

**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 by Red Bird Utility Operating)	
Company, LLC, and Baytree Waterfront)	MOTION TO REVISE
Properties Inc. for Transfer of Public)	ORDER SCHEDULING
Utility Franchise and for Approval of)	HEARINGS AND
Rates)	DISCOVERY

NOW COMES THE PUBLIC STAFF – North Carolina Utilities Commission (Public Staff), by and through its Executive Director, Christopher J. Ayers, pursuant to Commission Rule R1-7(a)(5), and respectfully moves the North Carolina Utilities Commission (Commission) to revise for good cause its Order, issued September 13, 2023, Scheduling Hearings, Establishing Discovery Guidelines, and Requiring Customer Notice. In support of this Motion, the Public Staff respectfully shows the Commission the following:

1. On October 9, 2020, Red Bird Utility Operating Company, LLC d/b/a Red Bird Water (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 approval of rates. Red Bird filed an amendment to the Application on October 21, 2020.

Baytree currently serves 26 residential customers in the Windemere Pointe Subdivision.

2. On December 17, 2020, the Public Staff filed a deficiency letter outlining information that was needed to complete the Application. On June 2, 2021, and December 12, 2022, Red Bird filed supplemental material to address deficiencies identified by the Public Staff. On June 15, 2023, Red Bird filed a letter indicating that it considered the Application to be complete.

3. On July 25, 2023, the Public Staff filed a second deficiency letter outlining additional, updated information that was needed to complete the Application and recommended that the Commission determine that the Application is incomplete. On July 28, 2023, the Commission issued an Order Finding Application Incomplete.

4. Pursuant to the Commission's Order, on August 2, 2023, Red Bird filed additional information to address the issues identified in the Public Staff's July 25, 2023, letter.

5. On August 9, 2023, the Public Staff filed a letter with the Commission indicating that this docket now includes all the information required for a complete Application.

6. Based upon the foregoing, the Commission issued an Order on September 13, 2023 establishing the procedural schedule, including the filing requirements of Red Bird, Baytree, the Public Staff, and other parties, and required that Red Bird consult with the Public Staff to develop a public notice to provide to all

affected customers of the Application, which includes the proposed rates and the scheduled hearings for approval by the Commission (Scheduling Order).

7. On September 20, 2023, the Commission approved a Notice to Customers, and on September 29, 2023, Red Bird filed its Certificate of Service.

8. The Scheduling Order states, in pertinent part, at page 2, paragraph 3: “Formal discovery requests related to the ... prefiled direct testimony shall be served on ... not later than 14 calendar days prior to the deadline for filing of the Public Staff and intervenor testimony.” The Scheduling Order sets the deadline for filing of the Public Staff and intervenor testimony as October 17, 2023. As such, the deadline for formal discovery requests is October 3, 2023.

9. The Scheduling Order also sets October 9, 2023 as the deadline for Red Bird and Baytree’s prefiled direct testimony and exhibits.

10. As written, the Scheduling Order closes formal discovery before the filing of any prefiled direct testimony and does not provide the Public Staff with an opportunity to perform its functions and investigations under N.C. Gen. Stat § 62-15(d).

11. The Scheduling Order also sets a hearing date for public testimony but did not include any requirement or deadlines for reports and responses thereto regarding the public hearing.

12. The Commission provided in the Scheduling Order that it may be modified for good cause. Based on the foregoing, good cause exists to modify the Scheduling Order to revise the discovery deadlines.

13. The Public Staff and Red Bird have consulted and agreed upon the attached proposed revised scheduling order. The attached proposed revised scheduling order does not change the hearing dates for public or expert witness testimony or change the deadlines for significant protests or motions to intervene. As such, Public Staff and Red Bird agree that no additional notice to customers is required.

WHEREFORE, for the reasons set forth above, the Public Staff respectfully requests that the Commission grant this motion and enter the proposed revised scheduling order attached hereto and filed herewith.

Respectfully submitted this the 10th day of October, 2023.

PUBLIC STAFF
Christopher J. Ayers
Executive Director

Lucy E. Edmondson
Chief Counsel

Electronically submitted
/s/ James Bernier, Jr.
Staff Attorney
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CERTIFICATE OF SERVICE

I do hereby certify that I have this day served a copy of the foregoing Motion on each of the parties of record in this proceeding or their attorneys of record either by electronic delivery or by deposit in the U.S. Mail, postage prepaid.

This the 10th day of October, 2023.

Electronically submitted
/s/ James Bernier, Jr.

