



**NORTH CAROLINA  
PUBLIC STAFF  
UTILITIES COMMISSION**

March 21, 2024

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

Re: Docket Nos. W-1049, Sub 25 and W-1328, Sub 2 – Application of A&D Water Services, Inc., and Red Bird Utility Operating Company, LLC, d/b/a Red Bird Water, for Transfer of Public Utility Franchise 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](mailto:james.bernier@psncuc.nc.gov)

cc: Parties of Record

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**STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH**

DOCKET NO. W-1049, SUB 25  
DOCKET NO. W-1328, SUB 2

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of  
Application of A&D Water Services, Inc., )  
and Red Bird Utility Operating Company, )  
LLC, d/b/a Red Bird Water, for Transfer of )  
Public Utility Franchise 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 A&D Water Service, Inc. (A&D), filed with the Commission an Application for Transfer of Public Utility Franchise and for Approval of Rates (Application) seeking authority to transfer the assets of the water and/or wastewater utility systems serving the Buffalo Meadows, Camelot, Cinnamon Woods, High Vista, Hunters Glen, Kirk Glen, Mountain Valley, Rolling Oaks Estates, Sherwood Forest, Skyview Park, and White Oak Village subdivisions

in Ashe, Henderson, Buncombe, Transylvania, and Gaston Counties, North Carolina, from A&D 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 20, 2020; July 2, October 8; October 11, 2021; December 15, 2022; December 12, 2023; and January 17, 2024.

B. On October 18, 2023, Kiran H. Mehta, Molly M. Jagannathan and Holly R. Ingram of the law firm of Troutman Pepper Hamilton Sanders LLP filed a Notice of Appearance.

C. On October 31, 2023, Daniel C. Higgins filed a Motion requesting that he and the firm of Burns Day & Presnell, P.A. be allowed to withdraw as counsel for Red Bird. By Order of November 1, 2023, the Commission granted the Motion.

D. On November 1, 2023, Mindy McGrath of the law firm Troutman Pepper Hamilton Sanders LLP filed a Notice of Appearance on behalf of Red Bird.

E. On January 23, 2024, the Commission issued its Order Scheduling Hearings, Establishing Discovery Guidelines, and Requiring Customer Notice (Scheduling Order).

F. On February 5, 2024, 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 February 29, 2024, and that the Commission may decide the matter

without a public witness hearing if no significant protests are received through the submission of consumer statements by February 19, 2024.

G. On February 28, 2024, 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 Order.

H. On February 23, 2024, the Commission issued its Order Canceling Public Witness Hearing as no significant protests were received from customers.

I. 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.

J. On February 7, 2024, 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 six 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.

K. On March 6, 2024, 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 Kuei Fen Sun, 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.

L. On March 14, 2024, the Parties notified the Commission that they had agreed in principle to a settlement.

M. On March 18, 2024, the Parties filed their Joint Motion for Leave to File Stipulation and Settlement Testimony in Lieu of Rebuttal Testimony, which was granted on March 19, 2024.

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 the 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 A&D systems 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 \$100,000 and in a form acceptable to the Commission for the A&D systems.

C. At closing, Red Bird will adopt the tariffs and rates currently in effect for A&D's water and wastewater customers.

D. Red Bird will adopt at closing A&D's accounting records, provide the detailed accounting records received from A&D 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 total net book value of the assets Red Bird is acquiring from A&D is \$19,046 as detailed by system in Public Staff Sun Exhibit 1, Schedule 1. No plant additions through the closing date will be included in this or any future proceedings.

F. The Stipulating Parties agree that Red Bird may request recovery of up to \$173,250 for legal (transaction and regulatory) costs and engineering due diligence work listed in Cox Direct Exhibit 6 in the next general rate case relating to the A&D systems as follows:

- (i) Costs will be allocated to each system up to the amounts listed in the table below:

System	Joint Settlement Cost of Transfer Amount
Buffalo Meadows Water	\$ 15,977
Buffalo Meadows Sewer	\$ 15,793
Camelot	\$ 6,898
Cinnamon Woods	\$ 11,230
High Vista	\$ 33,531
Hunter's Glen	\$ 14,441
Kirk Glen	\$ 8,907
Mountain Valley	\$ 12,351
Rolling Oaks Estates	\$ 5,766
Sherwood Forest	\$ 14,910
Skyview Park	\$ 12,781
White Oak Village Water	\$ 9,508
White Oak Village Sewer	\$ 11,157
Total	\$173,250

(ii) Up to \$159,121.50 for engineering due diligence work supported by invoices provided in response to PS DR 9 and listed in Cox Direct Exhibit 6 in the next general rate case relating to the systems listed in the table above, provided that the work results in reasonable and prudent capital investments to improve the A&D systems; and

(iii) \$14,128.85 for legal (transactional and regulatory) costs related to the acquisition of the A&D systems, which is supported by

invoices provided in response to PS DR 9 and listed in Cox Direct Exhibit 6 in the next general rate case relating to the A&D systems.

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., Paragraph F above and further detailed in Public Staff Settlement Exhibit 1.

H. The Stipulating Parties agree that an acquisition adjustment in the amount of \$15,159 should be included in rate base due to the condition of the High Vista wastewater system and associated compliance issues rendering it operationally troubled. Depreciation starts at the date of closing of transactions with an amortization rate of 4%. Red Bird agrees not to pursue an additional acquisition adjustment related to the A&D systems in this or any future proceeding.

I. Consistent with the Settlement Agreement and Stipulation in Docket No. W-1328, Sub 10, Red Bird and key leadership from CSWR shall meet annually 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. through 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 resolution 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 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 be consistent 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.

The foregoing is agreed and stipulated to this the 21st day of March, 2024.

Public Staff — North Carolina Utilities Commission

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

Davia Newell  
Staff Attorney

Troutman Pepper Hamilton Sanders LLP

By: /s/ Mindy McGrath  
Attorney for Red Bird Utility Operating Company, LLC

**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 21st day March, 2024.

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