

STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH

DOCKET NO. W-938, SUB 6  
DOCKET NO. W-1328, SUB 8

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	)	
Application by Red Bird Utility Operating	)	
Company, LLC, and Baytree Waterfront	)	RED BIRD'S MOTION FOR
Properties Inc. for Transfer of Public Utility	)	APPROVAL OF NOTICE TO CUSTOMERS
Franchise and for Approval of Rates	)	

NOW COMES Red Bird Utility Operating Company, LLC ("Red Bird"), pursuant to the Order Scheduling Hearings, Establishing Discovery Guidelines and Requiring Customer Notice issued in these dockets on September 13, 2023 ("Procedural Order"). As directed in the Procedural Order, Red Bird conferred with Public Staff regarding the terms of the Notice to Customers to be used in these dockets. Red Bird and Public Staff made some progress regarding the Public Staff's proposed draft Notice to Customers but were ultimately not able to agree on all contents of a Notice to Baytree's customers. As directed by the Procedural Order, Red Bird files the attached proposed Notice to Customers and moves the Commission to approve its use in these dockets.

In support of its Motion Red Bird shows the Commission the following:

1. By the Transfer Application in these dockets Red Bird requests Commission approval to acquire Baytree's public utility assets and franchise and to adopt Baytree's **existing** Commission-approved rates.
2. The General Assembly recently passed North Carolina Session Law 2023-67, entitled "An Act to Expedite Transfer of Water or Wastewater Public Utilities," which added a new Section (f) to N.C. Gen. Stat. § 62-111, Subdivision (f)(1) of which provides, in pertinent part, as follows:

[T]he Commission shall issue an order approving the application upon finding that the proposed grant or transfer, including adoption of existing or proposed rates for the transferring utility, is in the public interest, will not adversely affect service to the public under any existing franchise, and the person acquiring said franchise or certificate of public convenience and necessity has the technical, managerial, and financial capabilities necessary to provide public utility service to the public.

3. Red Bird's view is that this legislation defines the issues to be decided by the Commission in deciding whether to approve the proposed transfer of the Baytree system to Red Bird and adoption by Red Bird of Baytree's existing approved rates as being limited to the following:

Whether the proposed transfer "including adoption of existing or proposed rates for the transferring utility, is in the public interest;"

Whether the proposed transfer "will not adversely affect service to the public under any existing franchise;" and

Whether "the person acquiring said franchise or certificate of public convenience and necessity has the technical, managerial, and financial capabilities necessary to provide public utility service to the public."

4. In prior Red Bird transfer dockets Public Staff has included information in customer notices which attempts to project the future potential rate impacts of Red Bird's pro forma estimates of investment in the seller's system(s), and attempts to project potential rates over a period of five years post-acquisition. Public Staff's projections were typically based on pro forma projections Red Bird provided in response to Public Staff data requests and the projected future rate increases in those notices are attributed solely to a 25-year amortization of estimated capital expenditures, recovery of 100% of purchase price and approval of an acquisition adjustment. Those notices usually also advised customers of Red Bird's stated intention to request approval of uniform rates once it has secured approvals and acquired a sufficient number of systems to make statewide rates feasible.

5. Red Bird has not agreed with these past attempts to project future rate impacts or future rates in prior customer notices, which projections have been inaccurately described in past notices as future charges for service “proposed” by Red Bird. Red Bird’s view is, and has been, that given the number of elements to be determined in a rate case, it is not possible to accurately predict what rates will be approved by the Commission years in the future.
6. Any future rate increase for any system acquired by Red Bird must be approved by the Commission through a separate general rate case, based on its findings of reasonable and prudent investment, operating expenses, etc. Public Staff will participate in any such rate case.
7. While it is certain that if a water or wastewater system in need of investment is acquired by any utility (be it Red Bird or another utility), and the acquiring utility makes investment to address needs in the system, and the investing utility files a rate case, then it can be expected that upon Commission approval the utility’s rates will increase. Simply put, that is the process by which utility investment is recovered.
8. Red Bird disagreed with Public Staff’s attempts to project future rate impacts or future rates in prior customer notices. It is not possible to accurately predict years in advance all of the relevant factors that will affect rates established in a future general rate case, including rate base, investment, capital structure, cost of money, operating expenses, taxes, etc. Even though any actual future rate increase for any system acquired by Red Bird will be approved by the Commission through a general rate case proceeding, Public Staff wants to include projections of future rates in the Baytree Notice to Customers, which Red Bird believes is neither accurate nor appropriate, in light of the recent legislation. There also has been no recognition in past notices of the fact that to the extent future rate increases are driven by

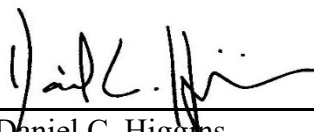
capital investments required to bring or keep systems in compliance with applicable health and safety regulations increases are likely to occur, regardless of who owns the system.

9. Public Staff proposes a similar approach here with regard to the Baytree Notice. By virtue of the recent legislation, and because Red Bird proposes to adopt Baytree's existing rates, the only issue relating to rates for purposes of the proposed transfer is whether the proposed transfer "including adoption of existing or proposed rates for the transferring utility, is in the public interest." Because the parties reached an impasse, Red Bird proposes the attached Notice to Customers, which accurately states that (i) Red Bird proposes to adopt Baytree's existing rates, (ii) Red Bird anticipates making investments to address specific system needs, (iii) that such investment would cause rates to increase in the future, subject to approval by the Commission,

Red Bird respectfully requests approval of the attached Notice to Customers for use in these dockets.

This the 20<sup>th</sup> day of September, 2023.

BURNS, DAY & PRESNELL, P.A.



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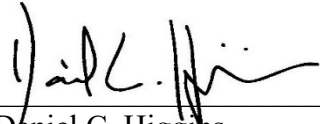
Attorneys for Red Bird

**CERTIFICATE OF SERVICE**

I certify that I have served a true and exact copy of the foregoing document on counsel for all parties to these dockets in accordance with Commission Rule R1-39, by United States mail, first class postage prepaid; by hand delivery; or by means of facsimile or electronic delivery upon agreement of the receiving party.

This the 20<sup>th</sup> day of September, 2023.

BURNS, DAY & PRESNELL, P.A.

By:   
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