



**NORTH CAROLINA
PUBLIC STAFF
UTILITIES COMMISSION**

December 6, 2023

Ms. A. Shonta Dunston, Chief Clerk
North Carolina Utilities Commission
4325 Mail Service Center
Raleigh, North Carolina 27699-4300

Re: Docket Nos. W-938, Sub 6 and W-1328, Sub 8 – Joint Application by Red Bird Utility Operating Company, LLC, 1650 Des Peres Road, Suite 303, St. Louis, Missouri 63131, and Baytree Waterfront Properties, Inc., 4 Stanley Drive, Thomasville, North Carolina 27360, for Authority to Transfer the Windemere Point Subdivision Wastewater Utility System and Public Utility Franchise in Montgomery County, North Carolina, and for Approval of Rates

Dear Ms. Dunston,

On behalf of the Public Staff and Red Bird Utility Operating Company, LLC (Red Bird), I herewith provide for filing in the above referenced dockets the Settlement Agreement and Stipulation entered into by the Public Staff and Red Bird. The parties will file testimony and exhibits in support of the Settlement Agreement and Stipulation in the near future.

By copy of this letter, I am forwarding a copy to all parties of record by electronic delivery.

Sincerely,

Electronically submitted
/s/ James Bernier, Jr.
Staff Attorney
james.bernier@psncuc.nc.gov

cc: Parties of Record

Executive Director
(919) 733-2435

Accounting
(919) 733-4279

Consumer Services
(919) 733-9277

Economic Research
(919) 733-2267

Energy
(919) 733-2267

Legal
(919) 733-6110

Transportation
(919) 733-7766

Water/Telephone
(919) 733-5610

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing has been served on all parties of record or their attorneys, or both, in accordance with Commission Rule R1-39, by United States Mail, first class or better; by hand delivery; or by means of facsimile or electronic delivery upon agreement of the receiving party.

This the 6th day December, 2023.

Electronically submitted
/s/ James Bernier, Jr.
Staff Attorney

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. W-938, SUB 6
DOCKET NO. W-1328, SUB 8

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Joint Application by Red Bird Utility)
Operating Company, LLC, 1650 Des)
Peres Road, Suite 303, St. Louis,)
Missouri 63131, and Baytree Waterfront)
Properties, Inc., 4 Stanley Drive,)
Thomasville, North Carolina 27360, for)
Authority to Transfer the Windemere)
Point Subdivision Wastewater Utility)
System and Public Utility Franchise in)
Montgomery County, North Carolina,)
and for Approval of Rates)

**SETTLEMENT AGREEMENT
AND STIPULATION**

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

I. BACKGROUND

A. On October 9, 2020, Red Bird and Baytree Waterfront Properties, Inc. (Baytree), filed with the Commission an Application for Transfer of Public Utility Franchise and for Approval of Rates (Application) seeking authority to transfer the

wastewater utility system and public utility franchise serving Windemere Pointe Subdivision in Montgomery County, North Carolina, from Baytree to Red Bird and for approval of rates. Red Bird filed with the Commission supplemental and additional materials in support of the Application on October 21, 2020, June 2, 2021, December 12, 2022, and August 2, 2023.

B. On September 13, 2023, the Commission issued its Order Scheduling Hearings, Establishing Discovery Guidelines, and Requiring Customer Notice. On October 11, 2023, an order was issued Amending Discovery Guidelines, Filing Dates for Prefiled Testimony and Witness List, and Requiring Report. On November 6, 2023, an order was issued Granting Leave to File Corrected Rebuttal Testimony and Rescheduling Expert Witness Hearing. (collectively, the Scheduling Orders).

C. On September 20, 2023, the Commission issued its Order Approving Notice to Customers (Notice Order). The Commission attached as Appendix A to its Notice Order a Notice to Customers stating that a public witness hearing is scheduled for October 18, 2023, and that the Commission may decide the matter without a public witness hearing if no significant protests are received by October 11, 2023.

D. On September 29, 2023, Red Bird filed a certificate of service stating that the Notice to Customers was mailed or hand delivered to all affected customers by the date specified in the Scheduling Orders.

E. On October 12, 2023, the Commission issued its Order Canceling Public Witness Hearing as no significant protests were received from customers.

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

G. On October 9, 2023, Red Bird filed the direct testimony and exhibits of Josiah Cox, President of Red Bird and CSWR, LLC, a Missouri limited liability company formed to provide managerial, technical, and financial support to its utility operating affiliates, including Red Bird. The Cox testimony included four exhibits, one of which was a spreadsheet showing the due diligence expenses incurred by Red Bird as of the date the Cox direct testimony was filed.

H. On October 23, 2023, the Public Staff filed the direct testimony and exhibits of John R. Hinton, Director of the Economic Research Division; the direct testimony and exhibits of Hemanth Meda, Public Utility Regulatory Analyst, Public Staff Accounting Division; and the direct testimony and exhibits of D. Michael Franklin, Utilities Engineer, Water, Sewer, and Telephone Division.

I. On October 30, 2023, Red Bird filed the rebuttal testimony and exhibits of Josiah Cox and Caitlin O'Reilly.

J. On November 1, 2023, Red Bird filed the agreed upon Witness List and Estimated Cross-Examination Times.

K. On November 6, 2023, Red Bird filed the Revised Rebuttal Testimony and Exhibits of Josiah Cox.

L. On November 8, 2023, at the expert witness hearing, the Commission rescheduled the expert witness hearing to begin on December 13, 2023, and continue to December 14, 2023.

