

**NORTH CAROLINA UTILITIES COMMISSION
RALEIGH**

Docket No. W-1146, Sub 13
Docket No. W-1328, Sub 10

Exceptions Due on or Before December 29, 2023

NOTICE TO PARTIES

Parties to the above proceeding may file exceptions to the report and Recommended Order hereto attached on or before the day shown above as provided in N.C. Gen. Stat. § 62-78. Exceptions, if any, must be filed with the North Carolina Utilities Commission, Raleigh, North Carolina, and a copy thereof mailed or delivered to each party of record, or to the attorney for such party, as shown by appearances noted. Each exception must be numbered and clearly and specifically stated in one paragraph without argument. The grounds for each exception must be stated in one or more paragraphs, immediately following the statement of the exception, and may include any argument, explanation, or citations the party filing same desires to make. In the event exceptions are filed, as herein provided, a time will be fixed for oral argument before the Commission upon the exceptions so filed, and due notice given to all parties of the time so fixed; provided, oral argument will be deemed waived unless written request is made therefore at the time exceptions are filed. If exceptions are not filed, as herein provided, the attached report and recommended decision will become final and effective on January 2, 2024, unless the Commission, upon its own initiative, with notice to parties of record modifies or changes said Order or decision or postpones the effective date thereof.

The report and Recommended Order attached shall be construed as tentative only until the same becomes final in the manner hereinabove set out.

**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, and Total Environmental)
Solutions, Inc., 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)
	RECOMMENDED ORDER
	APPROVING STIPULATION,
	APPROVING TRANSFER AND
	RATES, GRANTING FRANCHISE,
	APPROVING BOND, AND
	REQUIRING CUSTOMER NOTICE

HEARD: Monday, September 25, 2023, at 7:00 p.m., at the Judge Hamilton H. Hobgood Courthouse Annex, 113 South Main Street, Louisburg, North Carolina 27549; and

Tuesday, October 24, 2022, at 12:00 p.m., in the Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, 27603

BEFORE: Commission Karen M. Kemerait, Presiding, and Commissioner Jeffrey A. Hughes

APPEARANCES:

For Red Bird Utility Operating Company, LLC:

Daniel C. Higgins, Burns, Day & Presnell, P.A., PO Box 10867, Raleigh, North Carolina 27605

For Total Environmental Solutions, Inc.

Edward S. Finley, Jr., Edward S. Finley, Jr., PLLC, 2024 White Oak Road, Raleigh, North Carolina 27608

For Lake Royale Property Owners Association, Inc.

David T. Drooz, Fox Rothschild, LLP, 434 Fayetteville Street, Suite 2800, Raleigh, North Carolina 27601

For the Using and Consuming Public:

Megan Jost, Public Staff - North Carolina Utilities Commission, 4326 Mail Service Center, Raleigh, North Carolina 27699-432

BY THE COMMISSION: On June 7, 2021, Red Bird Utility Operating Company, LLC (Red Bird) and Total Environmental Solutions, Inc. (TESI) filed with the North Carolina Utilities Commission (Commission) an Application for Transfer of Public Utility Franchise and for Approval of Rates (Application) seeking authority to transfer the water and wastewater utility systems and public utility franchise serving the Lake Royale subdivision in Franklin and Nash Counties, North Carolina, 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.

On July 11, 2023, the Commission issued its Order Scheduling Hearings, Establishing Discovery Guidelines, and Requiring Customer Notice (Scheduling Order) scheduling, among other things, a public witness hearing on September 25, 2023, and an expert witness hearing on October 23, 2023.

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.

On July 31, 2023, the Commission issued a Notice of Complete Application in these dockets in accordance with North Carolina Session Law 2023-67.

On August 25, 2023, Red Bird filed a Motion for Extension of Time to file its direct testimony. By Order issued on August 28, 2023, the Commission granted the motion.

On August 30, 2023, Red Bird filed the direct testimony of Josiah Cox, President of Red Bird and CSWR, LLC (CSWR), a Missouri limited liability company formed to provide managerial, technical, and financial support to its utility operating affiliates, including Red Bird. Witness Cox's direct testimony included four exhibits: an updated listing of CSWR senior management; a letter from the Missouri Department of Natural Resources, a letter from the Mississippi State Department of Health, and a schedule showing the due diligence expenses Red Bird contends it incurred as of the date his direct testimony was filed.

Also on August 30, 2023, Red Bird filed objections to certain of the Public Staff's 13th Set of Data Requests. On September 1, 2023, Public Staff filed a Motion to Compel those data requests that were the subject of Red Bird's objections.

By Order dated September 7, 2023, the Commission granted Public Staff's Motion to Compel.

On September 8, 2023, Red Bird filed a Motion for Clarification or, Alternatively, for Reconsideration (Motion to Reconsider) as to the Commission's ruling on the Public Staff's Motion to Compel. On the same date, the Public Staff filed its Response opposing Red Bird's motion.

On September 11, 2023, the Lake Royale Property Owners Association, Inc. (LRPOA) filed a petition to intervene. The Commission issued an order granting LRPOA's intervention on September 12, 2023.

On September 12, 2023, the Commission issued an Order denying Red Bird's Motion to Reconsider.

On September 19, 2023, the Public Staff filed the direct testimony of Evan M. Houser, Public Utilities Engineer with the Public Staff's Water, Sewer, and Telephone Division; the direct testimony and exhibits of Lynn Feasel, Public Utilities Regulatory Manager of the Water, Sewer, and Telecommunications Sections with the Public Staff's Accounting Division, and the direct testimony and exhibit of John R. Hinton, Director of the Public Staff's Economic Research Division.

