigh, North Carolina. I am the Director of the
5 Economic Research Division of the Public Staff. My qualifications
6 and experience are provided in Appendix A.

7 **Q. What is the purpose of your testimony?**

8 A. The purpose of my testimony in this proceeding is to present the
9 results of my investigation of the application filed on October 8, 2020,
10 by Etowah Sewer Company, Inc. (Etowah) and Red Bird Utility
11 Operating Company, LLC (Red Bird) for authority to transfer the
12 wastewater utility system and public utility franchise serving the
13 Etowah Community in Henderson County, North Carolina, from
14 Etowah to Red Bird and approval of rates as it relates to the financial
15 viability of Red Bird.

16 **Q. Please describe your investigation.**

17 A. I reviewed Red Bird's application, responses to data requests, the
18 direct testimony of Company witness Josiah Cox, and the direct
19 testimony of David Murray filed on the behalf of the Missouri Office
20 of the Public Counsel in Case No. WR-2023-0006, a rate case filed
21 with the Missouri Public Service Commission by Red Bird's affiliate,
22 Confluence Rivers Utility Operating Company, Inc. In addition, I was

1 present during Mr. Cox's Supplemental Testimony of October 24,
2 2023, in the transfer proceeding involving Red Bird and Total
3 Environmental Solutions, Inc. in Docket Nos. W-1146, Sub 13 and
4 W-1328, Sub 10.

5 **Q. Please describe the Organizational Chart provided to the Public**
6 **Staff in response to a data request.**

7 A. The Central States Water Resources Corporate Entity
8 Organizational Chart attached to this testimony as Public Staff
9 Hinton Exhibit 1 shows that Red Bird is owned by the North Carolina
10 CSWR, LLC, in a similar fashion as the other utility operations in the
11 11 other state jurisdictions. In addition, US Water Systems, LLC is
12 the sole member of CSWR, LLC, and it owns 100% of CSWR, LLC.
13 The Company has stated that US Water, LLC is the sole source of
14 financing for CSWR, LLC.¹ In response to a data request, Red Bird
15 states that private equity firm, Sciens Capital Management, LLC is
16 also involved in raising capital for CSWR, LLC.

¹ Docket Nos.W-1146, Sub 13, W-1328, Sub 10, Rebuttal Testimony of Todd Thomas, P. 26.

1 **Q. Do you agree with witness Cox that Red Bird and CSWR, LLC**
2 **have the financial capacity to acquire, own, and operate the**
3 **Etowah system?**

4 A. Yes. Based on data request responses and the testimony of witness
5 Cox, US Water Systems, LLC and CSWR, LLC, I believe that Red
6 Bird will have sufficient equity capital to acquire and improve
7 Etowah's water and wastewater systems, fund system upgrades,
8 and support other capital improvements. However, the Public Staff
9 has some concerns regarding the ongoing viability of CSWR, LLC,
10 because it continues to report significant losses on its consolidated
11 income statements. As such, the Company's financial viability largely
12 depends on external infusions of common equity that are supplied by
13 private equity.

14 **Q. Does CSWR, LLC depend only on equity capital that is, in part,**
15 **provided by private equity?**

16 A. No. CSWR, LLC has been approved for three loans with CoBank in
17 other state jurisdictions and Red Bird's eventual plans are to
18 rebalance its capital structure from being comprised of 100% equity
19 to offsetting equity with 40% to 50% of debt capital.

1 **Q. Has the Public Staff observed any ongoing issues with any of**
2 **Red Bird's North Carolina operations that suggest sufficient**
3 **capital is not available?**

4 A. No. My understanding is that Public Staff witness Franklin and other
5 Public Staff engineers who have been involved with other transfer
6 applications with Red Bird are unaware of any plant and operational
7 problems that stem from a lack of investment capital. However, it
8 should be noted that Red Bird has not owned its systems in North
9 Carolina for very long. In view of the Company's business plan and
10 record of acquiring non-viable systems, raising additional equity
11 capital, and making necessary capital investments, I believe CSWR
12 has sufficient capital resources to be considered financially viable.

13 **Q. In view of your financial concerns, do you have any**
14 **recommendations?**

15 A. Yes. I recommend that Red Bird meet with the Public Staff on an
16 annual basis to discuss Red Bird's North Carolina water and
17 wastewater utility operations and address any concerns with its
18 financial condition. I propose that these meetings continue until the
19 Company's capital structure has been rebalanced to acceptable
20 levels and all viability concerns have been resolved.

21 **Q. Does this conclude your testimony?**

22 A. Yes, it does.

QUALIFICATIONS AND EXPERIENCE

JOHN R. HINTON

I received a Bachelor of Science degree in Economics from the University of North Carolina at Wilmington in 1980 and a Master of Economics degree from North Carolina State University in 1983. I joined the Public Staff in May of 1985. I filed testimony on the long-range electrical forecast in Docket No. E-100, Sub 50 which included an independently produced peak demand and energy sales forecast. This forecast and two other peak demand forecasts published in 1989 and 1992 were provided to the NC Utilities Commission and the Governor. I filed testimony on electricity weather normalization in Docket Nos. E-7, Sub 620, E-2, Sub 833, and E-7, Sub 989. I filed testimony on the level of funding for nuclear decommissioning costs in Docket No. E-2, Sub 1023; Docket Nos. E-7, Sub 1026 and E-7, Sub 1146. I have filed testimony on the Integrated Resource Plans (IRPs) filed in Docket No. E-100, Subs 114 and 125, and I have reviewed numerous peak demand and energy sales forecasts and the resource expansion plans filed in electric utilities' annual IRPs and IRP updates.

I have been the lead analyst for the Public Staff in numerous avoided cost proceedings, filing testimony in Docket No. E-100, Subs 106, 136, 140, 148, and Sub 158. I have filed a Statement of Position in the arbitration case involving EPCOR and Progress Energy Carolinas in Docket No. E-2, Sub 966. I have filed testimony in avoided cost related to the cost recovery of energy efficiency programs and demand side management programs in Dockets Nos. E-7, Sub 1032, E-7, Sub 1130, E-2, Sub 1145, and E-2, Sub 1174.

I have filed testimony on the issuance of certificates of public convenience and necessity (CPCN) in Docket Nos. E-2, Sub 669, SP-132, Sub 0, E-7, Sub 790, E-7, Sub 791, and E-7, Sub 1134.

I filed testimony on the merger of Dominion Energy, Inc. and SCANA Corp. in Docket Nos. E-22, Sub 551, and G-5, Sub 585.

I have filed testimony on the issue of fair rate of return in Docket Nos. E-22, Subs 333 412, and 532; P-26, Sub 93; P-12, Sub 89; G-21, Sub 293; P-31, Sub 125; P-100, Sub 133b; P-100, Sub 133d (1997 and 2002); G-21, Sub 442; G-5, Subs 327, 386; and 632; G-9, Subs 351, 382, 722 and Sub 781, G-39, Sub 47, W-778, Sub 31; W-218, Subs 319, 497, and 526; W-354, Subs 360; 364, 384, and 400 and in several smaller water utility rate cases. I have filed testimony on credit metrics and the risk of a downgrade in Docket No. E-7, Sub 1146.

I have filed testimony on the hedging of natural gas prices in Docket No. E-2, Subs 1001, 1018, 1031, and 1292. I have filed testimony on the expansion of natural gas in Docket No. G-5, Subs 337 and 372. I performed the financial analysis in the two audit reports on Mid-South Water Systems, Inc., Docket No. W-100, Sub 21. I testified in the application to transfer the CPCN from North Topsail Water and Sewer, Inc. to Utilities, Inc., in Docket No. W-1000, Sub 5. I have filed testimony on rainfall normalization with respect of water sales in Docket No. W-274, Sub 160.

I was a member of the Small Systems Working Group that reported to the National Drinking Water Advisory Council with the EPA and I have published an article in the

National Regulatory Research Institute's Quarterly Bulletin entitled Evaluating Water Utility Financial Capacity and filed testimony on the financial viability of water and wastewater utilities, including Docket No. W-1328, Sub 10.

1 MS. NEWELL: Thank you, Commissioner.

2 COMMISSIONER MCKISSICK: You may proceed.

3 MS. NEWELL: And Ms. Feasel and Mr. Franklin
4 are available for cross examination and questions from
5 the Commission.

6 COMMISSIONER MCKISSICK: Attorney McGrath,
7 the witnesses are yours.

8 MS. MCGRATH: Thank you.

9 CROSS EXAMINATION BY MS. MCGRATH:

10 Q Good afternoon. Ms. Feasel, I'll start with you.
11 I just have a few questions for you. You have
12 served as the accounting witness for Public Staff
13 in prior water rate cases, correct?

14 A (Ms. Feasel) Yes.

15 Q And so you're familiar with the information
16 needed to establish rate base?

17 A Yes.

18 Q In a rate case?

19 A Yes.

20 Q And can you describe some of the type of
21 information that you need in order to establish
22 rate base?

23 A I can start with the components that is included
24 in the rate base. It includes plant in service,

1 accumulated depreciation, which reduce the rate
2 base, takes that effect, CIAC amortization of
3 CIAC, existing PAA, and amortization of existing
4 PAA. Those components gives us a net plant
5 value. And also, on top of that, we will also
6 have cash capital -- cash working capital;
7 average tax accrual. Also, depending on the size
8 of the company, some company has ADIT cost-free
9 capital. Sometimes EDIT, but that does not apply
10 to all companies.

11 Q Okay. And Red Bird currently does not own the
12 Etowah Wastewater system sitting here today,
13 correct?

14 A Currently, they do not own.

15 Q Okay. And you would agree that Red Bird would be
16 in a better position to supply some of the
17 information that you just walked through,
18 particularly with respect to plant in service
19 once it owns the facilities?

20 A I believe when we ask for data request, Red Bird
21 contact with the seller and get information from
22 the seller.

23 Q Okay. And Red Bird can only supply the Public
24 Staff information that it either has or it

1 receives from the seller, correct?

2 A I think so.

3 Q Okay. Thank you, Ms. Feasel.

4 The remainder of my questions are for you,
5 Mr. Franklin.

6 A (Mr. Franklin) Okay.

7 Q And I'd like -- my questions are really focused
8 on the Application process for a Transfer
9 Application. So would you agree that the
10 Application requires a variety of information?
11 And I'll just -- I'll read through a couple of
12 things, and you can let me know if you agree.
13 Information about present and proposed rates?

14 A Yes.

15 Q The buyer's qualifications and financial
16 information?

17 A Yes.

18 Q And then it also requires the Applicant to
19 provide some pretty specific information about
20 the property that is proposed to be acquired,
21 such as ownership rights or easement rights?

22 A We typically ask that in a data request. It's
23 not part of the Application, I don't believe, as
24 far as easements.

1 Q Okay. So, subject to check -- let me just --
2 bear with me here one moment. So I'm not going
3 to mark an exhibit, but I'm going to read. So
4 would you agree, that some exhibits are requested
5 as part of the Application process to be --

6 A Yes, that's correct.

7 Q To be attached. And, subject to check, I'm just
8 going to read number four on the -- on Page 8 of
9 the Application, which lists exhibits and it
10 says: Enclose a copy of exhibits showing that
11 the seller has ownership of all property
12 necessary to operate the utility in a purchase
13 agreement reduced to writing. Does that sound
14 familiar to you?

15 A It does, but you had mentioned easements, and
16 easement's not ownership.

17 Q Okay. I'll rephrase. That one of the showings
18 that an Applicant is required is that it will --
19 that the property that is sought to be obtained
20 that the seller currently owns it?

21 A That's correct.

22 Q Okay. So specific to this proceeding, in order
23 for Red Bird to make this particular showing,
24 that the seller has ownership of all the property

1 necessary to operate the utility, I would think
2 that the -- it would have to demonstrate that it
3 has easements to the utility property?

4 A Yes. I mean, we asked that in a data request.

5 Q Okay. And, in fact, Red Bird's failure to do so
6 in some instances has resulted from a deficiency
7 letter from the Public Staff; has it not?

8 A Not specifically on easements. I'm not sure on
9 all of the deficiency letters what -- what the
10 issues were.

11 Q Are you familiar with the Meadowlands proceeding
12 invo- -- Red Bird's Application to acquire the
13 Red Bird's -- the Red Bird property?

14 A I am not familiar with Meadowlands.

15 Q Okay. Would you accept, subject to check, that
16 Public Staff has issued deficiency letters
17 related to Red Bird not having presented evidence
18 that it owns a list of fee interests and/or
19 easements related to lift stations?

20 A Subject to check.

21 Q Okay. And would you -- would you agree that the
22 Commission's requirements for demonstrating
23 ownership are the same regardless of the size of
24 a utility being required?

1 A Yes.

2 Q And that one of the purposes of conducting due
3 diligence is to prove ownership and easement
4 rights; would you agree with that?

5 A I would say that as far as what we allow as due
6 diligence is typically closing cost, and that
7 would be a cost that we would expect the Company
8 to absorb as a cost of doing business.

9 Q Okay. But would you agree that one of the
10 purposes of due diligence is to verify ownership?

11 A I would say that that is a company-cost portion
12 of due diligence, because there's no benefit to
13 the customer.

14 Q Okay. But I'm going to ask it again. One of the
15 purposes of due diligence, regardless of who the
16 cost is recovered from, but one of the actual
17 purposes of going out and conducting due
18 diligence is to verify ownership?

19 A I would agree.

20 Q Okay. And I think you testified that due
21 diligence costs include closing costs?

22 A That's correct. Typically.

23 Q Okay. And the Etowah transaction has not closed
24 yet, correct?

1 A That's correct.

2 MS. MCGRATH: Thank you, Mr. Franklin.

3 That's all I have. Nothing further.

4 MR. BERNIER: I have some redirect on the
5 accounting side.

6 REDIRECT EXAMINATION BY MR. BERNIER:

7 Q Ms. Feasel, one of the questions you were asked
8 regarding the -- and this is me paraphrasing --
9 whether Red Bird would have access to information
10 to help them determine rate base at this point
11 when Red Bird isn't an owner of the Company. The
12 question I want to follow up on with that is,
13 what are the sources for determining rate base?
14 In other words -- I'll start with that. What is
15 the sources for determining rate base?

16 A (Ms. Feasel) Commission website is one resource
17 the Company can go to because Etowah filed a rate
18 case last time back in 2014. So Red Bird is able
19 to go to the Commission website, find out what
20 was approved for the plant in the last rate base.
21 Starting from there, then the Company can ask --
22 search for additional plant information from the
23 seller.

24 Q And what about annual reports from Etowah; are

1 those available?

2 A Yes, they are.

3 Q Where and how?

4 A I believe annual reports are public records.

5 That Etowah filed annual report every year

6 sometime in April, late April. I believe the

7 Company is able to request the annual reports

8 from the seller, review those reports, and see

9 what are the plant's value from out of the

10 reports are comparable to what they pay for the

11 purchase price.

12 Q So is there any reason why the Company would not

13 be able to determine rate base until it owns the

14 system?

15 A No, there is no reason. The Company has the

16 resource to do the research.

17 MR. BERNIER: Commissioner McKissick, I

18 would like to introduce a confidential exhibit that

19 goes to this as to the components of rate base, and

20 it's a summary exhibit from Ms. Feasel comparing the

21 Company's calculation to the Public Staff's

22 calculation and explain the difference.

23 COMMISSIONER MCKISSICK: So we need to go

24 into confidential session?

1 MR. BERNIER: Yes.

2 COMMISSIONER MCKISSICK: All right.

3 MS. MCGRATH: Commissioner McKissick, I'm
4 going to object. I'm not sure this is appropriate for
5 redirect.

6 COMMISSIONER MCKISSICK: To be honest with
7 you, I had some questions about that as well.

8 MR. BERNIER: The reason --

9 COMMISSIONER MCKISSICK: I would have
10 thought you would have addressed this earlier.

11 MR. BERNIER: The -- my basis --

12 COMMISSIONER MCKISSICK: Yeah.

13 MR. BERNIER: -- is that I could save it for
14 rebuttal on the Company but, truly, the Applicant has
15 raised the question on direct as to other components
16 of rate base. That's the direct quote from one of
17 their questions. They asked Ms. Feasel as to the
18 components, and she went through the component of
19 plant additions. I think she said depreciation. I
20 think to further highlight -- to summarize what's at
21 issue here is what this exhibit tries to get at.

22 MS. MCGRATH: Commissioner, I'd like to
23 respond, if you'll permit. The purpose of my
24 questioning was nothing more than to illicit the

1 response that, prior to owning a facility, you would
2 not have the amount of information that you would have
3 once you actually own it. Including plant in service.

4 MR. BERNIER: And this exhibit actually goes
5 to that, because it shows -- in addition to what Ms.
6 Feasel just testified -- it actually shows the actual
7 numbers that are available to the Company before it
8 even owns. So it undermines directly the purposes
9 that counsel is trying to achieve.

10 COMMISSIONER MCKISSICK: You think you can
11 deal with this on rebuttal?

12 MR. BERNIER: No. Because this is Ms.
13 Feasel's work product. It's -- it's something she
14 needs to explain the differences.

15 MS. MCGRATH: And, again, Commissioner, I
16 would say this is an issue that would have been
17 appropriate on direct.

18 MR. BERNIER: It's in her direct testimony.
19 It's just a summary exhibit to show -- what's on this
20 exhibit is in all direct. It just brings it together
21 in one handy exhibit.

22 COMMISSIONER MCKISSICK: So it's already in
23 the record, then?

24 MR. BERNIER: Yes.

1 COMMISSIONER MCKISSICK: Then we will
2 observe it as being duly noted in the record, and
3 we're going to sustain the objection.

4 MR. BERNIER: Thank you. I don't have any
5 further questions on accounting. I don't know if my
6 cocounsel has questions for Engineering.

7 MS. NEWELL: I do. I'll be brief.

8 COMMISSIONER MCKISSICK: Okay.

9 REDIRECT EXAMINATION BY MS. NEWELL:

10 Q Mr. Franklin, is it true that Red Bird witness
11 Beckemeier indicated there continues to be title
12 deficiencies?

13 A (Mr. Franklin) You'll have to speak up.

14 Q Has Red Bird indicated that there are title
15 deficiencies that have continued?

16 A Yes, that's correct.

17 Q And is it true that past Commission Orders have
18 allowed up to a certain amount for closing costs?

19 A Yes.

20 MS. NEWELL: Nothing further from me,
21 Commissioner. All set.

22 COMMISSIONER MCKISSICK: All right then.
23 There are a few Commission questions. So I will go
24 ahead and present those at this time.

