

**NORTH CAROLINA UTILITIES COMMISSION  
RALEIGH**

Docket No. W-933, Sub 12  
Docket No. W-1328, Sub 0

Exceptions Due on or Before February 22, 2024

**NOTICE TO PARTIES**

Parties to the above proceeding may file exceptions to the report and Recommended Order hereto attached on or before the day shown above as provided in N.C. Gen. Stat. § 62-78. Exceptions, if any, must be filed with the North Carolina Utilities Commission, Raleigh, North Carolina, and a copy thereof mailed or delivered to each party of record, or to the attorney for such party, as shown by appearances noted. Each exception must be numbered and clearly and specifically stated in one paragraph without argument. The grounds for each exception must be stated in one or more paragraphs, immediately following the statement of the exception, and may include any argument, explanation, or citations the party filing same desires to make. In the event exceptions are filed, as herein provided, a time will be fixed for oral argument before the Commission upon the exceptions so filed, and due notice given to all parties of the time so fixed; provided, oral argument will be deemed waived unless written request is made therefore at the time exceptions are filed. If exceptions are not filed, as herein provided, the attached report and recommended decision will become final and effective on February 23, 2024, unless the Commission, upon its own initiative, with notice to parties of record modifies or changes said Order or decision or postpones the effective date thereof.

The report and Recommended Order attached shall be construed as tentative only until the same becomes final in the manner hereinabove set out.

**STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH**

DOCKET NO. W-933, SUB 12  
DOCKET NO. W-1328, SUB 0

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Joint Application by Red Bird Utility	)	RECOMMENDED ORDER
Operating Company, LLC d/b/a Red Bird	)	APPROVING TRANSFER AND
Water and Etowah Sewer Company, Inc.	)	RATES, GRANTING FRANCHISE,
for Transfer of Public Utility Franchise and	)	DETERMINING AMOUNT OF
for Approval of Rates	)	BOND, AND REQUIRING
	)	CUSTOMER NOTICE

HEARD: Wednesday, November 1, 2023, at 7:00 p.m. in the Henderson County Courthouse, 200 North Grove Street, Courtroom 2, Hendersonville, North Carolina 28792

Monday, November 20, 2023, at 1:00 p.m. in the Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, 27603

BEFORE: Commissioner Floyd B. McKissick, Jr., Presiding, and Commissioners Kimberley W. Duffley and Jeffrey A. Hughes

APPEARANCES:

For Red Bird Utility Operating Company, LLC:

Kiran H. Mehta, Molly M. Jagannathan, and Mindy L. McGrath, Troutman Pepper Hamilton Sanders LLP, 301 South College Street, Suite 3400, Charlotte, North Carolina 28202

For the Using and Consuming Public:

Davia Newell and James Bernier, Jr., Staff Attorneys, the Public Staff – North Carolina Utilities Commission, 4326 Mail Service Center, Raleigh, North Carolina 27699-4300

BY THE COMMISSION: On October 8, 2020, Red Bird Utility Operating Company, LLC d/b/a Red Bird Water (Red Bird), and Etowah Sewer Company, Inc. (Etowah), filed with the Commission an Application for Transfer of Public Utility Franchise and for Approval of Rates (Application) seeking authority to transfer the wastewater utility system

and public utility franchise serving the unincorporated community of Etowah in Henderson County, North Carolina, from Etowah to Red Bird. Red Bird filed with the Commission supplemental and additional materials in support of its Application on October 22, 2020.

The intervention and participation of the Public Staff – North Carolina Utilities Commission (Public Staff) is recognized pursuant to N.C. Gen. Stat. § 62-15(d) and Commission Rule R1-19 (e).

On October 19, 2020, Red Bird's counsel filed a letter informing the Commission that CSWR – North Carolina Utility Operating Company, LLC, changed its name to Red Bird Utility Operating Company, LLC.

On December 22, 2020, the Public Staff filed a deficiency letter outlining additional information that was needed to complete the Application.

Red Bird filed additional information to address the issues identified in the Public Staff's December 22, 2020, letter on May 14, 2021, October 7, 2021, February 15, 2022, August 17, 2022, and August 23, 2022.

On June 14, 2023, Red Bird filed a letter with the Commission indicating that it considered the Application complete.

On July 25, 2023, the Public Staff filed a second deficiency letter outlining additional, updated information that was needed to complete the Application and recommended that the Commission determine that the Application is incomplete. On July 28, 2023, the Commission issued an Order Finding Application Incomplete.

