



**NORTH CAROLINA
PUBLIC STAFF
UTILITIES COMMISSION**

March 21, 2022

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

Re: Docket Nos. W-1040, Sub 10 and W-1328, Sub 4 – Proposed Transfer of Bear Den Acres Development, Inc., to Red Bird Utility Operating Company, LLC, d/b/a Red Bird Water, and for Approval of Rates

Dear Ms. Dunston:

The Public Staff, on behalf of itself and Red Bird Utility Operating Company, LLC, d/b/a Red Bird Water, respectfully submits for filing in the above-referenced dockets the attached Joint Motion for Order Cancelling Evidentiary Hearing, Approving Stipulation, Approving Bond, and Approving Transfer and Rates and Joint Proposed Order Cancelling Evidentiary Hearing, Approving Stipulation, Approving Bond, Approving Transfer and Rates, and Requiring Customer Notice.

By copy of this letter, I am forwarding a copy to all parties of record by electronic delivery.

Sincerely,

Electronically submitted
/s/ Megan Jost
Staff Attorney
megan.jost@psncuc.nc.gov

Attachments

Executive Director
(919) 733-2435

Accounting
(919) 733-4279

Consumer Services
(919) 733-9277

Economic Research
(919) 733-2267

Energy
(919) 733-2267

Legal
(919) 733-6110

Transportation
(919) 733-7766

Water/Telephone
(919) 733-5610

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. W-1040, SUB 10
DOCKET NO. W-1328, SUB 4

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of)	
Application by Red Bird Utility Operating)	
Company, LLC, 1650 Des Peres Road, Suite)	JOINT MOTION FOR ORDER
303, St. Louis, Missouri 63131, and Bear Den)	CANCELLING EVIDENTIARY
Acres Development, Inc., 600 Bear Den)	HEARING, APPROVING
Mountain Road, Spruce Pine, North Carolina)	STIPULATION, APPROVING
28777, for Authority to Transfer the Bear Den)	BOND, AND APPROVING
Acres Development Water System and Public)	TRANSFER AND RATES
Utility Franchise in McDowell County, North)	
Carolina, and for Approval of Rates)	

The Public Staff – North Carolina Utilities Commission (Public Staff) and Red Bird Utility Operating Company, LLC (Red Bird or Company), through counsel, hereby jointly move the Commission for an order (1) allowing the introduction of all pre-filed testimony and exhibits into the record without the appearance of witnesses and cancelling the evidentiary hearing scheduled for March 28, 2022, (2) accepting the Settlement Agreement and Stipulation filed in the above-captioned proceedings on March 2, 2022, and (3) approving Red Bird’s Application for Transfer of Public Utility Franchise and for Approval of Rates (Application). In support of this request, the Public Staff and Red Bird respectfully show unto the Commission as follows:

1. On December 4, 2020, Red Bird and Bear Den Acres Development, Inc. (Bear Den), filed with the Commission an Application seeking authority to transfer the water utility system and public utility franchise serving Bear Den Acres Development in McDowell County, North Carolina, from Bear Den to Red Bird and approval of rates. Red

Bird filed supplemental and additional materials in support of its Application on March 29, April 19, April 20, and October 6, 2021.

2. On January 5, 2022, the Commission issued its Order Scheduling Hearing, Establishing Discovery Guidelines, and Requiring Customer Notice (Scheduling Order). The Commission attached as Appendix A to its Scheduling Order a Notice to Customers stating that a public witness hearing has not yet been scheduled and that the Commission may decide the matter without a public witness hearing if no significant protests are received within 45 days of the date of the notice.

3. On January 21, 2022, Red Bird filed a certificate of service stating that the Notice to Customers was mailed or hand delivered to all affected customers by January 19, 2022, the date specified in the Scheduling Order.

4. On February 4, 2022, Red Bird filed a Notice of Supplemental Service of Notice to Customers. Red Bird stated that the Notice to Customers was originally mailed to the service addresses rather than the billing addresses of at least some Bear Den customers, and that the Company had also mailed the Notice to Customers to the billing addresses of all Bear Den customers on January 31, 2022, to ensure that all customers are properly notified.

5. On February 11, 2022, Red Bird filed the direct testimony of Josiah Cox, President of Red Bird Utility Operating Company, LLC, and of CSWR, LLC.

