

OFFICIAL COPY

Oct 30 2023

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

I. INTRODUCTION

2 A. My name is Josiah Cox. My business address is 1630 Des Peres Road, Suite 140, St.
3 Louis, Missouri, 63131. I am President of Red Bird Utility Operating Company, LLC
4 (“Red Bird”). I also am President of CSWR, LLC, (“CSWR”) a Red Bird affiliate.

7 A. Yes, I am.

9 A. The subject of these dockets is the Application for Transfer of Public Utility Franchise
10 and for Approval of Rates (“Joint Application”) filed in these dockets by Red Bird and
11 Baytree Waterfront Properties, Inc. (“Baytree”). The Joint Application seeks Commission
12 approval for Red Bird to acquire all utility assets currently used by Baytree and to provide
13 wastewater utility services to customers in the Windemere Pointe subdivision in
14 Montgomery County, and to adopt Baytree’s Commission-approved rates. In testimony

1 filed October 23, Public Staff witnesses Michael Franklin and John Hinton acknowledge
2 Red Bird has the technical, managerial and financial qualifications required to acquire,
3 own, and operate Baytree's wastewater system, and appear to have conditionally
4 recommended Commission approval of the Joint Application. However, Mr. Franklin
5 expressed Public Staff's concerns and reservations regarding certain aspects of the
6 proposed transactions. My rebuttal testimony addresses those concerns and reservations.

7 Specifically, my rebuttal testimony addresses the following issues raised in
8 testimony filed by Public Staff's witnesses:

- 9 • The contention that the Baytree system is not a "troubled" utility;
- 10 • Public Staff's contention that no "acquisition adjustment" should be allowed in
11 connection with the proposed acquisition;
- 12 • Concerns expressed by Mr. Franklin regarding due diligence costs Red Bird will
13 incur in connection with this transaction;
- 14 • Public Staff's claims regarding the effect approval of this acquisition would have
15 on customer rates; and

16 I also will reiterate the many benefits Red Bird's proposed acquisition would bring
17 to customers served by the Baytree wastewater system both immediately and in the long
18 term.

19 In addition, I will briefly address concerns expressed in the testimony of Public
20 Staff's witness John Hinton regarding CSWR's ability to provide capital necessary to
21 acquire, make required upgrades and improvements, and operate the Baytree systems after
22 closing.

1 In separate rebuttal testimony filed by CSWR witness Caitlin O'Reilly, Red Bird
2 will address accounting issues raised in the testimony of Public Staff's witness Hemanth
3 Meda.

4 **II. IS THE BAYTREE SYSTEM A "TROUBLED" UTILITY**

5 **Q. WHAT IS MR. FRANKLIN'S ASSESSMENT OF THE OVERALL**
6 **CONDITION OF BAYTREE AND ITS UTILITY FACILITIES?**

7 A. At page 6 of his prefiled testimony Mr. Franklin states that "[b]ased on the lack of
8 warnings or violations from the Montgomery County Environmental Health Office and the
9 lack of customer complaints over the past three years . . . Baytree is providing safe and
10 reliable service to its wastewater customers . . ."

11 **Q. DO YOU CONCUR WITH MR. FRANKLIN'S ASSESSMENT?**

12 A. I do not concur with Mr. Franklin's assessment. In preparation for this testimony a
13 review of available compliance documentation for the Baytree system was completed to
14 assess the compliance history and competency of the existing ownership. As a result of that
15 review a number of trends in reporting, facility status, and enforcement action were noted
16 that indicate the existence of compliance and management issues at the facility. The facility
17 received numerous notices of violation (NOVs) and civil penalty (CP) assessments over
18 the period observed with NOVs and CPs issued monthly for monitoring reporting that was
19 not submitted for previous months. Each violation stated that while the reporting had been
20 completed and submitted, the facility owner or responsible official failed to sign the reports
21 in order for them to be accepted. In fact, the notices stated the owner "refused to sign" the
22 reports as required by law. This resulted in monthly fines of \$10,083.44 being issued for
23 two missing reports and to cover the enforcement costs associated with issuing the NOVs

1 and CPs. It is unclear if the state succeeded in collecting these fines. However, because
2 there is no record of the owner responding to the NOVs or CPs to request the penalties be
3 waved, those fines likely remain outstanding. This pattern continued every month until
4 August 2022 when, inexplicably, the owner began to sign reports.

