



**NORTH CAROLINA
PUBLIC STAFF
UTILITIES COMMISSION**

October 23, 2023

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

Re: Docket Nos. W-1146, Sub 13 and W-1328, Sub 10 – Application by Red Bird Utility Operating Company, LLC, for Authority to Transfer the Lake Royale Subdivision Water and Wastewater Utility Systems and Public Utility Franchise in Franklin and Nash Counties, North Carolina, 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/ Megan Jost
Staff Attorney
megan.jost@psncuc.nc.gov

cc: Parties of Record

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

from TESI to Red Bird and approval of rates. Red Bird filed with the Commission supplemental and additional materials in support of the Application on June 8 and August 6, 2021, January 24, August 2, and September 8, 2022, and August 18, 2023.

B. On July 11, 2023, the Commission issued its Order Scheduling Hearings, 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 is scheduled for September 25, 2023, and that the Commission may decide the matter without a public witness hearing if no significant protests are received by September 11, 2023.

C. On July 18, 2023, Edward S. Finley, Jr. filed a notice of appearance on behalf of TESI.

D. On July 26, 2023, 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.

E. On September 11, 2023, the Lake Royale Property Owners Association (POA) petitioned to intervene in these dockets. On September 12, 2023, the Commission issued its order granting the POA's request to intervene.

F. The public hearing was held as scheduled on September 25, 2023.

G. 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.

H. On August 30, 2023, Red Bird filed the direct testimony 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 four 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.

I. On September 19, 2023, Public Staff filed the testimony and exhibits of Evan M. Houser, Lynn Feasel, and John R. Hinton.

J. On October 3, 2023, Red Bird filed the rebuttal testimony of Catilin O'Reilly and the rebuttal testimony of Todd Thomas, which included three exhibits.

K. On October 12, 2023, Red Bird filed a Motion for Substitution of Witness and Adoption of Testimony, wherein it requested that Todd Thomas, CSWR's Senior Vice President, be allowed to adopt the pre-filed direct testimony of Josiah Cox, due to a scheduling conflict for Mr. Cox on October 23.

L. On October 13, 2023, Public Staff filed its objections to Red Bird's Motion for Substitution of Witness and Adoption of Testimony.

M. On October 13, 2023, the Commission issued its Order Delaying Hearing and Denying Motion for Substitution of Witness and Adoption of Testimony

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 joint settlement testimony of Public Staff witnesses Feasel and Houser.

II. STIPULATION AND AGREEMENT OF THE STIPULATING PARTIES

The Stipulating Parties agree and stipulate as follows:

- A. The transfer of the TESI 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 form acceptable to the Commission for the TESI systems.
- C. At closing, Red Bird will adopt the tariffs and rates currently in effect for TESI's water and wastewater customers, including any approved pass through approved pursuant to N.C.G.S. § 62-133.11.
- D. Red Bird will adopt at closing TESI's accounting records, provide the detailed accounting records received from TESI to the Public Staff, and will not adjust or make changes to those records without Commission approval.
- E. The Stipulating Parties agree that the net book value of the TESI assets Red Bird is acquiring is \$186,541. This amount is based on plant additions through December 31, 2022, as provided by the Company, and includes depreciation and amortization calculated through December 31, 2023. Public Staff Settlement Exhibit 1 shows the calculation of the net book value. The parties reserve the right to seek a determination by the Commission of whether all of the utility assets acquired by Red Bird were used and useful during the applicable test period in Red Bird's initial rate case. Any assets determined by the Commission not to have been used and useful during the applicable test period will be removed from rate base.
- F. The Stipulating Parties agree that the correct gross amount of contributions in aid of construction (CIAC) to be recorded by Red Bird at closing

is \$21,900. By amortizing the CIAC over 15 years, the net CIAC balance is \$19,710 as of December 31, 2023.

G. Red Bird may request recovery of the following costs associated with the transfer of the Lake Royale systems to Red Bird:

- (i) Up to \$40,801.23 for engineering due diligence work listed in Cox Exhibit 4 in the next general rate case relating to the Lake Royale water system, provided that the work results in reasonable and prudent capital investments to improve the water system.
- (ii) Up to \$22,450.50 for engineering due diligence work listed in Cox Exhibit 4 in the next general rate case relating to the Lake Royale wastewater system, provided that the work results in reasonable and prudent capital investments to improve the wastewater system.
- (iii) Up to \$10,000 for legal costs related to the acquisition of the TESI systems in the next general rate case relating to the Lake Royale water and sewer systems.

H. 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 Paragraphs II.G. (i), (ii), and (iii) above and further detailed in **Public Staff Settlement Exhibit 2**.

I. Red Bird agrees not to pursue an acquisition adjustment related to the TESI systems in this or any future proceeding.

J. Until the earlier of the conclusion of Red Bird's first rate case or a Commission order modifying this requirement, Red Bird shall apply for funding

from the North Carolina Department of Environmental Quality, Division of Water Infrastructure in the funding cycle preceding planned water system investment of more than \$100,000 in the TESI water system.

K. Beginning one year after the effective date of the Commission's order approving this Stipulation, and continuing annually, Red Bird and key leadership from CSWR will meet 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.

L. Red Bird President Josiah Cox shall file settlement testimony, some of which may be confidential, addressing the following:

- (i) The relationship between Sciens Water and/or Sciens Capital Management, LLC, and US Water Systems, LLC;
- (ii) The ultimate source of the funding received by Red Bird and an explanation of how that funding is allocated among the affiliates of CSWR, LLC;
- (iii) Any limitations and/or conditions placed on the future funding of Red Bird by any of Red Bird's upstream owners; and
- (iv) Attach as an exhibit a revised version of the "Explanation of Corporate Structure," filed as a late filed exhibit in Docket No. W-1328, Sub 4, which reflects U.S. Water Systems, LLC's position in the corporate structure.

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. - L. 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 settlement 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.

A. 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 all of 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 not be inconsistent 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. Execution by facsimile signature shall be deemed to be, and shall have the same effect as, execution by original signature.

The foregoing is agreed and stipulated to this the 23rd day of October, 2023.

Burns, Day & Presnell, PA

By: /s/ Daniel C. Higgins
Daniel C. Higgins .
Attorney for Red Bird Utility Operating Company, LLC

Public Staff — North Carolina Utilities Commission

By: /s/ Megan Jost
Megan Jost
Staff Attorney

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 23rd day October, 2023.

Electronically submitted
/s/ Megan Jost
Staff Attorney