



**NORTH CAROLINA  
PUBLIC STAFF  
UTILITIES COMMISSION**

October 23, 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 – Application by Red Bird Utility Operating Company, LLC, 1630 Des Peres Road, Suite 140, St. Louis, Missouri 63131, and Baytree Waterfront Properties, Inc., 4 Stanley Ave., Thomasville, North Carolina 27360 for Authority to Transfer the Baytree Waterfront Properties, Inc., Wastewater Utility System and Public Utility Franchise in Windemere Pointe Subdivision in Montgomery County, North Carolina, and for Approval of Rates

Dear Ms. Dunston,

Attached for filing on behalf of the Public Staff in the above-referenced dockets is the public version of the testimony of D. Mike Franklin.

By copy of this letter, I am forwarding a copy of the redacted version to all parties of record by electronic delivery. Confidential information is located on pages 12-13, 16, and 19 of the testimony. The confidential version will be provided to those parties that have entered into a confidentiality agreement.

Sincerely,

Electronically submitted  
s/ James Bernier, Jr.  
Staff Attorney  
[james.bernier@psncuc.nc.gov](mailto:james.bernier@psncuc.nc.gov)

cc: Parties of Record

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**BEFORE THE NORTH CAROLINA UTILITIES COMMISSION****DOCKET NO. W-938, SUB 6****DOCKET NO. W-1328, SUB 8**

In the Matter of  
Application by Red Bird Utility Operating )  
Company, LLC, 1630 Des Peres Road, )  
Suite 140, St. Louis, Missouri 63131, and )  
Baytree Waterfront Properties, Inc., 4 )  
Stanley Drive, Thomasville, North Carolina )  
27360 for Authority to Transfer the Baytree )  
Waterfront Properties, Inc., Wastewater )  
Utility System and Public Utility Franchise )  
in Windemere Point Subdivision in )  
Montgomery County, North Carolina, and )  
for Approval of Rates )

**TESTIMONY OF  
D. MICHAEL FRANKLIN  
PUBLIC STAFF –  
NORTH CAROLINA  
UTILITIES COMMISSION**

**October 23, 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 9, 2020, by Red Bird Utility  
12          Operating Company, LLC (Red Bird), in Docket No. W-1328, Sub 8, and  
13          Baytree Waterfront Properties, Inc. (Baytree), in Docket No. W-938, Sub 6,  
14          for transfer of public utility franchise and for approval of rates (Joint  
15          Application)<sup>1</sup>. 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,  
18          Montgomery County environmental regulatory compliance, and assisting

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<sup>1</sup> Red Bird supplemented the Joint Application through filings made on October 21, 2020, June 2, 2021, December 12, 2022, and August 2, 2023.

1 the Accounting Division of the Public Staff with reviewing expenses and  
2 plant in service.

3 **Q. Please describe the Baytree service area and wastewater utility**  
4 **system.**

5 A. The Baytree system is located adjacent to the Pee Dee River/Lake Tillery  
6 and North Carolina Highway 24 in Montgomery County and serves  
7 approximately 26 wastewater customers in the Windemere Pointe  
8 Subdivision. The Baytree wastewater system was constructed and placed  
9 in service in the late 1980's and consists of a 13,000 gallons per day  
10 treatment and disposal system consisting of a 13,000-gallon septic tank, a  
11 13,000-gallon dosing tank with dual 15-horsepower dosing pumps,  
12 approximately 2,000 linear feet of 3-inch force main and a 52,000-square-  
13 foot low pressure pipe disposal site with seven leach fields to serve 31 lots  
14 in the Windemere Pointe Subdivision. An individual grinder pump or  
15 submersible effluent pump at each residence pumps wastewater from the  
16 residential septic tank to the wastewater force main that is then conveyed  
17 to the 13,000-gallon septic tank at the wastewater facility. In response to  
18 Public Staff Data Request No. 10, Red Bird stated that each resident is  
19 responsible for maintaining their individual grinder/submersible effluent  
20 pump.

1     **Q.     Have you conducted a site visit of the Baytree wastewater system and,**  
2           **if so, what were your observations?**

3     A.     On October 6, 2023, I visually inspected the Baytree wastewater system  
4           and was accompanied by a representative of Baytree's maintenance  
5           contractor, Hurley Backhoe Services, Inc. (Hurley). The wastewater system  
6           appears to be in fair condition. The septic tank lid has areas of concrete  
7           cracking and spalling. The grout encasing the manhole lids is cracked in  
8           multiple locations. The dosing pump station has no hoist mechanism for  
9           pump access. The hatch opening and closing mechanisms are corroded,  
10          and one hatch to the valve vault is missing the opening latch. There is no  
11          off-site alarm capability.