5 Reports available after August 2022 show two consistent issues with facility
6 performance/status. First, each report shows the facility consistently exceeding its flow
7 limits in both monthly average flow (20,000 gallons per day on average) and daily
8 maximum flow (30,000 gallons per day). This indicates the facility is receiving more flow
9 than it is permitted or designed for, possibly due to inflow and infiltration in the collection
10 system or overloading. Daily maximum exceedances ranged from more than 20,000
11 gallons per day to more than 50,000 gallons per day. This indicates that either inflow and
12 infiltration problems must be addressed or facility and drain field upgrades must occur to
13 account for the additional flows.

14 Another issue highlighted in the post-August 2022 reports is that no disinfection
15 process is currently in use at the facility. There is a chlorine dosing system present in the
16 Baytree system, but it is disconnected from the system because the piping is too corroded
17 to allow the chlorine feed to be connected. The reports also state that the "area manager"
18 (presumably either a DEQ or local official, or an operator of the facility) has received
19 quotes for the piping replacement required to reenale the disinfection system, but that the
20 owner refused to grant approval for the work to be performed. As the DEQ inspector
21 indicates in his report, this means that "all effluent that is sprayed has not been

1 disinfected." Such a practice represents a risk of introducing harmful pathogens to the
2 environment or causing health issues for people nearby.

3 Overall, the history I just recounted indicates conditional and design issues at the
4 facility that have been left unaddressed related to disinfection, potential collection system
5 or under-sizing issues, and a pattern of obstinance on the part of the existing ownership
6 leading to fines that could affect customers. I do not consider these to be indicia of a system
7 that is providing safe and reliable service.

8 **Q. DO YOU HAVE INFORMATION TO SUPPORT YOUR OPINION THAT**
9 **BAYTREE AND ITS UTILITY SYSTEMS ARE “TROUBLED”?**

10 A. Yes, I do. I also want to caution the Commission on relying too heavily on Mr.
11 Franklin’s assessment of the condition of Baytree’s wastewater system based on a single
12 visit to those facilities. That single visit provides a “snapshot” of what was observed on
13 that one day and may not – especially in the face of contrary historical evidence – provide
14 an accurate picture of the true condition of Baytree’s system or how Baytree has operated
15 that system over time. Therefore, in assessing whether Baytree’s system is “troubled” the
16 Commission should take a longer-term, more wholistic view. Just because Baytree’s system
17 currently complies with applicable regulations does not mean it will be in compliance in
18 the future.

19 **Q. WHAT EVIDENCE HAS RED BIRD IDENTIFIED IN ITS DUE**
20 **DILIGENCE ANALYSIS THAT SUGGESTS CONTINUED COMPLIANCE WILL**
21 **BE DIFFICULT, IF NOT IMPOSSIBLE, FOR BAYTREE TO ACHIEVE?**

22 A. In my direct testimony in this docket (pages 20-23) I described the preliminary
23 engineering assessment Red Bird performed of Baytree’s wastewater system as part of its
24 due diligence and the recommendations developed for repairs and upgrades required after

1 closing. That report, which was prepared by a third-party engineering firm in February
2 2021 identified necessary sewer system repairs and upgrades estimated to cost more than
3 \$155,000. Because of the effects of inflation in the more than two years since those
4 recommendations were prepared, I would expect current cost estimates of the
5 recommended projects to be substantially greater. Well run and managed water and
6 wastewater systems to not allow their facilities to deteriorate to the degree described in the
7 due diligence engineering report.

8 III. ACQUISITION ADJUSTMENT

9 **Q. MR. FRANKLIN STATES IN HIS TESTIMONY THAT PUBLIC STAFF**
10 **DOES NOT SUPPORT RED BIRD RECEIVING AN ACQUISITION**
11 **ADJUSTMENT IN THIS PROCEEDING. HOW DO YOU RESPOND?**

12 A. For reasons I will further explain later in my testimony, I believe the Commission
13 *need not* authorize an acquisition adjustment for Red Bird in this proceeding. Instead, the
14 Commission can and should defer to Red Bird's initial rate case involving the Baytree
15 system any decision regarding whether an acquisition adjustment should be granted. There
16 are three primary reasons for my deferral proposal.

