

STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH

DOCKET NO. W-1146, SUB 13  
DOCKET NO. W-1328, SUB 10

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	)	
Application by Red Bird Utility Operating	)	
Company, LLC, 1650 Des Peres Road,	)	RED BIRD'S OBJECTIONS AND
Total Environmental Solutions, Inc., Post	)	RESPONSES TO PUBLIC STAFF'S
Office Box 14056, Baton Rouge, Louisiana	)	17 <sup>TH</sup> SET OF DATA REQUESTS
70898, 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	)	

NOW COMES Red Bird Utility Operating Company, LLC ("Red Bird"), pursuant to the Order Scheduling Hearings, Establish Discovery Guidelines, And Requiring Notice issued July 11, 2023 in these dockets ("Scheduling Order"), and objects to certain items included in Public Staff's 17<sup>th</sup> Set of Data Requests in these dockets served at 4:20 p.m. on September 6, 2023, on the grounds set forth below.

**Objections and Response: Red Bird objects to DRs 17-1 through 17-13 to the extent that the documents and/or information requested are neither relevant to any issues that are or may be involved in these dockets, nor reasonably calculated to lead to the of admissible evidence.**

**Red Bird further and specifically objects to DRs 17-1 through 17-13 to the extent that any of them request information relating to future potential rates or the impact on cost elements used in future potential rate proceedings, based on North Carolina Session Law 2023-67, entitled "An Act to Expedite Transfer of Water or Wastewater Public Utilities," which limits the issues to be decided by the Commission in these dockets, which concern only the proposed transfer of the TESI system to Red Bird and adoption by Red Bird of TESI's existing approved rates, to the following:**

**[Whether] the proposed grant or transfer, including adoption of existing or proposed rates for the transferring utility, is in the public interest, will not adversely affect service to the public**

under any existing franchise, and the person acquiring said franchise or certificate of public convenience and necessity has the technical, managerial, and financial capabilities necessary to provide public utility service to the public.

The request for production of information as to the potential impact on future rates is beyond the scope of the matters to be determined by the Commission in a system transfer proceeding and thus this request seeks to require Red Bird to prepare materials and information that it does not currently possess and that are neither relevant to any issues involved in these dockets, nor is the request reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving its foregoing objections, Red Bird responds as follows:

1. On page 12 of his testimony, witness Cox states that Red Bird has made capital improvements to systems their affiliate group has acquired. Please provide a list of capital improvements Red Bird has made to systems which it has acquired in North Carolina including which service area, a description of the project, total estimated cost, total cumulative spend and estimated or actual in service date.

**RESPONSE:** Please see the attached workbook, which details the various capital improvements completed to date and a summary of the costs per facility.

2. The spreadsheet titled “Red Bird Valuation Summary.xlsx” provided to the Public Staff via email dated February 3, 2023, shows the Red Bird Asset Valuation for Total Environmental Solutions, Inc. as \$223,127. On page 24 of witness Cox’s testimony, he testifies to rate base value of \$271,502. Similar to the spreadsheet described above, please provide an update to the schedules, worksheets with working formulas intact, and invoices to support this amount. The schedules should include:
  - a. Original cost, depreciation rate, year the plant placed in service, years in service, and accumulated depreciation; and
  - b. Contributions in aid of construction, amortization rate, year of contribution or payment, and accumulated amortization.

**RESPONSE:** Please see the attached worksheet provided to Red Bird by Public Staff on 5/25/2023. The Company utilized the value in the attached worksheet in Mr. Cox’s testimony. As such, the Company does not have the specific information requested. Subject to that, please see the Company’s response to DR 6 in this docket for all information the Company has regarding a valuation of the assets to be acquired.

3. On pages 13-15 of witness Cox's testimony, he describes the benefits of Utility Cloud software. Please describe the relationship between Red Bird, or CSWR, with Utility Cloud and AMCS Group. In addition, please provide copies of any contracts and/or agreements with Utility Cloud and AMCS Group.

**RESPONSE: The only relationship between CSWR/Red Bird and Utility Cloud is that of a customer/vendor. The Utility Cloud contract is attached.**

4. On page 17 of witness Cox's testimony, he testifies that Red Bird plans to pursue debt financing from non-affiliated commercial sources. Please clarify if this intentionally says Red Bird, or should state CSWR as a continuation from the preceding sentence regarding capital investment. In addition, please describe when would be the "appropriate time" to pursue debt.

**RESPONSE: As described in the response to DR 16-2, Red Bird intends to pursue debt financing from non-affiliated commercial sources at the appropriate time. Mr. Cox's testimony was not in error because debt financing for Red Bird's North Carolina operations would be sought by Red Bird, not by CSWR.**

5. On page 19 of witness Cox's testimony, he testifies that Red Bird would use a non-affiliated third-party customer service firm. Please identify the customer service firm and provide a copy of the service agreement. In addition, please define "service-related billing question" and explain how customer calls are routed by call type.