The public witness hearing was held as scheduled in Louisburg, North Carolina on September 25, 2023.

On September 26, 2023, the Public Staff filed the corrected testimony of Evan M. Houser.

On October 3, 2023, Red Bird filed the rebuttal testimony and exhibits of Todd Thomas, Senior Vice President of CSWR, and the rebuttal testimony of Caitlin O'Reilly, Regulatory Accounting Manager for CSWR.

On October 9, 2023, Red Bird and TESI filed their respective Verified Reports (Public Hearing Reports) regarding issues raised at the public witness hearing as required by the Scheduling Order.

On October 12, 2023, Red Bird filed a Motion for Substitution of Witness and Adoption of Testimony by which it sought to have witness Thomas adopt the prefiled direct testimony of witness Cox and appear and testify in his stead at the expert witness hearing.

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

Also on October 13, 2023, the Commission issued an Order Delaying Hearing and Denying Motion for Substitution of Witness and Adoption of Testimony.

On October 20, 2023, Red Bird filed a Motion for Substitution of Witness and Adoption of Testimony, for Rescheduling of Expert Witness Hearing, and to Excuse One

Witness. In its motion, Red Bird requested that the Commission reschedule the expert witness hearing to begin at 12:00 p.m. on October 24, 2023, that witness Cox be substituted for witness Thomas and be allowed to adopt witness Thomas' prefiled rebuttal testimony, and that witness O'Reilly be excused from attending the expert witness hearing. Red Bird's motion was granted by Commission order issued on October 23, 2023.

On October 23, 2023, Red Bird and the Public Staff (collectively, the Stipulating Parties) filed a Settlement Agreement and Stipulation (Stipulation) setting forth their agreement on settlement. On that same day, the Public Staff filed the joint settlement testimony and exhibit of Public Staff witnesses Feasel and Houser, and Red Bird filed the supplemental testimony and exhibit of witness Cox. TESI and LRPOA did not join the Stipulation.

Also, on October 23, 2023, the Public Staff filed its Response to the Public Hearing Reports.

On October 24, 2023, the expert witness hearing was held as rescheduled by the Commission.

On October 25, 2023, the Public Staff filed late-filed exhibits as requested during the expert witness hearing.

On November 22, 2023, LRPOA filed its Post-Hearing Brief, in which it supported approval of the Application conditioned upon two conditions: "(1) TESI first repairing all existing road damage due to leaks from its water system and from its past repair efforts, or paying another party to make the repairs, and (2) TESI paying the Lake Royale POA for the \$16,000 incurred by the Lake Royale POA to repair road damage caused by TESI."

On November 30, 2023, TESI filed a Motion for Leave to File Response to Brief (Motion) and its accompanying Response. In its Response, TESI argues that LRPOA failed to include a statement describing the exact relief it sought when it filed its request to intervene, as required by Commission Rule R1-19(a)(4). TESI also disputed LRPOA's claim on evidentiary grounds, citing a lack of documentary evidence in support of its proposed condition. Finally, TESI stated that the Commission lacks jurisdiction to award damages against a public utility.¹

On December 1, 2023, LRPOA filed its Reply to TESI's Response to Brief, in which it disputed TESI's assertion that insufficient documentary evidence existed in the record to support LRPOA's proposed condition. LRPOA also disputed TESI's assertion that the Commission is without jurisdiction to award monetary damages against a public utility, stating that LRPOA's request is not proposed as an award of damages, but instead as a

¹ In support of its argument, TESI cited to Order Denying Hearing and Finding No Reasonable Grounds Exist to Further Investigate Complaint, *Jay Wiese v. Mountain Air Utility Corporation*, Docket No. W-1148, Sub 13 (N.C.U.C. May 18, 2015); Order Dismissing Complaint Due to Lack of Jurisdiction and Closing Docket, *Sterling Baker v. Duke Power*, Docket No. E-7, Sub 675 (N.C.U.C. Mar. 12, 2002).

proposed regulatory condition for the transfer of a franchise, distinguishing it from the cases cited by TESI.²

On December 13, 2023, the Commission granted TESI's Motion and issued its Order Granting Motion for Leave to File Response, Accepting Response, and Accepting Reply.

DESCRIPTION OF THE STIPULATION

The Stipulation provides, in pertinent part, the following:

The Stipulating Parties agree that the Application filed by Red Bird and TESI in these dockets should be approved by the Commission, subject to the following terms and conditions:

1. Prior to closing and pursuant to future Commission order, Red Bird shall post a bond in the amount of \$100,000.00 in a form acceptable to the Commission for the TESI systems.

2. At closing, Red Bird will adopt the tariffs and rates currently in effect for TESI's water and wastewater customers, including any pass-through rates approved pursuant to N.C. Gen. Stat. § 62-133.11.

3. 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.

4. The Stipulating Parties agree that the net book value of the TESI assets Red Bird is acquiring is \$186,541.00 as calculated in Public Staff Settlement Exhibit 1. This amount is based on plant additions through December 31, 2022, as provided by Red Bird, and includes depreciation and amortization calculated through December 31, 2023. The Stipulating 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.

5. 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 \$21,900.00. By amortizing the CIAC over 15 years, the net CIAC balance is \$19,710.00 as of December 31, 2023.

