

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. W-1328, SUB 4
DOCKET NO. W-1040, SUB 10

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

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

BY THE COMMISSION: On December 4, 2020, Red Bird Utility Operating Company, LLC (Red Bird), and Bear Den Acres Development, Inc. (Bear Den), 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 Bear Den Acres Development in McDowell County, North Carolina, from Bear Den 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.

Bear Den currently serves 50 residential customers in Bear Den Acres Development. Upon acquisition, Red Bird plans to make capital improvements including replacement of the well pump at Well No. 1, existing piping in the well houses, and the sight gauge on the water tank. Based on Red Bird's estimated costs for these improvements, due diligence costs, and the purchase price of the water utility system, the approximate annual revenue requirement associated with the capital expenditures is \$19,535 or \$32.56¹ per customer per month for 25 years.

The present rates for Bear Den were approved in Docket Nos. W-1040, Sub 8 and M-100, Sub 138, and have been in effect since December 6, 2016. Upon acquisition of the system, Red Bird proposes to charge the current Commission approved rates for Bear Den. The present and proposed rates are as follows:

¹ The approximate annual revenue requirement is based on a revised estimated capital expenditure Red Bird provided in Confidential Attachment R filed with the Commission on October 6, 2021, which is nearly \$200,000 less than the capital expenditure estimate Red Bird provided in Attachment L.1 filed with the Commission on March 29, 2021.

<u>Monthly Metered Residential Water Service:</u>	<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

Based on an average usage of approximately 1,500 gallons per month, the monthly water utility bill is \$37.57.

Upon acquisition, Red Bird plans to make capital improvements and implement changes to operations that will increase annual operating costs above current levels. Non-confidential Attachment E.1 to the Application states Red Bird plans to request a rate increase approximately 14 months post-acquisition, subject to Commission approval.² As part of that request, Red Bird also intends to seek uniform rates across all its North Carolina systems, including Bear Den. If the full amount of the projected rate increase, including the request for uniform rates, were approved by the Commission in the timeframe proposed by Red Bird, the average monthly bill charged to each customer for water utility service would be as follows:

<u>Timeframe</u>	<u>Monthly Water Utility Bill</u>
Present ³	\$ 37.57
Year 1	\$ 37.57
Year 2 ⁴	\$ 67.46
Years 3 through 5	\$ 73.44

The Public Staff – North Carolina Utilities Commission (Public Staff) presented this matter at the Commission’s Staff Conference on December 13, 2021. The Public Staff recommends that the matter be decided without a public witness hearing if no significant protests are received subsequent to customer notice. The Public Staff further recommends that the matter be scheduled for an expert witness hearing for the sole purpose of receiving expert testimony from Red Bird, the Public Staff, and other intervenors, if any, and that Red Bird should be required to provide notice to all affected customers of the Application, including the applied for rates and the scheduled hearing.

Based upon the foregoing, and the recommendation of the Public Staff, the Commission concludes that the matter may be determined without public witness hearing

² Any future change in rates proposed by Red Bird would require filing a general rate case application pursuant to N.C. Gen. Stat. § 62-134. Future rates are subject to change and could be less or more than the projected \$73.44 per customer.

³ The timeframes of present through the first two months of Year 2 assumes an average monthly usage of 1,500 gallons per customer.

⁴ Red Bird has indicated it intends to request approval of a rate increase approximately 14 months post-acquisition. Values are based on two months at Year 1 rates and ten months at the higher proposed rate of \$73.44 per customer, which is the projected average monthly bill amount for Red Bird customers statewide. Although Red Bird plans to request both a rate increase and uniform statewide rates, no rate change can be implemented until approved by the Commission.

if no significant protests are received subsequent to customer notice and that the matter should be scheduled for an expert witness hearing for the sole purpose of receiving expert witness testimony from Red Bird, the Public Staff, and other intervenors, if any.

The Commission hereby establishes the procedural schedule, including filing requirements of Red Bird and other parties, and requires that Red Bird provide notice to all affected customers of the Application, including the applied for rates and the scheduled hearing.

