

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

In the Matter of		
Application by Red Bird Utility Operating	)	
Company, LLC, 1650 Des Peres Road, Suite	)	JOINT PROPOSED ORDER
303, St. Louis, Missouri 63131, and Bear Den	)	APPROVING STIPULATION,
Acres Development, Inc., 600 Bear Den	)	APPROVING BOND,
Mountain Road, Spruce Pine, North Carolina	)	APPROVING TRANSFER AND
28777, for Authority to Transfer the Bear Den	)	RATES, AND REQUIRING
Acres Development Water System and Public	)	CUSTOMER NOTICE
Utility Franchise in McDowell County, North	)	
Carolina, and for Approval of Rates	)	

HEARD: Monday, March 28, 2022, at 1:00 p.m. in the Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, 27603

BEFORE: Commissioner ToNola D. Brown-Bland, Presiding, Chair Charlotte A. Mitchell, and Commissioner Jeffrey A. Hughes

HEARD: Thursday, August 4, 2022, at 1:30 p.m. via WebEx  
Thursday, August 4, 2022, at 6:30 p.m. via WebEx

BEFORE: Commissioner ToNola D. Brown-Bland, 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, NC 27605

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 December 4, 2020, Red Bird Utility Operating Company, LLC (Red Bird or Company), and Bear Den Acres Development, Inc. (Bear Den Development), filed with the Commission an Application for Transfer of Public Utility Franchise and for Approval of Rates (Application) seeking authority to transfer the water utility system and public utility franchise serving the Bear Den Acres Development in McDowell County, North Carolina, from Bear Den Development to Red Bird and approval of rates. Red Bird filed with the Commission supplemental and additional materials in support of its Application on March 29, April 19, and April 20, 2021.

On January 5, 2022, the Commission issued an Order Scheduling Hearing, Establishing Discovery Guidelines, and Requiring Customer Notice (Scheduling Order) setting this matter for hearing on March 28, 2022, directing that a Notice to Customers be mailed with sufficient postage or hand delivered by Red Bird to all affected customers no later than 14 days after the date of the order; and requiring that Red Bird submit to the Commission a Certificate of Service, properly signed and notarized, indicating that the notice had been sent to customers as directed. The Scheduling Order also states that a public witness hearing has not yet been scheduled and that the Commission may decide the matter without a public witness hearing if no significant protests are received within 45 days of the date of the notice.

On January 21, 2022, 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, January 19, 2022. On February 4, 2022, Red Bird filed a Notice of Supplemental Service of Notice to Customers stating that the Notice to Customers was originally mailed to the service addresses rather than the billing addresses of at least

some Bear Den Acres customers, and that the Company had also mailed the Notice to Customers to the billing addresses of all Bear Den Acres customers on January 31, 2022, to ensure that all customers are properly notified.

On February 11, 2022, Red Bird filed the direct testimony of Josiah Cox, President of Red Bird Utility Operating Company, LLC, CSWR, LLC, and Central States Water Resources, Inc.

On March 2, 2022, the Public Staff filed the Settlement Agreement and Stipulation (Stipulation) of the Public Staff and Red Bird (Stipulating Parties) resolving all contested issues related to the Application.

On March 3, 2022, Shelley Pierce, a Bear Den Acres customer, filed a petition to intervene.

On March 18, 2022, the Public Staff filed the settlement testimony of D. Michael Franklin, Public Utilities Engineer with the Public Staff's Water, Sewer, and Telephone Division, and Red Bird filed the supplemental testimony of Josiah Cox in support of the Stipulation.

Also on March 18, 2022, the Commission issued an order granting Ms. Pierce's petition to intervene.

On March 21, 2022, the Stipulating Parties filed a Joint Motion for Order Cancelling Evidentiary Hearing, Approving Stipulation, Approving Bond, And Approving Transfer and Rates.

On March 21, 2022, Red Bird made the filing regarding witnesses and cross-examination required by the Scheduling Order.