1 EXAMINATION BY COMMISSIONER MCKISSICK:

2 Q Is there any precedent for the Commission
3 granting approval of a transfer where rate base
4 was not set?

5 A (Mr. Franklin) Not to my knowledge.

6 Q All right. Is there any precedent for the
7 Commission granting approval of a transfer when
8 due diligence costs are not set?

9 A Again, not to my knowledge.

10 Q Is there any precedent the Commission granting
11 approval of a transfer where the amount of an
12 acquisition adjustment is not set?

13 A Not to my knowledge.

14 Q Do you agree with the Company that recent changes
15 to North Carolina General Statute § 62-111
16 changed the way the Commission should decide
17 these cases?

18 A Absolutely not.

19 Q And could you explain your thoughts and
20 observations as it relates to that?

21 A Yes, sir. So the session law provides that the
22 Commission shall issue the Order approving the
23 Application upon finding that the proposed grant
24 or transfer, among other things, is in the public

1 interest. And this is in my testimony, by the
2 way on Page 21, and the Public Staff does not
3 believe that the Commission can determine if a
4 transfer is in the public interest if it does not
5 know the impact of -- to rate base and customer
6 rates of the acquiring utilities proposed
7 acquisition adjustment and due diligence
8 expenses.

9 Q All right. How does the Public Staff respond to
10 Red Bird's argument that Etowah is distressed due
11 to its: Number one, repeated violations; number
12 two, lack of profitability needed to support the
13 capital required to address the issues causing
14 the violations; or number three, invest capital
15 to improve its plant assets?

16 A So if you look at the definition of a troubled
17 system in Docket W-1000, Sub 5, in that Order
18 approving transfer and denying acquisition that
19 was issued January 6, 2020, it determines that a
20 system is operationally troubled if it has
21 various system deficiencies, ongoing
22 environmental regulatory violations, and frequent
23 customer complaints.

24 The Public Staff Consumer Services Division

1 received zero customer complaints over the
2 three-year period that I requested information
3 on.

4 As far as ongoing environmental regulations,
5 there are some and some that are recent, but,
6 again, when you look at the determination of the
7 frequency, it is not -- does not meet -- to my
8 opinion, as ongoing. They are occasional. The
9 coliform violation that Mr. Cox mentioned was
10 actually -- there was one in 2021 and another in
11 2023, about 17 months apart. And there have been
12 some BOD violations, and then, with a collection
13 system, there's been a sanitary system overflow.
14 So I don't consider that being ongoing. It
15 has -- there has been some, but not ongoing.

16 And then, various system deficiencies.
17 Again, supported by the infrequency of
18 violations, the lack of consumer complaints, and
19 my site visit. Although it was a one-day visit,
20 and even though the report of McGill did not
21 identify, I would call various system
22 deficiencies.

23 Q Okay. Can you explain how the changes to
24 Etowah's calculated rate base as the December 31,

1 20- -- I believe it should be 2022 -- were caused
2 by the reduction of depreciable lives from where
3 they were set in the last rate case?

4 A I'm sorry. Commissioner McKissick, could you
5 repeat that?

6 Q Yes. And one thing, I believe there may be a
7 date here that was provided in this question that
8 might be an error. Excuse me. Give me one
9 second --

10 A Okay.

11 Q -- to clarify that detail. All right.

12 Let me reask that question with -- it looks
13 like the date was correct that was in
14 Commission's questions. Explain how the changes
15 to Etowah's calculated rate base as of
16 December 31, 2023, were caused by the reduction
17 of depreciable lives from where they set in the
18 last rate case?

19 A The lives that -- if I understand your question
20 correctly, and in my testimony, I discuss the
21 adjustments I made, but the lives were --

22 Q What I'm trying to get at is, would there be a
23 difference between the rate base as proposed by
24 the Public Staff in its testimony and the rate

1 base calculated using the depreciable lives
2 established by the Commission in the last rate
3 case?

4 A No. Because we use those lives for the items
5 that were similar in the additions that have been
6 made since the last rate case. The only ones we
7 change were the ones that were not covered in the
8 previous rate cases.

9 Q Thank you. Does the Public Staff disagree with
10 the Company's position that the relevant rates
11 for purpose of evaluating whether the transfer is
12 in the public interest are those that will be in
13 effect post-closing?

14 A No.

15 Q All right. Does the Commission have the
16 authority to set rates in a next general rate
17 case regardless of whether future rate impacts
18 upon Red Bird's ownership are evaluated in this
19 proceeding?

20 A Yes.

21 Q Would the Commission's ability to allow or
22 disallow due diligence cost and/or recovery of an
23 acquisition premium be diminished if the rates
24 were deferred to a rate case proceeding, as the

1 Company requests?

2 A I would not say. What I would say is, since Red
3 Bird is proposing to go to uniform rates, that
4 adding the additional information for an
5 acquisition adjustment and due diligence at that
6 time with the additional cases that would be
7 required to be combined into a uniform rate in a
8 time restraint that we're under with the rate
9 case, that it would be overly cumbersome and
10 difficult to -- to -- and for no reason when they
11 have the information now.

12 Q All right. Given that the Company is not asking
13 us to rule on these issues, why do they need to
14 be taken up in this proceeding?

15 A Because back to -- for the Commission to have
16 a -- make a decision whether the transfer is in
17 the public interest, they need to know this
18 information and understand what the impacts to
19 rates is prior to them purchasing the system
20 verses afterwards.

21 A (Ms. Feasel) May I also add some supplemental
22 comments regarding the acquisition adjustment?
23 From the accounting perspective, we need this
24 information to be determined now because on the

1 Company's books as soon as the transaction is
2 closed, if the transaction closed, the Company
3 need to record on their books the purchase
4 acquisition adjustment and start amortizing the
5 purchase acquisition adjustment from there. In
6 order to amortize that, we need to determine the
7 depreciation life for the PAA.

8 Q Would it be the Public Staff's position that
9 calculation of an acquisition adjustment, your
10 calculation, begins amortization as of the date
11 of a contract; is that correct?

12 A As of January 1, 2024.

13 Q As of January 1, 2024.

14 A Yes.

15 Q All right. And has it been the Commission's past
16 practice to begin amortization of the acquisition
17 adjustment before consummation of the acquisition
18 in cases in which an acquisition adjustment is
19 ultimately allowed?

20 A I don't know either way.

21 COMMISSIONER MCKISSICK: Okay. I think that
22 covers the Commission questions. Let me look to my
23 colleagues to see if there are further questions they
24 may have.

1 Yes, Commissioner Hughes?

2 EXAMINATION BY COMMISSIONER HUGHES:

3 Q I'm not sure either one of you can weigh in on
4 this, but the testimony that the precedent has
5 been to -- to set the rate base and deal with due
6 diligence at the time of transfer; that was your
7 testimony if I understood it. Was there any
8 discussion with the Company when -- I mean, I'm
9 not sure if it was the two of you -- but that
10 when you went over the customer notice about
11 including something related to acquisition
12 adjustments or due diligence in the customer
13 notice? I have the customer notice here in front
14 of me, and it talks about the investment in
15 capital would lead to a rate increase, but for a
16 customer trying to understand this, there's --
17 there's no mention of --

18 A (Mr. Franklin) Yeah. So we used to include that
19 information, Commissioner Hughes, in these notice
20 of customers for Red Bird. But we -- when we
21 were doing the Baytree notice of customers, the
22 Company filed a motion objecting to having that
23 information in the notice of customers, and the
24 Commission agreed.

1 So we -- so it was not included in Baytree,
2 and so Etowah was the next one, and so we assumed
3 that if the Commission didn't want it for Baytree
4 they wouldn't want it going forward. And so
5 Etowah did not include that information for that
6 reason.

7 Q Good answer. Thank you.

8 A I hate to say that, but I will also say that the
9 seven additional statements that we've received
10 that were after the -- that were, you know,
11 before the public hearing, but they were after my
12 testimony was filed, and one actually refers to
13 my testimony directly. So I think, I don't have
14 the foolproof but that, part of the reason why we
15 received these so late is they saw my testimony,
16 which has those impacts in it.

17 COMMISSIONER MCKISSICK: Any further
18 questions?

19 And your testimony is consistent with my
20 recollections as well about the notice. All right.

21 Are there questions on Commissioner
22 questions?

23 MS. MCGRATH: Nothing further.

24 MS. NEWELL: Nothing further.

1 MR. BERNIER: Nothing else from the Public
2 Staff.

3 COMMISSIONER MCKISSICK: All right. In
4 which case, we will return to the Applicant for your
5 rebuttal.

6 MS. MCGRATH: Thank you, Commissioner
7 McKissick. At this time, I would call Josiah Cox,
8 Brent Thies, and Jim Beckemeier to the stand as a
9 panel on rebuttal.

10 COMMISSIONER MCKISSICK: Mr. Cox, you're
11 still under oath. So we'll just have the other two
12 gentlemen put the left hand on the Bible, raise your
13 right hand.

14 JOSIAH COX, BRENT THIES, and JAMES BECKEMEIER;
15 having been duly sworn,
16 testified as follows:
17

18 MS. NEWELL: Commissioner, just as a
19 procedural matter, at this time the Public Staff would
20 like to move their exhibits into evidence.

21 COMMISSIONER MCKISSICK: Go right ahead.

22 MS. NEWELL: Okay. Sorry.

23 COMMISSIONER MCKISSICK: I thought we put
24 them -- the testimony into evidence from the very

1 outset. So I don't think there were any other
2 exhibits during the -- that I'm aware about that I
3 recall. Now, I stand to be corrected, but we did get
4 the testimony, including Hinton's testimony into the
5 record. If you want to make a motion about the
6 prefiled exhibits going into the record, that'll be
7 fine. We will move.

8 MR. BERNIER: Yes. We'd like to move the
9 exhibits of Lynn Feasel that were included with her
10 prefiled testimony, I believe, they're Exhibits 1
11 through 4, move them into evidence. Get them into
12 evidence.

13 COMMISSIONER MCKISSICK: All right. Motion
14 has been made to admit those documents into evidence.
15 Without objection, your motion is allowed.

16 And we'll proceed with the testimony of
17 the -- rebuttal testimony of the Applicant.

18 (WHEREUPON, Feasel Exhibit
19 I, Confidential Exhibit II
20 & III and Exhibit IV are
21 received into evidence.)

22 MS. MCGRATH: I'm sorry. Do they need to be
23 sworn in?

24 COMMISSIONER MCKISSICK: They were sworn in.

1 Yeah. We're okay.

2 MS. MCGRATH: All right. Forgive me.

3 COMMISSIONER MCKISSICK: So you must tell
4 the truth.

5 DIRECT EXAMINATION BY MS. MCGRATH:

6 Q Mr. Cox, I will start with you, walk through
7 similar questions. Mr. Cox, can you please state
8 your name and business address for the record?

9 A (Mr. Cox) Josiah Cox. 1630 Des Peres Road,
10 Suite 140, St. Louis, Missouri, 63131. And I'm
11 the president of Red Bird and CSWR, LLC.

12 Q Okay. Well, you just answered my next question.
13 Mr. Cox, on November 13, 2023, did you cause to
14 be prefiled in this docket rebuttal testimony,
15 consisting of 28 pages and two exhibits?

16 A I did.

17 Q And do you have any corrections to your prefiled
18 rebuttal testimony?

19 A I do not.

20 Q And if you were to ask you the same questions
21 that are in your rebuttal testimony while you are
22 here today under oath, would your answers be the
23 same?

24 A Yes.

1 Q Thank you.

2 And, Mr. Theis, can you please state your
3 name and business address for the record?

4 A (Mr. Theis) My name is Brent Theis. Business
5 address is 1632 Des Peres Road, Suite 140, Des
6 Peres Missouri, 63131.

7 Q And by whom are you employed and in what
8 capacity?

9 A I'm the vice president corporate controller for
10 CSWR, LLC, and its affiliates, including Red
11 Bird.

12 Q And, Mr. Theis, on November 13, 2023, did you
13 cause to be prefiled in this docket rebuttal
14 testimony, consisting of 10 pages and one
15 exhibit?

16 A I did.

17 Q And on November 15, 2023, did you cause to be
18 prefiled corrected confidential and
19 nonconfidential rebuttal testimony consisting of
20 10 pages and one exhibit?

21 A I did.

22 Q And do you have any corrections that you need to
23 make to your prefiled corrected confidential and
24 nonconfidential rebuttal testimony?

1 A I do. On Page 5 -- I'm sorry. That would be
2 Page 6 of the corrected filing. It does say Page
3 5 at the bottom, however, it is Page 5 and the
4 chart on -- that begins on Line 10, the line in
5 that chart labeled "Accumulated Depreciation,"
6 but it's DEPR is what's used for depreciation.
7 The number that is in the testimony says negative
8 number 1,301,696. That should be a negative
9 number, 1,304,796. And since that table results
10 in a sum for rate base, when you go down to the
11 bottom line of that table that's labeled rate
12 base the total currently -- the total in the
13 final testimony says 426,661, the corrected value
14 is 423,561.

15 Q Thank you. And noting that correction, if I were
16 to ask you the same questions that are set forth
17 in your corrected testimony while you're under
18 oath here today, would your answers be the same?

19 A Yes.

20 Q And, finally, Mr. Beckemeier, can you please
21 state your name and business address for the
22 record?

23 A (Mr. Beckemeier) James Beckemeier. My business
24 address is 13421 Manchester Road, St. Louis,

1 Missouri, 63131.

2 Q And by whom are you employed and in what
3 capacity?

4 A Beckemeier LeMoine. I'm a member.

5 Q And on November 13, 2023, did you cause to be
6 prefiled in this docket rebuttal testimony,
7 consisting of 12 pages?

8 A Yes.

9 Q And are there any corrections you need to make to
10 your prefiled rebuttal testimony?

11 A No, they're not.

12 Q And if I were to ask you the same questions today
13 under oath, would your answers be the same?

14 A Yes, they would.

15 MS. MCGRATH: Thank you.

16 Commissioner McKissick, at this time, I
17 would request that the prefiled rebuttal testimonies
18 of Mr. Cox, Theis, and Beckemeier be entered into the
19 record as if given orally here today, and that Mr.
20 Cox' exhibits designated as Cox Rebuttal Exhibits 1
21 and 2, and Mr. Theis' Rebuttal Exhibit Number 1 be
22 identified as marked when prefiled.

23 And, Commissioner McKissick, I don't know if
24 at that time you want me to request to move those

1 exhibits into evidence.

2 COMMISSIONER MCKISSICK: I think it's
3 appropriate to go ahead and do it now.

4 MS. MCGRATH: Okay. Thank you. So I'd like
5 to -- to move to have those exhibits entered into
6 evidence.

7 COMMISSIONER MCKISSICK: Excellent. The
8 motion which you have made to introduce the rebuttal
9 testimony of Mr. Cox, consisting of 28 pages as well
10 as two exhibits; Mr. Theis, as amended from his
11 testimony, consisting of 10 pages with one exhibit;
12 and Mr. Beckemeier, consisting of 12 pages will be
13 admitted into evidence and treated as if given orally
14 from the witness stand.

15 The attached exhibits to the prefiled
16 rebuttal testimony will be identified as it was marked
17 when prefiled, and the exhibits relating to the
18 testimonies which have been identified hereinabove
19 will be admitted into evidence at this time as well.

20 MS. MCGRATH: Thank you.

21 COMMISSIONER MCKISSICK: Absolutely.

22 (WHEREUPON, Cox Rebuttal
23 Exhibits 1 & 2 are received
24 into evidence.)

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(WHEREUPON, the prefiled
rebuttal testimony of
JOSIAH COX is copied into
the record as if given
orally from the stand.)

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. W-933, SUB 12
DOCKET NO. W-1328, SUB 0

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of)
Application by Red Bird Utility Operating)
Company, LLC, and Etowah Sewer)
Company, Inc., for Transfer of Public)
Utility Franchise and for Approval of Rates)

**REBUTTAL TESTIMONY OF JOSIAH COX
ON BEHALF OF RED BIRD UTILITY OPERATING COMPANY, LLC**

I. 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,
3 St. Louis, Missouri, 63131.

4 **Q. ARE YOU THE SAME JOSIAH COX WHO PREVIOUSLY FILED**
5 **DIRECT TESTIMONY IN THESE DOCKETS?**

6 A. Yes.

7 **Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?**

8 A. My rebuttal testimony responds to the pre-filed direct testimony of Public Staff
9 witnesses Franklin, Feasel, and Hinton. Specifically, I address the Public Staff's
10 testimony regarding:

- 11 • Etowah Sewer Company, Inc.'s ("Etowah") status as a distressed or
- 12 troubled utility;
- 13 • the Public Staff's contention that the Commission should disallow an
- 14 acquisition adjustment in connection with the proposed acquisition;

- 1 • the Public Staff’s argument that Red Bird Utility Operating Company’s
2 (“Red Bird” or the “Company”) due diligence costs are excessive and
3 should be capped at \$10,000; and
4 • the Public Staff’s testimony pertaining to the effect the approval of the
5 proposed acquisition would have on customer rates.

6 I also reiterate how Red Bird’s proposed acquisition of Etowah would bring many
7 benefits to Etowah’s current customers—both immediately and in the long term. I
8 also briefly address the concerns raised in the testimony of Public Staff witness
9 Hinton regarding CSWR, LLC’s (“CSWR”) ability to provide the capital necessary
10 to acquire, make required upgrades and improvements, and operate the Etowah
11 system post-closing.

12 **Q. ARE ANY OTHER WITNESSES PRE-FILING REBUTTAL TESTIMONY**
13 **ON BEHALF OF THE COMPANY?**

14 A. Yes. Two other witnesses are filing rebuttal testimony on behalf of Red Bird. The
15 rebuttal testimony of Red Bird witness Brent Thies addresses the accounting issues
16 raised in the testimony of Public Staff witnesses Lynn Feasel and Michael Franklin
17 and the rebuttal testimony of Red Bird witness James Beckemeier responds to the
18 Public Staff’s concerns regarding due diligence costs.