17 First, based on the changes to the law applicable to water and wastewater
18 acquisitions that I discussed in my direct testimony, the Commission's focus in these types
19 of cases is limited to determining (1) whether the party seeking to acquire a system
20 possesses the technical, managerial, and financial capabilities necessary to provide public
21 utility services, and (2) whether the transaction is in the public interest. And insofar as the
22 public interest determination is concerned, that determination is to be made in the context
23 of the rates proposed to be in effect immediately after the system is transferred. Because

1 any acquisition adjustment deemed appropriate in this case would affect none of the factors
2 the Commission is to consider in a water or sewer transfer proceeding, it is neither
3 necessary nor appropriate to decide that issue at this point in this acquisition case.

4 Second, there is no need for the Commission to address the acquisition adjustment
5 in this case because after closing Red Bird plans to adopt and charge customers Baytree's
6 currently approved rates. Therefore, any decision regarding whether an acquisition
7 adjustment should be authorized can be deferred to the initial rate case involving the
8 Baytree systems when that issue and its impact on rates can be fully considered.

9 Finally, by deferring the acquisition adjustment issue to Red Bird's initial rate case
10 involving the Baytree system more and better information would be available regarding
11 the circumstances and factors that govern whether such an adjustment should be included
12 in rate base. As stated in the Commission's decision in the *Order Approving Transfer and*
13 *Denying Acquisition Adjustment*, issued in Socket No. W-100, Sub 5 (N.C.U.C. January 6,
14 2000) ("*North Topsail*"):

15 Although the number of relevant considerations seems virtually unlimited,
16 all of them apparently relate to the question of whether the acquiring utility
17 paid too much for the acquired utility and whether the customers of both the
18 acquired and acquiring utilities are better off after the transfer than they
19 were before that time . . . [T]he Commission should refrain from allowing
20 rate base treatment of an acquisition adjustment unless the purchasing utility
21 establishes, by the greater weight of the evidence, that the price the
22 purchaser agreed to pay for the acquired utility was prudent and that both
23 the existing customers of the acquiring utility and the customers of the
24 acquired utility would be better off [or at least no worse off] with the
25 proposed transfer, including rate base treatment of any acquisition
26 adjustment, than would otherwise be the case.

27
28 *North Topsail* at page 27.

1 Evidence regarding the purchase price presented in this case does not focus on
2 whether the purchase price Red Bird will pay for Baytree's assets is "reasonable."
3 However, Red Bird states the price was the lowest that could be negotiated after arms-
4 length negotiations between the two non-affiliated parties.

5 Because the transaction has not yet been completed, there is not – and cannot be –
6 any tangible evidence regarding how the proposed acquisition would affect either Baytree's
7 current customers or Red Bird's current and future customers. Public Staff's projections
8 regarding future rate impacts of the proposed acquisition are purely speculative and are
9 unreliable for that reason.

10 However, deficiencies in the current record regarding both the reasonableness of
11 the purchase price and the effect of the proposed acquisition on customers can be cured if
12 the acquisition adjustment issue is deferred to a future rate case. And customers would not
13 be harmed by such a deferral, because Red Bird's proposed adoption of Baytree's current
14 approved rates ensures that the rates charged to Red Bird's and Baytree's customers would
15 not change if Red Bird's acquisition of the Baytree system is approved.

16 For all the reasons just stated, I believe it makes sense to defer any decision on an
17 acquisition adjustment to Red Bird's initial North Carolina rate case including Baytree. As
18 previously noted, such a deferral will harm no one. Moreover, such a deferral is more
19 consistent with what I believe is the intent of recent changes to the statute governing
20 transfer of water and wastewater utilities, which narrows the scope of the Commission's
21 inquiry in such cases to public interest in the context of the rates proposed by the acquiring
22 utility and the technical, managerial, and financial qualifications of a potential acquiror.

