

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. W-992, SUB 8
DOCKET NO. W-1328, SUB 4

In the Matter of
Application by Red Bird Utility Operating)
Company, LLC, 1650 Des Peres Road, Suite 303,)
St. Louis, Missouri 63131, and Crosby Utilities,)
Inc., 7536 NC Highway 39, Zebulon, North)
Carolina 27597, for Authority to Transfer the)
Baywood Forest Subdivision Water and Wastewater)
Utility Systems and the Cottonwood Subdivision)
Wastewater Utility System and Public Utility)
Franchise in Wake County, North Carolina, and for)
Approval of Rates

MOTION FOR ENLARGEMENT OF DISCOVERY PERIOD BY ONE DAY

NOW COMES Red Bird Utility Operating Company, LLC ("Red Bird") and moves the Commission to enlarge by one day, the permissible period for service of discovery in these dockets for the reasons set forth below.

1. Red Bird filed an Application for Transfer in these dockets on October 22, 2020.
2. On September 22, 2022, the Commission issued its Order Scheduling Hearings, Establishing Discovery Guidelines, and Requiring Customer Notice ("Scheduling Order") in these dockets.
3. Pursuant to the Scheduling Order, on February 2, 2023, Redbird filed the Direct Testimony of Josiah Cox.
4. Pursuant to the Scheduling Order, on February 23, 2023, Public Staff filed the Testimony of Michael Franklin and Lynn Feasel.
5. On March 1, 2023, Red Bird served its First Data Requests on the Public Staff, which related to the Public Staff testimony filed February 23.
6. On March 1 Public Staff responded by referencing discovery guideline 4 on page 3 of the Scheduling Order, which provides as follows:

Formal discovery requests of the Public Staff or their intervener shall be served by hand delivery, facsimile, or

electronic service (with the agreement of the receiving party) no later than five calendar days of Testimony. We shall have up to three business days to file with the Commission objections to the discovery requests on an item by item basis, but in no event shall objections be filed later than nine calendar days after the filing of that party's testimony.

7. Public Staff's position is that Red Bird First Data Requests were served one day too late (March 1 rather than February 28), and that it will not respond to those data requests.

8. Red Bird notes that the provision of the Scheduling Order relied upon by Public Staff relates to "formal discovery requests of the Public Staff or other interveners." Red Bird's First Data Requests to the Public Staff is not a "formal discovery requests of the Public Staff," it is a discovery request **to the Public Staff**. It is not certain from the quoted language that this provision is applicable her.

9. If discovery guideline 4 is applicable, then Red Bird's counsel failed to adequately recollect the distinction between the provision for service of discovery requests within "five calendar days" and the provision for filing objections to discovery within "three business days." Counsel operated under the mistaken belief that the time interval for both such actions was based on business days. Red Bird's First Data Requests were served six calendar days (four business days) after Public Staff's testimony was filed.

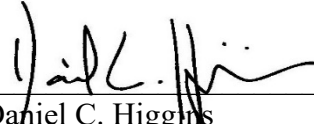
10. Red Bird has responded to nine rounds of data requests from the Public Staff in these dockets, and Red Bird's rebuttal testimony is due March 15.

11. Given the lack of any demonstrable harm or prejudice to Public Staff under the circumstances presented, and in order to shorten the length of the upcoming hearing, Red Bird requests that if the Commission concludes that Red Bird's First Data Requests was, in fact, required to be served by February 28, that the Commission extend *nunc pro tunc* by one day the time for Red Bird to have served its First Data Requests on Public Staff to and including March 1, and direct Public Staff to respond to Red Bird's First Data Requests to Public Staff by March 8, as requested in those data requests.

12. The requested relief would effectively allow Red Bird six calendar days to serve discovery, which is the same time interval accorded to Public Staff for its service of discovery under guideline 3.

Respectfully submitted, this the 2nd day of March, 2023.

BURNS, DAY & PRESNELL, P.A.



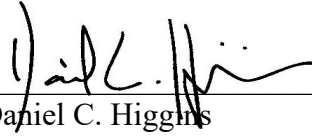
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CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing document has been served on all counsel for the Public Staff, by either depositing same in a depository of the United States Postal Service, first-class postage prepaid and mailed by the means specified below, or by electronic delivery.

This the 2nd day of March, 2023.

BURNS, DAY & PRESNELL, P.A.



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