12          The system is inspected twice a year by Hurley, which records pump run  
13          time, pump drawdown, and sludge levels. The leach field lines are flushed,  
14          and any needed repairs performed. According to Hurley, the dosing pumps  
15          only operate for a few hours once a week, pumping effluent from the 13,000-  
16          gallon septic tank to the leach fields. Sludge from the 13,000-gallon septic  
17          tank is removed every two years, as required.

18          A new control panel was installed in 2019 after damage from a possible  
19          lightning strike. There is both an audible and visual high wastewater septic  
20          tank level alarm at the local control panel but there is no off-site notification  
21          capability. As a result, if the high-level alarm occurs, a nearby resident or

1 someone in the vicinity will hear the alarm and notify Baytree or Hurley of  
2 the alarm.

3 **Q. Briefly describe the results of your investigation of Montgomery**  
4 **County environmental regulatory compliance.**

5 A. I contacted the Montgomery County Environmental Health Office. They  
6 have not issued any warnings or violations to the Baytree wastewater  
7 system in the last 3 years. Furthermore, in response to Public Staff Data  
8 Request No. 10, Red Bird stated that Baytree has not received any  
9 correspondence from Montgomery County since 2019.

10 **Q. Did Red Bird provide Notice to Customers of the Joint Application?**

11 A. Yes. On September 25, 2023, the Commission issued an Order approving  
12 Red Bird's proposed Customer Notice. On September 29, 2023, Red Bird  
13 filed a Certificate of Service stating that the Notice to Customers was mailed  
14 or hand delivered by the date specified in the Customer Notice Order.

15 **Q. Has the Public Staff received any customer complaints?**

16 A. Between October 1, 2020, and October 9, 2023, the Public Staff Consumer  
17 Services Division did not receive any customer complaints from Baytree's  
18 wastewater customers.

19 **Q. Has the Public Staff received any consumer statement of position?**

20 A. As of October 23, 2023, the Public Staff has not received any consumer  
21 statements of position.

1   **Q.    Is Baytree providing safe and reliable service?**

2    A.    Yes. Based on the lack of warnings or violations from the Montgomery  
3           County Environmental Health Office and the lack of customer complaints  
4           over the past three years, I have determined that Baytree is providing safe  
5           and reliable service to its wastewater customers of the Windemere Pointe  
6           Subdivision.

7   **Q.    What are the present and proposed wastewater utility service rates?**

8    A.    Baytree's present rates, fees, and additional charges were approved in  
9           Docket Nos. W-938, Sub 5 and M-100, Sub 138, and have been in effect  
10          since January 1, 2017. Upon acquisition of the system, Red Bird proposes  
11          to charge the current Commission approved rates, fees, and additional  
12          charges for the Windemere Pointe Subdivision with the exception of the  
13          reconnection charge if wastewater utility service is cut off by the utility where  
14          the proposed fee is \$0.18 higher than the present fee. The present and  
15          proposed rates are as follows:

16       Wastewater Service Rates and Fees:

	<u>Present</u>	<u>Proposed</u>
17           Monthly Flat Rate	\$ 34.69	\$ 34.69
18		
19           Annual Availability Rate	\$ 139.90	\$ 139.90
20           Connection Charge	\$2,250	\$2,250
21           Reconnection Charge (if wastewater		
22           utility service is cut off by utility)	\$ 46.64	\$ 46.82
23           Monthly Finance Charge for Late	1%	1%
24           Payment for Bills Past Due 25 Days		

1   **Q.    What is your recommendation regarding the requested approval of**  
2       **rates?**

3    A.    The requested rates are primarily the current Commission-approved rates  
4       for Baytree except for the \$0.18 increase in the reconnection charge. This  
5       is a minimal increase over the Commission-approved rates and the  
6       proposed rates are considered just and reasonable.

7   **Q.    Based on your investigation, what is your opinion of Red Bird's ability**  
8       **to own and operate Baytree's wastewater system?**

9    A.    Public Staff witness John R. Hinton addresses Red Bird's financial ability to  
10       own and operate the wastewater system serving Windemere Pointe. Based  
11       on my investigation, I believe Red Bird, a subsidiary of Central States Water  
12       Resources, LLC, has the financial, technical, and managerial capabilities  
13       necessary to provide wastewater utility service to customers in Windemere  
14       Point. Therefore, I recommend the Commission approve the transfer of the  
15       wastewater system from Baytree to Red Bird, subject to certain conditions  
16       described below.

