



**NORTH CAROLINA  
PUBLIC STAFF  
UTILITIES COMMISSION**

October 27, 2023

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

Re: Docket Nos. W-933, Sub 12 and W-1328, Sub 0 – Application by Red Bird Utility Operating Company, LLC, for Authority to Transfer the Sewer Utility Systems and Public Utility Franchise in Henderson County, North Carolina, and for Approval of Rates

Dear Ms. Dunston,

Attached for filing on behalf of the Public Staff in the above-referenced dockets is the public version of the testimony of D. Michael Franklin. Confidential information is located on pages 5, 18, and 22.

By copy of this letter, I am forwarding a copy of the redacted version to all parties of record by electronic delivery.

Sincerely,

Electronically submitted  
/s/ Davia A. Newell  
Staff Attorney  
[davia.newell@psncuc.nc.gov](mailto:davia.newell@psncuc.nc.gov)

cc: Parties of Record

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Consumer Services  
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**BEFORE THE NORTH CAROLINA UTILITIES COMMISSION**

**DOCKET NO. W-933, SUB 12**

**DOCKET NO. W-1328, SUB 0**

In the Matter of  
Application of Red Bird Utility Operating )  
Company, LLC, 1650 Des Peres Road, )  
Suite 303, St. Louis, Missouri 63131, and )  
Etowah Sewer Company, Inc., P.O. Box )  
1659, Etowah, NC 28729-1659, for )  
Authority to Transfer the Sewer Utility )  
Systems and Public Utility Franchise in )  
Henderson County, North Carolina, and )  
for Approval of Rates )

**TESTIMONY OF  
D. MICHAEL FRANKLIN  
PUBLIC STAFF –  
NORTH CAROLINA  
UTILITIES COMMISSION**

**October 27, 2023**

1 **Q. Please state your name, business address, and present position.**

2 A. My name is D. Michael Franklin. My business address is 430 North  
3 Salisbury Street, Dobbs Building, Raleigh, North Carolina. I am a Public  
4 Utilities Engineer with the Water, Sewer, and Telephone Division of the  
5 Public Staff – North Carolina Utilities Commission (Public Staff).

6 **Q. Briefly state your qualifications and duties.**

7 A. My qualifications and duties are included in Appendix A.

8 **Q. What is the purpose of your testimony?**

9 A. The purpose of my testimony is to provide the North Carolina Utilities  
10 Commission (Commission) with the results of my investigation of specific  
11 areas of the application filed on October 8, 2020, by Red Bird Utility  
12 Operating Company, LLC (Red Bird), in Docket No. W-1328, Sub 0, and  
13 Etowah Sewer Company, Inc. (Etowah), in Docket No. W-933, Sub 12, for  
14 transfer of public utility franchise and for approval of rates (Joint  
15 Application)<sup>1</sup>. I also discuss whether the transfer is in the best interest of  
16 the using and consuming public.

17 The specific areas of my investigation include customer complaints, along  
18 with Notices of Violation and Notices of Deficiency issued by the North  
19 Carolina Department of Environmental Quality (DEQ). I also assisted the

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<sup>1</sup> Red Bird supplemented the Joint Application through filings made on October 22, 2020, May 14 and October 7, 2021, February 15, August 17, and August 23, 2022, and August 15, 2023.

1 Accounting Division of the Public Staff with reviewing expenses and plant  
2 in service.

3 **Q. Please describe the Etowah service area and wastewater utility**  
4 **system.**

5 A. The Etowah service area is located in Henderson County and is comprised  
6 of both residential and commercial customers. In response to Public Staff  
7 Data Request No. 9, Question 1, Red Bird stated that based on recent billing  
8 information, Etowah has 485 wastewater customers, 440 of which are  
9 residential wastewater customers. The Etowah wastewater system consists  
10 of 0.125 million gallons per day wastewater collection, treatment, and  
11 extended aeration discharge facilities. The wastewater collection facilities  
12 consist of gravity sewer lines, six pump stations with duplex grinder pumps,  
13 and force main. The wastewater treatment facilities consist of a duplex  
14 influent lift station, manual bar screen, 31,250-gallon flow equalization tank,  
15 flow control splitter box, dual manual bar screens, 60,000- and 65,000-  
16 gallon diffused air aeration tanks, dual 10,877-gallon rectangular clarifiers  
17 with skimmers and sludge returns, 4,000- and 10,000-gallon aerobic  
18 digesters, dual tablet chlorination units with 1,354-gallon chlorine contact  
19 chambers, and flow meters. The two effluent lines discharge to the concrete  
20 wet well at the duplex effluent lift station, where an automatic sampler  
21 collects effluent samples. Effluent is pumped by force main approximately  
22 one mile from the duplex effluent lift station to a gravity outfall into the  
23 French Broad River. The wastewater treatment site has an emergency

1 power generator with capacity to fully power the treatment facilities and  
2 automatic transfer switch.