Also on March 21, 2022, Ms. Pierce's request to withdraw her petition to intervene was filed in the above-captioned dockets.

On March 22, 2022, the Commission issued an order allowing Ms. Pierce to withdraw her intervention.

On March 24, 2022, the Commission issued its Order Denying Joint Motion for Order Cancelling Evidentiary Hearing, Approving Stipulation, Approving Bond, and Approving Transfer and Rates.

The evidentiary hearing was held as scheduled on March 28, 2022.

On April 18, 2022, Red Bird submitted post-hearing filings as directed by the Commission.

Also on April 18, 2022, Public Staff filed Franklin Late Filed Exhibit 1.

On April 20, 2022, the Commission issued notice that proposed orders and/or briefs were due in these dockets on or before May 20, 2022.

Between May 6 and May 9, 2022, it was discovered that 11 additional customer statements had been sent to [statements@ncuc.net](mailto:statements@ncuc.net) on or before March 9, 2022, which was the deadline for protests set out in the customer notice. The existence of these statements was not known to the parties before May 9, 2022. The Public Staff viewed the additional 11 statements, together with the 4 previously known customer statements, as constituting a significant protest, given that there are approximately 50 customers on the Bear Den Acres water system.

On May 19, 2022, the Public Staff filed a Motion for Order Scheduling Public Hearing And Extending Deadline to File Proposed Orders in this matter.

By its Order Scheduling Public Hearing and Requiring Proposed Orders issued July 1, 2022 (Public Hearing Order), the Commission scheduled public hearings to be conducted via WebEx on August 4, 2022, at 1:30 p.m. and at 6:30 p.m. The Public Hearing Order directed that a Notice to Customers be mailed with sufficient postage or hand delivered to both the billing address and the service address of all affected customers within ten days of the date of that order. The Public Hearing Order also directed that the Notice to Customers be hand delivered to all occupied campground lots, and posted to all physical communication boards and restroom doors of Bear Den Campground no later than ten days after the date of the Public Hearing Order and that Bear Den file a Certificate of Service, properly signed and notarized, indicating that the notice had given as prescribed in the Public Hearing Order.

On July 8, 2022, Bear Den Acres Development filed a Certificate of Service stating that the Notice to Customers had been hand delivered to all occupied campground lots, and posted to all physical communication boards and restroom doors of Bear Den Campground.

On July 18, 2022, Red Bird filed a Certificate of Service stating that the Notice to Customers regarding the public hearing was mailed or hand delivered to all affected customers by the date specified in the Public Hearing Order.

Two public hearings were held via WebEx as scheduled on August 4, 2022, the first at 1:30 p.m. and the second at 6:30 p.m.

On August 11, 2022, Bear Den Development filed a Verified Response as to issues raised at the public hearings, including water quality complaints, the fact that the Bear Den

Campground is not connected to the Bear Den Acres water system, and the posting of the Notice to Customers and the mailing list provided to Red Bird.

On August 15, 2022, Red Bird filed a Verified Report as to issues raised at the public hearings.

On August 22, 2022, Public Staff filed a Verified Response as to matters and issues raised at the public hearing and as to Bear Den Development's Verified Response and Red Bird's Verified Report regarding the public hearings.

On the basis of the Application, the testimonies, the post-hearing filings of the parties, the public hearings, the Verified Reports filed after the public hearings, and the entire record in this proceeding, the Commission makes the following:

#### **FINDINGS OF FACT**

1. Red Bird presently holds one utility franchise in North Carolina. On December 8, 2022, 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. Red Bird's indirect corporate parent, CSWR, LLC (CSWR), has acquired and currently operates over 400 water and wastewater utility systems in Missouri, Arkansas, Kentucky, Louisiana, Texas, Tennessee, Mississippi, North Carolina, and Arizona providing utility service to approximately 94,000 wastewater customers and 59,000 water customers.

