



**NORTH CAROLINA
PUBLIC STAFF
UTILITIES COMMISSION**

March 4, 2024

Ms. A. Shonta Dunston, Chief Clerk
North Carolina Utilities Commission
4325 Mail Service Center
Raleigh, North Carolina 27699-4300

Re: Docket No. W-1328, Sub 11 – Application by Red Bird Utility Operating Company, LLC d/b/a Red Bird Water for a Certificate of Public Convenience and Necessity and for Approval of Rates for Pine Mountain Lakes

Dear Ms. Dunston,

On behalf of the Public Staff and Red Bird Utility Operating Company, LLC (Red Bird), we herewith provide for filing in the above referenced docket the Settlement Agreement and Stipulation entered into by the Public Staff and Red Bird.

By copy of this letter, we are forwarding a copy to all parties of record by electronic delivery.

Sincerely,

Electronically submitted
/s/ James Bernier, Jr.
Staff Attorney
james.bernier@psncuc.nc.gov

/s/Megan Jost
Staff Attorney
megan.jost@psncuc.nc.gov

cc: Parties of Record

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**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. W-1328, SUB 11

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application by Red Bird Utility Operating)
Company, LLC, d/b/a Red Bird Water for a)
Certificate of Public Convenience and)
Necessity for Pine Mountain Lakes in)
Burke County, North Carolina, and)
Approval of Rates)

**SETTLEMENT AGREEMENT
AND STIPULATION**

Red Bird Utility Operating Company, LLC d/b/a Red Bird Water (Red Bird or the Company), and the Public Staff – North Carolina Utilities Commission (Public Staff) (collectively, the Stipulating Parties), through counsel and pursuant to N.C. Gen. Stat. § 62-69 and Rule R1-24(c) of the Rules and Regulations of the North Carolina Utilities Commission (Commission), respectfully submit the following Settlement Agreement and Stipulation (Stipulation) for consideration by the Commission in this proceeding. The Stipulating Parties hereby stipulate and agree as follows:

I. BACKGROUND

A. On September 30, 2021, Red Bird filed with the Commission an Application for a Certificate of Public Convenience and Necessity and for Approval of Rates (Application) seeking to provide water and sewer utility service to Pine Mountain Lakes (Pine Mountain) in Burke County, North Carolina. The Pine Mountain systems serve 96 residential water customers, 33 wastewater

customers, and 2 commercial water and wastewater customers (a motel and a restaurant).

B. Following Red Bird's filing of supplemental material to address issues identified by the Public Staff in its deficiency letter of November 2, 2023, on January 5, 2024, the Commission issued its Order Finding Application Complete and Requiring the Public Staff to File Specific Application Data. The Public Staff filed the requested data on January 12, 2024.

C. On January 16, 2024, the Commission issued its Order Scheduling Hearings, Establishing Discovery Guidelines, and Requiring Customer Notice. On January 22, 2024, the Commission issued its Order Changing Expert Witness Hearing Date, Amending Customer Protest Deadline, and Approving Customer Notice (collectively, the Scheduling Orders).

D. Attached as Appendix A to the Scheduling Orders was the Commission approved Notice to Customers stating that a public witness hearing was scheduled for February 20, 2024, and that the Commission may decide the matter without a public witness hearing if no significant protests are received through the submission of consumer statements by February 9, 2024.

E. On January 25, 2024, 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 Orders.

F. On February 14, 2024, the Commission issued its Order Canceling Public Witness Hearing as no significant protests were received from customers.

G. Subsequent to the filing of Red Bird's Application in this docket, the Public Staff engaged in substantial discovery of Red Bird regarding the matters addressed by the Company's Application and supplemental and additional materials filed with the Commission in support of the Application.

H. On February 9, 2024, Red Bird filed the direct testimony of Josiah Cox, President of Red Bird and CSWR, LLC, a Missouri limited liability company formed to provide managerial, technical, and financial support to its utility operating affiliates, including Red Bird. The Cox testimony included five exhibits.

I. On February 28, 2024, the parties notified the Commission that they had agreed in principle to a settlement and filed their Joint Motion for Leave to File Stipulation and Settlement Testimony in Lieu of Direct and Rebuttal Testimony.

J. After settlement negotiations, in which concessions from their litigation positions were made by both Red Bird and the Public Staff, the Stipulating Parties were ultimately able to arrive at a settlement; the terms of which are reflected in the following sections of this Stipulation and supported by the settlement testimony of Red Bird witness Cox and joint settlement testimony of Public Staff witnesses Meredith L. Strickland, Shashi M. Bhatta, and John R. Hinton.

II. STIPULATION AND AGREEMENT OF THE STIPULATING PARTIES

The Stipulating Parties agree and stipulate as follows:

A. Red Bird should be granted a Certificate of Public Convenience and Necessity (CPCN) and a public utility franchise to provide water and sewer utility service to the Pine Mountain Lakes (Pine Mountain) service area.

B. Subject to Commission approval, at closing, Red Bird will adopt the proposed tariffs and rates currently in effect at Pine Mountain. The present and proposed rates are as follows:

Monthly Water Utility Service:

Residential Flat Rate	\$ 35.56
Commercial Flat Rate	\$100.00

Monthly Wastewater Utility Service:

Residential Rate	\$ 27.72 per toilet
Commercial Flat Rate	\$243.52

Reconnection Charge:

If water service cut off by utility for good cause	\$ 14.99
If water service discontinued at customer request	\$ 14.99
If sewer only service cut off by utility for good cause	\$ 14.99

Bills Due: On billing date

Bills Past Due: 25 days after billing date

Billing Frequency: Shall be monthly for service in arrears

Finance Charge for Late Payment: 1% per month will be applied to the unpaid balance of all bills still past due 25 days after the billing date.