3 **Q. Have you conducted a site visit of the Etowah wastewater system and,**  
4 **if so, what were your observations?**

5 A. On October 12, 2023, I visually inspected the wastewater system while  
6 accompanied by a representative of Etowah's maintenance contractor, A &  
7 D Maintenance, Inc. The wastewater system appears to be in fair condition.  
8 In general, I agree with the condition of the wastewater system as stated in  
9 the Confidential Attachment L of the Joint Application, McGill Associates  
10 Engineering Memorandum, Appendices A-1 and A-2, which was based on  
11 inspections performed on December 4, 2019. While there are areas of the  
12 wastewater collection and treatment system that need improvement, most  
13 areas were determined by me and McGill to be in either good or average  
14 condition. At the wastewater treatment plant (WWTP) these areas include  
15 the duplex influent pump station, the flow equalization basin with duplex  
16 blowers and control panel, the dual train aeration basins with two blowers,  
17 clarifiers and airlift pumps, the sampling station, the duplex effluent pump  
18 station, and the standby diesel generator.

19 At five of the six lift stations, the lift station structure and pumps, control  
20 panels, and overall site were determined to be either in good or average  
21 condition. I was unable to inspect the remaining lift station, but according to  
22 McGill's Engineering Memorandum, Appendix A-1, **[BEGIN**

1 CONFIDENTIAL] [REDACTED]

2 [REDACTED]

3 [REDACTED] [END CONFIDENTIAL].

4 **Q. Briefly describe the results of your investigation of DEQ Notices of**  
5 **Violation and Civil Penalties.**

6 A. The Etowah wastewater system operates under two DEQ permits. Permit  
7 NC0071323 is the National Pollutant Discharge Elimination System  
8 (NPDES) permit and is applicable to the wastewater treatment plant  
9 (WWTP) and its discharges. Permit WQCSD0135 is for the wastewater  
10 collection system where wastewater is collected from the wastewater  
11 sources and conveyed to the WWTP for treatment through system mains  
12 and lift stations. The last inspection of the WWTP system was performed by  
13 DEQ on March 22, 2019. The inspection concluded that the wastewater  
14 facility appeared to be operating well but indicated that several minor repairs  
15 were needed, which included the repair of the audio and visual alarms at  
16 both the influent and effluent pump stations and the replacement of  
17 collapsed grating.

18 WWTP

19 Between September 1, 2020, and October 1, 2023, the Etowah WWTP  
20 received eight Notices of Violation (NOV). Two NOVs were issued for Daily  
21 Maximum Exceedance of Coliform, Fecal Membrane Filtration (MF), and  
22 Membrane Filtration Method (MFC) Broth, one in 2021 and the second in

1 2023. Six additional NOV's were issued with one issued in 2021 and again  
2 in 2022 for Daily Maximum Exceedance of Biochemical Oxygen Demand,  
3 5-Day Concentration (BOD5). In 2023, the remaining four NOV's were  
4 issued for Daily Maximum Exceedance of BOD5, two of which also included  
5 a Monthly Average Exceedance of the same parameter. On September 11,  
6 2023, Etowah was assessed a civil penalty of \$1,073.66 based on the limit  
7 exceedances identified in NOV-2023-LV-0442 for the Daily Maximum  
8 Exceedances of BOD5 that occurred twice in May 2023 and the Monthly  
9 Average Exceedance of BOD5 that occurred once in May 2023. According  
10 to the DEQ Asheville Regional Office, none of the NOV's issued for Permit  
11 NC0071323 remain open.

#### 12 Collection System

13 Between September 1, 2020, and October 1, 2023, Etowah was issued  
14 three NOV's, all in 2023, for the wastewater collection system. One NOV  
15 was issued for a sanitary system overflow (SSO) that occurred on July 19,  
16 2022, due to the City of Hendersonville striking an unmarked wastewater  
17 line resulting in the discharge of 808 gallons of wastewater. The additional  
18 two NOV's were the result of a SSO that occurred on January 9, 2023. One  
19 NOV was issued for the actual SSO event that resulted in the inadvertent  
20 discharge of 600 gallons, and a second NOV was issued based on the  
21 results of the DEQ Compliance Inspection performed on January 10, 2023,  
22 due to the January 9, 2023, SSO event. The Compliance Inspection

1 identified five violations for the lift station where the SSO event occurred.