**RESPONSE: Nitor Billing Services is the non-affiliated third-party customer services company used by Red Bird and all its affiliated utility operating companies. Please find the Nitor contract attached. A "service-related billing question" is any inquiry relating to a bill received as it pertains to the Company's approved tariff.**

6. Please provide supporting documentation, including but not limited to a billing log for the most recent month, that there are currently 2,276 water connections as stated on page 20 line 7 of witness Cox's testimony.

**RESPONSE: Please see the attached Highly Confidential customer list provided by TESI, which is marked Confidential.**

7. On page 21 of witness Cox's direct testimony, witness Cox testified about the report completed by McGill regarding the water and wastewater systems Red

Bird has applied to acquire. Regarding the wastewater system, witness Cox testified that the McGill report indicates the wastewater collection service area includes “separate lift stations in the neighborhood.” Is the system being purchased by Red Bird limited to two lift stations serving the “comfort station” and clubhouse? Please identify the terms in the purchase agreement that clearly delineates wastewater system assets being purchased.

**RESPONSE: As stated in Section 1 of the *Agreement for Sale of Utility System*, Red Bird is acquiring all assets associated with TESI’s Lake Royale system, including but not limited “[a]ll of Seller’s water and sewer service facilities and their component parts permanently attached to the water and sewer system including but not limited to lines, plant, pipes, manholes and appurtenances.” A copy of that agreement was filed as Attachment F to the Transfer Application.**

8. Does the EPA consent decree related to TESI’s Louisiana operations, discussed on pages 21-23 of witness Cox’s testimony, include any federal requirements related to systems in North Carolina?
- a. Provide a copy of the consent decree by the EPA, including federal docket numbers and any documents related to TESI’s North Carolina operations.

**RESPONSE: The consent decree relating to TESI’s Louisiana operations does not include any federal requirements related to systems in North Carolina. Attached is the Modified Consent Decree entered November 1, 2022.**

9. On page 26 of witness Cox’s testimony, he describes the McGill documents that “were Confidential Attachment H to the Joint Application.” Please indicate whether the Attachment H is confidential or not.

**RESPONSE: Attachment H is confidential.**

10. Please provide a basis for the “apparently continuing compliance issues” referenced on page 27 line 23 of witness Cox’s testimony.

**RESPONSE: Please see the link below to the EPA ECHO database, which details various compliance issues associated with the facility at issue. Additionally, it is understood that TESI has been out of compliance for 12 out of the last 12 quarters, which indicates continuing compliance issues.**

**<https://echo.epa.gov/detailed-facility-report?fid=110006804226>**

11. Please support the claim that “TESI’s customers will be better off if this transaction closes with approval of an acquisition adjustment, because Red Bird is able to invest the capital necessary to address the near term and long term needs in the TESI systems.” made by witness Cox on page 29 of his testimony.

**RESPONSE:** Please see the Company’s responses to DR 17-10 above as well as Confidential Attachment H to the Transfer Application, which details various issues with the TESI systems. Additionally, TESI is in the process of exiting the water and wastewater industry; it has sold all of its operations in other states, is selling its assets in North Carolina, and no longer has the financial or managerial capabilities to provide or ensure provision of safe and reliable service.

12. On page 29 of witness Cox’s testimony, he testifies that the proposed acquisition adjustment satisfies the standard. Please provide Red Bird’s analysis and quantification of the rate impact of rate base treatment of the proposed acquisition adjustment.

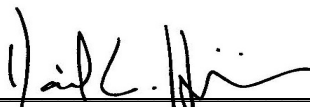
**RESPONSE:** Please refer to the Company’s response to DR 15.

13. On page 21 of witness Cox’s direct testimony, witness Cox testified about the report completed by McGill regarding the water and wastewater systems Red Bird has applied to acquire. Regarding the wastewater system, witness Cox testified that the McGill report indicates the wastewater collection service area includes “separate lift stations in the neighborhood.” During a site visit to the system, the Public Staff observed that lift station 5 was secured by lock which ClearWater Solutions staff indicated they could not access at the time. Please indicate whether the seller will convey lift station 5 as part of the transfer.

**RESPONSE:** Based on discussion with operations/former TESI staff, Red Bird understands that this lift station was turned back over to the Lake Royale POA when the bathhouse that contributed flow to this lift station was connected to a septic system instead. We don’t know, however, whether this lift station was officially abandoned, i.e., disconnected from the sewer system, etc., but it allegedly receives no flow to it because it was only ever serving the one bathhouse that is now on septic. That is also the reason Red Bird does not have access to this lift station site.

Respectfully submitted, this the 9<sup>th</sup> day of September, 2023.

BURNS, DAY & PRESNELL, P.A.



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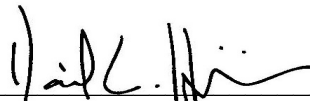
**CERTIFICATE OF SERVICE**

I certify that I have served a true and exact copy of the foregoing document on counsel of record for all parties to these dockets in accordance with Commission Rule R1-39, by United States mail, first class postage prepaid; by hand delivery; or by means of facsimile or electronic delivery upon agreement of the receiving party.

This the 9<sup>th</sup> day of September, 2023.

BURNS, DAY & PRESNELL, P.A.

By:



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