17   **Q.    Do you agree with the prefiled direct testimony of Red Bird witness**  
18       **Josiah Cox that the Baytree wastewater system is either distressed,**  
19       **troubled, or requires infusion of capital investment that the current**  
20       **owner is either unable or unwilling to provide?**

21    A.    Based on the recent performance of the wastewater system, including the  
22       lack of County regulatory issues, the lack of customer complaints, the



1 routine maintenance performed, and improvements made by Baytree,  
2 including replacement of the dosing tank control panel and rewinding of  
3 dosing pump motors, I do not consider the Baytree wastewater system to  
4 be distressed or troubled. Further, Baytree has made capital improvements  
5 to continue to provide safe and reliable service.

6 **Q. What adjustments have you made to plant additions since the last rate**  
7 **case?**

8 A. In response to Public Staff Data Request No. 6, Red Bird provided invoices  
9 and depreciation estimates for plant additions made since Baytree's last  
10 rate case in Docket No. W-938, Sub 3. My recommended adjustments to  
11 those plant additions include reducing the life of the dosing pump motors  
12 from ten years to seven years, the control panel from 20 years to ten years,  
13 and the check valve and laterals from 50 years to ten years. This adjustment  
14 is based on the environment in which the equipment is installed, the correct  
15 description of the equipment installed, and my engineering background and  
16 experience. I adjusted the cost of the pump motor placed in service on  
17 January 21, 2019, from \$7,122 to \$4,369. I also adjusted the control panel  
18 from \$4,500 to \$7,253, which was also placed in service on January 21,  
19 2019, based on work performed as described in the invoice.

20 **Q. What is your recommendation concerning an acquisition adjustment?**

21 A. The Public Staff does not support the requested acquisition adjustment. As  
22 a general proposition, when a public utility buys assets that have previously

1        been dedicated to public service as utility property, the acquiring utility is  
2        entitled to include in rate base the lesser of the purchase price or the net  
3        original cost of the acquired facilities owned by the seller at the time of the  
4        transfer. See Order Approving Transfer and Denying Acquisition  
5        Adjustment, *Petition of Utilities, Inc. for Transfer of the Certificate of Public*  
6        *Convenience and Necessity for Providing Sewer Utility Service on North*  
7        *Topsail Island and Adjacent Mainland Areas in Onslow County from North*  
8        *Topsail Water and Sewer, Inc. and for Temporary Operating Authority,*  
9        Docket No. W-1000, Sub 5 (N.C.U.C. January 6, 2000) (W-1000, Sub 5  
10       Order).

11       The Commission has indicated "a strong general policy against the  
12       inclusion of acquisition adjustments in rate base subject to exceptions in  
13       appropriate instances." *Id.* at 24. In the W-1000, Sub 5 Order, the  
14       Commission discussed the circumstances when the rate base treatment of  
15       acquisition adjustments is proper. The Commission stated the following:

16                As should be apparent from an analysis of the Commission's  
17                previous Orders concerning this subject, a wide range of  
18                factors have been considered relevant in attempting to  
19                resolve this question, including the prudence of the purchase  
20                price paid by the acquiring utility; the extent to which the size  
21                of the acquisition adjustment resulted from an arm's length  
22                transaction; the extent to which the selling utility is financially  
23                or operationally "troubled;" the extent to which the purchase  
24                will facilitate system improvements; the size of the acquisition  
25                adjustment; the impact of including the acquisition adjustment  
26                in rate base on the rates paid by customers of the acquired  
27                and acquiring utilities; the desirability of transferring small  
28                systems to professional operators; and a wide range of other  
29                factors, none of which have been deemed universally

dispositive. Although the number of relevant considerations seems virtually unlimited, all of them apparently relate to the question of whether the acquiring utility paid too much for the acquired utility and whether the customers of both the acquired and acquiring utilities are better off after the transfer than they were before that time. This method of analysis is consistent with sound regulatory policy since it focuses on the two truly relevant questions which ought to be considered in any analysis of acquisition adjustment issues. It is also consistent with the construction of G.S. 62-111 (a) adopted in *State ex rel. Utilities Commission v. Village of Pinehurst*, 99 N.C App. 224,393 S.E.2d 111 (1990), *affd* 331 N.C. 278,415 S.E.2d 199 (1992), which seems to indicate that all relevant factors must be considered in analyzing the appropriateness of utility transfer applications. As a result, . . . the Commission should refrain from allowing rate base treatment of an acquisition adjustment unless the purchasing utility establishes, by the greater weight of the evidence, that the price the purchaser agreed to pay for the acquired utility was prudent and that both the existing customers of the acquiring utility and the customers of the acquired utility would be better off [or at least no worse off] with the proposed transfer, including rate base treatment of any acquisition adjustment, than would otherwise be the case. *Id.* at 27.