IV. DUE DILIGENCE COSTS

1 **Q. PUBLIC STAFF RECOMMENDS THE COMMISSION APPLY A \$10,000**
2 **CAP ON DUE DILIGENCE COSTS INCURRED BY RED BIRD IN CONNECTION**
3 **WITH THE BAYTREE ACQUISITION. HOW DO YOU RESPOND?**

4 A. I disagree with Public Staff's recommendation for at least two reasons. First, as I
5 stated elsewhere in my testimony and reiterate here, changes to G.S. § 62-111 limit the
6 issues the Commission is to consider in water and wastewater acquisition cases. Because
7 the amount of due diligence costs Red Bird incurred does not reflect on the rates it proposes
8 to use if the transfer is approved, or its technical, managerial, or financial capabilities to
9 own and operate the Baytree systems, the amount of due diligence costs that should be
10 included in rate base is an issue that can and should be deferred to Red Bird's initial rate
11 case involving the Baytree system.

12 Second, because Red Bird is not proposing to change rates currently in effect for the
13 Baytree system, there is no need for the Commission to deal with any issue related to
14 transaction costs in this proceeding. Deferring that issue will harm or disadvantage no one.
15 Moreover, deferring the issue to a future rate case, when the full amount of transaction-
16 related costs will be known, will enable all parties to provide evidence regarding the
17 prudence of those costs and whether they should be included in the rate base used to
18 calculate rates.

19 In addition, I find many of the arguments Mr. Franklin makes regarding due
20 diligence costs to be unreasonable. For example, at page 13 of his testimony Mr. Franklin
21 claims invoices Red Bird supplied to support its due diligence costs included five law firms
22 and two engineering firms. While that number may sound excessive to Mr. Franklin and

1 Public Staff, there are good reasons why each of the firms Red Bird used was engaged to
2 assist in this transaction.

3 With regard to the law firms Red Bird engaged, what appears from the invoices to
4 be five different law firms actually is only three. Beckemeier LeMoine Law and The
5 Beckemeier Law Firm are one and the same. However, the firm's name changed over the
6 more than three years this application has been pending. The same is true for Black,
7 Slaughter & Black and Law Firm Carolinas; it's the same firm before and after a name
8 change. In terms of their respective roles in the due diligence process, Beckemeier
9 LeMoine Law has overall responsibility for coordinating all due diligence and closing
10 activities. To partially fulfill that obligation, it engaged Law Firm
11 Carolina to handle matters and issues related to ensuring Red Bird would obtain at closing
12 clear title to all utility assets it contracted to acquire from Baytree. This is significant,
13 because Public Staff will not recognize that a transfer application is complete until the
14 parties to the application establish that the seller owns or otherwise controls and is able to
15 convey to the purchaser all real property and easements, etc., required for operation of the
16 utility system. The remaining firm whose costs are included in the due diligence total is
17 Burns, Day & Presnell who is responsible for legal work required to secure Commission
18 approval of the proposed acquisition.

19 As part of the engineering portion of the due diligence costs, our affiliate group
20 routinely engages a third-party engineering firm to assess the condition of assets we
21 propose to purchase and to project what capital improvements will be necessary during the
22 first few years we own and operate those assets. For Baytree, McGill Associates performed

1 that assessment, and while the results of its efforts are preliminary – because we have found
2 the true condition and needs of systems we acquire can only really be determined after we
3 own and operate those systems – they are nonetheless invaluable for many reasons. Among
4 those is the need to respond to questions raised by regulators in acquisition cases regarding
5 future capital plans. The Commission’s own application form is a perfect example of why
6 information gathered during our engineering due diligence activities is essential to the
7 process for obtaining regulatory approval for acquisitions we seek to make. Questions 1
8 and 2 of the Commission’s *Application for Transfer of Public Utility Franchise and for*
9 *Approval of Rates* require applicants, like Red Bird, to provide the following information:

10 1. Are there any major improvements/additions required in the next
11 five years and the next ten years? Indicate the estimated cost of each
12 improvement/addition, the year it will be made, and how it will be financed
13 (long-term debt, short-term debt, common stock, retained earnings, and
14 other (please explain)).

15 2. Are there any major replacements required in the next five years
16 and the next ten years? Indicate the estimated cost of each replacement, the
17 year it will be made, and how it will be financed (long-term debt, short-term
18 debt, common stock, retained earnings, and other (please explain)).