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

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

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

<p>In the Matter of Joint Application by Red Bird Utility Operating Company, LLC d/b/a Red Bird Water and Baytree Waterfront Properties, Inc. for Transfer of Public Utility Franchise and for Approval of Rates</p>	<p>))))))</p>	<p>REVISED ORDER SCHEDULING HEARINGS AND ESTABLISHING DISCOVERY GUIDELINES</p>
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BY THE COMMISSION: On October 9, 2020, Red Bird Utility Operating Company, LLC d/b/a Red Bird Water (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 approval of rates. Red Bird filed an amendment to the Application on October 21, 2020. Baytree currently serves 26 residential customers in the Windemere Pointe Subdivision.

Upon acquisition, Red Bird plans to make approximately \$163,000 in wastewater utility system capital improvements, including installing Mission Remote Monitoring and flow metering, a hoist on the pump station and dosing pumps, and a new pump control panel. Red Bird also plans to make pump valve vault improvements, as well as other improvements to the system that, according to Red Bird, are necessary to ensure proper operation of the

wastewater utility system and to provide safe and reliable service to customers.

The present rates for the Windemere Point Subdivision were approved in Docket Nos. W-938, Sub 5 and M-100, Sub 138, and have been in effect since January 1, 2017. Upon acquisition, Red Bird plans to adopt Baytree's current rates and charges, which are as follows:

Monthly Flat Sewer Rate:	\$34.69
Annual Availability Rate:	\$139.90
Connection Charge:	\$2,250
Reconnection Charge:	
If sewer utility service is cut off by utility	\$46.64

On December 17, 2020, the Public Staff filed a deficiency letter outlining information that was needed to complete the Application. On June 2, 2021, and December 12, 2022, Red Bird filed supplemental material to address deficiencies identified by the Public Staff. On June 15, 2023, Red Bird filed a letter indicating that it considered the Application to be complete.

On July 25, 2023, the Public Staff filed a second deficiency letter outlining additional, updated information that was needed to complete the Application and recommended that the Commission determine that the Application was incomplete. On July 28, 2023, the Commission issued an Order Finding Application Incomplete.

Pursuant to the Commission's Order, on August 2, 2023, Red Bird filed additional information to address the issues identified in the Public Staff's July 25, 2023, letter.

On August 9, 2023, the Public Staff filed a letter with the Commission indicating that this docket now included all the information required for a complete Application.

Based upon the foregoing, the Commission issued an Order on September 13, 2023, establishing the procedural schedule including filing requirements of Red Bird, Baytree, the Public Staff, and other parties, and required that Red Bird consult with the Public Staff to develop a public notice to provide to all affected customers of the Application, which includes the proposed rates and the scheduled hearings for approval by the Commission (Scheduling Order).

On September 20, 2023, the Commission approved a Notice to Customers, and on September 29, 2023, Red Bird filed its Certificate of Service.

On October 5, 2023, the Public Staff filed a motion requesting to revise the Scheduling Order. Under the Scheduling Order, formal discovery would close before any prefiled testimony was filed. Moreover, the Scheduling Order did not provide for the filing of reports and responses regarding the public witness hearing. The proposed revised scheduling order would not change the hearing dates for the public or expert witness hearings, or change the deadlines for significant protests or motions to intervene. As such, a revised customer

notice is not needed. Good cause therefore exists to modify the Scheduling Order as requested by the Public Staff and supported by Red Bird.

The modified guidelines regarding discovery in this docket, subject to modification for good cause shown, are as follows:

1. Any deposition which a party desires to take shall be taken before the deadline for filing of the Public Staff and intervenor testimony. Notice of deposition shall be served on all parties at least seven days prior to the taking of the deposition. Notice of deposition and all other discovery notices, requests, and motions shall be served on the appropriate parties by hand delivery or facsimile, or by electronic delivery if the receiving party has agreed to receipt by electronic delivery.

2. Any motion for subpoena of a witness to appear at the expert witness hearing shall be filed with the Commission before the deadline for the filing of the Public Staff and intervenor testimony, shall be served by hand delivery or facsimile to the person sought to be subpoenaed at or before the time of filing with the Commission, and shall make a reasonable showing that the evidence of such person will be material and relevant to an issue in the proceeding. See N.C. Gen. Stat. § 62-62. Unless an objection is filed, the Chief Clerk shall issue the requested subpoena 24 hours after such motion is filed.

3. Formal discovery requests related to the Application and Red Bird and Baytree's prefiled direct testimony shall be served on Red Bird or Baytree, or both, not later than October 12, 2023. The party served shall have up to ten

calendar days to file with the Commission objections to discovery requests on an item-by-item basis, but in no event shall objections be filed later than ten calendar days prior to the deadline for the filing of the Public Staff and intervenor testimony.

4. Formal discovery requests of the Public Staff or intervenors shall be served not later than 33 calendar days after such testimony is filed. The party served shall have up to three calendar days to file with the Commission objections to the discovery requests on an item-by-item basis. In the event that the third day falls on a weekend or holiday, the relevant party shall have until the first business day after the third calendar day to take the specified action.