6. On March 2, 2022, the Public Staff filed the Settlement Agreement and Stipulation (Stipulation) of the Public Staff and Red Bird (Stipulating Parties) which resolves all contested issues related to the Application. The Public Staff stated in the cover letter filed with the Stipulation that the Public Staff did not intend to file direct

testimony on the deadline set by the Commission in light of the settlement, but that the Stipulating Parties would file testimony in support of the Stipulation in the near future.

7. On March 3, 2022, a request to intervene was filed by Shelley Pierce, the owner of two properties in the Bear Den Acres development. On March 18, 2022, the Commission issued an order granting Ms. Pierce's petition.

8. On March 18, 2022, the Public Staff filed the settlement testimony of D. Michael Franklin, Public Utilities Engineer with the Public Staff's Water, Sewer, and Telephone Division. Witness Franklin testified that Red Bird has the financial, technical, and managerial ability to own and operate the Bear Den Acres system, and he recommended that the Commission approve the transfer. Witness Franklin also recommended that the Commission approve the rates requested by Red Bird, which are identical to the present rates approved by the Commission in Docket Nos. W-1040, Sub 8 and M-100, Sub 138. Finally, witness Franklin testified regarding the benefits provided to rate payers by the Stipulation and recommended that the Stipulation be approved.

9. Also on March 18, 2022, Red Bird filed the supplemental testimony of Josiah Cox in support of the Stipulation. In his testimony, Witness Cox describes the issues resolved through the Stipulation, the concessions made by Red Bird in agreeing to the Stipulation, and Red Bird's reasons for making such concessions.

10. The Stipulation provides 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 that each Stipulating Party waives all right to cross examine all of the Stipulating Parties' witnesses with respect to pre-filed testimony and exhibits.

11. Therefore, the Public Staff and Red Bird respectfully request that the Commission enter an order excusing all Public Staff and Red Bird witnesses from appearing at the evidentiary hearing and allowing their testimony and exhibits to be entered into the record as if given orally from the stand. The parties recognize that this request is contingent on the Commission having no questions for the witnesses.

12. Counsel for the Public Staff contacted the intervenor, Ms. Pierce, to ascertain her position on this motion. Ms. Pierce indicated in response that she had notified the Commission that she wished to withdraw her petition to intervene. Ms. Pierce's request to withdraw her petition to intervene was filed in the above-captioned dockets on March 21, 2022.

13. A proposed order is being filed as Attachment A to this motion.

WHEREFORE, the Public Staff and Red Bird respectfully request that the Commission issue an order granting the following relief:

1. Ordering that the prefiled testimony of the Public Staff and Red Bird witnesses be copied into the record and received into evidence as if given under oath from the stand and cancelling the evidentiary hearing scheduled for March 28, 2022;
2. Approving the Stipulation between the Public Staff and Red Bird;
3. Accepting and approving the bond; and
4. Approving the transfer of the water utility system and public utility franchise serving Bear Den Acres Development in McDowell County, North Carolina, from Bear Den to Red Bird, approving rates, and requiring Red Bird to notify its customers of the transfer.

Respectfully submitted, this the 21st day of March, 2022.

PUBLIC STAFF – NORTH CAROLINA
UTILITIES COMMISSION

Electronically submitted

/s/ Megan Jost

Staff Attorney

4326 Mail Service Center

Raleigh, North Carolina 27699-4300

Telephone: (919) 733-6110

megan.jost@psncuc.nc.gov

RED BIRD UTILITY OPERATING COMPANY,
LLC

Electronically submitted

/s/ Daniel C. Higgins

Burns, Day & Presnell, P.A.

Post Office Box 10867

Raleigh, North Carolina 27605

Telephone: (919) 782-1441

dhiggins@bdppa.com

CERTIFICATE OF SERVICE

I certify that a copy of this joint motion has been served on all parties of record or their attorneys, or both, 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 of March, 2022.