Pursuant to the Commission's Order, on August 15, 2023, Red Bird filed additional information to address the issues identified in the Public Staff's July 25, 2023.

On August 22, 2023, the Public Staff filed a letter in which it recommended that the Commission find the Application to be complete.

On September 14, 2023, the Commission issued its Order Finding Application Complete and Requiring the Public Staff to Provide Specific Application Data (September 14 Order).

On September 21, 2023, the Public Staff filed a letter that addressed the Commission's questions pursuant to its September 14 Order.

On September 26, 2023, the Commission issued an Order Scheduling Hearings, Establishing Discovery Guidelines, and Requiring Customer Notice (Scheduling Order), which established the procedural schedule in this proceeding, including filing requirements of the parties.

On October 2, 2023, the Commission issued an order changing the time for commencement of the expert witness hearing. On the same date, Red Bird filed a Proposed Notice to Customers (Notice). The Notice was approved by Commission Order issued on October 4, 2023.

On October 10, 2023, Red Bird filed a Certificate of Service, which indicated that service of customer notice had been conducted as required by Commission order. The same day, Red Bird also filed the direct testimony and exhibits of Josiah Cox, President of Red Bird Utility Operating Company, LLC.

On October 18, 2023, a Notice of Appearance of Counsel for Red Bird was filed by Kiran H. Mehta, Molly M. Jagannathan, and Holly R. Ingram of the law firm of Troutman Pepper Hamilton Sanders, LLP, as counsel for Red Bird.

On October 19, 2023, the Public Staff filed a motion requesting that the Commission revise the Scheduling Order to change the dates pertaining to formal discovery guidelines and filing requirements put forth in the Scheduling Order. By order dated October 20, 2023, the Commission granted the Public Staff's motion.

The Public Staff filed its direct testimony on October 27, 2023, consisting of testimony and exhibits of Public Staff witnesses Lynn Feasel, Public Utilities Regulatory Manager of the Water, Sewer, and Telecommunications Sections with the Accounting Division of the Public Staff; D. Michael Franklin, Public Utilities Engineer, Water, Sewer, and Telephone Division of the Public Staff; and John R. Hinton, Director of the Economic Research Division of the Public Staff.

On October 27, 2023, the Public Staff filed a letter that recommended that the customer hearing be held as scheduled.

On October 31, 2023, attorney Daniel C. Higgins filed a motion requesting that he and the law firm of Burns Day & Presnell, P.A., be allowed to withdraw as counsel for Red Bird in the instant docket, which was granted by Commission order on November 1, 2023.

The public witness hearing was held as scheduled on November 1, 2023. The Public Staff had received six consumer statements of position from Etowah customers by October 27, 2023. Four Etowah customers testified at the public witness hearing. The testifying witnesses expressed concerns regarding the approval of a 200-unit subdivision on the site of the Etowah Valley Country Club, and whether the additional wastewater load could be served by the existing Etowah system or would require an additional wastewater treatment plant (WWTP), a matter not before the Commission in this proceeding. The Public Staff received an additional seven consumer statements as of the date of the expert witness hearing on November 20, 2023, expressing concern about the possible additional costs after the transfer to Red Bird, which were not included in the proposed rates contained in the customer notice. No customers complained of service issues.

On November 1, 2023, Mindy McGrath filed a Notice of Appearance as counsel of record for Red Bird in these dockets.

On November 13, 2023, Red Bird filed the rebuttal testimony and exhibits of Josiah Cox; the rebuttal testimony and exhibit of Brent G. Thies, Vice President and Corporate Controller for CSWR, LLC, an affiliate of Red Bird; and the rebuttal testimony of James A. Beckemeier, Managing Member of BL-STL, LLC, d/b/a Beckemeier LeMoine Law, a vendor of Red Bird which oversees and facilitates all of Red Bird's utility system acquisitions throughout the United States.

On November 15, 2023, Red Bird filed the corrected rebuttal testimony of Brent Thies, a witness list and estimated cross examination times for the scheduled expert witness hearing, and a Verified Report Regarding Issues Raised at Public Hearing (Report on Customer Comments).

On November 20, 2023, an expert hearing was held as scheduled in Raleigh, North Carolina.

On November 29, 2023, the Public Staff filed a verified response to the Company's Report on Customer Comments.

On December 4, 2023, Red Bird filed summaries of the testimony of its witnesses, Josiah Cox, Brent Thies, and James Beckemeier.