The guidelines regarding discovery in this docket, subject to modification for good cause shown, are as follows:

1. Any deposition shall be taken before the deadline for the filing of Public Staff and other intervenor testimony, or as agreed to by the parties should the Company require depositions. A notice of deposition shall be served on all parties at least seven business days prior to the taking of the deposition.

2. Any motion for subpoena of a witness to appear at the evidentiary hearing shall be filed with the Commission before the deadline for the filing of the Public Staff and other intervenor testimony shall be served by hand delivery or facsimile to the person sought to be subpoenaed at or before the time of filing with the Commission, and shall make a reasonable showing that the evidence of such person will be material and relevant to an issue in the proceeding. N.C.G.S. § 62-62. Unless an objection is filed, the Chief Clerk shall issue the requested subpoena within one business day of the filing of such motion.

3. Formal discovery requests related to the Application and the Company's pre-filed direct and supplemental testimony shall be served on the Company by hand delivery, facsimile, or electronic delivery with the Company's agreement, no later than 14 calendar days prior to the filing of Public Staff and other intervenor testimony. The Company shall have up to ten calendar days to file with the Commission objections to the discovery requests on an item-by-item basis, but in no event shall objections be filed later than ten calendar days prior to the deadline for the filing of Public Staff and other intervenor testimony.

4. Formal discovery requests of the Public Staff or other intervenors shall be served by hand delivery, facsimile, or electronic delivery with the agreement of the receiving party, no later than five calendar days after the filing of that party's testimony. The party served shall have up to three business days to file with the Commission objections to the discovery requests on an item-by-item basis, but in no event shall objections be filed later than nine calendar days after the filing of that party's testimony.

5. Formal discovery requests related to pre-filed rebuttal testimony shall be served by hand delivery, facsimile, or electronic delivery with the Company's agreement, no later than two calendar days after the filing of such testimony. The party served shall have up to two calendar days to file with the Commission objections to the discovery requests on an item-by-item basis, but in no event shall objections be filed later than three

business days after the filing of such rebuttal testimony. Discovery related to rebuttal testimony shall be limited to new material introduced in such rebuttal testimony and will be carefully scrutinized upon objection that such discovery should have been sought during the initial period of discovery.

6. Discovery requests need not be filed with the Commission when served; however, objections shall be filed with the Commission, and the objecting party shall attach a copy of the relevant discovery request to the objections. Each discovery request, or part thereof, to which no objection is filed, shall be answered by the time objections are due, subject to other agreement of the affected parties or other order of the Commission. Upon the filing of objections, the party seeking discovery shall have two business days to file with the Commission a motion to compel, and the party objecting to discovery shall have one business day thereafter to file a response. All objections, motions to compel, and responses shall be served on the other affected party by hand delivery, facsimile, or electronic delivery with the agreement of the receiving party, at or before the time of filing with the Commission.

7. A party shall not be granted an extension of time to pursue discovery due to that party's late intervention or other delay in initiating discovery.

The Commission urges all parties to work in a cooperative manner and to try to accommodate discovery within the time available. The Commission recognizes that in the past, most discovery has been conducted in an informal manner without the need for Commission involvement or enforcement, and that such has been generally successful. The above guidelines are without prejudice to the parties conducting informal discovery or exchanging information by agreement at any time with the understanding that such will not be enforceable by the Commission if outside the guidelines.

Further, the Commission finds good cause to require the Company and all other parties who file exhibits and workpapers that include tables of numbers and calculations to provide the Commission Staff, Public Staff, and any other party upon request from such party an electronic version of all such exhibits and workpapers, with formulas intact.

Finally, the Commission will require the Company to consult with all other parties and file, no later than Monday, March 21, 2022, a list of witnesses to be called at the hearing, the order of witnesses, and the estimated time for cross-examination. If the parties cannot agree, the remaining parties shall, no later than Thursday, March 24, 2022, make a filing indicating their points of disagreement with the Company's filing.