19 **Q. DO YOU HAVE ANY EXHIBITS TO YOUR REBUTTAL TESTIMONY?**

20 A. Yes. My rebuttal testimony includes two exhibits: **Cox Rebuttal Exhibit 1** is an
21 Order from the Arizona Corporation Commission examining water utility viability
22 and articulating guiding factors and indica for such determinations. **Cox Rebuttal**

1 **Exhibit 2** provides a map showing the location of systems our affiliates own and
2 operate in the United States.

3 **Q. WERE THESE EXHIBITS PREPARED OR PROVIDED BY YOU OR**
4 **UNDER YOUR DIRECTION AND SUPERVISION?**

5 A. Yes.

6 **II. THE PUBLIC STAFF’S EVALUATION OF THE CONDITION OF**
7 **ETOWAH’S WASTEWATER SYSTEM**

8 **Q. WHAT IS THE PUBLIC STAFF’S ASSESSMENT OF THE OVERALL**
9 **CONDITION OF THE ETOWAH WASTEWATER SYSTEM AND**
10 **RELATED FACILITIES?**

11 A. Public Staff witness Franklin testified that the Etowah wastewater system “appears
12 to be in fair condition”¹ and that he does not consider the system to be distressed or
13 troubled.

14 **Q. WHAT IS THE BASIS OF MR. FRANKLIN’S ASSESSMENT?**

15 A. Mr. Franklin’s assessment of the Etowah wastewater system is based on a visual
16 inspection of the facilities on October 12, 2023, and “the recent performance of the
17 wastewater system, including the lack of customer complaints, the routine
18 maintenance performed, and recent improvements made by Etowah”²

19 **Q. DO YOU CONCUR WITH MR. FRANKLIN’S ASSESSMENT?**

20 A. No, I do not. I base my disagreement on at least two factors. First, based on
21 information provided in responses to data requests in a previous case, it is my
22 understanding that Mr. Franklin has never designed, constructed, or operated a

¹ See Direct Testimony of Michael D. Franklin, Docket Nos. W-933, Sub 12; W-1328, Sub 0, at 4.

² *Id.* at 11.

1 water or wastewater system. In addition, although he has utility industry
2 experience, that experience was with a large electric utility whose operations differ
3 materially from those of a small wastewater utility. Given Mr. Franklin's lack of
4 experience with wastewater utilities, I question whether he is qualified to accurately
5 (or adequately) assess the current condition of Etowah's facilities, their
6 functionality, or the upgrades or improvements the wastewater system will require
7 in the future.

8 Second, as I explained in my direct testimony, and as I further explain in
9 my rebuttal testimony, the poor condition of Etowah's facilities combined with its
10 substandard operations history qualify the system as "distressed." My assessment
11 is corroborated by the eleven Notices of Violations ("NOVs") that Etowah received
12 from September 1, 2020 through October 1, 2023, which are detailed in witness
13 Franklin's testimony.

14 I also believe Etowah's facilities qualify as "non-viable" under *North*
15 *Carolina's Statewide Water and Wastewater Infrastructure Master Plan – The*
16 *Road to Viability*, which defines a "viable system" as "a [utility] system that
17 functions as a long-term, self-sufficient business enterprise, establishes
18 organizational excellence, and provides appropriate levels of infrastructure
19 maintenance, operation, and reinvestment that allow the utility to provide reliable
20 water services now and in the future."³ Although that definition expressly applies

³ N. C. Dep't of Env't Quality, *North Carolina's Statewide Water and Wastewater Infrastructure Master Plan – The Road to Viability* 1 (2017), https://files.nc.gov/ncdeq/WI/Authority/Statewide_Water_and_Wastewater_Infrastructure_Master_Plan_2017.pdf.

1 to water systems, I believe it also describes the characteristics of a “viable”
2 wastewater system and, conversely, a “non-viable” system as well.

3 **Q. WHAT INFORMATION DOES RED BIRD HAVE TO SUPPORT ITS**
4 **CONTENTION THAT ETOWAH’S WASTEWATER SYSTEM IS**
5 **DISTRESSED AND TROUBLED?**

6 A. Red Bird commissioned a preliminary survey and analysis of the Etowah system
7 by third-party engineering firm McGill Associates, P.A. (“McGill”), which
8 identified required repairs, improvements, and upgrades. McGill also reviewed the
9 documented occasions of past non-compliance collected over the last three or more
10 years, all of which support Red Bird’s assessment that Etowah is distressed or
11 troubled.

12 In contrast, witness Franklin testified that he “visually inspected” the
13 Etowah facilities on one day. An accurate assessment of the condition of
14 wastewater systems typically requires not just a visual inspection, but a *physical*
15 inspection, which can uncover structural issues and those that may be cosmetically
16 hidden. Moreover, a one-time visit provides only a “snapshot” of what was
17 observed on a particular day and may not – especially in the face of contrary
18 historical evidence – provide an accurate picture of the true condition of Etowah’s
19 system or its operations over time.

20 While witness Franklin also notes the eleven NOV’s issued by the North
21 Carolina Department of Environmental Quality (“NCDEQ”) to Etowah, eight of
22 which were directed at the wastewater treatment plant and three to the wastewater

1 collection system, he simply dismisses them as having no consequence.⁴ Witness
2 Franklin's testimony acknowledges that "two NOV's remain open as a result of the
3 January 9, 2023, SSO [sanitary system overflow] event" However, I think the
4 Public Staff and Commission should be concerned and should not disregard the
5 potential for these types of violations to reoccur in the future if the acquisition is
6 not approved.

7 As part of this acquisition proceeding, a review of the available compliance
8 data for the Etowah system was conducted. Etowah has received NOV's every year
9 since 2017, certainly demonstrating a history of noncompliance. Regarding the
10 wastewater treatment plant, in 2018, Etowah received several NOV's related to a
11 March 2018 violation resulting from the exceedance of daily maximum limits for
12 biochemical oxygen demand "BOD"⁵ and fecal coliform.⁶ Again, in November
13 2021, Etowah received an NOV for exceeding the daily maximum limit for fecal
14 coliform in September 2021. NCDEQ advised Etowah that if the violations
15 continue, it may require remedial actions. Most recently, in April of 2023, Etowah
16 received another NOV for exceeding the daily fecal coliform limits in February
17 2023. These violations are signification because they represent human health
18 hazards that could cause illness – or, in extreme cases, even death to people in and

⁴ Witness Franklin's testimony details NOV's issued from September 1, 2020, through October 1, 2023. My direct testimony shows that Etowah also received NOV's in 2017, 2018, and 2019.

⁵ BOD measures the amount of dissolved oxygen in water. *See, e.g.,* Raleigh, North Carolina Code of Ordinances Sec. 8-2112.

⁶ The presence of fecal coliform bacteria indicates that the water has been exposed to fecal material from humans or other warm-blooded animals. *See* N.C. Dep't of Health & Human Servs., *Total Coliform Bacteria, E. coli & PRIVATE WELLS*, (Sept. 2019), <https://epi.dph.ncdhhs.gov/oe/docs/TotalColiformBacteriaEcoliAndPrivateWells.pdf>.

1 around Etowah's service area. Given Etowah's track record for these types of
2 violations, unless something is done it is likely that they will recur in the future.

3 In addition to the events described above, which raise significant public
4 health concerns, the Etowah wastewater collection system, which operates under a
5 separate permit from the wastewater treatment plant, received a NOV in January
6 2023 related to a sanitary system overflow incident. In that event, approximately
7 600 gallons of sewage were released. The NCDEQ inspection summary for the
8 sanitary system overflow event stated that the complainant "had seen the . . . pump
9 station overflowing for two weeks" and that the "pump station sign does not have
10 phone numbers for the current emergency personnel."⁷

11 Red Bird considers these violations to be very serious and views them as
12 significant public health risks. It is even more concerning that some situations were
13 permitted to continue for weeks without Etowah personnel taking corrective action.
14 While I have not detailed all of Etowah's NOVs from the last five years, this sample
15 of violations demonstrates the risks noncompliance poses to human and
16 environmental health. The repeated exceedance of fecal coliform limits as well as
17 a sanitary system overflow event results in the release of improperly treated waste
18 into the surrounding environment and poses risks to adults and children alike.

19 In addition, as I stated in my direct testimony, McGill's preliminary
20 assessment of Etowah's wastewater system identified serious deficiencies and
21 needed improvements that would require an additional capital investment of almost

⁷ NCDEQ Inspection Summary (January 10, 2023), available at:
<https://edocs.deq.nc.gov/WaterResources/PDF10/981a7a29-2fa0-4736-bfda-d1d6f6e4fccb/2781022>.

1 half a million dollars. Note, however, that McGill's assessment was completed in
2 February 2020, over three years ago. Therefore, the capital cost estimates included
3 in McGill's report do not reflect the current or future costs of those improvements.
4 Moreover, if certain routine maintenance has not been undertaken during the
5 pendency of this application, it is likely that additional work will be necessary to
6 address operational and compliance issues with Etowah's wastewater system.

7 **Q. WHAT CRITERIA OR FACTORS DOES RED BIRD CONSIDER WHEN**
8 **DETERMINING WHETHER A UTILITY SYSTEM IS DISTRESSED OR**
9 **TROUBLED?**

10 A. In many states where our affiliate group operates, regulatory commissions have
11 identified criteria that qualify a water or wastewater utility as "distressed" or
12 "troubled." Red Bird's Arizona affiliate, Cactus State Utility Operating Company,
13 is regulated by the Arizona Corporation Commission (the "ACC") which has
14 extensively studied the issue and has articulated criteria and indicia for what the
15 ACC deems "viable" or "non-viable" water or wastewater utilities. A copy of the
16 ACC's Order articulating these factors and examining water utility viability is
17 included with my testimony as **Cox Rebuttal Exhibit 1**. While, of course, the
18 Commission is not bound by the decisions of regulatory commissions in other
19 jurisdictions, these criteria may be helpful or instructive to this Commission as it
20 seeks to evaluate troubled or distressed systems in North Carolina proceedings.⁸

21 The ACC defines a non-viable water or wastewater utility as one that:

⁸ See Order, Arizona Corporation Commission Investigation into Potential Improvements to its Water Policies, Docket No. W-00000C-0151 (September 19, 2016) at 15.

- 1 1. Lacks and is unable to acquire the managerial, technical
2 and/or financial capabilities to safely and adequately
3 operate; or
- 4 2. Is currently not in compliance or is unable to achieve
5 compliance with Arizona Department of Environmental
6 Quality, Arizona Department of Water Resources,
7 and/or Arizona Corporate Commission rules or orders or
8 is unable to achieve such compliance without
9 managerial, technical, or financial assistance; or
- 10 3. Will not be able to meet other requisite regulatory
11 requirements on a short- or long-term basis.
12

13 In addition to these general characteristics, the ACC developed a non-
14 exhaustive list of factors or indicia that may be present when a water or wastewater
15 utility is non-viable, any one or any combination of which the ACC considers
16 sufficient to show non-viability. These factors include:

- 17 • The utility lacks and is unable to acquire the managerial, technical,
18 and/or financial capabilities to:
 - 19 ○ Perform necessary operations and maintenance to assure an
20 adequate, safe, and permanent water supply and/or adequate and
21 safe treatment of wastewater, including:
 - 22 ▪ Maintaining and improving essential equipment.
 - 23 ▪ Properly addressing growth in excess of current utility
24 capacity.
 - 25 ▪ Failing to properly address any needs for significant
26 capital improvements and the inability to attract
27 investment or obtain financing for needed improvement.
 - 28 ▪ Contaminants in excess of drinking water or wastewater
29 standards.
 - 30 ▪ Failure to consistently or correctly perform required
31 testing.
 - 32 ▪ Failure to ensure compliance with new drinking water or
33 wastewater standards in effect or going into effect.

- 1 ○ Lack of adequate staffing and/or certified operators due to the
- 2 utility's inability to attract, hire, and retain engineers, attorneys,
- 3 accountants, etc. to properly operate the utility.
- 4 ○ Failure to file for regular rate increases and/or the inability to
- 5 hire experts that may be needed to assist in processing rate cases
- 6 that contribute to rates that fail to cover expenses and liabilities.
- 7 ○ Is unable or unwilling to ensure adequate supply or treatment
- 8 capabilities as demonstrated by:
 - 9 ▪ Insufficient storage leading to water outages or repeated
 - 10 shortages.
 - 11 ▪ Frequent triggering of curtailment tariffs.
 - 12 ▪ Utility relying on hauling or otherwise purchasing water
 - 13 on an emergency basis to meet demand.
 - 14 ▪ Implementation of a moratorium on new service
 - 15 connections or the inability to add new service
 - 16 connections due to low supplies or pressure.
- 17 ○ Issues related to billing such as a failure to bill, sporadic billing,
- 18 or inaccurate billing.
- 19 ○ The utility is in bankruptcy or is considering bankruptcy.
- 20 ○ The owner/operator of the utility has walked away.
- 21 ○ There isn't a clear succession plan in place in the event the
- 22 owner/operator passes away or becomes incapacitated.
- 23 ○ The utility is unable or unwilling to respond to service
- 24 complaints.
- 25 • The utility is not in compliance with [applicable] rules or order such as:
 - 26 ○ Outstanding violations, a history of violations, and/or the
 - 27 inability to correct violations.
 - 28 ○ Inability to meet existing mandates for significant capital
 - 29 improvements.
 - 30 ○ Failure to obtain required approval to construct, discharge
 - 31 authorizations, or other required permits.
 - 32 ○ The utility isn't current on sales and/or property taxes.

- 1 • The utility will not be able to meet other requisite regulatory agency
2 requirements on a short- or long-term basis, such as:
- 3 ○ The utility's CCN has been revoked.
- 4 ○ Accounting systems are not kept in accordance with required
5 standards.
- 6 ○ Failure to properly complete and/or file annual reports.
- 7 ○ Appointment of an interim manager.
- 8 ○ The utility has applied for interim or emergency rates.
- 9 ○ The setting of adequate rates would be unduly burdensome with
10 the existing customer base.⁹

11 **Q. DO ANY OF THE ABOVE FACTORS SUPPORT A DETERMINATION BY**
12 **THIS COMMISSION THAT THE ETOWAH SYSTEM IS DISTRESSED**
13 **OR NON-VIABLE?**

14 A. Yes, there are several factors listed above that support our assertion that the Etowah
15 system is distressed or non-viable. In its 2022 Annual Report filed with the
16 Commission in Docket No. M-2 Sub 2023W, Etowah reported a negative net
17 income of approximately (\$32,000). With the exception of 2021, where Etowah
18 reported positive net annual income of approximately \$2,000, Etowah has reported
19 negative net income since 2018. Moreover, these self-reported financials would not
20 enable Etowah to borrow from a commercial lender, which in turn means that it
21 lacks the financial ability to make the necessary capital improvements identified in
22 McGill's preliminary engineering assessment. That most likely explains why from
23 2018 to 2022, Etowah reported no change in utility plant in service. This is telling

⁹ *Id.* at 15-17.

1 as it demonstrates that Etowah has not made any capital investments in its systems
2 during the past five years.

3 Also, as I detailed above, Etowah has an outstanding NOV as well as a
4 history of violations and noncompliance. Each of these facts – operating loss, lack
5 of access to capital, no investment in plant, outstanding violations, and a history of
6 noncompliance – are indicia of a “non-viable” utility under the ACC’s criteria and
7 support our position that the Etowah system is distressed.

8 **Q. WHAT EVIDENCE HAS RED BIRD IDENTIFIED THROUGH THE DUE**
9 **DILIGENCE PROCESS THAT DEMONSTRATES THAT COMPLIANCE**
10 **WILL BE DIFFICULT FOR ETOWAH TO ACHIEVE AND MAINTAIN?**

11 A. As discussed above, Etowah’s recent annual reports demonstrate that it will be
12 difficult for Etowah to achieve and maintain compliance. Since at least 2018, there
13 have been no investments in plant made for the Etowah system and the annual
14 reports further demonstrate that Etowah does not have the capital, or the ability to
15 access capital, to maintain and improve its system. During that same time frame,
16 Etowah has continued to receive NOV’s, and, according to the United States
17 Environmental Protection Agency’s enforcement and compliance history online
18 database, Etowah has been in a state of noncompliance for eleven of the last twelve
19 quarters. All the while the necessary investments identified by McGill’s
20 preliminary engineering assessment, which includes required investments and
21 upgrades of almost half a million dollars, have not been completed. Without a
22 significant change in circumstances, it is hard to imagine a scenario in which
23 Etowah is able to achieve and maintain continued compliance.

1 **III. ACQUISITION ADJUSTMENT**

2 **Q. PLEASE RESPOND TO THE PUBLIC'S STAFF RECOMMENDATION**
3 **THAT RED BIRD SHOULD NOT RECEIVE AN ACQUISITION**
4 **ADJUSTMENT IN THIS PROCEEDING.**

5 A. While the Public Staff testifies that Red Bird should not receive an acquisition
6 adjustment, it is the Company's position that the Commission need not decide that
7 issue in this proceeding. Instead, Red Bird requests that Commission defer this
8 decision to an initial rate case proceeding involving the Etowah system, which
9 provides the best forum for such a determination.

10 **Q. PLEASE EXPLAIN WHY RED BIRD BELIEVES THAT THE**
11 **ACQUISITION ADJUSTMENT IS BETTER DETERMINED IN**
12 **ETOWAH'S FIRST RATE CASE PROCEEDING.**

13 A. There are three reasons why Red Bird's acquisition adjustment should be deferred
14 to Etowah's first rate case proceeding.

15 First, the amount of the proposed acquisition adjustment is not currently
16 known. Because the transaction is not finalized, all of the requisite information for
17 such a determination is not available.

18 Second, deferring a decision on an acquisition adjustment is consistent with
19 what I believe is the intent of recent changes to the statute governing the transfer of
20 water and wastewater utilities which narrowed the scope of the Commission's
21 inquiry in such cases to public interest in the context of the rates proposed by the
22 acquiring utility and the technical, managerial, and financial qualifications of a
23 potential acquiror. Specifically, based on recently enacted N.C. Gen. Stat. § 62-

1 111, the Commission's focus in acquisition proceedings is limited to determining:
2 (1) whether the party seeking to acquire a system possesses the technical,
3 managerial, and financial capabilities necessary to provide public utility services,
4 and (2) whether the transaction is in the public interest.