The prefiled direct testimony of witness Cox demonstrates that he understands that the customers of the acquired utility would need to be better off or at least no worse off as a result of the proposed transfer, including rate base treatment of any acquisition adjustment. Witness Cox identifies improved customer service, asset management via Utility Cloud software, professional operations, and access to capital as benefits that come with Red Bird's ownership and support an acquisition adjustment.

Witness Cox fails to acknowledge that customer service and professional operation can both be contracted to a third party by any current or acquiring utility. Red Bird has stated that it intends to use both third-party customer

1 service and contract operators for its systems in North Carolina. Witness  
2 Cox also outlined the benefits associated with Utility Cloud, a non-affiliated  
3 company, which Baytree or a different purchaser could pursue a contract  
4 with. There is no evidence to suggest that Windemere Pointe customers  
5 would be better off under Red Bird ownership with Red Bird hiring a contract  
6 operator, third-party customer service firm, or obtaining a contract with  
7 Utility Cloud, as compared to Baytree or a different purchaser doing the  
8 same.

9 On pages 22 and 28 of his prefiled direct testimony, Red Bird witness Cox  
10 testifies that the capital estimates are preliminary and the problems cannot  
11 be truly known until Red Bird has acquired and begun to operate a system.  
12 This raises the question of whether the capital investment is a tangible  
13 benefit due to its uncertainty.

14 In this transfer proceeding, as previously stated, no Montgomery County  
15 Environmental Health warnings or violations were identified for the Baytree  
16 wastewater system in the past three years. Therefore, the evidence  
17 demonstrates that there are no serious operational problems currently  
18 affecting the Baytree wastewater system and the system is being operated  
19 in a satisfactory manner.

20 Furthermore, Red Bird has not quantified “the impact of including the  
21 acquisition adjustment in rate base on the rates paid by customers of the  
22 acquired and acquiring utilities.” Inclusion in rate base of the Company's

1 requested acquisition adjustment to recover the entire difference between  
2 the purchase price and the residual net plant in service, as calculated by  
3 the Public Staff and provided in the prefiled testimony of Public Staff witness  
4 Hemanth Meda, Regulatory Analyst with the Accounting Division, would  
5 equate to a \$20.52 increase in wastewater monthly flat rates.<sup>2</sup> This is  
6 equivalent to a 59% increase in the wastewater monthly flat rate.

7 Approval of the proposed acquisition adjustment is not in the public interest.  
8 Red Bird has not established by the greater weight of the evidence that the  
9 benefits to Baytree's customers resulting from the allowance of rate base  
10 treatment of an acquisition adjustment in this case would offset or exceed  
11 the resulting burden or harm to customers associated therewith, including  
12 but not limited to the future rate impact of the requested acquisition  
13 adjustment and excessive due diligence expenses.

14 **Q. Briefly describe Red Bird's plans for capital improvements.**

15 A. In response to Public Staff Data Request No. 3, Red Bird intends to install  
16 new [BEGIN CONFIDENTIAL] [REDACTED]  
17 [REDACTED]  
18 [REDACTED] [END CONFIDENTIAL].

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<sup>2</sup> Rate impact is determined by dividing the respective revenue requirement included in the prefiled testimony of Public Staff witness Hemanth Meda by the 26 customers and by the number of months in a year.

1 It will be incumbent upon Red Bird to ensure the capital improvements are  
2 reasonable and prudent if they wish to have the capital investment  
3 associated with the improvements added to rate base and included in rates  
4 in a future rate case proceeding. Inclusion of the currently planned  
5 improvements totaling [BEGIN CONFIDENTIAL] [REDACTED] [END  
6 CONFIDENTIAL] for the wastewater system and based on the resulting  
7 revenue requirements to support the improvement costs as identified in the  
8 prefiled testimony of Public Staff witness Hemanth Meda would result in a  
9 \$84.38 per month increase in wastewater utility rates. This is equivalent to  
10 a 243% increase in the wastewater monthly flat rate.