IT IS, THEREFORE, ORDERED as follows:

1. That the Application is scheduled for expert witness hearing beginning at 1:00 p.m., on Monday, March 28, 2022, and continuing as necessary until conclusion. The hearing will be held in Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina;

2. That the parties shall comply with the discovery guidelines established herein and shall work in a cooperative manner as to discovery;

3. That all parties filing supporting exhibits in Excel format shall provide the Commission Staff electronic versions of the exhibits filed in native Excel format, including all of the supporting tabs and formulas, within three days of the filing of such exhibits; and that Red Bird and all other parties filing exhibits and workpapers that include tables of numbers and calculations shall provide the Public Staff and any other party upon request an electronic version of all such exhibits and workpapers, with formulas intact;

4. That Red Bird is required to prefile all testimony on which it will rely at the expert witness hearing on or before Friday, February 11, 2022. The Public Staff and other intervenors, if any, shall file their testimony on or before Tuesday, March 8, 2022, and Red Bird shall file its rebuttal testimony, if any, on or before Friday, March 18, 2022. Red Bird and the Public Staff shall address in their testimony the issue of whether the Commission should allow a purchase acquisition adjustment;

5. That on or before Tuesday, March 8, 2022, any persons having an interest in this matter may file petitions to intervene to this proceeding pursuant to Commission Rules R1-5, R1-7, and R1-19;

6. That Red Bird shall consult with all other parties and file, no later than Monday, March 21, 2022, a list of witnesses to be called at the hearing, the order of witnesses, and the estimated time for cross-examination. If the parties cannot agree, the remaining parties shall, no later than Thursday, March 24, 2022, make a filing indicating their points of disagreement with the Company's filing;

7. That an officer or representative of Red Bird is required to appear before the Commission at the time and place of the expert witness hearing to testify concerning any of the information contained in the Application; and

8. That the Notice to Customers, attached hereto as Appendix A, shall be mailed with sufficient postage or hand delivered by Red Bird to all affected customers no later than 14 days after the date of this Order and that Red Bird shall submit to the Commission the attached Certificate of Service, properly signed and notarized, not later than 21 days after the date of this Order.

ISSUED BY ORDER OF THE COMMISSION.

This the 5th day of January, 2022.

NORTH CAROLINA UTILITIES COMMISSION



Joann R. Snyder, Deputy Clerk

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

NOTICE TO CUSTOMERS

DOCKET NO. W-1328, SUB 4
DOCKET NO. W-1040, SUB 10

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

Notice is hereby given that Red Bird Utility Operating Company, LLC (Red Bird), 1650 Des Peres Road, Suite 303, St. Louis, Missouri 63131, and Bear Den Acres Development, Inc. (Bear Den), 600 Bear Den Mountain Road, Spruce Pine, North Carolina 28777, filed an Application with the North Carolina Utilities Commission (Commission) 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 Bear Den Acres Development in McDowell County, North Carolina, from Bear Den to Red Bird and approval of rates.

Upon acquisition, Red Bird plans to make capital improvements including replacement of the well pump at Well No. 1, existing piping in the well houses, and the sight gauge on the water tank. Based on Red Bird's estimated costs for these improvements, due diligence costs, and the purchase price of the water utility system, the approximate annual revenue requirement associated with the capital expenditures is \$19,535 or \$32.56¹ per customer per month for 25 years.

When Red Bird files a general rate case application with the Commission, Red Bird intends to include the costs of purchasing the Bear Den water utility system and its investment in the system in rate base, which would allow Red Bird to recover in rates the reasonable depreciation expense and allow Red Bird the opportunity to earn a return, approved by the Commission, on its post-closing investment. The Company also intends to seek authority to implement uniform rates for all its North Carolina systems.

EFFECT OF RATES:

In its Application, Red Bird proposes to charge the rates approved on December 6, 2016, in Docket No. W-1040, Sub 8, by Commission Order Approving Tariff Revision and Requiring Customer Notice. The Commission approved rates include a base charge of \$33.40 for minimum usage and a usage rate of \$2.78 for every 1,000 gallons of usage.