2 These violations are as follows:

- 3 1. A blown capacitor in the lift station control panel;
- 4 2. The autodialer not working for approximately one year;
- 5 3. The lift station sign not having phone numbers for the current  
6 emergency personnel;
- 7 4. One lift station pump not working for approximately a month; and
- 8 5. Failure to meet the required daily visitation frequency for a lift station  
9 without functional telemetry.

10 On February 9, 2023, Etowah responded, as required by DEQ, to the five  
11 violations identified in the Compliance Inspection Report and stated the  
12 violations have been addressed. According to DEQ's Asheville Regional  
13 Office, as of October 24, 2023, the two NOVs related to the January 2023  
14 SSO event remain open.

15 **Q. Did Red Bird provide Notice to Customers of the Joint Application?**

16 A. Yes. On October 4, 2023, the Commission issued the Order Approving  
17 Notice to Customers (Notice Order). The Notice Order directed Red Bird to  
18 provide the notice to customers no later than three days after the date of  
19 the Notice Order and to submit a signed and notarized certificate of service  
20 stating the notice had been provided as required by the Notice Order. On  
21 October 10, 2023, Red Bird filed a Certificate of Service stating that the



1 notice was mailed or hand delivered by the date specified in the Notice  
2 Order.

3 **Q. Has the Public Staff received any customer complaints?**

4 A. Between October 1, 2020, and October 9, 2023, the Public Staff Consumer  
5 Services Division did not receive any customer complaints from Etowah  
6 wastewater customers.

7 **Q. Has the Public Staff received any consumer statement of position?**

8 A. As of October 27, 2023, the Public Staff has received six consumer  
9 statements of position. Five of the consumer statements of position  
10 expressed concerns regarding the approval of a 200-unit subdivision on the  
11 site of the Etowah Valley Country Club, and whether the Etowah wastewater  
12 system can provide adequate service with the additional wastewater load  
13 from the new subdivision or whether the new subdivision would necessitate  
14 an additional WWTP. These five consumer statements of position  
15 expressed concerns on the impacts to the community if the existing WWTP  
16 is expanded or an additional WWTP is built. Two consumers expressed  
17 concerns on the impact on Etowah wastewater rates, with one of these  
18 consumers also having concerns over the cost of Red Bird's planned  
19 improvements and the other consumer having concerns regarding Red  
20 Bird's ability to serve their existing customers.

21 Additionally, the Public Staff received a phone call from Senator Berger's  
22 office and an email from Senator Moffitt on behalf of his constituents asking

1 that the public hearing go forward as planned. Senator Moffit also  
2 expressed concern over potential future rate increases that were not  
3 reflected in the notice to customers.

4 **Q. Is Etowah providing safe and reliable service?**

5 A. Yes. As described in more detail above, I reviewed NOVs and penalties  
6 issued by DEQ between September 1, 2020, and October 1, 2023. During  
7 that period, the WWTP had a rate of 90.85% for the number of days in  
8 regulatory compliance, and the wastewater collection system had a rate of  
9 96.8% for the number of days in regulatory compliance. While two NOVs  
10 remain open as a result of the January 9, 2023, SSO event, Etowah's  
11 response to DEQ's Compliance Inspection identifies actions taken to  
12 address the violations identified at the lift station where the SSO occurred.  
13 Also, the Public Staff Consumer Services Division did not receive any  
14 customer complaints between October 1, 2020, and October 9, 2023.  
15 Based on these factors, I conclude that Etowah is providing adequate  
16 service to its wastewater customers.

17 **Q. What are the present and proposed water and wastewater utility**  
18 **service rates?**

19 A. Etowah's present rates, fees, and additional charges were approved in  
20 Docket Nos. W-933, Sub 10 and M-100, Sub 138, and have been in effect  
21 since January 1, 2016. Upon acquisition of the system, Red Bird proposes

1 to charge these approved rates, fees, and additional charges for the Etowah  
 2 service area. The present and proposed rates are as follows:

3 Monthly Wastewater Utility Service:

	<u>Present and Proposed</u>
4 Residential Flat Rate	\$ 26.33
5 Commercial Customers (metered rates)	
6     Base Charge, zero usage	\$ 26.33
7     Usage Charge, per 1,000 gallons	\$ 4.05

9 Connection Charge:

10 Residential	\$2,300 per connection
11 Commercial	\$2,300, minimum per
12	connection, plus \$6.97 per
13	gallon of design flow over
14	330 gallons per day

16 Reconnection Charge:

17 If wastewater service cut off by	
18 utility for good cause	\$ 14.99

19 **Q. What is your recommendation regarding the requested approval of**  
 20 **rates?**

21 A. The requested rates are the current Commission-approved rates for Etowah  
 22 and are just and reasonable.

1 **Q. Based on your investigation, what is your opinion of Red Bird's ability**  
2 **to own and operate Etowah's wastewater system?**

3 A. Public Staff witness John R. Hinton addresses Red Bird's financial ability to  
4 own and operate the Etowah wastewater system. Based on our  
5 investigation, Red Bird, a subsidiary of Central States Water Resources,  
6 LLC, has the financial, technical, and managerial capabilities necessary to  
7 provide wastewater utility service to customers in Etowah's service area.  
8 Therefore, the Public Staff recommends the Commission approve the  
9 transfer of the wastewater system from Etowah to Red Bird, subject to  
10 certain conditions described below.