² In support of its argument, LRPOA cites to *State ex Rel. Utilities Comm. v. Southern Bell*, 88 N.C. App. 153 (1987).

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

a. 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.

b. 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.

c. Up to \$10,000.00 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.

7. Red Bird agrees not to pursue rate recovery of any additional costs associated with the transfer, including due diligence, transactional, or regulatory costs, other than those listed above in Paragraphs 6a, b, and c, and as further detailed in Public Staff Settlement Exhibit 2.

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

9. 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 investments of more than \$100,000.00 in the TESI water system.

10. 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 Red Bird's financial condition.

Based upon the foregoing, including the Application, the testimony and exhibits of the witnesses, the Stipulation, prior dockets regarding TESI, and the entire record in this proceeding, the Commission makes the following

FINDINGS OF FACT

1. TESI serves the Lake Royale subdivision in Nash and Franklin Counties, North Carolina. On October 19, 2000, TESI was granted a Certificate of Public Convenience and Necessity (CPCN) in Docket No. W-1146, Sub 0 to provide water utility

service to the Lake Royale subdivision. On March 13, 2007, TESI was granted a CPCN in Docket No. W-1146, Sub 3 to provide sewer service to the Lake Royale subdivision. TESI provides water service to approximately 2,276 residential customers and sewer service to two commercial customers.

2. Red Bird is a North Carolina limited liability company in good standing. Red Bird is a wholly owned subsidiary of its sole member, Red Bird Utility Holding Company, LLC (RBUH), which is also a North Carolina limited liability company in good standing. RBUH is a wholly owned subsidiary of its sole member, North Carolina Central States Water Resources, LLC, which is also a North Carolina limited liability company in good standing and a wholly owned subsidiary of CSWR.³

3. Red Bird presently holds three utility franchises in North Carolina. On December 8, 2021, 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. On February 7, 2023, in Docket Nos. W-1328, Sub 4, and W-1040, Sub 10, the Commission issued an order approving the transfer of the Bear Den Acres Development water system and issuing a franchise to Red Bird for that system. On August 29, 2023, in Docket Nos. W-1328, Sub 9, and W-992, Sub 8, the Commission issued an order approving the transfer of the Crosby Utilities, Inc. water and wastewater utility systems and issuing a franchise to Red Bird for those systems.⁴

4. During the public witness hearing, 15 TESI customers and one former customer testified regarding concerns about the number of water leaks and the timeliness of repairs by TESI; inadequate system pressure; inadequate flushing of lines; poor water quality; problems with road repairs and the LRPOA's payment for road repairs; issues with communications from TESI; and concerns about future rate increases. Also, TESI customers filed emails in the dockets expressing concerns about future rate increases, and the Public Staff received 28 complaints from TESI customers between July 1, 2020, and June 30, 2023, including ten complaints regarding water service outages between March and May 2022.

5. Red Bird seeks Commission approval to acquire the TESI water and wastewater utility systems and public utility franchise.

³ U.S. Water Systems, LLC (U.S. Water), is a Delaware limited liability company and the sole owner/member of CSWR. U.S. Water was formed by the independent investment firm Sciens Capital Management, LLC, to oversee water sector investments using investor dollars held by Sciens Water Opportunities Fund.

⁴ In addition to the three systems for which Red Bird has been granted franchises in North Carolina, Red Bird's indirect corporate parent, CSWR, through separate state affiliates, has acquired and currently operates more than 800 water or wastewater utility systems in Missouri, Arkansas, Kentucky, Louisiana, Texas, Tennessee, Mississippi, Arizona, Florida, and South Carolina, providing utility service to more than 219,000 wastewater customers and over 145,000 water customers.

6. TESI operates its water system under North Carolina Department of Environmental Quality (NCDEQ), Division of Water Resources Water System Permit No. NC0235108 and its wastewater system under NCDEQ Permit No. NC0042510.

7. A Red Bird affiliate, Central States Water Resources, Inc. (Central States), entered into an Agreement for Sale of Utility System with TESI dated February 4, 2021 (Purchase Agreement). According to the Purchase Agreement, the closing of the sale will occur after regulatory approval is obtained. Central States subsequently assigned the Purchase Agreement to its affiliate, Red Bird, on April 15, 2022.

8. Upon acquisition of the TESI systems, Red Bird indicated it plans to make capital improvements to the water and wastewater systems. Based on its consulting engineer's 2021 projections, Red Bird estimates that the cost of improvements to the TESI systems will be approximately \$457,900.00 for work on the wastewater system and approximately \$235,000.00 for the work on the water system.

9. TESI purchases bulk water from Franklin County. On November 6, 2023, the Commission issued its Order Approving Tariff Revision and Requiring Customer Notice in Docket No. W-1146, Sub 15 (Pass-Through Approval Order), whereby it approved TESI's request to revise its rates in order to pass through the increased cost of purchased water from Franklin County. Per the Pass-Through Approval Order, TESI's presently approved monthly rates, which Red Bird proposes to adopt and are uncontested by the Public Staff, are as follows:

<u>Monthly Metered Residential Water Service:</u>	<u>Present and Proposed</u>
Base Charge, zero usage	\$33.49
Usage Charge, per 1,000 gallons	\$ 8.08
<u>Monthly Metered Sewer Utility Service (based on metered water utility service):</u>	
Base charge, per water meter size:	
Less than 1"	\$164.50
1"	\$246.75
2"	\$411.25
Usage Charge, per 1,000 gallons	\$ 49.03
<u>Water Availability Rate:</u>	\$ 22.95 per year
<u>Connection Charge:</u>	
Water	\$300.00
Sewer	Actual cost of connection

Reconnection Charge:

If water service is cut off by utility for good cause \$ 14.35

If water service is discontinued at customer's request \$ 14.35

If sewer service is cut off by utility for good cause
by disconnecting water None

If sewer service is cut off by utility for good cause
by any method other than above Actual Cost

Finance Charge for Late Payment: 1% per month

10. The Stipulation resolves all contested issues between Red Bird and the Public Staff related to the transfer of the TESI systems to Red Bird. TESI and LRPOA are not parties to the Stipulation.