19 Answering these questions, which is necessary for an acquisition application to be deemed
20 “complete,” would not be possible without the information gathered from the engineering
21 studies prepared as part of our acquisition due diligence.

22 21 Design Group, the remaining entity whose costs are included in the due diligence
23 total, was engaged to perform tasks such as surveying and mapping the service area,
24 including the location of utility facilities Red Bird proposes to acquire. Some of this work
25 also is required to complete the Commission’s application process. But even if it wasn’t,
26 the work is critical to the successful operation of the system after closing.

1 **Q. DOESN'T MR. FRANKLIN ALSO CLAIM RED BIRD'S DUE DILIGENCE**
2 **COSTS ARE EXCESSIVE?**

3 A. He does not claim they're excessive, but he does contend the amount of due
4 diligence expense "suggests a lack of oversight." However, beyond misunderstanding the
5 number of firms who were involved in the process he offers no evidence supporting this
6 contention. There is nothing in the biographical information provided in his testimony that
7 suggests Mr. Franklin has ever been responsible for dealing with the numerous and critical
8 legal and engineering issues that routinely attend the acquisition of utility system assets. If
9 he had, I believe he could better understand and appreciate what is actually required to
10 accomplish an acquisition like the one proposed in this case and the reasonableness of Red
11 Bird's due diligence expenses.

12 **V. EFFECT OF PROPOSED ACQUISITION ON CUSTOMER RATES**

13 **Q. TWO OF PUBLIC STAFF'S WITNESSES INCLUDE ESTIMATES**
14 **REGARDING THE EFFECT ON CUSTOMER RATES OF VARIOUS ASPECTS**
15 **OF THE JOINT APPLICATION. HOW DO YOU RESPOND?**

16 A. My response to Mr. Franklin's and Mr. Meda's projections regarding the proposed
17 acquisition of Baytree's system on future rates is twofold. First, because of recent changes
18 to G.S. § 62-111, which governs the Commission's consideration of water and wastewater
19 acquisitions, the only rates the Commission should consider in determining whether an
20 acquisition is in the "public interest" are those that would be in effect immediately after
21 closing. Future rates – i.e., those that would be set by the Commission in a future rate case
22 – are irrelevant to the determination of whether an acquisition application should be
23 granted.

1 As we made clear in the Joint Application and as reiterated in my direct testimony,
2 if Red Bird is authorized to acquire Baytree's wastewater system the customer rates
3 currently in effect will continue to be charged until the Commission authorizes a change in
4 rates in a future Red Bird rate case. Because approval of the Joint Application will have no
5 impact on customer rates the Commission should disregard the rate impact estimates
6 included in the testimonies of both Mr. Franklin and Mr. Meta. Those estimates have no
7 relevance to the issues the Commission must decide in this case – i.e., whether Red Bird is
8 technically, managerially, and financially qualified to own and operate the Baytree system
9 as a regulated public utility and whether the proposed transaction is in the public interest.

10 But there is another reason Public Staff's rate impact testimony should be
11 disregarded – the rate impacts are just estimates. What's more, they are estimates made
12 based on assumptions regarding all elements of ratemaking – revenue, expenses, rate base,
13 capital structure, rate of return, rate design, etc. – that may or may not be valid. For
14 example, Red Bird has made clear it intends to request in its first North Carolina rate case
15 approval of consolidated, statewide rates for both water and wastewater services. Based on
16 the experience of our affiliate group in states outside North Carolina, where such rates have
17 been approved, consolidated rates are an effective mechanism to mitigate "rate shock" that
18 otherwise would result when small, undercapitalized, and mismanaged systems are taken
19 over by experienced and technically competent owners that invest the capital required to
20 address needs in those systems. Consolidated rates allow all customers within a state to
21 share the benefits of economies of scale our affiliated group can achieve, and also helps to
22 spread out the rate impact of required capital investments that have greater impacts on some

1 systems in the short term but that will affect all systems in the long run. Despite Red Bird's
2 declared intent to seek consolidated rates, Public Staff's estimated rate impacts, in addition
3 to being based on estimates and assumptions, also are calculated as if rates for the Baytree
4 system would always be set on a stand-alone basis.