2. The Bear Den Acres water utility system serves approximately 50 residential customers in the Bear Den Acres development located approximately seven miles northeast of the Town of Spruce Pine, in McDowell County.

3. Red Bird seeks Commission approval to acquire the Bear Den Acres water utility system. In 1993 the Commission ruled in a show cause proceeding initiated by Public Staff in Docket No. W-1040, Sub 0 that Bear Den Development is a public utility. In that docket the Commission issued a Certificate of Public Convenience and Necessity (CPCN) to Bear Den Development for its water system, and to William F. Moody, d/b/a Bear Den Campground for his campground operation. Members of the Moody family developed the Bear Den Acres development.

4. At the request of Bear Den Development, in Docket No. W-1040, Sub 2 the names of William F. Moody and Bear Den Campground were removed from the CPCN issued to Bear Den Development. Bear Den Development does not own, and Red Bird is not acquiring, the Bear Den campground, which is owned by Bear Den Mountain Resort, Inc. (Resort).

5. By Warranty Deed dated December 22, 2016, members of the Moody family conveyed four tracts of land, including the Bear Den Acres development, to Resort. That Deed included an acknowledgment that Resort “is purchasing all the stock of Bear Den Acres Development, Inc. which owns and operates all water utility equipment, including without limitation the water tank situated at the northeastern terminus of Bear Cub Drive . . . and all roads as well as roadway and utility easements that serve Bear Den Acres Phase 1 and 2, and the Mountain View Cabins.”

6. The Bear Den Acres water system is approved by the North Carolina Department of Environmental Quality, Division of Water Resources, under system number NC0156129.

7. A Red Bird affiliate, Central States Water Resources, Inc. (Central States), entered into an Agreement for Sale of Utility System with Bear Den Development on October 23, 2019 (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.

8. On April 12, 2022, Red Bird entered into a Second Amendment to the Purchase Agreement with both Bear Den Development and Resort. That Amendment revised the definition of “Seller” under the Purchase Agreement to include both Bear Den Development and Resort and identified Red Bird as the “Buyer.”

9. Upon acquisition of the water system, Red Bird plans to make capital improvements. At this point Red Bird estimates that the cost of improvements to be made to the Bear Den Acres water system is approximately \$15,500.

10. Bear Den Development’s presently approved monthly metered residential water service rates, which Red Bird proposes to adopt, and are uncontested by the Public Staff, are as follows:

	<u>Present</u>	<u>Proposed</u>
Base Charge, zero usage	\$33.40, minimum	\$33.40, minimum
Usage Charge, per 1,000 gallons	\$2.78	\$2.78
Meter Installation Fee:	\$175.00	\$175.00
Connection Fee:	\$600.00	\$600.00
<u>Reconnection Charges:</u>		
If water service cut off by utility for good cause	\$14.32	\$14.32
If water service discontinued at customer’s request	\$14.32	\$14.32

Returned Check Charge	\$9.55	\$9.55
Finance Charge for Late Payment	1% per month past due	1% per month past due

11. On January 5, 2022, the Commission issued the Order Scheduling Hearing, Establishing Discovery Guidelines, and Requiring Customer Notice. Among other things, the Order directed Red Bird to submit a signed and notarized Certificate of Service not later than 21 days after the date of the Order.

12. On January 21, 2022, Red Bird filed a Certificate of Service stating the Notice to Customers was mailed or hand delivered by the date specified in the Order. On February 4, 2022, Red Bird filed a Notice of Supplemental Service of Notice to Customers, stating that the Notice to Customers was originally mailed to the service addresses of Bear Den Development's customers, rather than their billing addresses. In an effort to ensure that all customers received notice, Red Bird mailed the Notice to Customers to the Bear Den customers' billing addresses on January 31, 2022.

13. As supplemented by its post-hearing filings submitted on April 18, 2022, Red Bird has filed all required exhibits with its Application.

14. 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.