Electronically submitted
/s/ Megan Jost

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. W-1040, SUB 10
DOCKET NO. W-1328, SUB 4

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of)	
Application by Red Bird Utility Operating Company, LLC, 1650 Des Peres Road, Suite 303, St. Louis, Missouri 63131, and Bear Den Acres Development, Inc., 600 Bear Den Mountain Road, Spruce Pine, North Carolina 28777, for Authority to Transfer the Bear Den Acres Development Water System and Public Utility Franchise in McDowell County, North Carolina, and for Approval of Rates)	JOINT PROPOSED ORDER CANCELLING EVIDENTIARY HEARING, APPROVING STIPULATION, APPROVING BOND, APPROVING TRANSFER AND RATES, AND REQUIRING CUSTOMER NOTICE

BY THE COMMISSION: On December 4, 2020, Red Bird Utility Operating Company, LLC (Red Bird or the Company), and Bear Den Acres Development, Inc. (Bear Den), filed with the Commission an Application for Transfer of Public Utility Franchise and for Approval of Rates (Application) seeking authority to transfer the water utility system and public utility franchise serving Bear Den Acres Development in McDowell County, North Carolina, from Bear Den to Red Bird and approval of rates. Red Bird filed with the Commission supplemental and additional materials in support of its Application on March 29, April 19, and April 20, 2021.

On January 5, 2022, the Commission issued an Order Scheduling Hearing, Establishing Discovery Guidelines, and Requiring Customer Notice (Scheduling Order) setting this matter for hearing on March 28, 2022, directing that a Notice to Customers be mailed with sufficient postage or hand delivered by Red Bird to all affected customers no later than 14 days after the date of the order; and requiring that Red Bird submit to the

Commission a Certificate of Service, properly signed and notarized, indicating that the notice had been sent to customers as directed. The Scheduling Order also states that a public witness hearing has not yet been scheduled and that the Commission may decide the matter without a public witness hearing if no significant protests are received within 45 days of the date of the notice.

On January 21, 2022, 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, January 19, 2022. On February 4, 2022, Red Bird filed a Notice of Supplemental Service of Notice to Customers stating that the Notice to Customers was originally mailed to the service addresses rather than the billing addresses of at least some Bear Den customers, and that the Company had also mailed the Notice to Customers to the billing addresses of all Bear Den customers on January 31, 2022, to ensure that all customers are properly notified.

On February 11, 2022, Red Bird filed the direct testimony of Josiah Cox, President of Red Bird Utility Operating Company, LLC, and of CSWR, LLC.

On March 2, 2022, the Public Staff filed the Settlement Agreement and Stipulation (Stipulation) of the Public Staff and Red Bird (Stipulating Parties) resolving all contested issues related to the Application.

On March 3, 2022, Shelley Pierce, a Bear Den customer, filed a petition to intervene.

On March 18, 2022, the Public Staff filed the settlement testimony of D. Michael Franklin, Public Utilities Engineer with the Public Staff's Water, Sewer, and Telephone

Division, and Red Bird filed the supplemental testimony of Josiah Cox in support of the Stipulation.

Also on March 18, 2022, the Commission issued an order granting Ms. Pierce's petition to intervene.

On March 21, 2022, the Public Staff and Red Bird filed a Joint Motion for Order Cancelling Evidentiary Hearing, Accepting Stipulation, Approving Transfer, and Cancelling Evidentiary Hearing.

Also on March 21, 2022, Ms. Pierce's request to withdraw her petition to intervene was filed in the above-captioned dockets.

On the basis of the Application, the testimonies, and the entire record in this proceeding, the Commission makes the following:

FINDINGS OF FACT

1. Red Bird presently holds one utility franchise in North Carolina. On December 8, 2022, in Docket No. W-1328, Sub 7, the Commission issued an order granting Red Bird a wastewater utility franchise for the Ocean Terrace and Pine Knoll Townes I, II, and III townhome communities in Carteret County, North Carolina. The direct testimony of Josiah Cox, Red Bird's parent company, Central States Water Resources, Inc. (Central States), states it has acquired and currently operates 410 water and wastewater utility systems in Missouri, Arkansas, Kentucky, Louisiana, Texas, Tennessee, Mississippi, and Arizona providing utility service to approximately 94,000 wastewater customers and 59,000 water customers.

2. The Bear Den Acres water utility system serves approximately 50 residential customers in the Bear Den Acres development located approximately seven miles northeast of the Town of Spruce Pine, in McDowell County.

3. The Bear Den Acres water system is approved by the North Carolina Department of Environmental Quality, Division of Water Resources, under system number NC0156129.

4. Central States entered into an Agreement for Sale of Utility System with Bear Den on October 23, 2019. According to the Agreement, the closing of the sale will occur after regulatory approval is obtained.

5. Upon acquisition of the water system, Red Bird plans to make capital improvements. Red Bird estimates that the cost of improvements to be made to the Bear Den water system is approximately \$15,500.