¹ The approximate annual revenue requirement is based on a revised estimated capital expenditure Red Bird provided in Confidential Attachment R filed with the Commission on October 6, 2021, which is nearly \$200,000 less than the capital expenditure estimate Red Bird provided in Attachment L.1 filed with the Commission on March 29, 2021.

Based on an average usage of approximately 1,500 gallons per month, the monthly water utility bill is \$37.57.

Red Bird plans to request a rate increase and uniform statewide rates approximately 14 months post-acquisition subject to Commission approval.² If the full amount of the projected rate increase, including the request for uniform rates, is granted, the average monthly statewide bill amount could be as much as the rates shown below.

Subject to Commission approval, the present and projected average monthly bill charged to each customer for water utility service as proposed by Red Bird are as follows:

<u>Timeframe</u>	<u>Monthly Water Utility Bill</u>
Present ³	\$37.57
Year 1	\$37.57
Year 2 ⁴	\$67.46
Years 3 through 5	\$73.44

PROCEDURE FOR PUBLIC HEARING:

At this point no public witness hearing has been scheduled. *The Commission may decide this matter without a public witness hearing if no significant protests are received from consumers within 45 days of the date of this notice.* Correspondence concerning the transfer or the need for a public witness hearing should be directed to the Public Staff – North Carolina Utilities Commission (Public Staff).

The Commission has scheduled this matter for an expert witness hearing beginning at 1:00 p.m., on Monday, March 28, 2022, and continuing as necessary until conclusion. The hearing will be held in Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina.

The Public Staff is authorized by statute to represent consumers in proceedings before the Commission. Written statements/protests to the Public Staff should include any information that the writer wishes to be considered by the Public Staff in its investigation of the matter, and such statements should be addressed to Mr. Christopher

² Any future change in rates proposed by Red Bird would require filing a general rate case application with the Commission pursuant to N.C. Gen. Stat. § 62-134. Future rates are subject to change and could be less or more than the projected \$73.44 per customer.

³ The timeframes of Present through the first two months of Year 2 assumes an average monthly usage of 1,500 gallons per customer.

⁴ Red Bird has indicated it intends to request approval of a rate increase approximately 14 months post-acquisition. Values are based on two months at Year 1 rates and ten months at the higher proposed rate of \$73.44 per customer, which is the projected average monthly bill amount for customers statewide. Although Red Bird plans to request both a rate increase and uniform statewide rates, no rate change can be implemented until approved by the Commission.

J. Ayers, Executive Director, Public Staff, 4326 Mail Service Center, Raleigh, North Carolina 27699-4326. Written statements may also be faxed to (919) 715-6704 or e-mailed to statements@ncuc.net.

Commission hearings are subject to change because of COVID-19. Any changes to scheduled hearings will be posted on the Commission website (<https://www.ncuc.net>).

The Attorney General is also authorized by statute to represent the consumers in proceedings before the Commission. Statements to the Attorney General should be addressed to The Honorable Josh Stein, Attorney General, 9001 Mail Service Center, Raleigh, North Carolina 27699-9001.

Persons desiring to intervene in this matter as formal parties of record should file a petition pursuant to North Carolina Utilities Commission Rules R1-5, R1-7, and R1-19, *on or before Tuesday, March 8, 2022*. Any such petition should be filed with the North Carolina Utilities Commission, 4325 Mail Service Center, Raleigh, North Carolina 27699-4300.

Information regarding this proceeding can also be accessed from the Commission's website at www.ncuc.net under the docket number of this proceeding.

This the 5th day of January, 2022.

NORTH CAROLINA UTILITIES COMMISSION

A handwritten signature in cursive script, appearing to read "Joann R. Snyder".

Joann R. Snyder, Deputy Clerk

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

Printed Name

(SEAL) My Commission Expires: _____
Date