11 **Q. Do you agree with the prefiled direct testimony of Red Bird witness**  
12 **Josiah Cox that the Etowah wastewater system is either distressed,**  
13 **troubled, or in need of an infusion of capital investment that the**  
14 **current owner is either unable or unwilling to provide?**

15 A. Based on the recent performance of the wastewater system, including the  
16 lack of customer complaints, the routine maintenance performed and recent  
17 improvements made by Etowah including replacement of pumps at Sunset  
18 Ridge and the Main lift stations, installing shut off valves at Homeplace and  
19 Jonathan Creek lift stations, and installation of additional diffuser leads to  
20 drop pipes at the WWTP, I do not consider the Etowah wastewater system  
21 to be distressed or troubled as described in Mr. Cox's prefiled direct  
22 testimony. While the system has recently been issued NOVs, the NOVs  
23 associated with the WWTP are closed and Etowah has addressed the

1 collection system violations identified in the January 2023 Compliance  
2 Inspection Report.

3 **Q. What adjustments have you made to plant additions since the last rate**  
4 **case?**

5 A. In response to Public Staff Data Request No. 6, Red Bird provided invoices  
6 and depreciation estimates for plant additions made since Etowah's last rate  
7 case in Docket No. W-933, Sub 9. My recommended adjustments to those  
8 plant additions include reducing the service life of the diffusers on drop  
9 pipes from 20 years to seven years. I also recommend that the service lives  
10 of the new pumps at Sunset Ridge, the Main lift stations, and the pump  
11 volute on the Sunset Ridge lift station pump No. 1 be reduced from ten years  
12 to seven years. These adjustments are based on service lives from the  
13 previous two Etowah rate cases in Docket No. W-933, Subs 7 and 9. I also  
14 reduced the life of the generator battery from 20 years to three years, the  
15 shutoff valves at the Homeplace and Jonathan Creek lift stations from 50  
16 years to 20 years, and the check valve at blower No. 2 from 20 years to  
17 seven years. Based on my Engineering background and experience, I  
18 believe these lives are more appropriate and reasonable.

19 Furthermore, I recommend disallowing the inclusion of \$4,763 in expenses  
20 identified as capital expenses by Red Bird in response to Public Staff Data  
21 Request No. 6. These include \$1,996 in expenses for new wiring and  
22 overload on pump No. 1, and a generator controller at Sunset Ridge lift

1 station. Red Bird failed to provide invoices supporting these expenses. The  
2 remaining \$2,767 should be classified as operating and maintenance  
3 expenses rather than capital investment. These include replacement of a  
4 hydraulic hose for blower No. 2, sewer main and sewer tap repairs, and  
5 refurbishment of the driveway.

6 **Q. What is your recommendation concerning an acquisition adjustment?**

7 A. The Public Staff does not support the requested acquisition adjustment. As  
8 a general proposition, when a public utility buys assets that have previously  
9 been dedicated to public service as utility property, the acquiring utility is  
10 entitled to include in rate base the lesser of the purchase price or the net  
11 original cost of the acquired facilities owned by the seller at the time of the  
12 transfer. See Order Approving Transfer and Denying Acquisition  
13 Adjustment, *Petition of Utilities, Inc. for Transfer of the Certificate of Public*  
14 *Convenience and Necessity for Providing Sewer Utility Service on North*  
15 *Topsail Island and Adjacent Mainland Areas in Onslow County from North*  
16 *Topsail Water and Sewer, Inc. and for Temporary Operating Authority,*  
17 Docket No. W-1000, Sub 5 (N.C.U.C. January 6, 2000) (W-1000, Sub 5  
18 Order).