6. The present and proposed monthly metered residential water service rates, which are uncontested by the Public Staff, are as follows:

	<u>Present</u>	<u>Proposed</u>
Base Charge, zero usage	\$ 33.40, minimum	\$ 33.40, minimum
Usage Charge, per 1,000 gallons	\$ 2.78	\$ 2.78
Meter Installation Fee:	\$175.00	\$175.00
Connection Fee:	\$600.00	\$600.00
<u>Reconnection Charges:</u>		
If water service cut off by utility for good cause	\$ 14.32	\$ 14.32
If water service discontinued at customer's request	\$ 14.32	\$ 14.32
Returned Check Charge	\$ 9.55	\$ 9.55

Finance Charge for
Late Payment

1% per month
past due

1% per month
past due

7. On January 5, 2022, the Commission issued the Order Scheduling Hearing, Establishing Discovery Guidelines, and Requiring Customer Notice. Among other things, the Order directed Red Bird to submit a signed and notarized certificate of service not later than 21 days after the date of the Order.

8. On January 21, 2022, Red Bird filed a Certificate of Service stating the Notice to Customers was mailed or hand delivered by the date specified in the Order. On February 4, 2022, Red Bird filed a Notice of Supplemental Service of Notice to Customers, stating that the Notice to Customers was originally mailed to the service addresses of Bear Den customers, rather than the billing addresses. In an effort to ensure that all customers received notice, Red Bird mailed the Notice to Customers to the Bear Den customers' billing addresses on January 31, 2022.

9. Red Bird has filed all exhibits required with its Application.

10. On March 2, 2022, the Public Staff and Red Bird entered a Settlement Agreement and Stipulation (Stipulation) in this docket which resolved all contested issues related to the transfer. The terms of the Stipulation are as follows:

- a. Red Bird agrees to post a bond in the amount of \$75,000 for the Bear Den Acres service area on or before March 18, 2022.
- b. Red Bird agrees not to pursue an acquisition adjustment related to the Bear Den system in this or any future proceeding.
- c. The Public Staff and Red Bird agree that rate base for the Bear Den Acres system should be \$3,153, plus up to \$5,000 for closing costs.

The actual amount of the closing costs should be determined in Red Bird's next general rate case relating to the Bear Den system.

- d. The Public Staff and Red Bird agree that Red Bird may request recovery of the remaining costs associated with the transfer of the Bear Den Acres system to Red Bird up to \$25,496 for engineering due diligence work in its next general rate case, provided that the resulting work results in reasonable and prudent capital investments to improve the Bear Den Acres system. Any portion of the \$25,496 associated with reasonable and prudent improvements should be included as utility plant in service in the Company's next general rate case filed after the improvements become used and useful in providing service.
- e. Red Bird agrees not to seek recovery of any additional costs associated with the transfer, including due diligence, transactional, and regulatory costs, other than those listed in paragraphs 10.c. and 10.d. above.

11. The Stipulation is the product of the give-and-take in settlement negotiations between the Public Staff and Red Bird, is material evidence in this proceeding, and is entitled to be given appropriate weight in this case, along with other evidence from the Company and the Public Staff.

12. On March 21, 2022, Red Bird posted the bond amount agreed to in the Stipulation and filed the appropriate bond documents. All filing requirements for a bond secured by a commercial surety have been met.

13. As of March 17, 2022, 45 days from the date the supplemental notices were mailed by Red Bird, the Commission and the Public Staff had received two consumer statements of position, and one Bear Den Customer filed a petition to intervene in the proceeding, which was subsequently withdrawn.

14. Based on all of the evidence in the record, the provisions of the Stipulation are just and reasonable to the Bear Den customers and to all parties to this proceeding and serve the public interest. Therefore, the Stipulation should be approved in its entirety.

15. Red Bird has the technical, managerial, and financial capacity to provide water utility service in this service area.

CONCLUSIONS

Based on the record, the Commission approves the Stipulation; concludes that the rates proposed by Red Bird should be approved; that the \$75,000 bond posted by Red Bird for the Bear Den Acres service area should be accepted and approved; that the rates proposed by Red Bird should be approved; that Red Bird should provide written notification to the Commission within 30 days from the date of this Order that closing of the sale of the Bear Den Acres water utility system has been completed; that upon receipt of such written notification Red Bird should be granted a Certificate of Public Convenience and Necessity to provide water utility service to the Bear Den Acres service area; and that Red Bird should provide notice to customers that the franchise has been granted and of the approved rates.