5. Formal discovery requests related to prefiled rebuttal testimony shall be served on Red Bird or Baytree, or both, not later than three calendar days after such testimony is filed. The party served shall have up to three calendar days to file with the Commission objections to the discovery requests on an item-by-item basis. Discovery related to rebuttal testimony shall be limited to new material introduced in such rebuttal testimony and will be carefully scrutinized upon objection that such discovery should have been sought during the initial period of discovery. In the event that the third calendar day falls on a weekend or holiday, the relevant party shall have until the first business day after the third calendar day to take the specified action.

6. Discovery requests need not be filed with the Commission when served; however, any party filing objections shall attach a copy of the relevant

discovery request to the objections. Each discovery request, or part thereof, to which no objection is filed shall be answered by the time objections are due, subject to other agreement of the affected parties or other order of the Commission. Upon the filing of objections, the party seeking discovery shall have two calendar days to file a motion to compel with the Commission, and the party objecting to discovery shall have one calendar day thereafter to file a response. All objections, motions to compel, and responses shall be served on the other affected party at or before the time of filing with the Commission.

7. A party shall not be granted an extension of time to pursue discovery because of that party's late intervention or other delay in initiating discovery.

The Commission recognizes that in the past most discovery has been conducted in an informal manner without the need for Commission involvement or enforcement, and that such has been generally successful. The above guidelines are without prejudice to the parties conducting informal discovery or exchanging information by agreement at any time with the understanding that such will not be enforceable by the Commission if outside the guidelines.

IT IS, THEREFORE, ORDERED as follows:

1. That a hearing for the purpose of receiving public witness testimony on the Application is hereby scheduled to begin at 7:00 p.m. on Wednesday, October 18, 2023, in the Montgomery County Courthouse, 108 E. Main Street, Troy, North Carolina 27371. The Commission may cancel the public

witness hearing if no significant protests are received on or before Wednesday, October 11, 2023;

2. That the public witness hearing will be conducted solely for the purpose of receiving the testimony of customers in accordance with Commission Rule R1-21(g). The Commission reserves the right to limit testimony at the public witness hearing pursuant to Commission Rule R1-21(g)(5);

3. That Baytree and Red Bird are required to file separate, verified reports addressing all customer service and service quality complaints expressed during the customer hearing held on Wednesday, October 18, 2023, within 14 days of the conclusion of the customer hearing. The Public Staff shall and other intervenors may file a verified response and any comments to Baytree's and Red Bird's reports on or before Wednesday, November 15, 2023. Because such verified response will not be filed until after the evidentiary hearing, Baytree and Red Bird shall be allowed to file a verified Reply to the Public Staff's response within seven days of that response being filed, should they desire to do so.

4. That a hearing for the purpose of receiving expert witness testimony on the Application is scheduled to begin at 1:00 p.m. on Monday, November 6, 2023, and continuing as necessary until conclusion. The hearing will be held in Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina 27603;

5. That the parties shall comply with the discovery guidelines established herein and shall work in a cooperative manner as to discovery;

6. That petitions to intervene in this proceeding shall be filed pursuant to Commission Rules R1-5 and R1-19 not later than Wednesday, October 11, 2023;

7. That Red Bird and Baytree's prefiled direct testimony and exhibits shall be filed on or before Monday, October 9, 2023;

8. That the Public Staff and other intervenors prefiled direct testimony and exhibits of shall be filed on or before Monday, October 23, 2023; That Red Bird and Baytree's prefiled rebuttal testimony and exhibits, if any, shall be filed on or before Monday, October 30, 2023;

9. That an officer or representative from Red Bird and Baytree is required to appear before the Commission at the time and place of the expert witness hearings to testify concerning any of the information contained in the Application;

10. That any parties filing supporting exhibits in Excel format shall provide the Commission Staff electronic versions of the exhibits filed in native Excel format via email at NCUCexhibits@ncuc.net, including all of the supporting tabs and formulas, within three days of the filing of such exhibits (or within three days of the issuance of this order if already filed with the Commission); and that any parties filing exhibits and workpapers that include tables of numbers and

calculations shall provide the Public Staff and any other party upon request an electronic version of all such exhibits and workpapers, with formulas intact;

11. That Red Bird and Baytree shall consult with all other parties and file no later than Wednesday, November 1, 2023: (1) a list of witnesses to be called at the expert witness hearing; (2) the order of witnesses; and (3) each party's estimated time for cross-examination. If the parties cannot agree, the remaining parties shall, no later than noon on Friday, November 3, 2023, make a filing indicating their points of disagreement with Red Bird and Baytree's filing.

ISSUED BY ORDER OF THE COMMISSION.

This the ____ day of _____, 2023.

NORTH CAROLINA UTILITIES COMMISSION

A. Shonta Dunston, Chief Clerk