15. The Warranty Deed dated December 22, 2016, executed by members of the Moody family in favor of Resort purported to transfer ownership and control of Bear

Den Development to Resort. This transfer of control was not approved by the Commission as required by N.C. Gen. Stat. § 62-111.

16. On March 2, 2022, the Public Staff and Red Bird filed a Settlement Agreement and Stipulation (Stipulation) in these dockets which resolved all contested issues related to the transfer of the Bear Den Acres water system to Red Bird. The terms of the Stipulation are as follows:

- a. Red Bird agrees to post a bond in the amount of \$75,000 for the Bear Den Acres service area on or before March 18, 2022.
- b. Red Bird agrees not to pursue an acquisition adjustment related to the Bear Den Acres system in this or any future proceeding.
- c. The Public Staff and Red Bird agree that rate base for the Bear Den Acres system should be \$3,153, plus up to \$5,000 for closing costs. The actual amount of the closing costs should be determined in Red Bird's next general rate case.
- d. The Public Staff and Red Bird agree that Red Bird may request recovery of the remaining costs associated with the transfer of the Bear Den Acres system to Red Bird up to \$25,496 for engineering due diligence work in its next general rate case, provided that the resulting work results in reasonable and prudent capital investments to improve the Bear Den Acres system. Any portion of the \$25,496 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.

- e. Red Bird agrees not to seek recovery of any additional costs associated with the transfer, including due diligence, transactional, and regulatory costs, other than those listed above.

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

18. On March 21, 2022, Red Bird posted the bond amount agreed to in the Stipulation and filed the appropriate bond documents. All filing requirements for a bond secured by a commercial surety have been met.

19. Red Bird's Verified Report filed on August 15, 2022, regarding issues raised at the public hearings, adequately addressed those issues.

20. The Verified Response of the Public Staff filed August 22, 2022, reflects its review of the Verified Reports filed by Bear Den Development and Red Bird. The Public Staff concluded that those responses adequately addressed the concerns testified to by customers during the August 4, 2022 public hearings.

21. Red Bird has the technical, managerial, and financial capacity to provide water utility service in this service area.

#### **EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 1**

This finding is based on the Commission's record in Docket No. W-1328, Sub 7 and in the Commission's Order Accepting and Approving Bond, Granting Franchise,

Approving Rates, and Requiring Customer Notice issued in that docket wherein the Commission found that Red Bird has the technical, managerial and financial capacity to provide wastewater utility services to the Ocean Terrace and Pine Knoll Townes I, II, and III service areas.

This finding is also based on the direct testimony of Red Bird witness Josiah Cox, that CSWR's operating subsidiaries have acquired and operate 410 water and/or wastewater utility systems in Missouri, Arkansas, Kentucky, Louisiana, Texas, Tennessee, Mississippi, North Carolina, and Arizona, in addition to the system addressed in Docket No. W-1328, Sub 7.

This finding is also based on the testimony of Public Staff witness D. Michael Franklin, which stated that Red Bird "has the financial, technical, and managerial ability to own and operate the Bear Den Acres water utility system." Tr. Vol. 2, 27.

#### **EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 2**

This finding is based on the Commission's records in these dockets and the testimony of Red Bird witness Cox and Public Staff witness Franklin, and is uncontested.

#### **EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 3**

This finding is based on the Application in the present dockets and the Commission's records in Docket No. W-1040, Sub 0, wherein the Commission issued a CPCN to Bear Den Development for its water system, and to William F. Moody, d/b/a Bear Den Campground for his campground operation, and is uncontested.

#### **EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 4**

This finding is based on the Commission's records in Docket No. W-1040, Sub 2 wherein the names of William F. Moody and Bear Den Campground were removed from

the CPCN previously issued to Bear Den Development in Docket No. W-1040, Sub 0 and is uncontested. This finding is also supported by the testimony of Public Staff witness Franklin, Mr. Franklin's late-filed exhibit filed on April 18, 2022, the post hearing supplemental information filed by Red Bird on April 18, 2022, establishing that Red Bird is not acquiring any part or aspect of the Bear Den Campground operation and that the Bear Den Campground is owned by Bear Den Mountain Resort, Inc., and the Verified Response filed by Bear Den Development on August 11, 2022.