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

12. Red Bird has the technical, managerial, operational, and financial capacity to provide adequate, safe, efficient, and reasonable water and sewer utility service on an ongoing basis to customers in the Lake Royale service area.

13. In its Post-Hearing Brief, LRPOA requested that the Commission make its approval of the Application contingent upon two conditions: (1) TESI repairing, or paying for the repair of, all existing road damage due to water system leaks and from previous repair efforts; and (2) TESI reimbursing LRPOA in the amount of \$16,000.00 for repair costs incurred for road repairs caused by repeated water leaks from the TESI water system.

14. TESI disputed LRPOA's claim that TESI should reimburse LRPOA for the \$16,000.00 cost of road repairs on evidentiary grounds, citing a lack of documentary evidence in support of its proposed condition. TESI also stated that the Commission lacks jurisdiction to award damages against a public utility. TESI further stated that all existing road damage due to water leaks and from previous repairs has been completed.

15. Consistent with N.C.G.S. § 62-111(a), approval of the pending Application is justified by the public convenience and necessity and is in the public interest.

16. It is appropriate for the Commission to approve the Stipulation in its entirety.

17. A bond in the amount of \$100,000.00 for the Lake Royale service area for water and wastewater service is just, reasonable, and appropriate.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 1-3

The evidence supporting these findings of fact is found in the verified Application, the Commission's records in the instant dockets, the testimony of Red Bird witness Cox, Public Staff witness Houser, and the entire record in this proceeding. This finding is also based on the Commission's records in the TESI Transfer and CPCN Docket Nos. W-1146, Subs 0 (Sub 0) and 3 (Sub 3); the Sub 0 Recommended Order Approving Transfer and the Sub 3 Recommended Order Granting Franchise, Approving Rates, and Requiring Customer Notice; the Red Bird Transfer Docket Nos. W-1328, Sub 9 and W-992, Sub 8; and the Order Approving Stipulation, Approving Bond, Approving Transfer and Rates, and Requiring Customer Notice as to the transfer of the Crosby Utilities, Inc., water and wastewater utility systems to Red Bird in Docket Nos. W-1328, Sub 9 and W-992, Sub 8.

Additionally, the evidence supporting these findings of fact is based on the direct testimony of Red Bird witness Cox describing CSWR, its subsidiary operating affiliates, and their water and/or wastewater utility systems in Docket Nos. W-1328, Sub 7 and W-1328, Sub 4, and W-1040, Sub 10.

Based upon competent, substantial, and material evidence in the record, the Commission concludes that these findings are informational, procedural, and jurisdictional in nature and are not contested by any party.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 4

The evidence supporting this finding of fact is based on public witness testimony at the public witness hearing regarding water leaks and the timeliness of repairs by TESI; inadequate system pressure; inadequate flushing of lines; poor water quality; problems with road repairs and the LRPOA's payment for road repairs; issues with communications from TESI; and concerns about future rate increases. The evidence supporting this finding of fact is also based on the witness summaries provided in the verified Public Hearing Reports filed by TESI and Red Bird, and the verified Response filed by the Public Staff. Additionally, this finding of fact is based on the 28 complaints from TESI customers filed in the dockets between July 1, 2020, and June 30, 2023, including 10 complaints regarding water service outages between March and May 2022.

This finding of fact is also based on the testimony of Public Staff witness Houser regarding complaints from TESI customers received by the Public Staff's Consumer Services Division. Tr. vol. 2, 165-66.

Based upon competent, substantial, and material evidence in the record, the Commission concludes that reasonable and prudent actions must be taken to address the issues with the TESI water system serving the Lake Royale subdivision, as testified

to by witnesses at the public witness hearing, raised through customer complaints submitted to the Public Staff, addressed in the verified Public Hearing Reports of TESI and Red Bird, and described in the Public Staff's verified Response to the Public Hearing Reports, including, but not limited to, quality of service, road repairs, and the condition of the water and wastewater systems.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NOS. 5-7

The evidence supporting these findings of fact is found in the Application; the Commission's records in Docket No. 1146, Sub 0, and other dockets related to TESI; the filings in this docket, including the Agreement for Sale of Utility System with TESI dated February 4, 2021, and the Assignment of Contract Rights document dated April 15, 2022; and the testimony of Public Staff witness Houser.

Based upon competent, substantial, and material evidence in the record, the Commission concludes that these findings are informational in nature and are not contested by any party.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NO. 8

The evidence supporting this finding of fact is found in the Application and supplemental supporting materials filed by Red Bird, as well as the direct testimony of Red Bird witness Cox, the testimony of Public Staff witness Houser, and the rebuttal testimony of Red Bird witness Thomas.