19 The Commission has indicated "a strong general policy against the  
20 inclusion of acquisition adjustments in rate base subject to exceptions in  
21 appropriate instances." *Id.* at 24. In the W-1000, Sub 5 Order, the

1 Commission discussed the circumstances when the rate base treatment of  
2 acquisition adjustments is proper. The Commission stated:

3 As should be apparent from an analysis of the Commission's  
4 previous Orders concerning this subject, a wide range of  
5 factors have been considered relevant in attempting to  
6 resolve this question, including the prudence of the purchase  
7 price paid by the acquiring utility; the extent to which the size  
8 of the acquisition adjustment resulted from an arm's length  
9 transaction; the extent to which the selling utility is financially  
10 or operationally "troubled;" the extent to which the purchase  
11 will facilitate system improvements; the size of the acquisition  
12 adjustment; the impact of including the acquisition adjustment  
13 in rate base on the rates paid by customers of the acquired  
14 and acquiring utilities; the desirability of transferring small  
15 systems to professional operators; and a wide range of other  
16 factors, none of which have been deemed universally  
17 dispositive. Although the number of relevant considerations  
18 seems virtually unlimited, all of them apparently relate to the  
19 question of whether the acquiring utility paid too much for the  
20 acquired utility and whether the customers of both the  
21 acquired and acquiring utilities are better off after the transfer  
22 than they were before that time. This method of analysis is  
23 consistent with sound regulatory policy since it focuses on the  
24 two truly relevant questions which ought to be considered in  
25 any analysis of acquisition adjustment issues. It is also  
26 consistent with the construction of G.S. 62-111 (a) adopted in  
27 State ex rel. Utilities Commission v. Village of Pinehurst. 99  
28 N.C App. 224,393 S.E.2d 111 (1990), affd 331 N.C. 278,415  
29 S.E.2d 199 (1992), which seems to indicate that all relevant  
30 factors must be considered in analyzing the appropriateness  
31 of utility transfer applications. As a result, . . . the Commission  
32 should refrain from allowing rate base treatment of an  
33 acquisition adjustment unless the purchasing utility  
34 establishes, by the greater weight of the evidence, that the  
35 price the purchaser agreed to pay for the acquired utility was  
36 prudent and that both the existing customers of the acquiring  
37 utility and the customers of the acquired utility would be better  
38 off [or at least no worse off] with the proposed transfer,  
39 including rate base treatment of any acquisition adjustment,  
40 than would otherwise be the case. *Id.* at 27.

1 The prefiled direct testimony of witness Cox demonstrates that he  
2 understands that the customers of the acquired utility would need to be  
3 better off or at least no worse off as a result of the proposed transfer,  
4 including rate base treatment of any acquisition adjustment. Witness Cox  
5 identifies improved customer service, asset management via Utility Cloud  
6 software, professional operations, and access to capital as benefits that  
7 would come with Red Bird's ownership and would support an acquisition  
8 adjustment.

9 Witness Cox fails to acknowledge that customer service and professional  
10 operation could both be contracted out to a third party by any current or  
11 acquiring utility. Red Bird has stated that it intends to use both third-party  
12 customer service and contract operators for its systems in North Carolina.  
13 Witness Cox also outlined the benefits associated with Utility Cloud, a non-  
14 affiliated company, with whom Etowah or a different purchaser could pursue  
15 a contract. There is no evidence to suggest that Etowah customers would  
16 be better off under Red Bird ownership with Red Bird hiring a contract  
17 operator, third-party customer service firm, or obtaining a contract with  
18 Utility Cloud, as compared to Etowah or a different purchaser doing the  
19 same.

20 On pages 23 and 29 of his prefiled direct testimony, Red Bird witness Cox  
21 testifies that the survey and capital estimates are preliminary, and the  
22 existence of problems cannot be truly known until Red Bird has acquired



1 and begun to operate a system. This raises the question of whether, due to  
2 the uncertainty as to the amount of capital investment that may be  
3 necessary, Red Bird's willingness to make capital investments can actually  
4 be considered a tangible benefit.

5 In this transfer proceeding, as previously stated, while DEQ has issued  
6 NOVs for the Etowah WWTP and the Etowah wastewater collection system  
7 in the last three years, none of the violations on the WWTP remain open.  
8 While two NOVs on the Etowah wastewater collection system remain open  
9 as a result of the January 9, 2023, SSO event, Etowah's response to DEQ's  
10 Compliance Inspection identifies actions taken to address the violations  
11 identified by DEQ. Therefore, the evidence demonstrates that while there  
12 have been recent operational incidents at both the WWTP and the  
13 wastewater collection system, Etowah has the willingness, ability, and  
14 means to address them. Therefore, I do not conclude that the Etowah  
15 system is troubled or distressed.