5 Regarding the Commission's public interest determination, that
6 determination is to be made in the context of the rates proposed to be in effect
7 immediately after the system is transferred. Because an acquisition adjustment is
8 not relevant to either of the factors to be considered in an acquisition proceeding
9 under N.C. G. S. §62-111,¹⁰ it is neither necessary nor appropriate to decide this
10 issue in the context of an acquisition proceeding.

11 Third, after closing, Red Bird plans to adopt and continue to charge
12 customers Etowah's currently approved rates. Red Bird is not proposing a change
13 in rates; rather, Red Bird proposes to adopt Etowah's currently approved rates.
14 Consequently, the Public Staff's projections regarding future rate impacts of the
15 proposed acquisition are purely speculative and are therefore unreliable. By
16 deferring the determination on the acquisition adjustment to a future rate case
17 proceeding, deficiencies in the current record regarding both the reasonableness of
18 the purchase price and the effect of the proposed acquisition on customers can be
19 cured. Thus, any decision regarding whether an acquisition adjustment should be

¹⁰ The Commission has articulated, and the Public Staff cites, the factors provided in the Commission's *Order Approving Transfer and Denying Acquisition Adjustment*, Petition of Utilities, Inc. for Transfer of the Certificate of Public Convenience and Necessity for Providing Sewer Utility Service on North Topsail Island and Adjacent Mainland Areas in Onslow County from North Topsail Water and Sewer, Inc. and for Temporary Operating Authority, Docket No. W-1000, Sub 5 (January 6, 2000).

1 authorized can be deferred to the initial rate case involving the Etowah system when
2 that issue and its impact on rates can be fully considered.

3 Considering the reasons articulated above, I believe it is appropriate for the
4 Commission to defer a decision regarding an acquisition adjustment to Red Bird's
5 initial rate case proceeding.

6 **IV. DUE DILIGENCE COSTS**

7 **Q. WHAT DOES THE PUBLIC STAFF RECOMMEND REGARDING RED**
8 **BIRD'S RECOVERY OF DUE DILIGENCE COSTS?**

9 A. Public Staff witness Franklin recommends that the Commission apply a \$10,000
10 cap on Red Bird's due diligence costs incurred in connection with the proposed
11 Etowah transaction.

12 **Q. HOW DO YOU RESPOND?**

13 A. I disagree with the Public Staff's recommendation for two main reasons:

14 First, and consistent with the reasons articulated in support of a deferral of
15 the acquisition adjustment determination, the amount of due diligence costs will
16 have no effect on the rates Red Bird will charge immediately after closing if the
17 transfer is approved, nor do due diligence costs have a bearing on Red Bird's
18 technical, managerial, or financial capabilities to own and operate the Etowah
19 system. As I previously explained, the changes to N.C.G.S. § 62-111 limit the issues
20 the Commission is to consider in water and wastewater acquisition cases to these
21 two factors—the appropriate amount of due diligence costs to be recovered by an
22 acquiring entity is not one of the factors the Commission is required to consider.
23 Therefore, the question regarding the amount of due diligence costs that should be

1 included in rate base can and should be deferred to Red Bird's initial rate case
2 involving the Etowah system.

3 Second, Red Bird has not proposed any change in rates for the Etowah
4 system. So, again, deferring this issue will not harm or disadvantage any customer
5 or party to this proceeding. Instead, a deferral of this issue will allow the
6 Commission to make its decision when the transaction-related costs are known and
7 measurable, and all parties will have the opportunity to present evidence regarding
8 the prudence of those costs and whether they should be included in the rate base.

9 **Q. IF THE COMMISSION DETERMINES THAT IT IS NECESSARY TO**
10 **DETERMINE THE AMOUNT OF DUE DILIGENCE COSTS TO BE**
11 **INCLUDED IN RATE BASE AS PART OF THIS PROCEEDING, DO YOU**
12 **AGREE WITH WITNESS FRANKLIN'S RECOMMENDATION THAT**
13 **RED BIRD ONLY BE PERMITTED TO INCLUDE \$10,000?**

14 A. No. As explained in more detail in the rebuttal testimony of Red Bird witness James
15 Beckemeier, all the due diligence costs that Red Bird incurred are a necessary part
16 of the transaction. Red Bird's estimated due diligence costs, which were provided
17 as Exhibit 4 to my direct testimony, include costs associated with engineering,
18 valuation and legal assessments conducted in pursuit of the underlying acquisition.
19 Final due diligence costs will not be known until after closing. Moreover, contrary
20 to witness Franklin's testimony, these costs represent a necessary component of the
21 acquisition process. I address this issue from a high-level perspective, but the
22 rebuttal testimony of Mr. Beckemeier provides more detailed information about the

1 due diligence process and the underlying rationale for undertaking due diligence
2 work, particularly in the context of acquiring utility systems.

3 For example, Questions 1 and 2 of the Commission's *Application for*
4 *Transfer of Public Utility Franchise and for Approval of Rates* require applicants,
5 like Red Bird, to provide the following information:

6 1. Are there any major improvements/additions
7 required in the next five years and the next ten years?
8 Indicate the estimated cost of each improvement/addition,
9 the year it will be made, and how it will be financed (long-
10 term debt, short-term debt, common stock, retained earnings,
11 and other (please explain)).

12 2. Are there any major replacements required in the
13 next five years and the next ten years? Indicate the estimated
14 cost of each replacement, the year it will be made, and how
15 it will be financed (long-term debt, short-term debt, common
16 stock, retained earnings, and other (please explain)).

17 Only after undertaking a fairly detailed engineering due diligence review would an
18 applicant be able to accurately respond to these application requirements. And
19 without this information Red Bird's applications almost certainly would be deemed
20 "deficient."

21 Additionally, the Public Staff will not recognize that a Joint Application is
22 complete until the parties to the application establish that the seller owns or
23 otherwise controls and is able to convey to the purchaser all real property and
24 easements, etc., required for operation of the utility system. Both of these
25 requirements mean that Red Bird, in order to file a Joint Application that will be
26 deemed "complete," must engage in extensive, pre-filing due diligence to obtain
27 necessary engineering studies and ownership information.

1 As part of the engineering portion of the due diligence costs, Red Bird's
2 affiliate group routinely engages a third-party engineering firm to assess the
3 condition of assets we propose to purchase and to project necessary capital
4 improvements during the first few years we own and operate those assets. For
5 Etowah, McGill performed that assessment. Although the results of its efforts are
6 preliminary—as we have found that the true condition and needs of acquired
7 systems can only be determined after we own and operate those systems—those
8 assessments and estimates are nonetheless invaluable for many reasons, including
9 the need to respond to discovery questions and questions raised by regulators in
10 acquisition cases regarding future capital plans.

11 Red Bird's affiliate group also engaged Valbridge Property Advisors to
12 provide an appraisal for the utility assets being purchased. An appraisal is required
13 to determine the value of the assets being acquired in order to determine the fair
14 value of the assets.

15 21 Design Group, the remaining entity whose costs are included in the
16 engineering due diligence total, was engaged to perform tasks such as surveying
17 and mapping the service area, including the location of Etowah's utility facilities
18 Red Bird proposes to acquire. Some of this work is required to complete the
19 Commission's application process; however, even if it was not, the work is critical
20 to the successful operation of the system after closing.

21 Regarding the legal portion of our due diligence costs, Red Bird engaged
22 The Beckemeier Law Firm, which in turn engaged Law Firm Carolinas, to handle
23 matters and issues related to ensuring Red Bird would obtain clear title at closing

1 to all utility assets it contracted to acquire from Etowah—a requirement of the Joint
2 Application.

3 The remaining firm whose costs are included in the due diligence total is
4 Burns, Day & Presnell who performed legal work required to secure Commission
5 approval of the proposed acquisition.¹¹ Mr. Beckemeier describes the due diligence
6 work each of these law firms performed and why it was essential to the
7 consummation of the proposed transaction.

8 **V. EFFECT OF PROPOSED ACQUISITION ON CUSTOMER RATES**

9 **Q. WHAT IS THE EFFECT OF THE PROPOSED ACQUISITION ON**
10 **CUSTOMER RATES?**

11 A. As I reiterated above, Red Bird proposes to adopt the rates currently in effect for
12 Etowah customers should the Commission approve this acquisition. These rates
13 will continue until the Commission authorizes a change in rates in a future rate case.
14 Therefore, this application will have no impact whatsoever on customer rates
15 immediately after closing.

16 **Q. WHAT DOES THE PUBLIC STAFF CONTEND REGARDING RED**
17 **BIRD'S FUTURE RATES?**

18 A. Public Staff witnesses Franklin and Feasel include estimated rates using projections
19 for various components of Red Bird's operating costs of the Etowah system. The

¹¹ Witness Franklin testifies that Red Bird included legal costs from “five law firms.” While the invoices provided on Cox Direct Exhibit 4 appear to be from five different law firms, in actuality there are three. Beckemeier LeMoine Law and The Beckemeier Law Firm are one and the same; the firm's name changed during the pendency of this Joint Application. The same is true for Black, Slaughter & Black and Law Firm Carolinas.

1 Public Staff also appears to have calculated rate increases as related to an
2 acquisition adjustment, capital improvements, and due diligence costs.

3 **Q. HOW DOES RED BIRD RESPOND?**

4 A. My response to the Public Staff's projections regarding the proposed acquisition of
5 Etowah's system on future rates is twofold. First, because the changes to N.C.G.S.
6 § 62-111, the only rates the Commission should consider in determining whether
7 an acquisition is in the "public interest" are those that will be in effect immediately
8 after closing. Future rates—i.e., those that would be set by the Commission in a
9 future rate case—are irrelevant to the determination of whether an acquisition
10 application should be granted. Because approval of the Joint Application will have
11 no impact on customer rates, the Commission should disregard the Public Staff's
12 rate impact estimates as irrelevant to the three issues currently before the
13 Commission: 1) whether Red Bird is technically, managerially, 2) whether Red
14 Bird is financially qualified to own and operate the Etowah system as a regulated
15 public utility; and 3) whether the proposed transaction is in the public interest.

16 Furthermore, the Commission should disregard the Public Staff's rate
17 impact testimony because the underlying estimates are based on assumptions
18 regarding all elements of ratemaking – revenue, expenses, rate base, capital
19 structure, rate of return, rate design, etc. – that may or may not be valid. Red Bird
20 has made clear that it intends to request in its first North Carolina rate case approval
21 of consolidated, statewide rates for both water and wastewater services. Based on
22 the experience of our affiliate group in states outside North Carolina, where such
23 rates have been approved, consolidated rates are an effective mechanism to mitigate

1 “rate shock” that otherwise would result when small, undercapitalized, and
2 mismanaged systems are acquired by experienced and technically competent
3 owners that invest the capital required to address needed capital improvements in
4 those systems. Consolidated rates allow all customers within a state to share the
5 benefits of economies of scale our affiliated group can achieve. Consolidated rates
6 also help spread out the rate impact of required capital investments that have greater
7 impacts on some systems in the short term but that will affect all systems in the
8 long run. Despite Red Bird’s declared intent to seek consolidated rates, Public
9 Staff’s estimated rate impacts, in addition to being based on estimates and
10 assumptions, are incorrectly calculated as if rates for the Etowah system would
11 always be set on a stand-alone basis.

12 **Q. SHOULD THE COMMISSION CONSIDER FUTURE RATE IMPACTS IN**
13 **REACHING A DECISION IN THIS CASE?**

14 A. No. The impact on future rates of Red Bird’s acquisition of the Etowah system is
15 not known and measurable, so it would be inappropriate and unreasonable for the
16 Commission to consider that issue in the current proceeding. Moreover, as a
17 regulated utility, Red Bird is prohibited by law from changing rates until such a
18 change is authorized by the Commission, and no change in rates can be approved
19 by the Commission without a thorough consideration of a utility’s rate change
20 request, with full opportunity for interested parties – including the Public Staff – to
21 present evidence and arguments regarding that request. Therefore, it serves no
22 purpose for the Commission to consider hypothetical future rate impacts in this
23 case. Similar to the issue of an acquisition adjustment and inclusion of due diligence

costs in rates, the issue of rates should be deferred to a future rate case proceeding where information is known and measurable and all parties can present evidence relevant to ratemaking.

VI. BOND

Q. WHAT IS THE PUBLIC STAFF'S RECOMMENDATION REGARDING THE AMOUNT OF THE BOND RED BIRD IS REQUIRED TO POST TO SATISFY N.C.G.S. § 62-110.3?

A. Public Staff witness Franklin recommends that Red Bird post a \$200,000 bond.

Q. DOES RED BIRD AGREE WITH THE PUBLIC STAFF'S BOND RECOMMENDATION?

A. No. Red Bird finds the Public Staff's bond recommendation to be excessive. It appears the Public Staff bases its recommendation on Red Bird's lack of a history of operations and management in North Carolina, the large customer size, the system improvements planned by Red Bird, and the size of the wastewater treatment plant and wastewater collection system.¹² However, in response to one of Red Bird's data requests Mr. Franklin admitted that "[b]ond recommendations are not determined by a mathematical formula" and therefore, he was unable to supply workpapers showing how the Public Staff considered and quantified each of the previously mentioned factors in reaching its bond recommendation.¹³

Although witness Franklin is correct that Red Bird does not have a lengthy history owning and operating water and wastewater systems in North Carolina, Red

¹² Direct Testimony of Michael D. Franklin, Docket Nos. W-933, Sub 12; W-1328, Sub 0, at 23-25.

¹³ See Public Staff's Response to Red Bird's First Set of Data Requests, Response 23.

1 Bird has significant operating and managerial experience with regard to ownership
2 and successful operation of water and wastewater systems across our affiliate
3 groups. Outside of North Carolina, our group owns and manages facilities in ten
4 other states: Arkansas, Arizona, Florida, Kentucky, Louisiana, Mississippi,
5 Missouri, South Carolina, Tennessee, and Texas. The group currently provides
6 wastewater service to more than 200,000 customers and water service to more than
7 130,000 customers. A map showing the location of systems our affiliates own and
8 operate is attached to my rebuttal testimony as **Cox Rebuttal Exhibit 2**.

9 In every state where we operate, our systems are successfully serviced and
10 maintained by third-party operations and maintenance contractors hired for that
11 purpose. We require those contractors to adhere to very specific performance
12 standards – which include periodic (sometimes daily) testing and inspections and a
13 requirement to respond to emergency service calls within two hours. We regularly
14 monitor our contractors' performance—indeed, through entries contractors are
15 required to make in our operations and customer service data entry and recording
16 systems, we have access to real-time information regarding those contractors'
17 performance. The success of our affiliate group in keeping the commitments we
18 have made to provide first-rate customer service can be measured, in part, from the
19 fact that no state utility commission has ever found that we are unqualified to
20 operate water and wastewater systems. To the contrary, most of these commissions
21 have time and time again approved our affiliates' acquisition applications. Such a
22 track record would not be possible if we did not possess the technical, managerial,
23 and financial qualifications required of a potential acquiror, or if we failed to

1 provide the level of customer service to which we commit in each and every
2 acquisition case.

3 Our North Carolina operations mirror those in the other states I just
4 mentioned. If Red Bird is authorized to acquire the Etowah system, it will be
5 operated in a similar fashion – i.e., using professional and experienced third-party
6 contractors whose adherence to our customer service requirements are carefully
7 monitored. And although our affiliate group has not had years of experience in
8 North Carolina, based on our track record elsewhere, there is no reason for the
9 Commission – or Public Staff – to believe Red Bird’s performance here will be of
10 lesser quality than its affiliates’ performance elsewhere.

11 **Q. DO YOU HAVE ANY OTHER EVIDENCE SUGGESTING THAT THE**
12 **PUBLIC STAFF’S RECOMMENDED BOND IS EXCESSIVE?**

13 A. Yes. According to Etowah’s 2022 Annual Report, the bond currently required for
14 the Etowah system is \$20,000. The Public Staff’s recommendation that Red Bird
15 post a bond in the amount of \$200,000 is *ten times* the current bond amount. I would
16 like to remind the Commission that the current bond amount applies to a small,
17 undercapitalized utility that has been subject to penalty actions and ongoing
18 violations as described earlier in my testimony. Despite those facts, the Public Staff
19 proposes a tenfold increase in the amount of the current bond if the Etowah system
20 is acquired by Red Bird, which is part of an affiliate group that is professionally
21 managed, well-capitalized, and successfully operates wastewater systems serving
22 more than 330,000 customers in eleven states. Therefore, even if an increase in Red

1 Bird's current bond is deemed necessary, the increase should not be anywhere near
2 Public Staff's recommendation.

3 **VII. PUBLIC STAFF'S RECOMMENDED ANNUAL REVIEW**

4 **Q. THE PUBLIC STAFF PROPOSES RED BIRD BE REQUIRED TO MEET**
5 **ANNUALLY WITH PUBLIC STAFF. HOW DO YOU RESPOND?**

6 A. In the Settlement Agreement and Stipulation filed between the Public Staff and Red
7 Bird in Docket Nos. W-1146, Sub 13 and W-1328, Sub 10 regarding the Total
8 Environmental Solutions Inc. ("TESI") transfer application, Red Bird agreed to
9 meet annually with Public Staff to discuss TESI's water and wastewater operations
10 and to review its financial condition. Although that agreement applied only to the
11 acquisition at issue in those two dockets, we plan to include in those annual
12 meetings information about all of Red Bird's North Carolina operations. Therefore,
13 if the Commission approves the proposed acquisition of Etowah's wastewater
14 system, information related to Etowah's system would be part of future annual
15 meetings with the Public Staff.

16 **Q. PUBLIC STAFF WITNESS HINTON EXPRESSES CONCERN**
17 **REGARDING LOSSES EXPERIENCED BY CSWR. HOW DOES RED**
18 **BIRD RESPOND?**

19 A. Public Staff witness Hinton testified that in view of the Company's business plan
20 and record of acquiring non-viable systems, raising additional equity capital, and
21 making necessary capital investments, he believes CSWR has sufficient capital
22 resources to be considered financially viable. He also testified that Red Bird will
23 have sufficient equity capital to acquire and improve Etowah's water and

1 wastewater systems, fund system upgrades, and support other capital
2 improvements.