C. Red Bird will adopt at closing Pine Mountain's accounting records, provide the detailed accounting records received from Pine Mountain to the Public

Staff, and not adjust or make changes to those records without Commission approval.

D. The Stipulating Parties agree that the appropriate plant in service for water is \$27,060 and that the appropriate plant in service for wastewater is \$0. The appropriate depreciation rate for water plant in service is 10%, beginning in 2022, and accumulated depreciation is reflected through December 31, 2023, as shown on Public Staff Settlement Exhibit 1. Plant additions after December 31, 2023, will be considered for inclusion in rates in future proceedings.

E. The Stipulating Parties agree that the following costs associated with the purchase of the Pine Mountain systems are acceptable to be incorporated into present rates:

- (i) \$75,200.87 for engineering due diligence work supported by invoices provided in response to PS DR 9 and listed in Cox Direct Exhibit 5, allocating \$26,120.96 to water and \$49,079.91 to wastewater; and
- (ii) \$64,006.71 for legal costs related to the acquisition of the Pine Mountain systems, which is supported by invoices provided in response to PS DR 9 and listed in Cox Direct Exhibit 5, allocating \$37,763.96 to water and \$26,242.75 to wastewater.
- (iii) The engineering due diligence and legal costs listed in Paragraphs E(i) and (ii) immediately above are included in the calculations of the revenue requirements, which support the

proposed rates. The amortization rate for these costs is 4%, with amortization beginning January 1, 2024.

F. Red Bird agrees not to pursue rate recovery of any additional costs associated with the acquisition, including due diligence, transactional, and regulatory costs, other than those listed in Paragraphs E(i) and (ii) and as further detailed in a Public Staff Settlement Exhibit 2.

G. Red Bird agrees not to request an acquisition adjustment related to the Pine Mountain water or wastewater systems in this or any future proceeding.

H. Prior to closing and pursuant to future order by the Commission, Red Bird shall post a bond in the amount of \$125,000 in a form acceptable to the Commission for the Pine Mountain system.

I. Consistent with the Settlement Agreement and Stipulation in Docket No. W-1328, Sub 10, Red Bird and key leadership from CSWR will meet annually 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 the Company's financial condition.

III. AGREEMENT TO SUPPORT SETTLEMENT; NON-WAIVER

A. The Stipulating Parties, and their agents, witnesses, and representatives, will act in good faith to support the reasonableness of this Stipulation in any hearing before the Commission and any proposed order or brief in this docket; provided, however, that the settlement of any issue pursuant to this

Stipulation shall not be cited as precedent by any of the Stipulating Parties in any other proceeding or docket before this Commission or on appeal before the North Carolina Court of Appeals or North Carolina Supreme Court. The provisions of this Stipulation do not necessarily reflect any position asserted by any of the Stipulating Parties. Rather, they reflect settlement among the Stipulating Parties as to all issues and, notwithstanding the items agreed and stipulated to in Section II. A through I above, no Stipulating Party waives the right to assert any position on any issue in any future docket before the Commission. The Stipulating Parties further agree that this Stipulation is in the public interest because it reflects a give-and-take settlement of contested issues.

B. This Stipulation is a product of negotiation among the Stipulating Parties, and no provision of this Stipulation shall be strictly construed in favor of or against any Party.

IV. INTRODUCTION OF TESTIMONY AND WAIVER OF CROSS-EXAMINATION

The Stipulating Parties agree that all pre-filed testimony and exhibits of the Stipulating Parties, including any supplemental testimony filed in support of this Stipulation, may be received in evidence without objection, and each Stipulating Party waives all right to cross examine the Stipulating Parties' witnesses with respect to pre-filed testimony and exhibits. If, however, questions are asked by any Commissioner or non-Stipulating Party, then any Stipulating Party may respond to such questions by presenting testimony or exhibits and cross-examining any

witness with respect to such testimony and exhibits; provided, however, that such testimony and/or exhibits shall not be inconsistent with this Stipulation.

V. STIPULATION BINDING ONLY IF ACCEPTED IN ITS ENTIRETY

This Stipulation is the product of negotiation and compromise of a complex set of issues, and no portion of this Stipulation is or will be binding on any of the Parties unless the entire Settlement Agreement and Stipulation is accepted by the Commission. If the Commission rejects any part of this Stipulation or approves this Stipulation subject to any change or condition, or if the Commission's approval of this Stipulation is rejected or conditioned by a reviewing court, the Stipulating Parties agree to meet and discuss the applicable Commission or court order within five business days of its issuance and to attempt in good faith to determine if they are willing to modify the Stipulation consistent with the order. No Party shall withdraw from the Stipulation prior to complying with the foregoing sentence. If any Party withdraws from the Stipulation, each Party retains the right to seek additional procedures before the Commission, including cross-examination of witnesses, with respect to issues addressed by the Stipulation and shall not be bound or prejudiced by the terms and conditions of the Stipulation.

VI. COUNTERPARTS

This Stipulation may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute the same instrument. Execution by facsimile signature shall be deemed to be, and shall have the same effect as, execution by original signature.

The foregoing is agreed and stipulated to this the 1st day of March, 2024.

Public Staff — North Carolina Utilities Commission

By: /s/ Megan Jost
Megan Jost
Staff Attorney

/s/ James Bernier Jr.
Staff Attorney

Troutman Pepper Hamilton Sanders LLP

By: /s/ Molly M. Jagannathan
Attorney for Red Bird Utility Operating Company, LLC

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing has been served on all parties of record or their attorneys, or both, in accordance with Commission Rule R1-39, by United States Mail, first class or better; by hand delivery; or by means of facsimile or electronic delivery upon agreement of the receiving party.

This the 4th day of March, 2024.

Electronically submitted
/s/ James Bernier, Jr.
Staff Attorney