11 **Q. What is the Public Staff's recommendation for Red Bird's due**  
12 **diligence expenses?**

13 A. The nature and magnitude of Red Bird's due diligence expenses in  
14 comparison to the purchase price amount suggests a lack of oversight. In  
15 response to Public Staff Data Request No. 7, Red Bird provided invoices to  
16 support their due diligence expense of \$70,799. Invoices were from seven  
17 different business entities, five law firms and two engineering firms, dated  
18 between September 2019 and August 2023. The invoices provided were  
19 heavily redacted and the description of the work performed was either  
20 vague and uninformative or no description beyond the name of the system  
21 was provided. Even with the scarcity of information provided in the redacted  
22 invoices, I strongly doubt the applicability of certain claimed due diligence  
23 expenses. Invoices from 21 Design Group totaling \$12,731 were not

1 provided and invoices from Burns, Day & Presnell totaling \$1,886 were  
2 entirely redacted including the invoiced amount. These omissions represent  
3 approximately 22% of the due diligence amount claimed. Furthermore, of  
4 the approximately 11 invoices from Engineering firm McGill Associates, P.A.  
5 (McGill), six invoices were dated after September 2020, the date of McGill's  
6 Preliminary Opinion of Probable Cost, which was filed as Confidential  
7 Attachment L of the Joint Application. Additionally, since Red Bird's North  
8 Carolina based attorney is affiliated with the law firm of Burns, Day &  
9 Presnell, P.A., their invoices are more likely expenses associated with this  
10 transfer proceeding before the Commission and not due diligence.

11 Revenue requirements to support the due diligence costs requested by Red  
12 Bird, as identified in the prefiled testimony of Public Staff witness Meda,  
13 would result in a \$43.23 per month increase in wastewater utility rates. This  
14 is equivalent to a 125% increase in the wastewater monthly flat rate. On  
15 page 29 of his prefiled direct testimony, Red Bird witness Cox testifies that  
16 "some potential acquisitions which, after proper due diligence, are shown to  
17 be not in the best interests of CSWR or its operating subsidiary's  
18 ratepayers" and that due diligence expenses are legitimate business  
19 expenses and this "opportunity cost" should be shared with ratepayers, just  
20 as the benefits of completed acquisitions are shared. The Public Staff's  
21 position is that the majority of these costs should be absorbed by Red Bird  
22 as a cost of doing business and not be included in rate base.

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 less than \$10,000. This amount is  
4 consistent with previous transfer applications, including those in Docket No.  
5 W-354, Sub 396, in which the Public Staff recommended due diligence  
6 expenses of \$8,229 be included in rate base, and Docket No. W-218, Sub  
7 527, in which the Public Staff recommended, and the Commission  
8 approved, 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 issue an order  
13 approving the application upon finding that the proposed grant or transfer,  
14 among other things, is in the public interest. The Commission cannot  
15 determine if the transfer is in the public interest if it does not know the impact  
16 to rate base and customer rates due to an acquisition adjustment and  
17 allowance of due diligence expenses. Additionally, Red Bird has indicated  
18 that in its first rate case it will seek Uniform Rates. Deferring the decision on  
19 acquisition adjustments and due diligence expenses for multiple utility  
20 systems to a future rate case would unduly complicate and encumber the  
21 rate case proceeding. The information required for an acquisition  
22 adjustment decision is known, as is the majority of the due diligence  
23 expenses. As a result, there is no advantage to deferring to the future rate



1 case the decision on the Baytree acquisition adjustment and due diligence  
2 expenses. Doing so is not in the public interest. Instead, those decisions  
3 should be made as part of this transfer proceeding consistent with long  
4 established procedure before the Commission.

5 **Q. Do you have concerns with Red Birds proposed operating expenses?**

6 A. Yes. In Confidential Attachment E.3 of the Joint Application, Red Bird  
7 identifies their expected total outside labor expenses as [BEGIN  
8 CONFIDENTIAL] [REDACTED]

9 [REDACTED] [END CONFIDENTIAL]. While it is unclear whether this  
10 includes any corporate allocation amount, the amount identified by Red Bird  
11 is significantly more than the \$770 approved in Baytree's last rate case for  
12 salary and wages expense. Additionally, Red Bird's expected outside labor  
13 expenses and employee salary expenses exceed the \$575 provided by Red  
14 Bird in the Joint Application<sup>3</sup> for 12 Months Ended December 31, 2022 for  
15 Baytree's total salaries paid to owner and contract labor.<sup>4</sup> While future  
16 operating expenses are not addressed in this proceeding, the Public Staff  
17 will ensure in any future Red Bird rate case that these expenses, as with all  
18 expenses, are reasonable and prudent.