3 Nevertheless, he notes that the Public Staff has some concerns related to
4 losses reported on CSWR's consolidated income statements. If you focus solely on
5 profit and loss from utility operations, it is true that CSWR has lost money each
6 year the Company has been in existence. However, these losses are not a cause for
7 concern because neither CSWR nor its utility affiliates fund day-to-day operations
8 exclusively from revenues derived from utility operations. Instead, those revenues
9 are substantially supplemented by working capital provided by investments from
10 U.S. Water Systems, LLC ("U.S. Water") – the affiliate group's ultimate corporate
11 parent.

12 As I explained in my direct testimony, U.S. Water invests equity in CSWR
13 sufficient to fund the purchase of systems like Etowah and the capital
14 improvements necessary to ensure those systems provide safe and reliable service
15 that complies with applicable law. U.S. Water also provides working capital
16 necessary to fund day-to-day operations until rates for the acquired systems can be
17 reviewed and adjusted by state regulators, as necessary. Like Etowah, most systems
18 our group acquires are losing money at the time of acquisition, and because we
19 routinely adopt rates in place at the time of acquisition, those losses continue after
20 closing. Indeed, we expect losses to increase because most systems we acquire were
21 not properly or professionally operated before our acquisition, and those systems
22 usually require significant capital investment to repair, replace, and upgrade
23 infrastructure that was neglected for many years. Therefore, losing money until

1 rates can be adjusted to compensatory levels is something our Company – and our
2 investors – plan for and expect. That is another reason why CSWR and its affiliates
3 have been so successful at turning around environmentally and financially
4 distressed utilities like Etowah. Consequently, the financial metrics that so concern
5 witness Hinton need not concern the Commission, especially since Etowah’s
6 current customers are being served by a utility that not only is losing money but is
7 failing to provide compliant service.

8 It is worth noting that since it began operations, CSWR has invested more
9 than \$450 million to acquire, improve, and operate water and wastewater systems.
10 Of that amount, approximately \$400 million was paid to sellers to acquire the utility
11 assets or has been invested to make capital improvements. The remaining \$50
12 million has provided working capital necessary to keep those operations going until
13 rates can be adjusted. Regulators in all other states where our affiliates operate
14 agree that this arrangement satisfies the requirement that a party seeking to acquire
15 utility assets demonstrate the financial wherewithal necessary to own and operate
16 those assets. This approach will work as well in North Carolina as it does elsewhere.

17 CSWR has access to the equity capital necessary to purchase, improve, and
18 operate the water and wastewater systems our affiliates acquire. Our commitment
19 to regulators has been to invest equity sufficient to fund purchases, make necessary
20 capital improvements, provide working capital and ensure safe and reliable utility
21 service. And because CSWR has continued to maintain those commitments, those
22 same regulators continue to approve our acquisitions. In fact, in a recent Red Bird
23 evidentiary hearing before the Commission, Public Staff witness Hinton testified

1 that “[his] research has indicated there’s no reason to think this company cannot do
2 as Mr. Cox testified to” and that he believes Red Bird to be “financially viable,”
3 abating his prior concerns.¹⁴

4 **VII. CONCLUSION**

5 Q. DO YOU HAVE ANY CONCLUDING THOUGHTS FOR THE
6 COMMISSION'S CONSIDERATION REGARDING THE JOINT
7 APPLICATION FILED BY RED BIRD AND CSWR?

8 A. Yes. I would like to reiterate that Red Bird's proposed acquisition of the wastewater
9 system currently owned and operated by Etowah would be consistent with and
10 would promote the public interest. Transfer of these systems to a well-capitalized
11 enterprise that is a professional utility would be in the best interests of current and
12 future Etowah customers. Red Bird and CSWR are fully qualified, in all respects,
13 to own and operate this system and to otherwise provide safe and reliable service.
14 Accordingly, I respectfully ask the Commission to grant the authority sought in the
15 Joint Application and to adopt all other recommendations I included in my direct
16 and rebuttal testimony related to this application.

17 **Q. DOES THIS CONCLUDE YOUR PRE-FILED REBUTTAL TESTIMONY?**

18 A. Yes.

¹⁴ Transcript of Hearing Held in Raleigh, NC on Tuesday October 24, 2023, Volume 2 - Public, Docket Nos. W-1146, Sub 13; W-1328, Sub 10, at 222-23.

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(WHEREUPON, Amended Thies
Rebuttal Exhibit 1 is
received into evidence.)
(WHEREUPON, the prefiled
rebuttal testimony of BRENT
THIES is copied into the
record as if given orally
from the stand.)

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. W-933, SUB 12
DOCKET NO. W-1328, SUB 0

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application by Red Bird Utility Operating
Company, LLC, and Etowah Sewer
Company, Inc., for Transfer of Public
Utility Franchise and for Approval of Rates

**RED BIRD UTILITY OPERATING COMPANY, LLC'S CORRECTION TO
THE NON-CONFIDENTIAL REBUTTAL TESTIMONY OF BRENT G. THIES**

Red Bird Utility Operating Company, LLC ("Red Bird"), provides the following Correction to the Rebuttal Testimony of Brent Thies:

- On Page 5, beginning after line 10, please insert **[BEGIN CONFIDENTIAL]** and **[END CONFIDENTIAL]** around the Purchase Price as identified in the table. Please change Red Bird's Accumulated Depr from \$(1,585,928) to \$(1,301,696) and Red Bird's Rate Base from \$142,429 to \$426,661. The corrected Table should read:

	Red Bird	Per Staff
Purchase Price	[BEGIN CONFIDENTIAL] [REDACTED]	[REDACTED] [END CONFIDENTIAL]
Plant in Service	\$2,159,338	\$973,930
Accumulated Depr	\$(1,301,696)	\$(825,156)
CIAC	\$(430,981)	\$(430,981)
Rate Base	\$426,661	\$(282,207)

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. W-933, SUB 12
DOCKET NO. W-1328, SUB 0

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application by Red Bird Utility Operating
Company, LLC, and Etowah Sewer
Company, Inc., for Transfer of Public
Utility Franchise and for Approval of Rates

**NON-CONFIDENTIAL REBUTTAL TESTIMONY OF BRENT G. THIES
ON BEHALF OF RED BIRD UTILITY OPERATING COMPANY, LLC**

I. INTRODUCTION

Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

A. My name is Brent G. Thies, and my business address is 1630 Des Peres Rd., Suite 140,
St. Louis, MO 63131.

Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?

A. I am employed by CSWR, LLC ("CSWR"). My current position is Vice President and
Corporate Controller.

Q. ON WHOSE BEHALF ARE YOU FILING THIS DIRECT TESTIMONY?

A. I am filing on behalf of Red Bird Utility Operating Company, LLC ("Red Bird" or the
"Company"), which is a subsidiary of CSWR.

1 **Q. HAVE YOU PREVIOUSLY FILED TESTIMONY BEFORE THIS**
2 **COMMISSION?**

3 A. Yes. I filed testimony in Docket Nos. W-922, Sub 8 and W-1328, Sub 9 in support of
4 Red Bird's Joint Transfer Application to acquire Crosby Utilities Inc's water and
5 wastewater systems.

6 **Q. PLEASE DESCRIBE YOUR EDUCATIONAL AND PROFESSIONAL**
7 **BACKGROUND.**

8 A. I hold a Bachelor of Arts in Communications/Public Relations from Missouri Baptist
9 University in St. Louis, Missouri and a Bachelor of Science in Accounting from Liberty
10 University in Virginia. I also hold a Master of Divinity degree from Midwestern Baptist
11 Theological Seminary in Kansas City, Missouri and a Master of Business
12 Administration degree from the University of Missouri-St. Louis. I am licensed as a
13 Certified Public Accountant in the state of Missouri, and during my time at CSWR, I
14 have completed the Fundamentals, Intermediate and Advanced Regulatory Studies
15 Programs through the Institute of Public Utilities at Michigan State University.

16 I have been employed in the Accounting and Finance department of CSWR
17 since July 2017. I started at CSWR as the Senior Accountant and was responsible for
18 monthly accounting work for CSWR and its regulated utility subsidiaries. My
19 responsibilities as a Senior Accountant included analysis and reporting related to state
20 regulatory requirements. I was promoted to the position of Controller in October 2018
21 and then Vice President and Corporate Controller in February 2022.

22 Prior to CSWR, I was employed as the Controller of a multi-entity non-profit
23 in St. Louis, Missouri.

1 **Q. WHAT ARE YOUR DUTIES AS VICE PRESIDENT AND CORPORATE**
2 **CONTROLLER?**

3 A. As Vice President and Corporate Controller I am responsible for maintaining the
4 accounting books and records of CSWR and its regulated utility subsidiaries. This
5 includes setting financial controls and accounting policy and having responsibility for
6 the accurate recording of revenues, expenses and capital expenditures. My team also is
7 responsible for preparing and filing regulatory annual reports and responding to certain
8 data requests for the regulated utility subsidiaries of CSWR. In addition, my
9 responsibilities include preparation of monthly and quarterly management reports and
10 interfacing with external auditors and tax professionals.

11 **Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY IN THIS**
12 **PROCEEDING?**

13 A. My rebuttal testimony responds to the testimony filed by Public Staff witnesses Lynn
14 Feasel and Michael Franklin. Specifically, I respond to Public Staff witness Feasel's
15 rate base and Contributions in Aid of Construction ("CIAC") calculations along with
16 her estimate of the impacts the Company's acquisition adjustment and due diligence
17 costs would have on a future revenue requirement. I also provide a brief response to
18 the depreciation rates used in the testimony of Public Staff witness Franklin. Lastly,
19 my testimony discusses some particulars of Public Staff's calculations and how the
20 Company views the underlying assumptions and calculations.

21 **Q. DO YOU HAVE ANY EXHIBITS TO YOUR REBUTTAL TESTIMONY?**

22 A. Yes. **Thies Rebuttal Exhibit 1** details the adjustments to Tap-Ins that the Company
23 used to arrive at its rate base calculation.

1 **Q. WAS THIS EXHIBIT PREPARED OR PROVIDED BY YOU OR UNDER**
2 **YOUR DIRECTION AND SUPERVISION?**

3 A. Yes.

4 **II. ACCOUNTING ISSUES**

5 **Q. HOW DID THE PUBLIC STAFF CALCULATE ETOWAH'S RATE BASE?**

6 A. Public Staff calculated Etowah's rate base beginning with the approved amounts in
7 Etowah's last rate case in Docket No. W-933, Sub 9 for Utility Plant in Service
8 ("UPIS"), accumulated depreciation, and CIAC. The UPIS approved as part of Docket
9 No. W-933, Sub 9 was \$951,285. Public Staff analyzed invoices provided by Etowah
10 to calculate UPIS additions of \$22,645, and then totaled these amounts to arrive at its
11 UPIS value of \$973,930.

12 Public Staff calculated Etowah's accumulated depreciation value in a similar
13 fashion. Public Staff began with the approved amount of accumulated depreciation in
14 Etowah's last rate case in Docket No. W-933, Sub 9—\$547,706—and then brought this
15 figure forward to December 31, 2023. Public Staff then calculated the additional
16 accumulated depreciation from the UPIS additions to arrive at \$825,156 for its final
17 amount of accumulated depreciation.

18 Public Staff also updated the CIAC balance used in its rate base calculation.
19 Public Staff updated the value approved in Docket No. W-933, Sub 9 for tap-in fees
20 received since that time and brought forward the accumulated amortization to
21 December 31, 2023. This process resulted in an adjusted net CIAC value of \$430,981.

1 The Public Staff's resulting total rate base after the adjustments noted above is
 2 \$(282,207).¹

3 **Q. DO YOU AGREE WITH PUBLIC STAFF'S CALCULATIONS?**

4 A. The Company believes that the approach taken by Public Staff is reasonable but the
 5 Company disagrees with some of the depreciation assumptions used by Public Staff
 6 and believes Public Staff should have included a UPIS value that corresponds to the
 7 CIAC amount that was added. These differences in UPIS and accumulated depreciation
 8 result in a different rate base value than that calculated by Public Staff, as displayed in
 9 the table below. Later in my testimony, I explain the Company's divergent
 10 assumptions.

	Red Bird	Per Staff
Purchase Price [BEGIN CONFIDENTIAL] [REDACTED] [REDACTED] [END CONFIDENTIAL]		
Plant in Service	\$2,159,338	\$973,930
Accumulated Depr	\$(1,301,696)	\$(825,156)
CIAC	\$(430,981)	\$(430,981)
Rate Base	\$426,661	\$(282,207)

11 **Q. WHAT DEPRECIATION RATES DID THE PUBLIC STAFF USE TO**
 12 **CALCULATE RATE BASE?**

13 A. In his testimony, Public Staff witness Franklin uses depreciation lives and rates that
 14 differ from those approved in Etowah's last rate case. Mr. Franklin used an adjusted
 15 depreciable life for generators of 3 years as opposed to 20 years; 20 years as opposed

¹ This calculation is derived by starting with UPIS and subtracting accumulated depreciation and CIAC to arrive at the final net plant in service, or the rate base.

1 to 50 years for lift stations; and a life of 7 years instead of the approved 20 years for
2 check valves.

3 **Q. DOES RED BIRD AGREE WITH THE PUBLIC STAFF'S ADJUSTED**
4 **DEPRECIATION LIVES?**

5 A. No. While the Company respects Mr. Franklin's qualifications to assess depreciable
6 lives, an acquisition case is not the appropriate forum to make adjustments to
7 depreciation lives; rather, depreciation changes should be addressed in a future rate
8 case after further evaluation and depreciation studies have been completed.

9 **Q. PLEASE DESCRIBE THE PUBLIC STAFF'S UPIS VALUES AND THEIR**
10 **RELATION TO THE ADDITION OF CIAC.**

11 A. On the bottom of page 9 on the North Carolina Annual Report template, CIAC is
12 defined as follows:

13 Contributions in aid of construction (CIAC) are generally defined in
14 the NARUC Uniform System of Accounts as money, services, or
15 property received by the utility company from customers,
16 developers, or any other source at no cost to the utility company
17 which offsets the acquisition, improvement, or construction cost of
18 the utility's property, facilities, or equipment to be used to provide
19 utility service. Tap-on fees and meter installation fees are forms of
20 CIAC.

21 Thus, according to the Commission's own Annual Report template, CIAC is a payment
22 of cash or property that results in an additional component of UPIS. In its analysis,
23 Public Staff recognized that Etowah had received tap-on fees that it properly booked
24 as CIAC. However, Etowah's annual reports show no increase in UPIS that
25 corresponds to the plant assets that should have been purchased or constructed as a
26 direct result of the receipt of the tap-on fees. Public Staff made no other adjustment to

UPIS to reflect the fact that new taps were added. The effect of this omission is to understate UPIS, resulting in an artificially low rate base value.

In order to adjust for the UPIS values associated with the new tap-on fees, the Company added \$1,180,645 to UPIS. This number is equal to the value of CIAC that Public Staff used in its rate base calculation. The Company also calculated the accumulated depreciation that should be associated with the addition UPIS of \$753,559 to arrive at a total of \$427,086 as of December 31, 2023. **Thies Rebuttal Exhibit 1** details the adjustments the Company made to arrive at its rate base calculation.

Q. SHOULD THE COMMISSION CONSIDER THE IMPACT OF THE PROPOSED ACQUISITION ON FUTURE RATES IN THIS PROCEEDING?

A. No, it should not. As described in more detail in the rebuttal testimony of Red Bird witness and CSWR's President Josiah Cox, the rate impacts included in the testimonies of Public Staff's witnesses are nothing more than estimates based on numerous assumptions that may or may not reflect the elements of the revenue requirement the Commission would use to set future rates. As such, those rate estimates cannot be relied on for assessing the rate impact of the proposed transaction.

In addition, Public Staff's rate impact estimates assumes that rates for the Etowah system would be set on a stand-alone basis despite Red Bird stating its intention to seek consolidated, statewide rates for its North Carolina water and wastewater systems. Based on the experience of our affiliate group in states like Kentucky, Missouri and Louisiana, there can be a significant difference between rates set on a stand-alone basis and those set on a consolidated basis.

1 Finally, because Red Bird proposes to adopt at closing the rates that are
2 currently in effect for the Etowah system, the Commission need not consider rates in
3 this proceeding. As I understand applicable law in North Carolina, the focus of this
4 proceeding is to determine if Red Bird has the technical, managerial, and financial
5 qualifications to own and operate as a public utility and to also determine if the
6 proposed acquisition is in the public interest. Issues related to future rates can (and
7 should) be deferred to a future rate case proceeding, where necessary evidence is
8 available to determine Red Bird's revenue requirement and establish the appropriate
9 rate design.

10 **Q. PLEASE DESCRIBE THE ASSUMPTIONS PUBLIC STAFF USED IN**
11 **ARRIVING AT THEIR CALCULATION OF THE ESTIMATED REVENUE**
12 **IMPACT.**

13 A. Public Staff witnesses Feasel and Franklin utilized assumptions for capital structure,
14 rate of return, and amortization period to arrive at the revenue and rate impact of certain
15 items that are a part of Red Bird's filing in this docket. Since Red Bird is not currently
16 in a rate case proceeding, there is no way to know whether the assumptions the Public
17 Staff made to arrive at these estimated rate impacts are realistic or reasonable. As the
18 Commission knows, capital structure, return on equity, and amortization periods are
19 some of the most heavily contested issues in a rate case. While Public Staff's witnesses
20 properly characterize their work as estimations, it is not proper to consider their
21 estimated revenue requirement impacts when (a) they are not relevant to an acquisition
22 proceeding, and (b) they are based on hypothetical assumptions that require the

1 development of a complete record in a future general rate case and are likely to be the
2 subject of dispute in that case.

3 **Q. WHAT CONCERNS OR OBJECTIONS DOES THE COMPANY HAVE**
4 **REGARDING THE AMORTIZATION PERIOD PUBLIC STAFF USED TO**
5 **ESTIMATE THE RATE IMPACTS INCLUDED IN ITS TESTIMONY?**

6 A. Public Staff witness Feasel assumes the amortization periods below for her rate impact
7 estimates based on the values of plant in service.