16 In the W-1000, Sub 5 Order, the Commission discussed the circumstances  
17 when the rate base treatment of acquisition adjustments is proper. The  
18 Commission stated:

19 The evidence supports the conclusion that NTWS  
20 management routinely makes prudent use of its available  
21 capital resources to provide an adequate quality of service to  
22 its customers. Furthermore, the NTWS system does not suffer  
23 from various system deficiencies, ongoing environmental  
24 regulatory violations and frequent customer complaints that  
25 typify operationally-troubled systems. The Commission finds

1 and concludes that the facilities owned and operated by  
2 NTWS are in satisfactory condition and are currently sufficient  
3 to provide sewer utility service to the customers. Without  
4 some evidence of inadequate service currently or in the recent  
5 past, the Commission cannot conclude that NTWS is  
6 operationally troubled. The record in this case is devoid of  
7 such evidence. Accordingly, the Commission concludes that  
8 NTWS is not an operationally troubled system. *Id.* at 21.

9 The allowance of the requested acquisition adjustment based on the Joint  
10 Application, and more specifically Mr. Cox's prefiled direct testimony, could  
11 incentivize other current utility owners to accumulate environmental  
12 violations and fail to properly operate and maintain systems in order to  
13 receive an acquisition adjustment.

14 Furthermore, Red Bird has not quantified "the impact of including the  
15 acquisition adjustment in rate base on the rates paid by customers of the  
16 acquired and acquiring utilities." Inclusion in rate base of the Company's  
17 requested acquisition adjustment to recover the entire difference between  
18 the purchase price and the residual net plant in service, as calculated by  
19 the Public Staff and provided in the prefiled testimony of Public Staff witness  
20 Lynn Feasel, Regulatory Analyst Supervisor with the Accounting Division,  
21 would equate to a \$22.23 increase in residential monthly wastewater flat  
22 rates and commercial metered monthly base charge.<sup>2</sup> This is equivalent to

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<sup>2</sup> Rate impact is determined by dividing the respective revenue requirement included in the prefiled testimony of Public Staff witness Lynn Feasel by the number of wastewater customers (485), and then by the number of months in a year and reflecting that amount in the residential wastewater flat rate and commercial metered wastewater base charge, zero usage rate.

1 an 84% increase in the residential wastewater monthly flat rate and  
2 commercial metered wastewater monthly base charge, zero usage rate.

3 Approval of the proposed acquisition adjustment is not in the public interest.  
4 Red Bird has not established by the greater weight of the evidence that the  
5 benefits to Etowah’s customers resulting from the allowance of rate base  
6 treatment of an acquisition adjustment in this case would offset or exceed  
7 the resulting burden or harm to customers associated therewith, including  
8 but not limited to the future rate impact of the requested acquisition  
9 adjustment and excessive due diligence expenses.

10 **Q. Briefly describe Red Bird’s plans for capital improvements.**

11 A. After completing the purchase of the Etowah wastewater system, Red Bird  
12 intends to [BEGIN CONFIDENTIAL] [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED] [END CONFIDENTIAL].

17 It will be incumbent upon Red Bird to ensure the capital improvements are  
18 reasonable and prudent for the capital investment associated with the  
19 improvements to be added to rate base and included in rates in a future rate  
20 case proceeding. Inclusion of the currently planned improvements totaling  
21 [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] for the  
22 wastewater system and based on the resulting revenue requirements to

1 support the improvement costs as identified in the prefiled testimony of  
2 Public Staff witness Feasel, would result in a \$16.29 per month increase in  
3 residential wastewater flat rates and commercial metered wastewater base  
4 charge, zero usage rates.<sup>3</sup> This is equivalent to a 62% increase in the  
5 residential wastewater monthly flat rate and commercial metered  
6 wastewater monthly base charge, zero usage rate.

7 **Q. What is the Public Staff's recommendation for Red Bird's due**  
8 **diligence expenses?**

9 A. In response to Public Staff Data Request No. 7, Red Bird provided invoices  
10 dated between September 2019 and August 2023 from five law firms, two  
11 engineering firms, and one commercial property appraiser to support its due  
12 diligence expense of \$317,269. The invoices provided were heavily  
13 redacted and the description of the work performed was either vague and  
14 uninformative or contained no description beyond the name of the system.  
15 Even with the lack of information provided in the redacted invoices, certain  
16 expenses do not appear to be appropriately categorized as due diligence  
17 expenses. Of the approximately 22 invoices from Engineering firm McGill  
18 Associates, P.A. (McGill), as identified in Exhibit 4 of the prefiled direct  
19 testimony of Red Bird witness Cox, 17 of those invoices were dated after  
20 the February 2020 issuance of the Preliminary Opinion of Probable Cost

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<sup>3</sup> Rate impact is determined by dividing the respective revenue requirement included in the prefiled testimony of Public Staff witness Lynn Feasel by the number of wastewater customers (485) by the number of months in a year and reflecting that amount in the residential wastewater flat rate and commercial metered wastewater base charge, zero usage rate.