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<sup>3</sup> See page 4, lines 10 and 32, of the Application filed with the Commission on August 2, 2023.

<sup>4</sup> Excluding owner.

1     **Q.     What is your recommendation concerning the bond for the wastewater**  
2     **utility system?**

3     A.     North Carolina Session Law 2023-137, Section 24 revised North Carolina  
4     General Statute § 62-110.3(a) to read that no franchise may be granted to  
5     any water or sewer utility company “until the applicant furnishes a bond,  
6     secured with sufficient surety as approved by the Commission, in an amount  
7     not less than twenty-five thousand dollars (\$25,000).” In addition, the bond,  
8     “shall be conditioned upon providing adequate and sufficient service within  
9     all the applicant's service areas.” Further, N.C.G.S. § 62-110.3(a) provides:

10                     In setting the amount of a bond, the Commission shall  
11                     consider and make appropriate findings as to the following:

- 12                     (1)     Whether the applicant holds other water or  
13                                 sewer franchises in this State, and if so its  
14                                 record of operation,  
15                     (2)     The number of customers the applicant now  
16                                 serves and proposes to serve,  
17                     (3)     The likelihood of future expansion needs of the  
18                                 service,  
19                     (4)     If the applicant is acquiring an existing  
20                                 company, the age, condition, and type of the  
21                                 equipment, and  
22                     (5)     Any other relevant factors, including the design  
23                                 of the system.

24                     Commission Rules R7-37 and R10-24 restate and reaffirm most of these  
25                     provisions and requirements although the Commission Rules have not been  
26                     updated to reflect the revised bond amount required by N.C.G.S. § 62-  
27                     110.3. The amount of bond seeks to ensure the continued provision of  
28                     adequate and sufficient wastewater services in the event a wastewater

1 utility is unable to provide such service due to financial constraints,  
2 mismanagement, and/or other factors. The factors and findings set forth in  
3 N.C.G.S. § 62-110.3(a)(1) – (5) make clear that the bond amount depends  
4 heavily on the applicant's financial, managerial, and technical expertise, the  
5 applicant's prior performance where applicable, the number of current and  
6 projected future wastewater customers, system expansion plans and  
7 needs, the complexity of the applicant's system and facilities, and any other  
8 factors that bear upon the risk of the applicant providing inadequate,  
9 inconsistent, and/or insufficient wastewater services. N.C.G.S. § 62-110.3  
10 and Commission Rules R7-37 and R10-24 make it clear that a higher risk  
11 of deficient wastewater services necessitates a higher bond amount.

12 While Red Bird does not have a history of operations and management in  
13 North Carolina, due to the small customer size and the relative simplicity of  
14 the Baytree wastewater system, I recommend that a \$35,000 bond be  
15 posted by Red Bird.

16 **Q. What is your recommendation regarding the requested transfer of the**  
17 **public utility franchise?**

18 A. While the Public Staff has found that Red Bird has the financial, technical,  
19 and managerial ability to own and operate the Baytree wastewater system,  
20 the Public Staff's support of the requested transfer is contingent on the  
21 Commission adopting the following conditions: (1) denial of an acquisition  
22 adjustment; (2) the amount included in rate base not exceeding the net plant

1 in-service amount of [BEGIN CONFIDENTIAL] [REDACTED] [END  
2 CONFIDENTIAL] plus \$10,000 in due diligence expenses; and (3) requiring  
3 a bond of \$35,000. The Public Staff does not consider the Baytree  
4 wastewater system to be troubled and estimates that the requested  
5 acquisition adjustment and the due diligence expenses of \$70,799 could  
6 increase the monthly flat wastewater rate by \$63.74 per month, or 184%.  
7 The Public Staff does not believe that such an increase in customer rates  
8 would be in the best interest of the Baytree wastewater system customers  
9 and would leave them worse off.

10 **Q. Does this conclude your testimony?**

11 **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.

## 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 23rd day of October, 2023.

Electronically submitted  
/s/James Bernier  
Staff Attorney