Proposed Amortization Period (Staff)	
Acquisition Adjustments	27.74 Years
Due Diligence Cost	27.74 Years

8 While it may be reasonable to calculating an amortization period that incorporates the
9 useful lives of utility plant assets, this calculation results in an unnecessarily short
10 amortization period. The Company proposes to amortize acquisition adjustments and
11 due diligence costs over a longer amortization period as demonstrated in the table
12 below.

Proposed Amortization Period (Company)	
Acquisition Adjustments	50 Years
Due Diligence Cost	50 Years

13 In accordance with the Depreciation Practices for Small Water Utilities published by
14 the National Association of Regulatory Utility Commissioners, the proposed 50-year
15 amortization is based on the average useful lives of assets comprising water distribution
16 systems and sewer collection systems.

1 **Q. WHY IS THE LONGER AMORTIZATION PERIOD YOU JUST DISCUSSED**
2 **MORE REASONABLE THAN THE PERIOD USED BY PUBLIC STAFF IN ITS**
3 **RATE IMPACT ESTIMATES?**

4 A. The Company's amortization period is more reasonable for at least two reasons. First,
5 as mentioned above, fifty years is a common estimate for the useful lives of the pipes
6 and similar assets comprising water distribution systems and sewer collection systems.
7 Second, the majority of the costs associated with the Company's due diligence efforts
8 relate to mapping, surveying and title and easement research related to the distribution
9 and collection systems. Due diligence costs associated with hard assets, such as those
10 mentioned above, are typically amortized over a period equal to the depreciation period
11 associated with those assets. Therefore, the amortization period for the due diligence
12 related costs should also be fifty years.

13 **III. CONCLUSION**

14 **Q. DOES THIS CONCLUDE YOUR PRE-FILED REBUTTAL TESTIMONY?**

15 A. Yes.

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(WHEREUPON, the prefiled
rebuttal testimony of JAMES
BECKEMEIER is copied into
the record as if given
orally from the stand.)

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. W-933, SUB 12
DOCKET NO. W-1328, SUB 0

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application by Red Bird Utility Operating
Company, LLC, and Etowah Sewer
Company, Inc., for Transfer of Public
Utility Franchise and for Approval of Rates

**REBUTTAL TESTIMONY OF JAMES A. BECKEMEIER
ON BEHALF OF RED BIRD UTILITY OPERATING COMPANY, LLC**

I. INTRODUCTION

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

2 A. My name is James A. Beckemeier, and my business address is 13421 Manchester Road,
3 Suite 103, St. Louis, MO 63131.

4 **Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?**

5 A. I am a Managing Member of BL-STL, LLC (dba Beckemeier LeMoine Law).

6 **Q. ON WHOSE BEHALF ARE YOU FILING THIS REBUTTAL TESTIMONY?**

7 A. I am filing rebuttal testimony on behalf of Red Bird Utility Operating Company, LLC
8 ("Red Bird" or the "Company"), which is a subsidiary of CSWR, LLC ("CSWR").
9 Beckemeier LeMoine Law is a vendor of Red Bird, and we oversee and facilitate all of
10 its utility system acquisitions throughout the United States.

11 **Q. HAVE YOU PREVIOUSLY FILED TESTIMONY BEFORE THIS**
12 **COMMISSION?**

13 A. No.

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

3 A. I have a B.S./B.A. in Business Marketing and a Juris Doctorate from the University of
4 Missouri, Columbia. I have been a licensed attorney in the States of Missouri and
5 Illinois for 21 years focusing on business and real estate law.

6 **Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY IN THIS**
7 **PROCEEDING?**

8 A. The purpose of my rebuttal testimony is to clarify and provide this Commission
9 additional information on the scope and purpose of the due diligence performed on this
10 acquisition and other similar projects prior to closing on the purchase.

11 **Q. DO YOU HAVE ANY EXHIBITS TO YOUR REBUTTAL TESTIMONY?**

12 A. No.

13 **II. DUE DILIGENCE COSTS**

14 **Q. WHAT IS YOUR EXPERIENCE WITH REGARD TO DUE DILIGENCE**
15 **ACTIVITIES FOR A TRANSACTION SUCH AS THE PROPOSED ETOWAH**
16 **SEWER COMPANY ACQUISITION?**

17 A. My law firm has closed over 200 utility company acquisitions since 2017 and has
18 extensive experience with acquiring systems similar to the Etowah Sewer Company,
19 Inc. ("Etowah").

20 **Q. HOW AND TO WHAT EXTENT ARE YOU AND YOUR LAW FIRM**
21 **INVOLVED IN DUE DILIGENCE ACTIVITIES RELATED TO ETOWAH?**

22 A. My law firm works with and/or oversees title companies and surveyors to determine
23 what title review is necessary for title due diligence, what surveys are required, which

1 title defects are material and necessary to cure prior to the closing date vs. those that
2 should not impact the closing. Our firm also manages all curative matters that arise
3 after the closing that are necessary to obtain proper rights to operate the system going
4 forward.

5 In states such as North Carolina, where the attorneys in our law firm are not
6 licensed, we work with local, licensed attorneys' who have similar expertise and
7 delegate the state-specific aspects of this due diligence and curative work to our local
8 partners. In North Carolina, we work with the Law Firm Carolinas for such work. We
9 endeavor to avoid duplicative efforts and to assign tasks accordingly.

10 **Q. WHY DOES A COMPANY SUCH AS RED BIRD CONDUCT DUE**
11 **DILIGENCE IN AN ACQUISITION TRANSACTION AND WHAT BENEFITS**
12 **DO SUCH ACTIVITIES PROVIDE?**

13 A. The primary benefit to conducting extensive due diligence prior to closing on a
14 transaction is to identify any defects in the system assets in order to plan for the capital
15 improvements that will be needed to properly operate the system. In addition,
16 conducting due diligence enables potential purchasers to identify any deficient real
17 property rights that could inhibit the ability to properly operate the system. Identifying
18 such deficiencies allows a purchaser such as Red Bird to take steps to cure such defects
19 and deficiencies as soon as practicable, either prior to or after the closing to avoid
20 disruptions in the proper operations of the system.

1 **Q. PLEASE DESCRIBE AND PROVIDE EXAMPLES OF DUE DILIGENCE**
2 **ACTIVITIES THAT HAVE BEEN PERFORMED BY, AND FOR, RED BIRD**
3 **IN CONNECTION WITH THE PROPOSED ETOWAH ACQUISITION.**

4 A. We obtained a Title Commitment for the tracts of land and easement rights being
5 transferred by Etowah and reviewed the referenced title documents related to the
6 acquisition to identify title deficiencies. We also obtained a detailed title summary of
7 the potential recorded documents within Etowah's service area that could have an
8 impact on the rights of the utility system. This report identified 28 potential easement
9 agreements, 54 plats, numerous deeds and other recorded legal instruments that we
10 reviewed to determine to what extent such instruments would impact an owner's ability
11 to operate the Etowah wastewater system.

12 In addition, the survey team completed five American Land Title Association
13 ("ALTA") surveys of real property that will be transferred as part of the purchase and
14 also has prepared numerous service area maps to set forth the relevant title findings in
15 a unified document.

16 Based on the foregoing activities, we determined that there are material defects
17 in the title rights impacting Etowah that need to be cured prior to the closing or shortly
18 thereafter.

1 **Q. WHAT CONCERNS DOES PUBLIC STAFF WITNESS FRANKLIN EXPRESS**
2 **REGARDING THE DUE DILIGENCE EXPENSES RED BIRD HAS**
3 **INCURRED IN CONNECTION WITH ITS PROPOSED ACQUISITION OF**
4 **THE ETOWAH SYSTEM?**

5 A. Mr. Franklin states that Red Bird's due diligence expenses are excessive and that he is
6 unclear as to the scope or substance of the due diligence work.

7 **Q. HOW DO YOU RESPOND TO MR. FRANKLIN'S CONCERNS?**

8 A. For a potential purchaser to properly assess the feasibility of acquiring a utility system
9 it is incumbent upon the purchasing utility company to perform due diligence. The
10 scope of due diligence generally consists of the following areas:

- 11 (1) engineering review of the current operational integrity and deferred
12 maintenance needs of the system;
13 (2) valuation of the system assets; and
14 (3) determination of real property rights for the fee simple acquired land as well
15 as the easement rights necessary to operate the system.

16 The proposition that due diligence could be completed at a price of \$10,000.00 for a
17 utility system with 440 residential customers and 485 total customers, consisting of a
18 treatment facility, six pump stations, a force main and sewer lines throughout the
19 service area suggests that Mr. Franklin does not appreciate the work involved in
20 conducting reasonable due diligence required for a transaction of this type.

1 **Q. PLEASE DESCRIBE THE PURPOSE OF CONDUCTING ENGINEERING**
2 **DUE DILIGENCE FOR A TRANSACTION SUCH AS THE ONE AT ISSUE IN**
3 **THIS CASE.**

4 A. The scope of the operational engineering due diligence is demonstrated in the McGill
5 Associates, P.A. ("McGill") engineering memorandum, Appendices A-1 and A-2, filed
6 as Confidential Attachment L to Red Bird's Application, in which McGill summarized
7 their assessment of the system and their recommendations to cure the numerous
8 deficiencies set forth in the memorandum. The operational engineering costs incurred
9 by Red Bird are in line with due diligence costs associated with deals of this size, type,
10 and complexity. It is also our understanding that the information developed through the
11 type of due diligence performed by McGill is required to complete part of the
12 Commission's acquisition application. Therefore, even if engineering due diligence
13 were not standard practice in a deal like this, which we think it is, at least part of the
14 expense associated with McGill's report was required to be incurred in order for Red
15 Bird to complete its acquisition application.

16 **Q. WHY IS AN APPRAISAL REQUIRED AND WHAT IS THE PROCESS USED**
17 **TO OBTAIN AN APPRAISAL?**

18 A. As part of its due diligence, Red Bird engaged a qualified appraiser to determine the
19 value of the assets being acquired in order to determine the fair value of the assets being
20 acquired. Based upon my experience, the cost of the appraisal for the Etowah system –
21 approximately \$2,500 – is reasonable.

1 **Q. PLEASE DESCRIBE THE PURPOSE OF CONDUCTING SURVEY**
2 **ENGINEERING DUE DILIGENCE FOR A TRANSACTION SUCH AS THE**
3 **ONE AT ISSUE IN THIS CASE.**

4 A. As part of its due diligence, Red Bird engaged 21 Design Group, Inc. to provide survey
5 work and GIS mapping work throughout Etowah's service area, which covers more
6 than 700 acres. In order to perform proper due diligence related to the real property
7 rights that are necessary to operate the utility system, ALTA level surveys needed to
8 be performed for all of the parcels of property where major components of the utility
9 system are located. The ALTA surveys are required by the Title Company to obtain
10 title insurance over the purchased property without exceptions set forth in the title
11 coverage related to matters that would be discovered by an ALTA level survey.

12 In addition to the ALTA level surveys, 21 Design Group performed boundary
13 survey work for each pump station to determine the proper boundaries and legal access
14 to the pump stations. 21 Design Group also conducted and generated GIS mapping for
15 the entire service area to create maps locating the service lines and other components
16 of the system both for pre-closing due diligence and also to use for the benefit of post-
17 closing maintenance and operations of the system. All of the work performed by 21
18 Design Group on this project is necessary for proper due diligence for a purchase of
19 this scope, and the associated fee, is consistent with other projects with a similar scope
20 of work.

1 **Q. PLEASE DESCRIBE THE PURPOSE OF CONDUCTING LEGAL DUE**
2 **DILIGENCE FOR A TRANSACTION SUCH AS THE ONE AT ISSUE IN THIS**
3 **PROCEEDING.**

4 A. In addition to the engineering due diligence I just described, it is standard practice to
5 conduct a legal due diligence review of a proposed transaction. As part of this process,
6 it is necessary to determine if the selling utility company has legal and transferable
7 rights in the real property necessary to operate the utility system. This review consists
8 of ordering a title commitment from a Title Company as to the real property owned by
9 the selling utility company, reviewing all of the referenced documents set forth in the
10 title commitment, and reviewing the ALTA surveys that are generated by the surveyors
11 that 21 Design Group engaged to create the surveys.

12 Real property due diligence also consists of a review of any real property rights
13 necessary to operate the system that the selling utility company does not own and/or is
14 not able to transfer. In order to determine the transferable rights of the selling utility
15 company and the additional rights that are necessary to properly operate the utility
16 system, all of the recorded plats as well as the covenants, restrictions and indentures in
17 the service area need to be located and reviewed to determine if there are any granted
18 easement rights for access to the service lines, if there are any developer rights available
19 for a utility company for operations, or if there are any other publicly dedicated rights
20 to rights of way or other easement areas in which the service lines or components of
21 the system are located.

22 Generally, when developers entitle real property for small communities that
23 have a utility system similar to the Etowah system, the developers fail to properly grant

1 the necessary utility easement rights to access all of the service lines and/or other
2 components of the system. Red Bird deems it prudent to determine these rights prior to
3 closing in order to have clarity as to which parts of the system components and/or
4 service rights are being transferred with clear titled access, and which part of the system
5 exist upon land that does not contain express legal rights for the components to be
6 located thereon. This process involves significant title search fees, survey work and
7 legal fees in order to determine the potential deficiencies in such rights. Once such
8 deficiencies are determined, then Red Bird can take reasonable steps prior to the closing
9 to attempt to cure some or all of these deficiencies; or, if they are not able to cure all
10 such deficiencies prior to closing, to have clarity on how to address the deficiencies
11 after the closing. This process ensures Red Bird will have enforceable title to the real
12 property assets it acquires, and any defects will be remedied as part of the title
13 company's obligations under its title insurance policy that is issued at the closing
14 related to the property listed in the title policy.

15 **Q. BASED ON YOUR EXPERIENCE, WOULD YOU CHARACTERIZE RED**
16 **BIRD'S DUE DILIGENCE ACTIVITIES AS REASONABLE FOR AN**
17 **ACQUISITION TRANSACTION SUCH AS THE ONE UNDER**
18 **CONSIDERATION IN THIS CASE? PLEASE EXPLAIN.**

19 **A.** Yes. The due diligence activities conducted to date for this transaction are reasonable
20 and consistent with prior North Carolina transactions conducted by Red Bird.
21 Moreover, the due diligence activities that have taken place for this transaction are
22 consistent with the due diligence Red Bird's affiliates have performed for similar
23 transactions in other states.

1 **Q. HAS RED BIRD COMPLETED ALL OF THE REQUIRED DUE DILIGENCE**
2 **FOR THIS TRANSACTION? IF NOT, WHAT ADDITIONAL DUE**
3 **DILIGENCE ACTIVITIES ARE REQUIRED?**

4 A. While most of the due diligence for the Etowah system has been completed, due to the
5 significant delay of the approval process of this transaction, much of the title review
6 and certain parts of the engineering due diligence will need to be updated to current
7 conditions prior to the closing in order to finalize the due diligence. Whereas CSWR's
8 affiliates outside North Carolina are accustomed to a closing time frame that generally
9 lasts anywhere from nine months to one-year, the delay in the regulatory approval
10 process in North Carolina has impacted transactions like Etowah, resulting in Red Bird
11 incurring significant additional due diligence costs.

12 **Q. PUBLIC STAFF WITNESS FRANKLIN STATES IN HIS TESTIMONY THAT**
13 **SEVEN DIFFERENT BUSINESS ENTITIES – TWO ENGINEERING FIRMS**
14 **AND FIVE LAW FIRMS – WERE ENGAGED IN DUE DILIGENCE FOR THIS**
15 **PROPOSED TRANSACTION. HOW DO YOU RESPOND?**

16 A. Mr. Franklin is mistaken. The following companies were engaged to assist with due
17 diligence for this matter:

- 18 1. McGill Associates, P.A. - McGill has provided engineering services to
19 determine the current condition of the physical assets of the system and has
20 made recommendations on curative work necessary to properly operate the
21 system after closing.
- 22 2. 21 Design Group, Inc. – 21 Design provided survey engineering and related
23 title review for the entire service area.

- 1 3. Beckemeier LeMoine Law – I previously explained the scope of services
2 undertaken by my law firm.
- 3 4. Black, Slaughter & Black, PA & Law Firm Carolinas – These two entities are
4 the same law firm (Law Firm Carolinas is the successor to the prior named law
5 firm), and this law firm has provided state-specific title due diligence as well as
6 title company services for this project.
- 7 5. Burns, Day & Presnell, P.A. – Burns has provided legal services related to the
8 regulatory approval process for this matter.
- 9 6. Valbridge Property Advisors – Valbridge provided an appraisal for the utility
10 assets being purchased.

11 **Q. WHY WERE THREE DIFFERENT LAW FIRMS REQUIRED FOR DUE**
12 **DILIGENCE IN THIS TRANSACTION?**

13 A. Burns, Day & Presnell, P.A. provided the necessary legal services to assist Red Bird
14 with meeting its obligations to properly comply with the regulatory approval process
15 for the purchase of the Etowah system. Beckemeier LeMoine Law provided the
16 necessary legal services to oversee and conduct legal due diligence related to the real
17 and personal property being purchased as part of this transaction as well as to determine
18 what (if any) additional property is necessary to obtain ownership or other rights in
19 order to properly operate the Etowah system after the closing. To the extent Beckemeier
20 LeMoine Law is not able to provide state-specific legal services, Law Firm Carolinas
21 provides the state-specific legal services. In addition, Law Firm Carolinas is a title
22 company agent that works with the underwriting title company to obtain and issue the
23 title commitment and title policy for the covered property.

1 **Q. DO YOU AGREE WITH PUBLIC STAFF WITNESS FRANKLIN'S**
2 **SUGGESTION THAT DUE DILIGENCE COSTS FOR THIS TRANSACTION**
3 **ARE EXCESSIVE BASED ON THE PURCHASE PRICE RED BIRD**
4 **PROPOSES TO PAY FOR THE ETOWAH SYSTEM?**

5 A. No. The purchase price has no correlation to due diligence costs. Red Bird's affiliate
6 group has had systems with purchase prices that are five times higher than the Etowah
7 price that have similar due diligence costs and have had systems that sold for as little
8 as \$1.00 that also have similar due diligence costs. The true driver of due diligence
9 costs is the assets being reviewed and the number of defects or deficiencies that are
10 discovered.