#### **EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 5**

This finding is based on the testimony of Red Bird witness Jonathan Raymer, and Exhibit A to the General Warranty Deed labeled as Red Bird Raymer Exhibit 1, and is uncontested.

#### **EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 6**

This finding is based on the testimony of Public Staff witness Franklin and the Commission's records in these and other dockets relating to Bear Den Development and is uncontested.

#### **EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NOS. 7 AND 8**

This finding is based on filings in these dockets, including the Agreement for Sale of Utility System with Bear Den Development. The Second Amendment to that Agreement, which is dated April 12, 2022, identified Red Bird as the Buyer under the Purchase Agreement and, because the Moody family had transferred control of Bear Den Development's utility assets to Resort without the required Commission approval in 2016, this amendment expanded the definition of "Seller" to include both Bear Den Development and Resort.

#### **EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 9**

The evidence for this finding is found in the application and supplemental materials filed by Red Bird as well as the testimony of Red Bird witness Cox.

#### **EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 10**

Because Red Bird proposes to adopt Bear Den Development's existing Commission-approved rates, this finding is based on the Commission's records in prior Bear Den Development dockets and is uncontested. As reflected in the Application, the direct testimony of Red Bird witness Cox, Red Bird's Verified Report and the Public Staff's Verified Response, both of which were filed after the public hearings, Red Bird proposes to adopt Bear Den Development's existing rates and is not seeking a rate increase in connection with the request for approval of the transfer of the Bear Den water system to Red Bird. It was apparent from the public hearings that there was some confusion among the customers on this point and Public Staff counsel encouraged those witnesses raising this issue to contact Mr. Franklin for confirmation on this point.

#### **EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NOS. 11, 12, AND 13**

These findings are procedural, are uncontested, and are based on the record in these dockets.

#### **EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 14**

This finding is based on the testimony of Red Bird witness Cox. Tr. vol. 1, 50-51. This finding of fact is also based on the post-hearing filing by Red Bird of Certificates of Good Standing from the North Carolina Secretary of State as to Red Bird; as to its sole

member, Red Bird Utility Holding Company, LLC; and as to that entity's sole member, North Carolina Central States Water Resources, LLC.

#### **EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 15**

This finding is based on the testimony of Red Bird witness Raymer, Exhibit A to the General Warranty Deed labeled as Red Bird Raymer Exhibit 1, and is uncontested. Tr. Vol. 1, 115. The Moody family's failure to secure the requisite Commission approval to transfer control of Bear Den Development to Resort is unfortunate and reflects a failure to appreciate the requirements of Chapter 62, in particular N.C.G.S. § 62-111. This may well be a product of the fact that the prior owners of this small system were not well versed in the regulatory requirements applicable to a public utility. In any event, Red Bird's application for transfer of the Bear Den Acres water system and franchise reflects its understanding of the process for transferring control of a regulated utility.

#### **EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 16**

This finding is based on the Settlement Agreement and Stipulation entered into by the Public Staff and Red Bird and filed with the Commission on March 2, 2022, in these dockets.

#### **EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 17**

The evidence supporting these Findings of Fact is found in the Joint Stipulation and Settlement Agreement, the Supplemental Testimony of Red Bird witness Cox, and the Settlement Testimony of Public Staff witness Franklin, as well as the records in these dockets as a whole.

On March 2, 2022, Red Bird and the Public Staff filed the Joint Stipulation and Settlement Agreement and both parties thereafter filed testimony in support of the

Stipulation. Red Bird and the Public Staff are the only parties to this proceeding, and the Joint Stipulation resolves all issues between the Stipulating Parties in this proceeding.