Red Bird witness Cox testified regarding the deficiencies and need for improvements in the TESI systems identified by McGill Associates, P.A. (McGill Associates), Red Bird's North Carolina consulting engineers, in McGill Associates' Engineering Memorandum dated May, 2021. *Id.* at 41. Witness Cox further testified that in order to address operational and/or compliance issues in TESI's water and wastewater treatment systems, McGill Associates recommended that the following improvements be performed:

1. For the water system:
 - a. Rehabilitation of the elevated tank for continued use as part of the distribution system (short term).
 - b. Removal of elevated tank from service (long term).
 - If Franklin County has capacity, installation of booster pumps to maintain pressure;
 - If Franklin does not have capacity, construction of a ground storage tank that meets state storage requirements.
2. For the wastewater system:
 - a. For Lift Station No. 1
 - Replace existing simplex pump with duplex pumps;
 - Provide connection for portable power source;

- Provide telemetry system for remote monitoring;
 - Rehabilitate wet well.
 - b. Exercise air release valves and replace as needed.
3. For Lift Station No. 9
- a. Demolish and replace existing wet well, pump, piping, and valves;
 - b. Demolish existing holding tank and reroute sewer lines to new wet well as needed.
4. For the treatment plant
- a. Rehabilitate two aeration chambers. Replace piping and diffusers to aeration chambers;
 - b. Rehabilitate two settling tanks;
 - c. Rehabilitate digester and replace piping and diffusers;
 - d. Replace sand media in tertiary filters;
 - e. Replace and reroute plant piping to remove from service chambers not being rehabilitated;
 - f. Replace both blowers with 100 CFM blowers and motors;
 - g. Provide new permanent backup generator with automatic transfer switch.

Id. at 42.

Public Staff witness Houser expressed concern about the extent of the investment estimated by Red Bird to address needs in the TESI wastewater plant, which only serves two customers. Witness Houser noted that all investment will be subject to a determination of whether utility property is used and useful during a future rate case. *Id.* at 183. Additionally, witness Houser stated that all investments made by Red Bird in the TESI system will be reviewed subject to the reasonable and prudent standard in future rate cases.

Also, at the public witness hearing, customers testified about their concerns about future rate increases, and customers filed emails in the dockets expressing concerns about future rate increases.

The Commission notes Red Bird's assertion that the TESI water and wastewater systems require maintenance and upgrades to ensure they are able to continue providing safe and reliable service to the customers they serve, along with some customers' testimony and statements that improvements to the systems are necessary. However, the Commission concludes, based upon competent, substantial, and material evidence in the record, that the scope and extent of capital improvements and repairs that are reasonable and prudent is, at this time, not adequately known or knowable by any party to this proceeding. Thus, the Commission concludes that the appropriate time and venue to determine the reasonableness and prudence of proposed and/or actual capital investments is the next general rate case involving these systems.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NO. 9

The evidence supporting this finding of fact is found in the Application, the direct testimony of Red Bird witness Cox, and the testimony of Public Staff witness Houser. This finding of fact is also based on the Application and the Commission's records in prior TESI dockets, including the Pass-Through Approval Order issued in Docket No. W-1146, Sub 15.

Red Bird proposed adopting TESI's existing rates and does not seek a rate increase in connection with its request for approval of the transfer of the TESI systems. *Id.* at 70, 168. Based upon competent, substantial, and material evidence in the record, the Commission concludes that this finding is not contested by any party to this proceeding.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 10-11

The evidence supporting these findings of fact is found in the Stipulation, the entire record in these dockets, the joint settlement testimony filed by Public Staff witnesses Houser and Feasel, and the supplemental testimony filed by Red Bird witness Cox.

Red Bird and the Public Staff are the Stipulating Parties to the Stipulation, while TESI and LRPOA are not parties to the Stipulation. The Stipulation resolves all issues between the Stipulating Parties in this proceeding. Neither TESI nor LRPOA has objected to the Stipulation.

Public Staff witnesses Houser and Feasel testified in their Joint Settlement Testimony that the Stipulation directly benefits customers by providing cost savings to customers by minimizing the magnitude of future rate increases. Public Staff Joint Settlement Testimony of Lynn Feasel and Evan M. Houser, 6-7.

Based upon the competent, substantial, and material evidence in the record, the Commission concludes that the Stipulation represents a negotiated settlement of all issues in this proceeding and that the provisions agreed to by the Stipulating Parties are reasonable and appropriate for the purpose of this proceeding. Based on the record as a whole, the Commission concludes that the terms of the Stipulation are just and reasonable to Red Bird as well as current and future customers of the TESI systems. In addition, as discussed hereinbelow, the Commission concludes that the provisions of the Stipulation are just and reasonable to all parties to this proceeding and serve the public interest, and that it is appropriate to approve the Stipulation in its entirety.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 12

The evidence supporting this finding of fact is found in the Application, Red Bird's supplemental filings, the testimony of Red Bird witness Cox, Public Staff witnesses Houser and Hinton, the Stipulation, and the entire record in this proceeding.

In his direct testimony, Public Staff witness Houser testified that “Red Bird has the technical and managerial capabilities necessary to provide public utility service to the Lake Royale water and wastewater systems,” and recommended that the Commission approve the transfer of the TESI systems to Red Bird. Tr. vol. 2, 171. Public Staff witness Hinton also noted in his testimony that Red Bird has “the financial capacity to acquire, own, and operate the TESI systems”. *Id.* at 216. Additionally, Red Bird witness Cox testified that CSWR has acquired and currently operates over 800 water and/or wastewater utility systems in 10 other states and currently provides service to approximately 219,000 wastewater customers and over 145,000 water customers. *Id.* at 25.