5 **Q. BECAUSE OF THE FACTORS YOU JUST DESCRIBED, DO YOU THINK**
6 **THE COMMISSION SHOULD CONSIDER FUTURE RATE IMPACTS IN**
7 **REACHING A DECISION IN THIS CASE?**

8 A. No, I do not. The impact on future rates of Red Bird's acquisition of the Baytree
9 system will not and cannot be known at the present time, so it would be inappropriate and
10 unreasonable for the Commission to consider that issue in the current case. As a regulated
11 utility, Red Bird is prohibited by law from changing rates unless and until such a change is
12 authorized by the Commission. Under applicable law, no change in rates can be approved
13 by the Commission without a thorough consideration of a utility's rate change request, with
14 full opportunity for interested parties – including Public Staff – to present evidence and
15 arguments regarding that request. Also, as provided in Chapter 62, all rates set by the
16 Commission must be fair and reasonable. For all these reasons, it serves no purpose for the
17 Commission to consider possible future rate impacts in this case. Consideration of rates
18 can and should be deferred to future rate cases where all parties can present evidence on
19 all factors relevant to ratemaking. Following such consideration, both the utility and its
20 customers can be assured that whatever decision the Commission makes regarding rates
21 will be based on facts – instead of estimates and assumptions – and that the resulting rates
22 are fair and reasonable to all affected parties.

1 **Q. HOW DO YOU RESPOND TO MR. FRANKLIN'S CLAIM THAT RED**
2 **BIRD PROPOSES TO INCREASE BAYTREE'S CURRENT RECONNECTION**
3 **CHARGE BY \$0.18?**

4 A. Mr. Franklin is correct; our filing does suggest such an increase. But that particular
5 rate was misstated in the Joint Application because we made an error when transposing
6 rate information provided by the seller. We intend no increase in Baytree's current rates,
7 so the correct reconnection charge is \$46.64 not \$46.82 as stated in the Joint Application.
8 Red Bird regrets the error and is grateful Mr. Franklin pointed it out.

9 **VI. PROPOSED ANNUAL REVIEW OF OPERATIONS AND**
10 **FINANCIAL CONDITION**

11 **Q. PUBLIC STAFF WITNESS HINTON PROPOSES RED BIRD BE**
12 **REQUIRED TO MEET ANNUALLY WITH PUBLIC STAFF TO DISCUSS THE**
13 **COMPANY'S WATER AND WASTEWATER OPERATIONS AND TO REVIEW**
14 **ITS FINANCIAL CONDITION. HOW DO YOU RESPOND?**

15 A. In the Settlement Agreement and Stipulation filed in Docket Nos. W-1146, Sub 13
16 and W-1328, Sub 10 Red Bird agreed to meet annually with Public Staff to discuss the
17 company's water and wastewater operations and to review its financial condition. Although
18 that agreement applied only to the acquisition at issue in those two dockets, we plan to
19 include in those annual meetings information about all of Red Bird's North Carolina
20 operations. Therefore, if the Commission approves the proposed acquisition of Baytree's
21 wastewater system, information related to that system would be part of future annual
22 meetings.

23 **Q. WHAT ABOUT THE CONCERNS MR. HINTON EXPRESSED**
24 **REGARDING "THE ONGOING VIABILITY OF CSWR, LLC, BECAUSE IT**
25 **CONTINUES TO REPORT SIGNIFICANT LOSSES ON ITS CONSOLIDATED**
26 **INCOME STATEMENT." ARE THOSE CONCERNS VALID?**

1 A. No, they are not valid. If you focus solely on profit and loss from utility operations,
2 it's true CSWR has lost money each year the company has been in existence. But the picture
3 Mr. Hinton paints is focused too narrowly because it fails to acknowledge that neither
4 CSWR nor its utility affiliates fund day-to-day operations exclusively from revenues
5 derived from utility operations. Instead, those revenues are substantially supplemented by
6 working capital provided by investments from U.S. Water Systems, LLC ("U.S. Water") –
7 the affiliate group's ultimate corporate parent.