1 prepared by McGill and provided in the Joint Application, Confidential  
2 Attachment L. Additionally, Red Bird’s legal invoices from Burns, Day &  
3 Presnell, P.A. are more likely expenses associated with this transfer  
4 proceeding before the Commission and not due diligence.

5 Revenue requirements to support the due diligence costs requested by Red  
6 Bird, as identified in the prefiled testimony of Public Staff witness Feasel,  
7 would result in a \$6.42 per month increase in residential monthly  
8 wastewater flat rates and commercial metered monthly wastewater base  
9 charge, zero usage rates. This is equivalent to a 24% increase in residential  
10 monthly wastewater flat rates and commercial metered monthly wastewater  
11 base charge, zero usage rates.<sup>4</sup> On page 29 of his prefiled direct testimony,  
12 Red Bird witness Cox testifies that “some potential acquisitions which, after  
13 proper due diligence, are shown to be not in the best interests of CSWR or  
14 its operating subsidiary’s ratepayers” and that due diligence expenses are  
15 legitimate business expenses and this “opportunity cost” should be shared  
16 with ratepayers, just as the benefits of completed acquisitions are shared.  
17 The Public Staff recommends that the majority of these costs be absorbed  
18 by Red Bird as a cost of doing business and not be included in rate base.

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<sup>4</sup> Rate impact is determined by dividing the respective revenue requirement included in the prefiled testimony of Public Staff witness Lynn Feasel by the number of wastewater customers (485) by the number of months in a year and reflecting that amount in the residential wastewater flat rate and commercial metered wastewater base charge, zero usage rate.

1 The Public Staff recommends limiting due diligence expenses to \$10,000 to  
2 be included in rate base. Due diligence expenses are typically limited to  
3 transaction closing costs and are generally less than \$10,000. This amount  
4 is consistent with previous transfer applications, including those in Docket  
5 No. W-354, Sub 396, where the Public Staff recommended due diligence  
6 expenses of \$8,229 be included in rate base, and Docket No. W-218, Sub  
7 527, where the Public Staff recommended, and the Commission approved,  
8 the inclusion of \$4,000 in attorney fees in rate base.

9 **Q. Do you agree with Red Bird's assertion that allowance of an**  
10 **acquisition adjustment and due diligence expenses should be**  
11 **considered during the first rate case versus this transfer proceeding?**

12 A. No. Session Law 2023-67 provides that the Commission shall issue an  
13 order approving the application upon finding that the proposed grant or  
14 transfer, among other things, is in the public interest. The Commission  
15 cannot determine if the transfer is in the public interest if it does not know  
16 the impact to rate base and customer rates of the acquiring utility's  
17 proposed acquisition adjustment and due diligence expenses. Additionally,  
18 Red Bird has indicated that in its first rate case it would seek uniform rates.  
19 Deferring the decision on acquisition adjustments and due diligence  
20 expenses for multiple utility systems to a future rate case would unduly  
21 complicate and encumber the rate case proceeding. The information  
22 required for an acquisition adjustment decision is known, as are the majority  
23 of the due diligence expenses. As a result, deferring to the future rate case

1 the decision on an acquisition adjustment and due diligence expenses  
2 would not be in the public interest. Instead, those decisions should be made  
3 as part of this transfer proceeding consistent with long established  
4 procedure before the Commission, including but not limited to the  
5 proceedings predating the precedent decision in Docket No. W-1000, Sub  
6 5, such as Hardscrabble in Docket No. W-274, Sub 122, Carolina Water I  
7 in Docket Nos. W-354, Subs 39, 40, and 41, Carolina Water II in Docket  
8 Nos. W-354, Subs 74, 79, and 81, and Transylvania in Docket Nos. W-1012,  
9 Subs 2 and 3.

10 **Q. Do you have concerns with Red Birds proposed operating expenses?**

11 A. Yes. In confidential attachment E.1 of the Joint Application, Red Bird  
12 forecasts its total operation and maintenance expenses in Years 1 through  
13 5 as **[BEGIN CONFIDENTIAL]** [REDACTED] **[END CONFIDENTIAL]**. Of that  
14 amount **[BEGIN CONFIDENTIAL]** [REDACTED]  
15 [REDACTED]  
16 [REDACTED] **[END CONFIDENTIAL]**.