11 **III. CONCLUSION**

12 **Q. DOES THIS CONCLUDE YOUR PRE-FILED REBUTTAL TESTIMONY?**

13 A. Yes.

1 MS. MCGRATH: At this time, the panel is
2 available for cross examination and questions from the
3 Commission.

4 CROSS EXAMINATION BY MS. NEWELL:

5 Q Mr. Cox, I'll start with you. So starting on
6 Page 3 of your rebuttal testimony, you describe a
7 basis of Public Staff witness Franklin's
8 assessment of the Etowah Wastewater system and
9 your disagreement with that assessment. Will you
10 please read for the Commission the sentence
11 starting with "given" on Page 4, Line 3?

12 A (Mr. Cox) Given Mr. Franklin's life experience
13 with wastewater utilities, I question whether he
14 is qualified to accurately or adequately assess
15 the current condition of Etowah's facilities.
16 Their functionality or upgrades or improvements
17 the wastewater system require in the future.

18 Q And are you familiar with North Carolina General
19 Statute § Chapter 6215?

20 A No.

21 Q And can I read to you Subsection B, which states
22 in pertinent part: "The Public Staff shall
23 consist of the executive director and such other
24 professional, administrative, technical, and

1 clerical personnel as may be necessary in order
2 for the Public Staff to represent the Using and
3 Consuming Public."

4 And Subsection D, which I'm going to
5 paraphrase for you states that: The Public
6 Staff's duties and responsibilities include to
7 review, investigate, and make appropriate
8 recommendations to the Commission with respect to
9 the reasonableness of rates and service furnished
10 or proposed to be furnished and intervene in
11 transfer proceedings; do you accept that, subject
12 to check?

13 A Yes.

14 Q Okay. Is it your testimony that Mr. Franklin is
15 not professional and technical personnel?

16 A No. I just completely disagree with his
17 findings.

18 Q Okay. And are you aware that Mr. Franklin has
19 worked as a member of the Public Staff for over
20 four years?

21 A No.

22 Q Okay. Did you read his resume before making
23 those comments?

24 A I base my comments solely on the fact that a

1 sanitary sewer overflow and fecal coliform
2 violations, not being considered repeated
3 violations. Not being considered distressed.

4 Q So are you aware that Mr. Franklin has also
5 testified in three prior Red Bird transfer
6 proceedings?

7 A Yes.

8 Q And that he's also testified in numerous water
9 and wastewater proceedings before this
10 Commission?

11 A Subject to check, yes.

12 Q Okay. Subject to check, do you know if
13 Mr. Franklin has ever filed incorrect testimony
14 or testimony regarding the wrong system in any of
15 the dockets he's testified?

16 A I have no idea.

17 Q Subject to check, would you accept that he has
18 not?

19 A Sure.

20 Q And have you ever filed testimony regarding the
21 wrong system in any of these dockets?

22 A Yes.

23 Q And are you aware that it was our Public Staff
24 engineer, Mr. Franklin, who noted that error and

1 facilitated contacting your Company?

2 A You know, that really has nothing to do with
3 whether or not these things are distressed, and
4 the fact that fecal coliform violations are a
5 public health risk and the BOD violations show
6 that --

7 MS. NEWELL: Objection. And also, your
8 testimony directly attacks his capabilities. So I
9 would argue, respectfully, Commissioners, that it
10 does.

11 MS. MCGRATH: Objection. I would note --

12 COMMISSIONER MCKISSICK: Go ahead, state
13 your basis for your objection.

14 MS. MCGRATH: I would note, that all that is
15 stated in the testimony is a lack of experience with
16 wastewater utilities, specifically. Nothing more.

17 COMMISSIONER MCKISSICK: And could you
18 restate your original question?

19 Q Has you -- have you filed incorrect testimony
20 regarding systems in these dockets?

21 A Not in this docket.

22 Q Did you file incorrect testimony in the Baytree
23 docket?

24 A Yes.

1 Q And --

2 COMMISSIONER MCKISSICK: Let the record
3 reflect, I overrule the objection. Go ahead.

4 MS. NEWELL: Thank you, Commissioner. And
5 do you still want to -- I'll move on from this line of
6 questioning.

7 Q So on Page 5, you contrast -- of your rebuttal
8 testimony -- you contrast the preliminary survey
9 and analysis by McGill against the work of Mr.
10 Franklin, correct?

11 A Correct.

12 Q In addition, you point to the preliminary survey
13 and analysis by McGill as support for Red Bird's
14 contention that Etowah's system is distressed and
15 troubled, correct?

16 A Correct.

17 Q Are you familiar with the Joint Application
18 Confidential Attachment L?

19 A If you can tell me what it refers to, I can see
20 if I'm familiar.

21 Q It is the McGill Engineering Memorandum.

22 A Yes.

23 MS. NEWELL: And, Commissioner, I'm going
24 into a line of confidential questions.

1 COMMISSIONER MCKISSICK: All right. Then we
2 will go into confidential setting. If any witness
3 that should not be in the hearing room with
4 confidential testimony is about to be provided, they
5 can leave at this time.

6 Looking at the attorneys, it looks as if
7 everybody who is here is entitled to be present and to
8 hear and be apart of the testimony about to be given.
9 And let the record reflect, we are going into
10 confidential testimony and session at this time.

11 (WHEREUPON, the following
12 pages are confidential and
13 shall be filed under seal.)

14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]

NORTH CAROLINA UTILITIES COMMISSION

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[REDACTED]
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[REDACTED]

(WHEREUPON, the
confidential session has
ended.)

Q So is it your contention, that Mr. Franklin is
unqualified based on the fact that you disagree
with his conclusions in this case; is that
correct?

A No. I disagree completely with his statement
that this is not a distressed utility based on
the violations and severity of those violations.

Q You also indicated in your testimony, that Mr.
Franklin did not have experience in constructing
or operating a wastewater system, correct?

A Correct.

Q Okay. And if that's your contention that not
having that experience means that he cannot offer
a qualified opinion on the condition of the

1 system?

2 A No. I just disagree with the severity of the
3 violations and his opinion that it's not
4 distressed.

5 Q So if you disagree with him even though his
6 findings are consistent with the findings of the
7 engineers that you hired, then your determination
8 is that he is not qualified?

9 A No. And my engineers did not say that these
10 systems were not distressed. They give visual
11 inspection and component analysis on it piece by
12 piece.

13 Q And sort of up a follow-up to this line of
14 thinking, are any of the presiding
15 Commissioners -- do any of them have experience
16 in constructing or operating a wastewater system?

17 A I don't know the answer to that question.

18 Q And if the answer is no, would you render the
19 opinion that they're not qualified to make a
20 decision in this case?

21 A Absolutely not. They are utility regulators.

22 Q And Mr. Franklin is a utilities engineer?

23 A And I disagree completely with his assessment of
24 whether or not a system dumping human pathogens

1 untreated into a stream is not distressed.

2 Q Okay. So if you can, read for the Commission the
3 paragraph starting with, "In contrast," on Page
4 5, Line 12 of your testimony.

5 A Could you point me again to where you'd like me
6 to read?

7 Q Page 5, Line 12.

8 A Line 12. "In contrast, Mr. Franklin's testified
9 that he "visually inspected" the Etowah
10 facilities on one day. An accurate assessment of
11 the condition of wastewater systems typically
12 requires not just a visual inspection but a
13 physical inspection, which can uncover structural
14 issues and those that may be cosmetically
15 hidden."

16 Q You were going really quickly. I wasn't sure if
17 the -- I understand we all want to get this over
18 with but, just slow down a bit. Have you
19 personally completed a physical inspection of the
20 Etowah Wastewater system?

21 A No. I've not been to Etowah.

22 Q Okay. And has McGill completed a physical
23 inspection of the Etowah Wastewater system?

24 A Yes, they have.

1 MS. NEWELL: Okay. And, Commissioner, at
2 this time, I would like to introduce a cross
3 examination exhibit. It is the response to Public
4 Staff Data Request Number 14. And, Commissioner, if I
5 can ask to have it marked as Public Staff Cox Rebuttal
6 Cross Examination Exhibit 1.

7 COMMISSIONER MCKISSICK: Duly noted. It
8 will be -- we should have this marked as rebuttal
9 panel exhibit, since they're up as a panel, just for
10 the record. Okay. And it will be your Rebuttal
11 Exhibit 1.

12 MS. MCGRATH: No objections.

13 COMMISSIONER MCKISSICK: Thank you.

14 (WHEREUPON, Public Staff
15 Panel Rebuttal Cross
16 Examination Exhibit 1 is
17 identified.)

18 Q And, Mr. Cox, did you prepare these responses?

19 A I reviewed the responses, yes.

20 Q Okay. And can you take a look at the response to
21 question number two, subpart A, on Page 3?

22 A I do.

23 Q So you indicated in the affirmative, yes, that
24 you did not -- of whether Red Bird or its

1 contractors have conducted a physical inspection,
2 correct?

3 A Affirm -- yes, correct.

4 Q And, specifically, McGill performed a site
5 assessment that was a physical inspection,
6 correct?

7 A I believe that's correct.

8 Q And then, if I could turn to confidential
9 Attachment L -- we don't need to actually discuss
10 the confidential material, but if you turn to
11 Page 23, your public -- I'm sorry -- prefiled
12 direct testimony.

13 A My prefiled direct testimony?

14 Q Your prefiled direct testimony.

15 A Prefiled direct testimony. Okay. I have it.

16 Q Okay. And then, can you turn to Page 23 and read
17 Lines 6 through 11?

18 A "McGill's survey of the Etowah system was based
19 on data provided by the seller --

20 Q Again. Just slow it down a little.

21 A "McGill's survey of the Etowah system was based
22 on data provided by the seller, information
23 available from public records, and information
24 gathered during a field survey of visible,

1 above-ground assets. McGill's field survey did
2 not include detailed investigation of system
3 components or any system testing procedures, or
4 an inspection or assessment of pipelines, valves,
5 or other below-ground facilities."

6 Q Is it your testimony that Red Bird, or its
7 contractors such as McGill, conducted a physical
8 investigat- -- inspection of the Etowah
9 Wastewater Treatment Plant?

10 A Yes. I think we've shot in manholes and depths
11 of lines and all that kind of stuff as part of
12 our GIS survey.

13 Q Sure. And what is the difference between
14 McGill's preliminary survey and the analysis --
15 survey analysis in Mr. Franklin's assessment?

16 A I would say it would be popping manholes, going
17 into lift stations. All that kind of good stuff.

18 Q But they conducted a visual inspection as well?

19 A Who?

20 Q McGill?

21 A Correct.

22 Q And McGill and Public Staff witness Franklin both
23 conducted visual inspections?

24 A Correct. They both conducted visual inspections

1 in addition to the physical inspection.

2 Q Now, on your -- on Page 6 of your rebuttal
3 testimony, you also suggest that Mr. Franklin has
4 dismissed NOV's as having no consequence; is that
5 an accurate representation?

6 A Can you point me to where you're referring to?

7 Q Actually, before I get to that, when was -- I'm
8 backtracking a little bit. When was the physical
9 inspection conducted?

10 A It's been ongoing. They have to survey all of
11 the lines as part of the GIS mapping.

12 Q By McGill?

13 A McGill has done a lot of that survey work,
14 correct.

15 Q So do you consider the survey work a part of the
16 physical inspection?

17 A It is a physical inspection of the lines. They
18 have to shoot them in, literally, have to put in
19 a laser to get the depth.

20 Q So going back to Page 6 of your rebuttal
21 testimony; do you have that pulled up?

22 A I do.

23 Q So you suggested that Mr. Franklin has dismissed
24 NOV's as having no consequence; is that an

1 accurate representation?

2 A Where in my testimony are you referring to? Just
3 what line? I apologize. I thought you were
4 talking to him, so I totally missed it. I don't
5 see it.

6 Q I'm sorry. I'm pulling up your testimony on my
7 computer. Line 3.

8 A Line 3. I have January 9, 2023, sanitary sewer
9 overflow.

10 Q Starting with, "However."

11 A However, yeah. Okay. Should be concerned.
12 Okay. I see it.

13 Q Okay. So was my statement accurate
14 representation of your testimony?

15 A I think that Public Staff and Commission should
16 be concerned and should not disregard the
17 potential for these types of violations to
18 reoccur in the future if the acquisition is not
19 approved.

20 Q So is West Elm Hills Utility Operating Company a
21 predecessor of Confluence Rivers Utility
22 Operating Company, Inc.?

23 A No.

24 Q Was West Elm Hills merged under the Confluence

1 Rivers name?

2 A No.

3 Q Is Confluence Rivers Utility Operating Company a
4 subsidiary of CSWR, LLC?

5 A Yes.

6 Q And, subject to check, did Elm Hills close on the
7 acquisition of the Berkshire Glen Utility Assets
8 on June 30, 2020?

9 A We own Berkshire Glen. I don't remember who
10 closed on that.

11 Q Okay. So point being, you own Berkshire Glen?

12 A Correct.

13 Q Okay. And has Berkshire Glen been in a state of
14 noncompliance for 12 of the last 12 quarters?

15 A No. In fact, the echo database -- there's a
16 statement on the database that says there's four
17 states in the country that the testing results
18 are not linked the echo database, so none of the
19 echo compliance data is correct.

20 Q Okay. So may I just bring your attention to Page
21 6 of the discovery response in Discovery Response
22 14?

23 A Can you -- which data request were you on?

24 Q Basically all of it. Do you mean that section?

1 A Yeah.

2 Q Data Request 14.

3 A 14. I see it.

4 Q Section C sort of runs through -- and I will, in
5 the interest of time, I won't read all of the
6 paragraphs it is in the record for the Commission
7 to review -- but, wouldn't you say that your
8 response to this DR request dismisses the
9 seriousness of the Confluence Rivers
10 Noncompliance exceedances and violations at
11 Berkshire Glen?

12 A No, because the EPA database is not correct.

13 Q Now, starting on Page 8-- well, I have a
14 backtrack. Is good standing the same as an
15 effluent that meets the permit limits?

16 A I don't know what good standing is, unless it's
17 inside an environmental compliance agreement.

18 Q Starting on Page 8, you discuss the viability of
19 utilities from your experience with Red Bird's
20 affiliate, Cactus State Utility Operating
21 Company, which is regulated by the Arizona
22 Corporation Commission, correct?

23 A Which part of my testimony are you in?

24 Q Page 8.

1 A Of my rebuttal?

2 Q Yes.

3 A I'm sorry. Thank you. Okay. I have it.

4 Q So on Page 8 of your rebuttal testimony, you
5 discuss the viability of utilities from your
6 experience with Red Bird's affiliate, Cactus
7 State Utility Operating Company, which is
8 regulated by the Arizona Corporation Commission,
9 correct?

10 A Correct.

11 Q Okay. On November 3 of this year, Cactus State
12 provided notice that Cactus State's counsel would
13 appear in person at the Arizona Corporation
14 Commission Hearing scheduled to begin on
15 November 8th, and that Cactus State's witness,
16 Josiah Cox, would appear via Webex; did you
17 testify via Webex in the hearing on November 8th?
18 The ACC hearing.

19 A I mean, I testified recently in a ACC hearing. I
20 can't remember which day it was.

21 Q And was that via Webex?

22 A Yes.

23 Q Okay. And did Caitlin O'Reilly testify in the
24 ACC hearing on November 8th?

1 A I do not believe so.

2 Q Did Caitlin O'Reilly attend this Commission's
3 hearing on November 8th in the Baytree matter?

4 MS. MCGRATH: Objection. I'm not following
5 the relevance of this line of questioning.

6 COMMISSIONER MCKISSICK: If you could
7 provide some context where you're going so we --

8 MS. NEWELL: I think it goes directly to the
9 credibility of the witness, because this witness is
10 sort of, what I'm trying to illicit through this line
11 of questioning, has falsely presented information to
12 the Commission. And if they are willing to do that in
13 other dockets, I would contend that we cannot rely on
14 the information that is testified to here.

15 MS. MCGRATH: I'm unclear about what false
16 testimony this testimony has provided.

17 MS. NEWELL: False information.

18 MS. MCGRATH: Again, I'm unclear about what
19 false information has been provided.

20 COMMISSIONER MCKISSICK: I'm going to give
21 you a little leeway here, but try to get to the point
22 very quickly.

23 MS. NEWELL: Sure.

24 COMMISSIONER MCKISSICK: So I'm going to

1 overrule the objection at this time, but that's a
2 short leash.

3 Q So did Red Bird or Cactus State request, or
4 attempt to provide, substitute witnesses in
5 either the Arizona or North Carolina hearings
6 scheduled for and held on November 8th?

7 A I don't remember.

8 Q Okay.

9 A And I don't remember when those hearings were
10 held. Sorry. I don't remember.

11 Q Two weeks ago on November 8th, but, I guess --
12 and I'll quickly wrap up this line of testimony,
13 Commissioner -- but, did Red Bird convey to the
14 Commission that they were unable to be here for
15 that hearing because they were testifying in a
16 hearing in Arizona?

17 A I don't remember the scheduling conflicts.

18 Q Well, if there were no scheduling conflicts, why
19 weren't you here?

20 A I literally have no idea what you're talking
21 about.

22 Q Okay. Moving on.

23 COMMISSIONER MCKISSICK: Yeah. Why don't
24 you go ahead and move on. I'm aware of what you're

1 talking about, so it's duly noted as a part of the
2 record.

3 MS. NEWELL: Thank you.

4 Q So starting on Page 3, Line 13 of his rebuttal
5 testimony, witness Beckemeier testifies about why
6 Red Bird conducts due diligence and the contended
7 benefits of such activities.

8 Does due diligence benefit the Company? If
9 yes, provide examples. If no, provide an example
10 why not. Do you agree-- I'm sorry. I'm
11 conflating the DR response with the testimony.
12 So witness Beckemeier's testimony was that Red
13 Bird conducts due diligence and the contended
14 benefits of such activities. And if you --

15 MS. NEWELL: At this time, Commissioner, I'm
16 going to ask that Public Staff Data Request Number 13
17 be marked as Rebuttal Panel Exhibit 2.

18 COMMISSIONER MCKISSICK: Okay. Now, in
19 terms of confidential information, have you concluded
20 everything that needs to be addressed?