The Stipulation also reflects the Public Staff's agreement that Red Bird has the technical, managerial, and financial capacity to provide water utility service in the TESI service area. The Commission has previously made similar findings regarding Red Bird in its 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 in Docket No. W-1328, Sub 7; in its order approving the transfer of the Bear Den Acres Development water system and public utility franchise to Red Bird in Docket Nos. W-1328, Sub 4, and W-1040, Sub 10; and in its order approving the transfer of the Crosby Utilities, Inc. systems and public utility franchise to Red Bird for those systems in Docket Nos. W-1328, Sub 9, and W-992, Sub 8.

Based upon competent, substantial, and material evidence in the record, the Commission concludes that Red Bird has the technical, managerial, and financial capacity to provide adequate, safe, efficient, and reasonable water and sewer utility service on an ongoing basis to customers in the TESI service area.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 13-14

The evidence supporting these findings of fact is found in LRPOA's Post-Hearing Brief; TESI's Motion and accompanying Response; LRPOA's Reply to TESI's Response to Brief; customer testimony at the public witness hearing; and TESI's and Red Bird's Public Hearing Reports.

During the public witness hearing, Grace Noonan, who is a TESI customer and General Manager for the LRPOA, testified about her concerns that TESI made inadequate repairs to the roads in the subdivision due to problems with the water system. Tr. vol. 1, 13, 14, 17, 18. Ms. Noonan testified: “We’ve had roads that are being prepared for years that haven’t been repaired. We’ve had roads that were repaired but then we had to repair them again because they weren’t sufficiently repaired. We have invoiced TESI just recently \$16,000 for repairs that we’ve had to make.” *Id.* at 14. Other customers testified about their concerns to TESI’s repair of the roads, but no customer other than Ms. Noonan testified that TESI is responsible for reimbursing LRPOA for road repairs or referenced a \$16,000.00 invoice. While Ms. Noonan referred to the \$16,000.00 invoice, she did not admit the invoice or any other supporting documentary evidence into the record.

In LRPOA's Post-Hearing Brief, LRPOA stated that "[s]ome of the road damage caused by TESI's water system has been repaired at the expense of the Lake Royale POA," and noted the \$16,000.00 invoice to which Ms. Noonan had referred during the public witness hearing. LRPOA Post-Hearing Brief at 3. Based upon that "circumstance," LRPOA stated that it supported approval of the Application so long as the approval includes the following two conditions: "(1) TESI first repairing all existing road damage due to leaks from its water system and from its past repair efforts, or paying another party to make the repairs, and (2) TESI paying the Lake Royale POA for the \$16,000 incurred by the Lake Royale POA to repair road damage caused by TESI." *Id.*

In TESI's Motion and accompanying Response, TESI argued that LRPOA failed to include a statement describing the exact relief it sought when it filed its request to intervene, as required by Commission Rule R1-19(a)(4); disputed LRPOA's claim on evidentiary grounds, citing a lack of documentary evidence in support of its proposed condition; and contended that the Commission lacks jurisdiction to award damages against a public utility. In regard to its argument that the Commission lacks jurisdiction to award monetary damages to LRPOA, TESI cited to Order Denying Hearing and Finding No Reasonable Grounds Exist to Further Investigate Complaint, *Jay Wiese v. Mountain Air Utility Corporation*, Docket No. W-1148, Sub 13 (N.C.U.C. May 18, 2015); Order Dismissing Complaint Due to Lack of Jurisdiction and Closing Docket, *Sterling Baker v. Duke Power*, Docket No. E-7, Sub 675 (N.C.U.C. Mar. 12, 2002). TESI Response at 1-2. TESI also alleged that there is no evidence in the record to support LRPOA's claim:

The record in this case contains no documentation evidence supporting the claim. The record contains no invoices, no evidence of bills paid, no correspondence. There is no evidence as to the timing of the repairs, the locations at which the repairs were made, which entity made the repairs. There is no evidence as to what the entity that made the repairs charged for each repair. There is no evidence as to whether the repairs were made to rectify damage to roads caused by efforts to repair leaks or to make connections for new residents. There is no evidence that the road repairs for which damages are sought were made to rectify situations where the POA was dissatisfied with the initial repairs made by TESI. There is no evidence that the POA first requested repairs by TESI for which damages are sought or TESI's response. There is no evidence or any other pertinent information that would be necessary to support a Commission order imposing a requirement upon TESI to honor this claim.

Id. at 2.

In LRPOA's Reply to TESI's Response, LRPOA claimed that there is sufficient evidence in the record to support a condition that the transfer not occur until TESI has reimbursed LRPOA in the amount of \$16,000.00 and cited to Ms. Noonan's testimony at the public witness hearing. Reply at 2. LRPOA further argued that the Commission does in fact have jurisdiction to require TESU to pay monetary damages to LRPOA as a

regulatory condition of approval, citing *State ex Rel. Utilities Comm. v. Southern Bell*, 88 N.C. App. 153 (1987).