8 As explained in my direct testimony, U.S. Water invests equity in CSWR sufficient
9 to fund the purchase of systems like Baytree, fund capital improvements necessary to
10 ensure those systems provide safe and reliable service that complies with applicable law,
11 and provide working capital necessary to fund day-to-day operations until rates for the
12 acquired systems can be reviewed and adjusted by state regulators, as necessary. Like
13 Baytree, most systems our group acquires are losing money at the time of acquisition. And
14 because we routinely adopt rates in place at the time of acquisition, those losses continue
15 after closing. Indeed, we expect losses to increase because most systems we acquire were
16 not properly or professionally operated before our acquisition, and those systems usually
17 require significant capital investment to repair, replace, and upgrade infrastructure that was
18 neglected for many years. Therefore, losing money until rates can be adjusted to
19 compensatory levels is something our company – and our investors – expect and plan for.
20 That is another reason why CSWR and its affiliates have been so successful at turning
21 around environmentally and financially distressed utilities like Baytree. Consequently, the
22 financial metrics that so concerned Mr. Hinton need not concern the Commission,

1 especially in light of the fact current customers are being served by a utility that not only
2 is losing money but is failing to provide compliant service.

3 Since it began operations, CSWR has invested more than \$450 million to acquire,
4 improve, and operate water and wastewater systems. Of that total, \$205 million was paid
5 to sellers to acquire the utility assets and \$195 million has been invested to make capital
6 improvements. The remaining \$50 million has provided working capital necessary to keep
7 those operations going until rates can be adjusted. Regulators in all other states where our
8 affiliates operate agree this arrangement satisfies the requirement that a party seeking to
9 acquire utility assets demonstrate the financial wherewithal necessary to own and operate
10 those assets. This approach will work as well in North Carolina as it does elsewhere.

11 CSWR has the equity capital necessary to purchase, improve, and operate the water
12 and wastewater systems our affiliates acquire. And that entire investment has been made
13 without a written commitment. CSWR has demonstrated that any potential concerns
14 regarding the lack of such a commitment are unfounded by living up to promises made
15 each time CSWR and its affiliates are granted authority to make an acquisition. Our
16 commitment to regulators has been to invest equity sufficient to fund purchases, make
17 necessary capital improvements, and provide working capital. And because those
18 commitments were kept, those same regulators continue to entertain and approve our
19 acquisitions.

20 Red Bird plans to add debt to its capital structure at the appropriate time, but that
21 time is not now. The Company currently has no assets, and as I have previously testified
22 Baytree's North Carolina operations currently operate at a loss. No commercial lender
23 would lend money to a company with that kind of balance sheet and income statement.

1 That's why only three state operating companies in our affiliate group – the affiliates in
2 Missouri, Louisiana, and Mississippi – have been able to obtain debt financing. Until debt
3 is available, equity provided by CSWR will be sufficient to fund and sustain utility
4 operations, as Red Bird's affiliates conclusively have demonstrated in other states.

5 **VII. CONCLUSION**

6 **Q. DO YOU HAVE ANY CONCLUDING THOUGHTS YOU WANT TO**
7 **EXPRESS TO THE COMMISSION REGARDING THIS JOINT APPLICATION?**

8 A. Yes. I would like to reiterate what I said at the conclusion of my direct testimony
9 in this case. Red Bird's proposed acquisition of the wastewater system currently owned
10 and operated by Baytree is consistent with and would promote the public interest. Transfer
11 of this system to a well-capitalized enterprise that is a professional utility would be in the
12 best interest of Baytree's customers. Red Bird and CSWR are fully qualified, in all respects,
13 to own and operate those systems and to otherwise provide safe and adequate service.
14 Accordingly, I respectfully ask the Commission to grant the authority sought in the Joint
15 Application.

16 **Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY AT THIS TIME?**

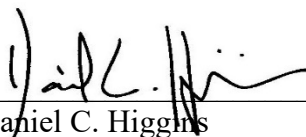
17 A. Yes, it does.

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing document, has been served on the Public Staff, by either depositing same in a depository of the United States Postal Service, first-class postage prepaid and mailed by the means specified below, or by electronic delivery.

This the 30th day of October, 2023.

BURNS, DAY & PRESNELL, P.A.



Daniel C. Higgins
Post Office Box 10867
Raleigh, NC 27605
Tel: (919) 782-1441
Email: dhiggins@bdppa.com
Attorneys for Red Bird