Based upon the foregoing and the entire record herein, the Commission finds that the Joint 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. In making this finding, the Commission gives substantial weight to the testimony of Public Staff witness Franklin and Red Bird witness Cox, and recognizes that the Stipulation is a product of arm's length negotiations, involving give and take, and notes that as part of the Stipulating Parties' agreement, Red Bird agrees not to seek recovery of any additional costs associated with the transfer, including due diligence, transactional, and regulatory costs, other than those listed in Paragraphs II.D. and II.E. of the Stipulation.

The Commission finds that, based on the record as a whole, the terms of the Stipulation are just and reasonable to both Red Bird and its future customers on the Bear Den water system. In addition, the Commission finds 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 Joint Stipulation in its entirety.

#### **EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 18**

This finding is based on the fact that Red Bird filed the bond in the amount of \$75,000, as recommended by the Public Staff, on March 21, 2022. All filing requirements of the bond posted by Red Bird have been met and this filing is uncontested.

## EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 19

Red Bird's Verified Report addressed issues raised at the public hearings. Those issues include customer concerns regarding potential future rate increases associated with Red Bird's proposed acquisition of the Bear Den Acres system. As noted in Red Bird's Verified Report, Red Bird plans to implement improvements to both the Bear Den water system and the service provided to its customers. Red Bird intends to make adjustments to the system, and it is anticipated that a rate increase would be necessary and appropriate a year or so after such investment is made. At the point that Red Bird actually proposes a rate increase, customers will have the opportunity to be heard, the Public Staff will perform an investigation and make recommendations, and the Commission will review the prudence and reasonableness of all improvements to both water quality and service to customers in Bear Den Acres during Red Bird's initial rate case.

Red Bird's Verified Report also addressed concerns regarding some customers' part-time occupancy, usage and the implications for customers of Red Bird's acquisition of the Bear Den Acres water system. Red Bird pointed out in its Verified Report that customers who only use their property occasionally can simply turn their water off and pay a reconnection fee of \$14.34 for having it turned back on. Residents can also take appropriate measures to limit water usage. Red Bird stated it would calculate usage by reading meters and would charge customers per Bear Den Development's currently approved tariff. Red Bird also addressed concerns regarding communications with customers and stated that it has complied with Commission orders regarding customer notices and information provided to Bear Den Acres customers. In Red Bird's Verified

Report it articulated its plan for establishing communication with customers approximately one month prior to the closing of this acquisition, if the transfer is approved, and stated its belief that utilizing technology will allow customers to have an enhanced ability to communicate with their water utility service provider.

Red Bird also addressed concerns relating to the Bear Den Campground, particularly the concern expressed by some customers that the campground was using the water system that serves the Bear Den Acres development. As established by the filings of Red Bird and the Public Staff, Red Bird is not acquiring the Bear Den Campground and as established by the Verified Response of Bear Den Development, the Bear Den Campground is not served by the Bear Den Acres water system.

With regard to operational concerns expressed at the public hearings, Red Bird confirmed that it will identify and employ a qualified low-cost firm to operate this system. The Verified Report lays out the steps that Central States utilizes to identify and contract with qualified operators, and Red Bird's Verified Report identifies those qualified operators in North Carolina which Red Bird has identified to this point.

With regard to water quality issues, Red Bird heard the complaints of several customers regarding discolored or odiferous water. Those experiences seemed to be a function of specific customer locations, both in terms of elevation and location relative to the end of a water distribution line. While Red Bird has no knowledge of specific efforts which may have been made in the past to address such issues, given its affiliates' experience in dealing with this issue in other systems, Red Bird expects to be able to mitigate and hopefully eliminate this problem by ensuring that the appropriate chlorine residuals are maintained within the distribution system and ensuring that a routine

flushing program is followed. While this problem is attributable in part to the fact that the Bear Den Acres community is transient and intermittently occupied, and therefore that water may sit in a line for an extended period, Red Bird also believes that installation of auto flush valves may reduce or eliminate these problems.

