

**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
Application of Baytree Waterfront Properties,)
Inc., for Transfer of Public Utility Franchise to) ORDER FINDING APPLICATION
Red Bird Utility Operating Company, LLC) INCOMPLETE
d/b/a Red Bird Water in Davidson County,)
North Carolina, and for Approval of Rates)

BY THE PRESIDING COMMISSIONER: On June 30, 2023, North Carolina Session Law 2023-67 entitled “An Act to Expedite Transfer of Water or Wastewater Public Utilities” (the Act), was signed into law by Governor Roy Cooper, having been previously ratified by the North Carolina General Assembly. The Act provides timelines for the Commission’s consideration of applications for grants or transfers of certificates of public convenience and necessity (CPCN) for certain water and wastewater systems.

Section 1.(b) of the Act applies to applications for grant or transfer of CPCNs for water and wastewater systems currently pending before the Commission as of June 30, 2023. Among other things, this section requires the Commission to provide notice by July 31, 2023, whether any pending application is complete.

On June 30, 2023, the Commission issued an Order Requiring Report of the Public Staff and Initiating Rulemaking Proceeding which, in part, directed the Public Staff to file on or before July 25, 2023, whether each application identified by the Public Staff as subject to the provisions of Section 1.(b) of the Act is complete and identifying any deficiency in any identified application that is not complete.

On July 25, 2023, the Public Staff filed a letter stating that it deems the application filed in this docket “incomplete because the information included in the application and on file with the Commission is too outdated for the Public Staff to make a recommendation and for the Commission to make a determination as to whether the application should be approved.” The Public Staff further states in its letter that it recommends the Commission “(1) determine that the application is incomplete and (2) direct the Company to file an amended application form and all required exhibits with information current as of no earlier than December 31, 2022.”

For applications subject to the provision of Section 1 of the Act, the Commission must issue an order approving the application within the later of 180 days after (1) the act becoming law, or (2) the filing of a completed application, if the Commission “finds that the proposed grant or transfer, including adoption of existing or proposed rates for the

transferring utility, is in the public interest, will not adversely affect service to the public under any existing franchise, and the person acquiring said franchise or certificate of public convenience and necessity has the technical, managerial, and financial capabilities necessary to provide public utility service to the public.”

In making its determination on whether applications meet the statutory requirements and are in the public interest, the Commission considers the evidence presented in each docket including the investigation of the Public Staff and the ensuing recommendation. As provided under N.C. Gen. Stat. §. 62-15, it is the duty of the Public Staff to “[i]ntervene on behalf of the using and consuming public, in all Commission proceedings affecting the rates or service of any public utility.” The ability of the Commission to make the findings required under Section 1.(b) of the Act and therefore, issue an order approving the application will be hindered in any docket that does not include a recommendation of the Public Staff on the application. The Public Staff has stated in its letter that it is unable to make a recommendation on this application without updated financial information from the applicant.

Based on the foregoing and review of the application and filings in this docket, the Presiding Commissioner finds that the application is incomplete. The applicant shall file an amended application form and all required exhibits with information current as of no earlier than December 31, 2022. No later than 5 business days after the amended application is filed, the Public Staff shall file with the Commission and serve upon the applicant a notice regarding whether the amended application is complete or state if the amended application is incomplete and identify any deficiencies.

IT IS, THEREFORE, SO ORDERED.

ISSUED BY ORDER OF THE COMMISSION.

This the 28th day of July, 2023.

NORTH CAROLINA UTILITIES COMMISSION

A handwritten signature in cursive script that reads "Tamika D. Conyers". The signature is written in black ink and is positioned above the printed name of the signatory.

Tamika D. Conyers, Deputy Clerk