M. On December 6, 2023, the Public Staff and counsel for Red Bird notified the Commission that they had agreed in principle to a settlement.

N. After settlement negotiations, in which concessions from their litigation positions were made by both Red Bird and the Public Staff. The Stipulating Parties were ultimately able to arrive at a settlement, the terms of which are reflected in the following sections of this Stipulation and supported by the settlement testimony of Red Bird witness Cox and joint settlement testimony of Public Staff witnesses.

II. STIPULATION AND AGREEMENT OF THE STIPULATING PARTIES

The Stipulating Parties agree and stipulate as follows:

- A. The transfer of the Baytree system to Red Bird should be approved.
- B. Prior to closing and pursuant to future order by the Commission, Red Bird shall post a bond in the amount of \$35,000 and in a form acceptable to the Commission for the Baytree system.
- C. At closing, Red Bird will adopt the tariffs and rates currently in effect for Baytree's wastewater customers.

D. Red Bird will adopt at closing Baytree's accounting records, provide the detailed accounting records received from Baytree to the Public Staff, and will not adjust or make changes to those records without Commission approval.

E. The Stipulating Parties agree that the appropriate net book value of the assets Red Bird is acquiring from Baytree is \$10,653. This amount is based on plant additions through December 31, 2023, as provided by the Company, and includes depreciation and amortization calculated through December 31, 2023, as shown on Public Staff Settlement Exhibit 1.

F. Red Bird may request recovery of the following costs associated with the transfer of the Baytree system to Red Bird:

(i) Up to \$24,574 for engineering due diligence work listed in Cox Exhibit 4 in the next general rate case relating to the Baytree wastewater system, provided that the work results in reasonable and prudent capital investments to improve the wastewater system.

(ii) Up to \$13,500 for legal costs related to the acquisition of the Baytree system in the next general rate case relating to the Baytree wastewater system.

G. Red Bird agrees not to pursue rate recovery of any additional costs associated with the transfer, including due diligence, transactional, and regulatory costs, other than those listed in Section II., Paragraphs F, (i) and (ii) above and further detailed in Public Staff Settlement Exhibit 1.

H. Red Bird agrees not to pursue an acquisition adjustment related to the Baytree system in this or any future proceeding.

I. Consistent with the Settlement Agreement and Stipulation in Docket No. W-1328, Sub 10, annually until a Commission order is issued modifying this requirement, Red Bird and key leadership from CSWR will meet with the Public Staff and provide an update detailing all changes in Red Bird's facilities and operations since the last annual update and discuss the Company's financial condition.

III. AGREEMENT TO SUPPORT SETTLEMENT; NON-WAIVER.

A. The Stipulating Parties, and their agents, witnesses, and representatives, will act in good faith to support the reasonableness of this Stipulation in any hearing before the Commission and any proposed order or brief in this docket; provided, however, that the settlement of any issue pursuant to this Stipulation shall not be cited as precedent by any of the Stipulating Parties in any other proceeding or docket before this Commission or on appeal before the North Carolina Court of Appeals or North Carolina Supreme Court. The provisions of this Stipulation do not necessarily reflect any position asserted by any of the Stipulating Parties. Rather, they reflect settlement among the Stipulating Parties as to all issues and, notwithstanding the items agreed and stipulated to in Section II.A. - I. above, no Stipulating Party waives the right to assert any position on any issue in any future docket before the Commission. The Stipulating Parties further agree that this Stipulation is in the public interest because it reflects a give-and-take settlement of contested issues.

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

IV. INTRODUCTION OF TESTIMONY AND WAIVER OF CROSS-EXAMINATION.

The Stipulating Parties agree that all pre-filed testimony and exhibits of the Stipulating Parties, including any supplemental testimony filed in support of this Stipulation, may be received in evidence without objection, and each Stipulating Party waives all right to cross examine all of the Stipulating Parties' witnesses with respect to pre-filed testimony and exhibits. If, however, questions are asked by any Commissioner or non-Stipulating Party, then any Stipulating Party may respond to such questions by presenting testimony or exhibits and cross-examining any witness with respect to such testimony and exhibits; provided, however, that such testimony and/or exhibits shall not be inconsistent with this Stipulation.

V. STIPULATION BINDING ONLY IF ACCEPTED IN ITS ENTIRETY

This Stipulation is the product of negotiation and compromise of a complex set of issues, and no portion of this Stipulation is or will be binding on any of the Parties unless the entire Settlement Agreement and Stipulation is accepted by the Commission. If the Commission rejects any part of this Stipulation or approves this Stipulation subject to any change or condition, or if the Commission's approval of this Stipulation is rejected or conditioned by a reviewing court, the Stipulating Parties agree to meet and discuss the applicable Commission or court order within five business days of its issuance and to attempt in good faith to determine if they are willing to modify the Stipulation consistent with the order. No Party shall withdraw from the Stipulation prior to complying with the foregoing sentence. If any Party withdraws from the Stipulation, each Party retains the right to seek additional procedures before the Commission, including cross-examination of witnesses, with

respect to issues addressed by the Stipulation and shall not be bound or prejudiced by the terms and conditions of the Stipulation.

VI. COUNTERPARTS

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

The foregoing is agreed and stipulated to this the 6th day of December, 2023.

Public Staff — North Carolina Utilities Commission

By: /s/ James Bernier, Jr.
James Bernier, Jr.
Staff Attorney

Davia Newell
Staff Attorney

Burns, Day & Presnell, P.A.

By: /s/ Daniel C. Higgins
Daniel C. Higgins
Attorney for Red Bird Utility Operating Company, LLC