21 MS. NEWELL: No.

22 COMMISSIONER MCKISSICK: No. Okay. Just
23 want to make sure. All right. Thank you, again.
24 This will be Rebuttal Cross Exhibit 2 for this panel.

1 (WHEREUPON, Public Staff
2 Panel Rebuttal Cross
3 Examination Exhibit 2 is
4 identified.)

5 Q So the question states: Does due diligence
6 benefit the Company? If yes, provide examples.
7 And the response was: Yes, it does. So do you
8 agree with Mr. Beckemeier's response to Public
9 Staff Data Request Number 13, Question 1B, that
10 due diligence benefits the Company?

11 A (Mr. Cox) Were you asking me this question?

12 Q Yes.

13 A Okay. I'm sorry. I thought you were talking to
14 Mr. Beckemeier. I apologize. Can you just ask
15 me that one more time, ma'am?

16 Q Well, do you agree with his response or not?

17 A With his response about what?

18 Q To question 13 -- number 13 -- DR-13, Question
19 1B: Does due diligence benefit the Company? If
20 yes, provide examples.

21 A So you're asking me does utilities benefit the
22 Company, yes.

23 Q Okay. But it's nevertheless your position that
24 the customers should absorb those costs?

1 A Yes, because they tell us what kind of
2 improvements the plants need to have -- we have
3 legal access to the -- the various components of
4 the utility. You know, do we have to get more
5 legal access? We have to cure real property
6 issues for sure.

7 Q Do you agree, also, with Mr. Beckemeier's
8 response to Public Staff Data Request Number 13
9 Question 1A that: The primary benefit to
10 conducting extensive due diligence prior to
11 closing an acquisition is to identify any defects
12 in the system assets in order to plan for the
13 capital improvements that will be needed to
14 properly operate the system?

15 A Yes.

16 Q However, in your rebuttal testimony, Page 18,
17 Lines 1 to 7, you state that: The results of
18 McGill's projection of capital improvements is
19 preliminary and that Red Bird has found that the
20 true condition and needs of acquired systems can
21 only be determined after Red Bird owns and
22 operates those systems. Can you then explain how
23 the preliminary cost estimates developed by
24 McGill benefited the Etowah customers?

1 A Yeah. Absolutely. They outline all the
2 improvements that are necessary to do right now.
3 I mean, when we talk about BOD violations or
4 ammonia violations, that means you have
5 insufficient air. It's the extended air plant.
6 It's not designed to help treat those components,
7 consistent basis. Maybe it points to failing
8 components. When we own a system, I've seen
9 crazy stuff. There was a part of the system that
10 wasn't mapped. It didn't exist. There's a
11 manhole buried in the woods that's bringing water
12 in.

13 So we can't know what -- we can't know what
14 we don't know until we own the system, and
15 historically, these owners, as evidenced by, you
16 know, having a sanitary sewer overflow for two
17 weeks that went unreported. We don't know what
18 else they're not reporting.

19 Q Did the Company significantly reduce the planned
20 improvements at Bear Den?

21 A I'm sorry. I don't recall Bear Den right now.

22 Q I'll move on. So I'm going back to DR
23 response -- I'm sorry -- DR-14. And on Page 6,
24 the response to question six.

1 A DR-14; what page?

2 Q I'm sorry. DR-13.

3 A 13.

4 Q 6C.

5 A I see it.

6 Q Okay. So the Public Staff asked for a list of
7 transactions closed by CSWR affiliates, including
8 state, regulator, name of the system, closing
9 timeframe, start date, end date, amount of due
10 diligence costs incurred, and amount of due
11 diligence costs allowed for recovery in rates.
12 And your response to 6C is that: Red Bird objects
13 to this request to the extent it requires the
14 Company to undertake legal analysis, research,
15 and/or compilation of new studies. You've
16 testified here today --

17 MS. MCGRATH: I'm sorry. I'm going to
18 object. The response actually goes on and says more
19 than what you just quoted.

20 MS. NEWELL: Commissioner, I'm happy to read
21 the entire thing.

22 COMMISSIONER MCKISSICK: Well, why don't you
23 read the entirety of it, please.

24 MS. NEWELL: Okay.

1 COMMISSIONER MCKISSICK: For the record.
2 For accuracy. So nothing's out of context.

3 Q Red Bird also objects to this request on the
4 basis that it is unduly burdensome, as this data
5 cannot be easily queried from our systems to
6 provide a comprehensive response in the given
7 timeframe. Subject to and notwithstanding these
8 objections, Red Bird will provide a list of all
9 acquisition cases by state and docket number.
10 Was that the response?

11 A Yes.

12 Q Okay. So we requested information regarding due
13 diligence expenses -- and when I say "we,"
14 meaning the Public Staff -- in other
15 jurisdictions, but you objected.

16 MS. MCGRATH: Again, objection. The
17 response included objections, and then it also
18 included a response that we would provide a list of
19 all of the dockets with the docket number.

20 COMMISSIONER MCKISSICK: I'm going to sus --

21 MS. NEWELL: And, Commissioner, if I may?

22 COMMISSIONER MCKISSICK: Okay.

23 MS. NEWELL: The Company has testified in
24 this proceeding that they have been -- no state has

1 disallowed their due diligence expenses. And they've
2 provided no documentation or support for that
3 position. And the Public Staff did ask for that
4 information. So we are expected to rely on,
5 respectfully, simply their word with no supporting
6 documentation.

7 MS. MCGRATH: May I respond?

8 COMMISSIONER MCKISSICK: Yes.

9 MS. MCGRATH: So we did respond. We said we
10 would provide the docket numbers. I would also note,
11 that we had three days to respond to these requests.

12 And so as our response indicates, given the
13 amount of time, we did not have the amount of time to
14 compile all of the specific information that was
15 requested. And so, given the amount of time, we
16 thought we provided an adequate response, nor did we
17 hear anything further.

18 COMMISSIONER MCKISSICK: Were there any
19 further communications --

20 MS. NEWELL: Commissioner, --

21 COMMISSIONER MCKISSICK: -- that you're
22 aware of.

23 MS. NEWELL: My only contention is not
24 necessarily with the DR Response in itself. It's

1 that, we cannot rely simply on the testimony presented
2 here today in that regard.

3 MS. MCGRATH: Commissioner Mckissick, I'll
4 answer your question. No, there were no additional
5 followup requests.

6 COMMISSIONER MCKISSICK: And is that
7 information that could be provided in a late-filed
8 exhibit?

9 MS. MCGRATH: Subject to speaking with Red
10 Bird representatives. I would have to look to them.

11 THE WITNESS: (Mr. Beckemeier) Do you mind
12 if I respond to that? I mean, it would be very
13 difficult to curate that information because it's not
14 tracked in the way that they are requesting. And the
15 amount of time that it would take would be overly
16 burdensome and incredibly expensive.

17 THE WITNESS: (Mr. Cox) Can I add one more
18 to that as well? We roll this stuff into rate base.
19 So it becomes part of our plant in service. And, you
20 know, once it goes through a rate case. So that's how
21 we track it. It all gets capitalized in rate base.
22 So I'd be glad to share rate cases where it's
23 capitalized.

24 COMMISSIONER MCKISSICK: So that could be

1 provided?

2 THE WITNESS: (Mr. Cox) Yes. We could
3 provide -- we could provide evidence of rate cases
4 where these costs have been capitalized.

5 COMMISSIONER MCKISSICK: Would that satisfy
6 the query made by the Public Staff, or what additional
7 information would you want to see provided in a late
8 filed exhibit?

9 MS. NEWELL: So, Commissioner, my only
10 response to will be, the burden of proof is on the
11 Applicant, so I will leave it up to them to determine
12 whether or not they'd like to meet that burden.

13 MS. MCGRATH: And, again, Commissioner
14 McKissick, we're not seeking a ruling on, you know,
15 the amount of due diligence costs that are
16 appropriate. We're here today before our
17 Application -- our Transfer Application.

18 COMMISSIONER MCKISSICK: There was certainly
19 short periods of time that were provided for in this
20 discovery schedule, that's for certain. So, I mean,
21 there was -- there would be challenges to pull
22 information together; however, I understand fully the
23 Public Staff's concern that they don't believe that
24 they received full and complete information that was

1 responsive to the request as it was stated.

2 I'm going to go ahead and overrule the
3 objection at this time, but at the same time, I want
4 to allow the Applicant an opportunity to submit a
5 late-filed exhibit that can satisfy as fully as
6 possible what they're able to provide in terms of
7 informational content at this time based upon what has
8 been requested.

9 MS. NEWELL: Thank you, Commissioner.

10 Q Starting on Page 21, on Line 21, you testified --
11 of your rebuttal testimony -- I'm sorry. You
12 testified, and I quote, "Therefore, it serves no
13 purpose for the Commission to consider
14 hypothetical future rate impacts in this case."
15 Is your testimony that an acquisition adjustment
16 and due diligence cost directly -- sorry --
17 directly related to the Transfer Application?

18 A (Mr. Cox) I'm sorry. Could you state that
19 question again?

20 Q I'll rephrase. I'll ask another question. Are
21 estimated rate impacts a method of quantifying
22 the cost of a transfer?

23 A Are estimated rate impacts of their estimates,
24 correct?

1 Q No. Are they a method of quantifying the cost of
2 a transfer?

3 A Yeah. So, for example, you know, when the
4 financial witness was up here earlier, she talked
5 about previous rate cases and annual reports
6 being sources of truth that we could rely on.
7 And, for example, the last rate case that ever
8 went through was actually a rate case on a margin
9 of expenses. It wasn't a rate base rate case.
10 So it really wasn't very helpful for
11 determination of rate base.

12 In addition to that, there's a disagreement
13 between, you know, how the tap-on fees were
14 calculated. Were those revenue? Which was shown
15 in the annual report, but now you're including
16 the CIAC, which was never included in the report.
17 So none of those are really known, and that's why
18 I just -- I have a problem with estimates and why
19 we talked about, you really can't know what the
20 effects of these are until after we've owned it
21 and gone through all the information and can
22 present some future rate hearing.

23 Q And are you aware that this Commission earlier
24 this year stated in it's Order in Docket Number

1 W-354, Sub 398, on Page 24 and I quote, "To
2 access whether granting or denying an Application
3 is in the public interest, the Commission
4 considers both the costs and the benefits to
5 customers of the acquiring utility as well as a
6 system to be acquired."

7 A Where is that in my testimony?

8 Q No. I'm referring you to the Commission's Order.

9 A Okay. In what -- in what --

10 MS. MCGRATH: I'm sorry. What Order are you
11 referring to?

12 MS. NEWELL: Docket 354, Sub 398; Page 24.

13 MS. MCGRATH: And, again, what docket is
14 that? What matter?

15 COMMISSIONER MCKISSICK: If you could be
16 precise and clear as in terms of what proceeding that
17 is relating to and --

18 MS. MCGRATH: And I would also request that,
19 if you're going to be asking questions about the Order
20 --

21 MS. NEWELL: It relates to Carteret County.
22 And my only point, Commissioner, is that we are citing
23 an example of previous cases where the Commission has
24 made determinations about what considerations are

1 important in making its assessment. Or what
2 consider -- what it considers when it makes is
3 assessment.

4 MS. MCGRATH: And if you're going to ask the
5 witness questions about a particular Order, I would
6 just request that he be given a copy of the Order so
7 that he can refer to it.

8 COMMISSIONER MCKISSICK: I think that's a
9 reasonable request. So if you would like to provide
10 the witness a copy of that Order, so the witness can
11 respond fully and completely, and competently to the
12 extent he has the ability to do so.

13 MS. NEWELL: Commissioner, I'll move on.
14 I'll just ask a general question.

15 Q Has the Commission, to your knowledge, considered
16 rate impact to determine public interest?

17 A (Mr. Cox) Historically, yes.

18 MS. NEWELL: Okay. And that was the point.

19 All done. I'll turn it over to my colleague
20 for this witness.

21 CROSS EXAMINATION BY MR. BERNIER:

22 Q Good afternoon. Or good evening. All right. I
23 believe most of my questions will be directed
24 towards Mr. -- forgive me for your last name,

1 Theis.

2 A (Mr. Theis) Theis.

3 Q Theis.

4 A The H is silent.

5 Q Thank you. Regarding net book value, what is Red
6 Bird's position on what should be calculated --
7 included in calculating net book value?

8 A You know, Ms. Feasel talked about what -- what
9 consists of rate base, and so those will
10 certainly be components of utility plant and
11 service, accumulated depreciation, CIAC, and then
12 there's some lesser components: Cash-working
13 capital and those kinds of things. And can --
14 did you ask for -- you didn't ask for rate base,
15 you asked for --

16 Q Net book value.

17 A Yeah. And so then, I think, net book value, you
18 know, I think, historic net book value kind of
19 stops there. And then if you -- if you think
20 about an acquisition adjustment approved or not,
21 that would also be on the books clearly so it
22 would be part of the value of the system should
23 it be approved.

24 Q And talking about the purchase acquisition

1 adjustment, when determining whether the purchase
2 price is reasonable, did Red Bird review -- and I
3 note two options: Etowah's annual reports and/or
4 the last rate case as a reference for net plant
5 value?

6 A Those evaluations are not done by me, but I know
7 that we have access to the annual reports. I'm
8 not sure about the prior rate cases.

9 Q Do you know if anyone looked at the prior rate
10 case in this docket before agreeing to a purchase
11 price?

12 A I do not know the answer to that.

13 Q Do you know who would no know the answer to that?

14 A Mr. Cox may have some insight. I'm not sure he
15 would know either.

16 Q Mr. Cox, do you know if anyone looked at the
17 prior rate case before agreeing to a purchase
18 price?

19 A (Mr. Cox) No, that was not -- because our
20 business developers --

21 Q So that's a no?

22 A That's a no, correct.

23 Q What about annual reports? Did any of you look
24 at the annual reports of Etowah before agreeing

1 to a purchase price?

2 A Yes. They looked at annual reports.

3 Q Which annual reports?

4 A The last five years, I believe.

5 MR. BERNIER: Commissioner Mckissick, I'd
6 like to introduce an exhibit. It'll be Rebuttal Panel
7 Exhibit 3. The label on the exhibit doesn't quite
8 match what I just described as the rebuttal panel
9 exhibit, but its --

10 COMMISSIONER MCKISSICK: It will be duly
11 noted. This is now Rebuttal Exhibit Number 3.

12 MR. BERNIER: Commissioners, this is a
13 summary exhibit of the data from annual reports, I
14 would say, subject to check from the panel, that was
15 produced by Public Staff.

16 COMMISSIONER MCKISSICK: That was produced
17 by Public Staff you said?

18 MR. BERNIER: Yes. The Public Staff
19 Accounting Office made us pull the data from the
20 annual reports. Rather than produce all the stacks of
21 annual reports for us to go through, we thought this
22 would be easier.

23 COMMISSIONER MCKISSICK: So it's a
24 compilation?

1 MR. BERNIER: Yes.

2 COMMISSIONER MCKISSICK: Okay. Let's give
3 Ms. McGrath a chance to review it.

4 MS. MCGRATH: Commissioner Mckissick, I
5 mean, I do have some concerns in that. I mean, if
6 this is the Public Staff's data, I'm not sure how
7 we're supposed to verify the accuracy or testify to
8 whether or not it's accurate or not.

9 MR. BERNIER: Well, they just testified that
10 they reviewed the last five years. So if we want to
11 just limit the questions the last five years, then
12 that's fine, but it's --

13 COMMISSIONER MCKISSICK: I'm going to
14 sustain that objection. I mean, you want to limit the
15 testimony to the last five years, I think that's fine,
16 but this is not an original document. It a
17 compilation that's been prepared.

18 MR. BERNIER: Okay.

19 COMMISSIONER MCKISSICK: Now, I mean -- let
20 me ask you this, Ms. McGrath, do you have any problems
21 if there were limitations on this testimony provided
22 to just the five years with this document being used?
23 I suspect you would continue to have the same
24 objections, but I will look to you.

1 MS. MCGRATH: I would, Commissioner
2 McKissick, because, again, I mean, there's just no way
3 to verify this data.

4 MR. BERNIER: That's the whole point of
5 subject to check.

6 MS. MCGRATH: Not on Public Staff
7 compilations of --

8 COMMISSIONER MCKISSICK: I'm going to
9 sustain the objection.

10 MS. MCGRATH: Thank you.

11 MR. BERNIER: Okay. But I still intend to
12 ask the witness these questions.

13 COMMISSIONER MCKISSICK: Feel free to ask
14 the questions. We just won't be able to rely on this
15 exhibit for that purpose.

16 Q In -- to the whole panel, in -- just to revisit,
17 did the three of you review the last five years
18 of the annual reports on Etowah?

19 A (Mr. Beckemeier) I did.

20 Q Mr. Cox, did you?

21 A (Mr. Cox) No. Not prior to signing the
22 contract.

23 Q Mr. Theis?

24 A (Mr. Theis) Not prior to signing the contract.

1 Q So I guess my questions will be focused on you,
2 Mr. -- forgive me, Mr. Beckin [sic]?

3 A (Beckemeier) Beckemeier.

4 Q All right. So in reviewing the annual reports,
5 did you review them for any errors?

6 A No.

7 Q Would you know if there were any errors in the
8 reports?

9 A No.

10 Q Would you -- did you compare -- well, what data
11 annual reports did you look at?

12 A We would have looked at financial information,
13 but quite frankly, we don't put much weight on
14 annual reports for most of the seller's utilities
15 that we look at because they don't tend to turn
16 out to be as accurate as you would hope once the
17 acquisition is actually closed.

18 COMMISSIONER MCKISSICK: Since we have not
19 had a break in a couple of hours, I'm going to go
20 ahead and provide a ten-minute break at this time -- a
21 recess. We'll come back on the record at
22 approximately 6:08.

23 (A recess was taken from 5:59 p.m. to 6:10 p.m.)
24

C E R T I F I C A T E

I, KAYLENE M. CLAYTON, DO HEREBY CERTIFY that the Proceedings in the above-captioned matter were taken before me, that I did report in stenographic shorthand the Proceedings set forth herein, and the foregoing pages are a true and correct transcription to the best of my ability.



Kaylene Clayton