Based upon the entire record in these dockets, the Commission concludes that there is insufficient evidence in the record to demonstrate that TESI is liable to LRPOA in the amount of \$16,000.00 for road repairs for which LRPOA paid. While Ms. Noonan testified at the Public Witness Hearing that LRPOA had invoiced TESI for \$16,000.00 for road repairs, neither Ms. Noonan nor LRPOA introduced the invoice or any supporting documentation into the record. Such testimony by Ms. Noonan without any additional evidence or documentation is insufficient to demonstrate that TESI is responsible for the \$16,000.00 cost. As noted by TESI, LRPOA presented no documentary evidence (invoices or bills paid), no specific information as to the repairs that LRPOA made, and no specific information about the reason for the repairs. Since the Commission has concluded that LRPOA failed to present sufficient evidence to support Ms. Noonan's testimony that TESI should reimburse LRPOA for the amount of \$16,000.00, there is no need for the Commission to address TESI's contention that the Commission lacks jurisdiction to impose a condition—that TESI pay LRPOA the amount of \$16,000.00—on the approval of the Application.

With regard to LRPOA's request that TESI repair all existing road damage due to water leaks and from TESI's previous repair efforts, TESI states in its Response that, per Jack Gibbons, TESI's on-site supervisor and Red Bird's current operator and contractor for road repairs, all the sites referenced in LRPOA's brief have been repaired and all road repairs are up to date. LRPOA's Reply does not dispute that TESI has completed all road repairs as requested.

Based upon competent, substantial, and material evidence in the record, the Commission concludes that TESI has completed repairs to all existing road damage caused by water leaks and that this issue has been resolved making LRPOA's request moot.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 15

The evidence supporting this finding of fact is found in the Stipulation, the entire record in these dockets, the supplemental testimony of Red Bird witness Cox, and the joint settlement testimony of Public Staff witnesses Houser and Feasel.

Based upon competent, substantial, and material evidence in the record, the Commission concludes that good cause exists to approve the Application. Consistent with N.C.G.S. § 62-111(a), the Commission concludes that approval of the Application is justified by the public convenience and necessity and is in the public interest. The decision is fully supported by the supplemental testimony filed by Red Bird witness Cox, the joint settlement testimony filed by Public Staff witnesses Houser and Feasel, and the Stipulation entered into by Red Bird and the Public Staff. Accordingly, the Commission concludes that Red Bird's Application should be approved, as modified under the

Stipulation, effective upon the close of the acquisition of the water and wastewater utility system assets by Red Bird from TESI.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 16-17

The evidence supporting these findings of fact is found in the Application, the Stipulation, the entire record in these dockets, the supplemental testimony of Red Bird witness Cox, and the joint settlement testimony of Public Staff witnesses Houser and Feasel.

Based upon competent, substantial, and material evidence in the record, the Commission concludes that the provisions of the Stipulation are just and reasonable to TESI customers and all parties to this proceeding and serve the public interest. Therefore, the Commission concludes that the Stipulation should be approved in its entirety.

The Commission further concludes that: (1) Red Bird shall post a \$100,000.00 bond for the TESI service area for acceptance and approval by the Commission within 30 days of the date of this Order or prior to closing, whichever occurs first; (2) Red Bird shall provide written notice to the Commission within three business days after the closing that the transfer has been completed and the date of such closing; (3) upon the closing of the transfer, Red Bird will be granted a CPCN to provide water and sewer utility service to the TESI service areas; (4) Red Bird shall adopt the tariffs and rates currently in effect for TESI's water and wastewater customers, including any pass-through increases approved pursuant to N.C.G.S. § 62-133.11; (5) Red Bird shall adopt TESI's accounting records upon closing, provide the detailed accounting records so received to the Public Staff, and will not adjust or make changes to those records without Commission approval; and (6) Red Bird shall provide notice to customers that the transfer has been granted and of the approved rates.

Consistent with the Stipulation, the Commission also concludes that the net book value of the TESI assets Red Bird will acquire is \$186,541.00 as calculated by the Public Staff, that all involved parties have the right to seek a later 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, and that any assets determined by the Commission to not have been used and useful will be removed from rate base. Furthermore, the Commission concludes that the amounts for due diligence and other transaction costs should be approved for recovery by Red Bird as described in the Stipulation, and that Red Bird has agreed not to pursue an acquisition adjustment or rate recovery for any additional costs related to its acquisition of the TESI systems.

Additionally, the Commission concludes that it is appropriate for Red Bird to apply for funding from the NCDEQ, Division of Water Infrastructure in the funding cycle preceding any planned water system investment of more than \$100,000.00 in the TESI water system so as to mitigate future customer rate increases from expenses related to maintenance and capital improvements that may be necessary to ensure that the system is capable of providing safe and reliable service in a consistent manner.

Finally, the Commission concludes that it is reasonable, beginning one year after the effective date of this Order and continuing annually thereafter, for Red Bird and key CSWR leaders to meet with the Public Staff. During this meeting, Red Bird and CSWR shall provide an update to the Public Staff detailing all changes to Red Bird's facilities and operations since the last annual meeting and update, as well as discuss the overall financial condition of both companies. Furthermore, the Commission concludes that this meeting should not be limited only to discussing the TESI system and that including all of Red Bird's current and future North Carolina water and wastewater systems in this discussion will provide appropriate oversight while preventing unnecessary and duplicative efforts on the part of Red Bird and the Public Staff.