17 In Etowah's last rate case, Docket W-933, Sub 9, contract labor expenses  
18 of \$32,998 and administrative and office expenses of \$4,401 were approved  
19 by the Commission. While it is unclear whether operation and maintenance  
20 expenses provided in confidential attachment E.1 of the Joint Application  
21 include any corporate allocation amount, the amount identified by Red Bird  
22 is significantly more than the \$37,399 approved in Etowah's last rate case  
23 for contract labor and administrative and office expenses. While future

1 operating expenses are not addressed in this proceeding, the Public Staff  
2 will, in any future Red Bird rate case, audit these expenses to determine  
3 whether they were reasonably and prudently incurred.

4 **Q. What is your recommendation concerning the bond for the water and**  
5 **wastewater utility systems?**

6 A. North Carolina Session Law 2023-137, Section 24 revised North Carolina  
7 General Statute § 62-110.3(a) to read that no franchise may be granted to  
8 any water or sewer utility company “until the applicant furnishes a bond,  
9 secured with sufficient surety as approved by the Commission, in an amount  
10 not less than twenty-five thousand dollars (\$25,000).” In addition, the bond,  
11 “shall be conditioned upon providing adequate and sufficient service within  
12 all the applicant's service areas.” Further, N.C.G.S. § 62-110.3(a) provides:

13 In setting the amount of a bond, the Commission shall  
14 consider and make appropriate findings as to the following:

- 15 (1) Whether the applicant holds other water or  
16 sewer franchises in this State, and if so its  
17 record of operation,  
18 (2) The number of customers the applicant now  
19 serves and proposes to serve,  
20 (3) The likelihood of future expansion needs of the  
21 service,  
22 (4) If the applicant is acquiring an existing  
23 company, the age, condition, and type of the  
24 equipment, and  
25 (5) Any other relevant factors, including the design  
26 of the system.

27 Commission Rules R7-37 and R10-24 restate and reaffirm most of these  
28 provisions and requirements although the Commission Rules have not been



1 updated to reflect the revised bond amount required by N.C.G.S. § 62-  
2 110.3. Bond is required to ensure the continued provision of adequate and  
3 sufficient wastewater services in the event a wastewater utility is unable to  
4 provide such service due to financial constraints, mismanagement, or other  
5 factors. The factors and findings set forth in N.C.G.S. § 62-110.3(a)(1) – (5)  
6 make clear that the bond amount depends heavily on the applicant's  
7 financial, managerial, and technical expertise; the applicant's prior  
8 performance where applicable; the number of current and projected future  
9 wastewater customers; system expansion plans and needs; the complexity  
10 of the applicant's system and facilities; and any other factors that bear upon  
11 the risk of the applicant providing inadequate, inconsistent, and/or  
12 insufficient wastewater services. Section 62-110.3 and Commission Rules  
13 R7-37 and R10-24 make it clear that a higher risk of deficient wastewater  
14 services necessitates a higher bond amount.

15 Red Bird does not have a history of operations and management in North  
16 Carolina, and due to the large customer size, the improvements planned by  
17 Red Bird, and size of the WWTP and wastewater collection system, I  
18 recommend that a \$200,000 bond be posted by Red Bird.

19 **Q. What is your recommendation regarding the requested transfer of the**  
20 **public utility franchise?**

21 A. While the Public Staff has found that Red Bird has the financial, technical,  
22 and managerial ability to own and operate the Etowah wastewater system,

1 the Public Staff's support of the requested transfer is contingent on the  
2 following conditions: (1) denying an acquisition adjustment; (2) including in  
3 rate base no more than the net plant in-service amount of negative  
4 (\$282,207) plus \$10,000 in due diligence expenses; and (3) requiring a  
5 bond of \$200,000. As stated previously, the Public Staff does not consider  
6 the Etowah wastewater system to be troubled. It is important for the  
7 Commission to consider the impact the requested acquisition adjustment  
8 and the due diligence expenses could have on the residential monthly  
9 wastewater flat rates and commercial metered monthly wastewater base  
10 charge, zero usage rates, an estimated increase of \$28.65 per month, or  
11 108%. This would not include any increases in operating expenses  
12 associated with Red Bird's operations and ownership. The Public Staff does  
13 not believe that such an increase in customer rates would be in the best  
14 interest of the Etowah wastewater system customers and would leave them  
15 worse off.

16 **Q. Does this conclude your testimony?**

17 **A.** Yes, it does.



**QUALIFICATIONS AND EXPERIENCE**

D. MICHAEL FRANKLIN

I graduated from the University of South Carolina, earning a Bachelor of Science Degree in Engineering. I worked in the electric utility industry for 33 years prior to joining the Public Staff in June 2019. While employed by the Public Staff, I have worked on utility rate case proceedings, new franchise and transfer applications, customer complaints, and other aspects of utility regulation.



## CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Public Staff testimony have 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 27th day of October, 2023.

Electronically submitted  
/s/ Davia A. Newell  
Staff Attorney