

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,	)	
Total Environmental Solutions, Inc., Post	)	
Office Box 14056, Baton Rouge, Louisiana	)	RED BIRD'S MOTION
70898, for Authority to Transfer the Lake	)	FOR CLARIFICATION OR,
Royale Subdivision Water and Wastewater	)	ALTERNATIVELY, FOR
Utility Systems and Public Utility Franchise	)	RECONSIDERATION
in Franklin and Nash Counties, North Carolina,	)	
and for Approval of Rates	)	

NOW COMES Red Bird Utility Operating Company, LLC (“Red Bird”), and requests clarification of one aspect of the Commission’s Order Granting Motion to Compel issued in these dockets on September 7, 2023. Alternatively, Red Bird requests that the Commission reconsider that same aspect of its ruling Order Granting Motion to Compel.

Specifically, clarification or reconsideration is requested as to the extent of the Commission's ruling with regard to Data Request 13-6. The Order Granting Motion to Compel contains the following statement regarding that data request: "Indeed, the information sought in Data Request 13-6 is identified with particularity and should be readily accessible by Red Bird as it has already been produced in the Missouri proceeding."

Public Staff Data Request 13-6 broadly requested “copies of all discovery responses provided in File No. WR-2023-0006 (In the Matter of Confluence Rivers Utility Operating Company, Inc.’s Request for Authority to Implement a General Rate Increase for Water Service and Sewer Service Provided in Missouri Service Areas) by any Affiliate of Red Bird....” As shown in the Public Staff’s request, the proceeding that is the subject of that

request is a general rate case for Confluence Rivers Utility Operating Company, Inc., another operating subsidiary of CSWR, LLC. As reflected in the Order Granting Motion to Compel, Confluence responded to approximately 1,000 data requests (including subparts) in that Missouri rate case. Yet the only materials addressed or specifically identified in the Public Staff's Motion to Compel relating to Data Request 13-6 are Investment Memoranda produced pursuant to an Order issued by the Missouri Commission, which Memoranda the Public Staff described as follows:

[T]he Missouri Public Service Commission ordered Confluence Rivers to produce investment Memoranda prepared by CSWR and transmitted to US Water's Board of Directors for the purposes of requesting funding associated in total or in any part with Confluence Rivers or potential Missouri acquisitions over the past four and a half years (Exhibit E I). Should these Memoranda contain information regarding CSWR's request for funding for itself or its affiliates' North Carolina operations, the information would certainly be relevant in this matter. Should the Memoranda only contain Missouri-specific information, the Memoranda would still be reasonably calculated to lead to admissible evidence pursuant to Rule 26 of the North Carolina Rules of Evidence [sic] because the Public Staff would be able to understand how financing is arranged between CSWR and its affiliates and tailor future data requests to seek similar information that is North Carolina specific in a manner that is not overly broad or burdensome.

Motion to Compel (¶ 16).

Red Bird believes the Order on Motion to Compel can be read as requiring it to produce information or materials that were "specifically identified." Red Bird will produce all Investment Memoranda that Confluence Rivers produced in its Missouri rate case, as referenced in the Public Staff's Motion to Compel. Red Bird must point out, however, that the only thing Public Staff identified in its Motion to Compel as warranting compelling Red Bird to respond to Data Request 13-6 is the Investment Memoranda described in the Motion to Compel. There was no assertion by Public Staff in its Motion to Compel that anything other than the Investment Memoranda produced by Confluence

Rivers in the Missouri rate case was relevant to the issues presented in this proceeding, or was calculated to lead the discovery of admissible evidence. This is not surprising, as Public Staff would have no visibility to the data requests propounded to Confluence Rivers in Confluence's rate case, and therefore has no ability to show or even contend that, as a general proposition, all the Missouri data request responses are relevant or are calculated to lead to discovery of admissible evidence.

As noted in Red Bird's Response to the Motion to Compel, the overwhelming majority of Confluence Rivers' responses to the Missouri data requests pertained exclusively to Confluence Rivers. Surely the Commission does not believe it appropriate for Red Bird to be required to produce this volume of documents to the Public Staff when the Public Staff's only focus in its Motion to Compel was the Investment Memoranda that it is interested in.

It is quite apparent from the Motion to Compel that the focus of Public Staff's request in DR 13-6 was the Investment Memoranda that Confluence Rivers provided to the Missouri Commission. Those Memoranda are what the Public Staff has "identified with particularity" and Red Bird will produce those documents. But Red Bird submits that a requirement to produce all of the voluminous responses and materials provided by Confluence Rivers in its general rate case is both much more than what the Public Staff is apparently actually interested in, and would be burdensomely punitive for Red Bird.

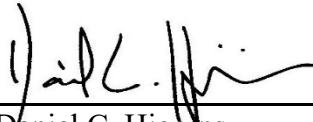
As a final and practical technical consideration, because of the means by which Confluence Rivers filed the overwhelming majority of its discovery responses in the Missouri rate case – via that Commission's electronic filing system – it will be impossible

for Red Bird to recreate and compile all such responses so that they could be transmitted to Public Staff by next Wednesday.

WHEREFORE, Red Bird requests clarification or reconsideration as to the extent of the Commission's ruling as to Data Request 13-6, such that in response to that data request Red Bird is required only to produce the Investment Memoranda that Confluence Rivers produced to the Missouri Public Service Commission in its rate case.

Respectfully submitted, this the 8<sup>th</sup> day of September, 2023.

BURNS, DAY & PRESNELL, P.A.



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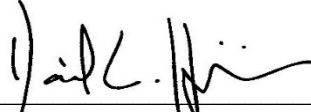
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**CERTIFICATE OF SERVICE**

I certify that I have served a true and exact copy of the foregoing document on counsel 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 8<sup>th</sup> day of September, 2023.

BURNS, DAY & PRESNELL, P.A.

By:   
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