IT IS, THEREFORE, ORDERED as follows:

1. That the Stipulation between the Public Staff and Red Bird is hereby approved in its entirety;

2. That the \$75,000 bond and commercial surety from RLI Insurance Company is hereby accepted and approved for Red Bird, in compliance with N.C. Gen. Stat. § 62-110.3;

3. That Red Bird is granted a Certificate of Public Convenience and Necessity to provide water utility service to the Bear Den Acres service area located in McDowell County, North Carolina, effective upon the closing of the sale of the Bear Den Acres water utility system assets to Red Bird. Appendix A, attached hereto, constitutes the Certificate of Public Convenience and Necessity;

4. That the Schedule of Rates, attached hereto as Appendix B, is hereby approved and deemed filed with the Commission pursuant to N.C. Gen. Stat. § 62-138. This Schedule of Rates shall become effective upon the closing of the sale of the Bear Den Acres water utility system assets to Red Bird;

5. That Red Bird, shall provide notification to the Commission within 30 days from the date of this Order, that closing of the sale of the water utility system serving Bear Den Acres has been completed;

6. That within 30 days from the closing of the sale of the Bear Den Acres water utility system, Red Bird shall file in this docket the warranty deed showing Red Bird's ownership of the required easements and all interests in land it has obtained in connection with the operation and maintenance of the water utility system; and

7. That a copy of this Order and Appendix B shall be mailed with sufficient postage or hand delivered by Red Bird to Bear Den Acres customers no later than seven days after the closing of the sale of the water utility system serving Bear Den Acres has been completed, and that Red Bird shall submit to the Commission the attached

Certificate of Service properly signed and notarized not later than 15 days after the mailing or hand delivery of the Order and Appendix B.

ISSUED BY ORDER OF THE COMMISSION.

This the ____ day of March, 2022.

NORTH CAROLINA UTILITIES COMMISSION

A. Shonta Dunston, Chief Clerk

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. W-1040, SUB 10
DOCKET NO. W-1328, SUB 4

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

RED BIRD UTILITY OPERATING COMPANY, LLC

is granted this

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

to provide water utility service

to

BEAR DEN ACRES

McDowell County, North Carolina

subject to any orders, rules, regulations
and conditions now or hereafter lawfully made
by the North Carolina Utilities Commission.

ISSUED BY ORDER OF THE COMMISSION.

This the ____ day of March, 2022.

NORTH CAROLINA UTILITIES COMMISSION

A. Shonta Dunston, Chief Clerk

SCHEDULE OF RATES

for

RED BIRD UTILITY OPERATING COMPANY, LLCfor providing water utility service

to

BEAR DEN ACRES

McDowell County, North Carolina

Monthly Metered Residential Water Service:

	<u>Present</u>	<u>Proposed</u>
Base Charge, zero usage	\$ 33.40, minimum	\$ 33.40, minimum
Usage Charge, per 1,000 gallons	\$ 2.78	\$ 2.78
Meter Installation Fee:	\$175.00	\$175.00
Connection Fee:	\$600.00	\$600.00
<u>Reconnection Charges:</u>		
If water service cut off by utility for good cause	\$ 14.32	\$ 14.32
If water service discontinued at customer's request	\$ 14.32	\$ 14.32
Returned Check Charge	\$ 9.55	\$ 9.55
Finance Charge for Late Payment	1% per month past due	1% per month past due

Issued in Accordance with Authority Granted by the North Carolina Utilities Commission in Docket Nos. W-1040, Sub 10 and W-1328, Sub 4, on this the ____ day of March, 2022.

CERTIFICATE OF SERVICE

I, _____, mailed with sufficient postage or hand delivered to all affected customers copies of the attached Notice to Customers issued by the North Carolina Utilities Commission in Docket Nos. W-1040, Sub 10 and W-1328, Sub 4, and the Notice was mailed or hand delivered by the date specified in the Order.

This the ____ day of _____, 2022.

By: _____
Signature

Name of Utility Company

The above named Applicant, _____, personally appeared before me this day and, being first duly sworn, says that the required Notice to Customers was mailed or hand delivered to all affected customers, as required by the Commission Order dated _____ in Docket Nos. W-1040, Sub 10 and W-1328, Sub 4.

Witness my hand and notarial seal, this the ____ day of _____, 2022.

Notary Public

Address

Date

(SEAL) My Commission Expires:
