

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. W-933, SUB 12
DOCKET NO. W-1328, SUB 0

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	)	MOTION TO REVISE
Joint Application by Red Bird Utility	)	ORDER SCHEDULING
Operating Company, LLC d/b/a Red Bird	)	DISCOVERY GUIDELINES,
Water and Etowah Sewer Company, Inc.	)	FILING DATES FOR
for Transfer of Public Utility Franchise	)	PREFILED TESTIMONY
and for Approval of Rates	)	AND WITNESS LIST, AND
	)	REQUIRING REPORTS

NOW COMES THE PUBLIC STAFF – North Carolina Utilities Commission (Public Staff), by and through its Executive Director, Christopher J. Ayers, pursuant to Commission Rule R1-7(a)(5), and respectfully moves the North Carolina Utilities Commission (Commission) to revise for good cause its Order, issued September 26, 2023, Scheduling Hearings, Establishing Discovery Guidelines, and Requiring Customer Notice. In support of this Motion, the Public Staff respectfully shows the Commission the following:

1. On October 8, 2020, Red Bird Utility Operating Company, LLC d/b/a Red Bird Water (Red Bird), and Etowah Sewer Company, Inc. (Etowah) filed with the Commission an Application for Transfer of Public Utility Franchise and for Approval of Rates (Application) seeking authority to transfer the wastewater utility system and public utility franchise serving the Etowah Community in Henderson County, North Carolina, from Etowah to Red Bird and approval of rates. Red Bird, in subsequent filings, filed with the Commission supplemental and additional materials in support of the Application and to cure deficiencies raised by the Public

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Oct 19 2023

Staff. Etowah currently serves approximately 455 residential wastewater customers in the Etowah Community.

2. On September 26, 2023, the Commission issued an Order Scheduling Hearings, Establishing Discovery Guidelines, and Requiring Customer Notice (Scheduling Order), which established the procedural schedule in this proceeding, including filing requirements of the parties.

3. On October 4, 2023, the Commission approved a Notice to Customers, and on October 10, 2023, Red Bird filed its Certificate of Service.

4. The Scheduling Order states, in pertinent part, at page 3, paragraph 1: "Formal discovery requests related to the ... prefiled direct testimony shall be served on ... not later than 14 calendar days prior to the deadline for filing of the Public Staff and intervenor testimony." The Scheduling Order sets the deadline for filing of the Public Staff and intervenor testimony as October 20, 2023. As such, the deadline for formal discovery requests is October 6, 2023.

5. The Scheduling Order also sets October 10, 2023, as the deadline for Red Bird and Etowah's prefiled direct testimony and exhibits.

6. As written, the Scheduling Order closes formal discovery before the filing of any prefiled direct testimony and does not provide the Public Staff with an opportunity to perform its functions and investigations under N.C. Gen. Stat § 62-15(d).

7. The Commission provided in the Scheduling Order that it may be modified for good cause. Based on the foregoing, good cause exists to modify the Scheduling Order to revise the discovery deadlines.

8. The Public Staff and Red Bird have consulted over the past few weeks and have agreed upon the attached proposed revised scheduling order. While both parties agree that postponing the hearing date for a brief period would better allow for adequate discovery, given the Commission's full calendar, the parties have reached a compromise to keep the established expert hearing date by severely curtailing the discovery and response periods. As a result, it may be necessary to hold the hearing open or the parties may need to file supplemental testimony, with the Commission's approval.

9. The attached proposed revised scheduling order does not change the dates for the established public or expert hearings or change the deadlines for significant protests or motions to intervene. As such, Public Staff and Red Bird agree that no additional notice to customers is required.

WHEREFORE, for the reasons set forth above, the Public Staff respectfully requests that the Commission grant this motion and enter the proposed revised scheduling order attached hereto and filed herewith.

Respectfully submitted this the 19h day of October, 2023.

PUBLIC STAFF
Christopher J. Ayers
Executive Director

Lucy E. Edmondson
Chief Counsel

Electronically submitted
/s/ Davia A. Newell
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CERTIFICATE OF SERVICE

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

This the 19th day of October, 2023.

Electronically submitted
/s/ Davia A. Newell

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BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of)	ORDER AMENDING
Joint Application by Red Bird Utility	)	DISCOVERY GUIDELINES,
Operating Company, LLC d/b/a Red Bird	)	FILING DATES FOR
Water and Etowah Sewer Company, Inc.	)	PREFILED TESTIMONY
for Transfer of Public Utility Franchise	)	AND WITNESS LIST, AND
and for Approval of Rates	)	REQUIRING REPORTS

BY THE COMMISSION: On October 8, 2020, Red Bird Utility Operating Company, LLC d/b/a Red Bird Water (Red Bird), and Etowah Sewer Company, Inc. (Etowah) filed with the Commission an Application for Transfer of Public Utility Franchise and for Approval of Rates (Application) seeking authority to transfer the wastewater utility system and public utility franchise serving the Etowah Community in Henderson County, North Carolina, from Etowah to Red Bird and approval of rates. Red Bird has filed with the Commission supplemental and additional materials in support of the Application and to cure deficiencies raised by the Public Staff. Etowah currently serves approximately 455 residential wastewater customers in the Etowah Community.

On September 26, 2023, the Commission issued an Order Scheduling Hearings, Establishing Discovery Guidelines, and Requiring Customer Notice (Scheduling Order), which established the procedural schedule in this proceeding, including filing requirements of the parties.

On October 19, 2023, the Public Staff filed a motion requesting the Commission to revise the Scheduling Order to change the filing requirements of the parties and discovery guidelines. In support of its motion, the Public Staff stated that under the Scheduling Order, formal discovery would close before any prefiled direct testimony was filed. The revised scheduling order proposed by the Public Staff would not change the hearing dates for the public or expert witness hearings or change the deadlines for significant protests or motions to intervene. As such, a revised customer notice is not needed.

Based on the foregoing and the entire record, the Commission finds that good cause exists to grant the Public Staff's motion and amend certain formal discovery guidelines and filing requirements put forth in the Scheduling Order. All other provisions of the September 26, 2023, Scheduling Order shall remain the same, including a public witness hearing date of Wednesday, November 1, 2023, and expert witness hearing date of Monday, November 20, 2023.

The Commission recognizes that in the past most discovery has been conducted in an informal manner and acknowledges that the parties may come to an agreement that if a discovery deadline falls on a weekend or holiday, the relevant party may have until the first business day after the deadline to take the specified action.

IT IS, THEREFORE, ORDERED as follows:

1. That formal discovery requests related to the Application and Red Bird and Etowah's prefiled direct testimony shall be served on Red Bird or Etowah, or

both, not later than, Friday, October 13, 2023. The party served shall have up to ten calendar days to file with the Commission objections to discovery requests on an item-by-item basis;

2. That the Public Staff and other intervenors prefiled direct testimony and exhibits shall be filed on or before Friday, October 27, 2023;

3. That formal discovery requests on the Public Staff or intervenors shall be served no later than Wednesday, November 1, 2023. The party served shall have up to Monday, November 6, 2023, to file with the Commission objections to the discovery requests on an item-by-item basis;

4. That Red Bird and Etowah's prefiled rebuttal testimony and exhibits, if any, shall be filed on or before Friday, November 10, 2023;

5. That formal discovery requests related to prefiled rebuttal testimony shall be served on Red Bird or Etowah, or both, no later than Tuesday, November 14, 2023. The party served shall have up to Friday, November 17, 2023, to file with the Commission objections to the discovery requests on an item-by-item basis. Discovery related to rebuttal testimony shall be limited to new material introduced in such rebuttal testimony and will be carefully scrutinized upon objection that such discovery should have been sought during the initial period of discovery;

6. A party shall not be granted an extension of time to pursue discovery because of that party's late intervention or other delay in initiating discovery;

7. That Etowah and Red Bird are required to file separate, verified reports addressing all customer service and service quality complaints expressed during the customer hearing held on Wednesday, November 1, 2023, within 14 days of the conclusion of the customer hearing. The Public Staff shall and other intervenors may file a verified response and any comments to Etowah's and Red Bird's reports on or before November 29, 2023. Because such verified response will not be filed until after the expert witness hearing has concluded, Etowah and Red Bird shall be allowed to file a verified reply regarding the Public Staff's response within seven days of the date such verified response is filed; and

8. That Red Bird and Etowah shall consult with all other parties and file, no later than Friday, November 17, 2023, a list of witnesses to be called at the expert witness hearing, the order of witnesses, and each party's estimated time for cross examination. If the parties cannot agree, the remaining parties shall, no later than 9:00 a.m. on Monday, November 20, 2023, make a filing indicating their points of disagreement with Red Bird and Etowah's filing.

ISSUED BY ORDER OF THE COMMISSION.

This the ____ day of _____, 2023.

NORTH CAROLINA UTILITIES COMMISSION

A. Shonta Dunston, Chief Clerk