#### **EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 20**

In the Public Staff's Verified Response, it addressed the customer concerns expressed at the public hearings regarding water utility rates and set forth the Public Staff's conclusion that Red Bird's Verified Report adequately addressed this customer concern by confirming that, if it acquires the Bear Den water system, it will adopt the rates currently approved for Bear Den Development.

With regard to water quality issues, the Public Staff noted that four customers testified that they had experienced issues with the quality of the water provided by Bear Den Development. Public Staff's response stated that it is of the opinion that the actions Red Bird identified in its Report should improve water quality, although further investigation of the Bear Den Acres water distribution system may be needed. The Public Staff agrees with Red Bird's assertion that for seasonal residents, there can be stagnant water in service lines and indoor plumbing and residents may need to flush the lines when they first return to their property. This operational issue, and how it will best be addressed, is consistent with Red Bird's view that it will be able to truly understand the needs of the Bear Den Acres water system once it has acquired that system and begun operating it.

The Public Staff's Verified Response also reflects that the Bear Den Acres water system is not serving the Bear Den Acres Campground.

The Public Staff noted that two customers expressed concern that Red Bird is an out-of-state company, and two other customers testified to concerns regarding Bear Den Water Association. Public Staff noted that it does not consider the latter concern relevant to this proceeding because the Bear Den Water Association has no ownership of the Bear Den Acres water system or the property necessary to operate that system.

#### **EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 21**

The evidence supporting this finding of fact is found in Red Bird's Application, Red Bird's supplemental filings, the testimony of Red Bird witness Cox and Public Staff witness Franklin, and the entire record in this proceeding. These findings are informational, procedural, and jurisdictional in nature and are not contested by any party.

The Stipulation reflects the Public Staff's agreement that Red Bird has the technical, managerial, and financial capacity to provide water utility service in the Bear Den Acres service area. Likewise, the Commission previously found in Docket No.W-1328, Sub 7 that Red Bird had the technical, managerial, and financial capacity to be granted a wastewater utility franchise authorizing it to serve the Ocean Terrace and Pine Knoll Townes I, II, and III townhome communities in Carteret County.

As established by the testimony of Red Bird witness Cox, Central States has acquired and currently operates through various operating subsidiaries over 400 water and/or wastewater utility systems in eight other states and currently provides service to approximately 94,000 wastewater customers and 59,000 water customers. There is adequate and sufficient evidence that Red Bird has the technical, managerial, and financial capacity to run and operate the Bear Den Acres Water System.

## CONCLUSIONS

Based on all of the evidence in the record, the provisions of the Stipulation are just and reasonable to the Bear Den Acres customers and to all parties to this proceeding and serve the public interest. Therefore, the Stipulation should be approved in its entirety.

The Commission therefore approves the Stipulation; concludes that Red Bird's adoption of Bear Den Development's existing rates should be approved; that the \$75,000 bond posted by Red Bird for the Bear Den Acres service area should be accepted and approved; that Red Bird should provide written notification to the Commission within 30 days from the date of this Order that closing of the sale of the Bear Den Acres water utility system has been completed; that upon receipt of such written notification Red Bird should be granted a Certificate of Public Convenience and Necessity to provide water utility service to the Bear Den Acres service area; and that Red Bird should provide notice to customers that the franchise has been granted and of the approved rates.

IT IS, THEREFORE, ORDERED as follows:

1. That the Stipulation between the Public Staff and Red Bird is hereby approved in its entirety;
2. Rate base for the Bear Den Acres system shall be \$3,153, plus up to \$5,000 for closing costs. The actual amount of the closing costs should be determined in Red Bird's next general rate case relating to Bear Den Acres. Red Bird may request recovery of the remaining costs associated with the transfer of the Bear Den Acres system to Red Bird up to \$25,496 for engineering due diligence work in its next general rate case related to Bear Den Acres, provided that the resulting work results in reasonable and prudent capital investments to improve the Bear Den Acres system. Any portion of the \$25,496

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. 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.