IT IS, THEREFORE, ORDERED as follows:

1. That the Application for Transfer of Public Utility Franchise and for Approval of Rates, jointly filed on June 7, 2021, by Red Bird and TESI, is hereby approved;
2. That the Stipulation between Red Bird and the Public Staff is hereby approved in its entirety;
3. That Red Bird shall comply with all terms of the Stipulation as filed in this docket;
4. That the rate base for the TESI system assets shall be \$186,541.00. The gross amount of CIAC to be recorded by Red Bird at closing is \$21,900.00, and the net CIAC balance (amortized over 15 years) is \$19,710.00 as of December 31, 2023;
5. Red Bird may request recovery of the following costs associated with the transfer of the Lake Royale systems to Red Bird:
 - a. 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;
 - b. 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;
 - c. Up to \$10,000.00 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; and
 - d. Any portion of these amounts 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, and Red Bird shall not seek recovery of any additional costs associated with the transfer, including due diligence, transactional, and regulatory costs, other than those listed above;

6. That, prior to closing, Red Bird shall post a \$100,000.00 bond and surety in a form acceptable to the Commission and in compliance with N.C.G. § 62-110.3, and that Red Bird shall file a copy of the same within 30 days from the date of this Order;

7. That TESI's surety bonds held by the Commission shall be released to TESI upon receipt of written notification to the Commission that closing of the transfer of the TESI systems has been completed;

8. That Red Bird is granted a CPCN to provide water and wastewater utility service to the Lake Royale service area in Franklin and Nash Counties, North Carolina, effective upon the closing of the transfer of the water and wastewater utility system assets to Red Bird;

9. That Appendix A constitutes the CPCN;

10. That the CPCN to provide water and wastewater utility service heretofore granted to TESI is cancelled, effective on the date when Red Bird files with the Commission written notification that the closing of the transfer of the water and wastewater systems has been completed;

11. That all ratemaking determinations included in the Stipulation and set forth in this Order regarding rate base/ratemaking issues are hereby determined as stipulated and as set forth hereinabove;

12. That the Schedule of Rates, attached hereto as Appendix B, is approved for water and wastewater utility service in the Lake Royale service area and deemed filed with the Commission pursuant to N.C.G.S. § 62-138. This Schedule of Rates shall become effective on and after the date of closing of the transfer of the water and wastewater utility system assets to Red Bird;

13. That Red Bird shall provide notification to the Commission within three business days from the date of closing that the sale of the water and sewer utility systems serving the TESI service area has been completed;

14. That within 30 days from the closing of the sale of the TESI water and sewer utility systems, Red Bird shall file in these dockets the warranty deed showing Red Bird's ownership of the required easements and all interest in land it has obtained in connection with the operation and maintenance of the TESI water and sewer utility systems; and

15. That a copy of this Order and Appendix B shall be mailed with sufficient postage or hand delivered by Red Bird to TESI customers within seven days of the closing of the sale of the water and wastewater utility systems serving the Lake Royale

Subdivision 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 14th day of December, 2023.

NORTH CAROLINA UTILITIES COMMISSION

A handwritten signature in black ink that reads "A. Shonta Dunston". The signature is written in a cursive, flowing style.

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 and sewer utility service

to

THE LAKE ROYALE SUBDIVISION

Franklin and Nash Counties, 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 14th day of December, 2023.

NORTH CAROLINA UTILITIES COMMISSION

A handwritten signature in black ink, reading "A. Shonta Dunston". The signature is written in a cursive, flowing style.

A. Shonta Dunston, Chief Clerk

SCHEDULE OF RATES

for

RED BIRD UTILITY OPERATING COMPANY, LLCfor providing water and wastewater utility service inLAKE ROYALE SUBDIVISION

Franklin and Nash Counties, North Carolina

Monthly Metered Residential Water Service:

Base Charge, zero usage	\$33.49
Usage Charge, per 1,000 gallons	\$ 8.08

Monthly Metered Sewer Utility Service (based upon metered water utility service)

Base charge, per water meter size:	
Less than 1"	\$164.50
1"	\$246.75
2"	\$411.25

Usage Charge, per 1,000 gallons	\$ 49.03
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<u>Water Availability Rate:</u>	\$ 22.95 per year
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Connection Charge:

Water	\$300.00
Sewer	Actual cost of connection

Reconnection Charge:

If water service is cut off by utility for good cause	\$ 14.35
If water service is discontinued at customer's request	\$ 14.35
If sewer service is cut off by utility for good cause by disconnecting water	None
If sewer service is cut off by utility for good cause by any method other than above	Actual Cost

<u>Finance Charge for Late Payment:</u>	1% per month
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Issued in Accordance with Authority Granted by the North Carolina Utilities Commission in Docket Nos. W-1146, Sub 13, and W-1328, Sub 10, on this the 14th day of December, 2023.

CERTIFICATE OF SERVICE

I, _____, mailed with sufficient postage or hand delivered to all affected customers the attached Order and Schedule of Rates to Customers issued by the North Carolina Utilities Commission in Docket Nos. W-1146, Sub 13 and W-1328, Sub 10, and the Order and Schedule of Rates were mailed or hand delivered by the date specified in the Order.

This the _____ day of _____, 2023.

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 Order and Schedule of Rates were mailed or hand delivered to all affected customers, as required by the Commission Order dated _____ in Docket Nos. W-1328, Sub 10 and W-1146, Sub 13.

Witness my hand and notarial seal, this the ____ day of _____, 2023.

Notary Public

(SEAL)

Printed or Typed Name

My Commission Expires:

Date