3. That the \$75,000 bond and commercial surety from RLI Insurance Company is hereby accepted and approved for Red Bird, in compliance with N.C.G.S. § 62-110.3;

4. That Red Bird is granted a Certificate of Public Convenience and Necessity to provide water utility service to the Bear Den Acres service area located in McDowell County, North Carolina, effective upon the closing of the sale of the Bear Den Acres water utility system assets to Red Bird. Appendix A, attached hereto, constitutes the Certificate of Public Convenience and Necessity;

5. That the Schedule of Rates, attached hereto as Appendix B, is hereby approved and deemed filed with the Commission pursuant to N.C.G.S. § 62-138. This Schedule of Rates shall become effective upon the closing of the sale of the Bear Den Acres water utility system assets to Red Bird;

6. That Red Bird shall provide notification to the Commission within 30 days from the date of this Order that closing of the sale of the water utility system serving Bear Den Acres has been completed;

7. That within 30 days from the closing of the sale of the Bear Den Acres water utility system, Red Bird shall file in these dockets the warranty deed showing Red Bird's ownership of the required easements and all interests in land it has obtained in connection

with the operation and maintenance of the Bear Den Acres water utility system; and

7. That a copy of this Order and Appendix B shall be mailed with sufficient postage or hand delivered by Red Bird to Bear Den Acres customers no later than seven days after the closing of the sale of the water utility system serving Bear Den Acres has been completed, 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 \_\_\_\_ day of \_\_\_\_\_, 2022.

NORTH CAROLINA UTILITIES COMMISSION

A. Shonta Dunston, Chief Clerk

APPENDIX A

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 utility service

to

BEAR DEN ACRES

McDowell County, 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 \_\_\_\_ day of \_\_\_\_\_, 2022.

NORTH CAROLINA UTILITIES COMMISSION

A. Shonta Dunston, Chief Clerk

SCHEDULE OF RATES

for

RED BIRD UTILITY OPERATING COMPANY, LLC

for providing water utility service

to

BEAR DEN ACRES

McDowell County, North Carolina

Monthly Metered Residential Water Service:

	<u>Present</u>	<u>Proposed</u>
Base Charge, zero usage	\$ 33.40, minimum	\$ 33.40, minimum
Usage Charge, per 1,000 gallons	\$ 2.78	\$ 2.78
Meter Installation Fee:	\$175.00	\$175.00
Connection Fee:	\$600.00	\$600.00
<u>Reconnection Charges:</u>		
If water service cut off by utility for good cause	\$ 14.32	\$ 14.32
If water service discontinued at customer's request	\$ 14.32	\$ 14.32
Returned Check Charge	\$ 9.55	\$ 9.55
Finance Charge for Late Payment	1% per month past due	1% per month past due

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Issued in Accordance with Authority Granted by the North Carolina Utilities Commission in Docket Nos. W-1040, Sub 10 and W-1328, Sub 4, on this the \_\_\_\_ day of \_\_\_\_\_, 2022.

CERTIFICATE OF SERVICE

I, \_\_\_\_\_, mailed with sufficient postage or hand delivered to all affected customers copies of the attached Notice to Customers issued by the North Carolina Utilities Commission in Docket Nos. W-1040, Sub 10 and W-1328, Sub 4, and the Notice was mailed or hand delivered by the date specified in the Order.

This the \_\_\_\_ day of \_\_\_\_\_, 2022.

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 Notice to Customers was mailed or hand delivered to all affected customers, as required by the Commission Order dated \_\_\_\_\_ in Docket Nos. W-1040, Sub 10 and W-1328, Sub 4.

Witness my hand and notarial seal, this the \_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Notary Public  
\_\_\_\_\_  
Address

(SEAL) My Commission Expires: \_\_\_\_\_  
Date