On December 14, 2023, Red Bird filed Late-filed Exhibit 1 and accompanying attachments to respond to the Commission's request at the expert witness hearing that Red Bird provide additional information concerning Red Bird affiliates and the process by which those affiliates recover certain acquisition costs including due diligence expenses.

On December 22, 2023, the Commission issued a Notice of Due Date for Proposed Orders and/or Briefs setting the due date of filing proposed orders and/or briefs as January 16, 2024, which was subsequently revised to January 12, 2024.

On January 12, 2024, the Public Staff and Red Bird filed their respective Proposed Orders, and Red Bird filed its Post-Hearing Brief.

WHEREUPON, based upon the entirety of the evidence and the record herein, the Commission now makes the following

### **FINDINGS OF FACT**

1. 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 (NCCSWR), which is also a North Carolina limited liability

company in good standing and a wholly owned subsidiary of CSWR, LLC (CSWR). U.S. Water Systems, LLC (U.S. Water), is a Delaware limited liability company and the sole owner/member of CSWR. U.S. Water was formed by the independent investment firm Sciens Capital Management, LLC (Sciens Capital), to oversee water sector investments using investor dollars held by Sciens Water Opportunities Fund. Sciens Capital, is also the limited partner of U.S. Water. The membership of U.S. Water is comprised of Gullfoss Investments, LLC; Todd Thomas, Senior Vice President of CSWR; and Josiah Cox.

2. Central States Water Resources, Inc. (Central States) is the sole managing member of Red Bird, RBUH, and NCCSWR. Central States has no assets or paid employees and performs all its managerial responsibilities through CSWR. The Board of Directors of Central States provides input on the utilization of the personnel of CSWR.

3. U.S. Water, Sciens Capital, and Gullfoss Investments, LLC, are affiliates of Red Bird and CSWR.

4. Red Bird presently holds five utility franchises in North Carolina. On December 8, 2021, in Docket No. W-1328, Sub 7, the Commission issued an Order Accepting and Approving Bond, Granting Franchise, Approving Rates, and Requiring Customer Notice (Utility Franchise Order I) 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. On February 7, 2023, in Docket Nos. W-1328, Sub 4, and W-1040, Sub 10, the Commission issued its Order Approving Stipulation, Approving Bond, Approving Transfer and Rates, and Requiring Customer Notice (Utility Franchise Order II) approving the transfer of the Bear Den Acres Development water system and public utility franchise in McDowell County, North Carolina, to Red Bird. On August 29, 2023, in Docket Nos. W-1328, Sub 9 and W-992, Sub 8, the Commission issued an Order Approving Stipulation, Approving Bond, Approving Transfer and Rates, and Requiring Customer Notice (Utility Franchise Order III) approving the transfer of the water and wastewater systems serving the Baywood Forest Subdivision, the wastewater system serving the Cottonwood Subdivision, and the public utility franchise serving all of Crosby Utilities, Inc.'s service areas in Wake County, North Carolina. On December 14, 2023, in Docket Nos. W-1146, Sub 13 and W-1328, Sub 10, the Commission issued a Recommended Order Approving Stipulation, Approving Transfer and Rates, Granting Franchise, Approving Bond, and Requiring Customer Notice (Utility Franchise Order IV), approving the transfer of the water and wastewater systems serving the Lake Royale subdivision in Franklin and Nash Counties, North Carolina, from Total Environmental Solutions, Inc., to Red Bird.<sup>1</sup> On January 31, 2024, in Docket Nos. W-1296, Sub 3 and W-1328, Sub 3, the Commission issued an Order Approving Stipulation, Approving Transfer and Rates, Approving Bond, and Requiring Customer Notice (Utility Franchise Order V, collectively, with Utility Franchise Orders I, II, III, and IV, the Utility Franchise Orders), approving the transfer of

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<sup>1</sup> The Utility Franchise IV Order became final and effective on January 2, 2024.

the water and wastewater utility systems serving the Jefferson Landing subdivision in Ashe County, North Carolina, from JL Golf to Red Bird.

5. In addition to the five systems for which Red Bird has been granted franchises in North Carolina, Red Bird's indirect corporate parent, CSWR, through separate state affiliates, has acquired and currently operates more than 800 water or wastewater utility systems in Missouri, Arkansas, Kentucky, Louisiana, Texas, Tennessee, Mississippi, Arizona, Florida, and South Carolina, and provides utility service to more than 221,000 wastewater customers and over 146,000 water customers.

6. The Etowah utility system currently serves 485 wastewater customers in Henderson County, North Carolina, 440 of whom are residential wastewater customers.

7. Red Bird seeks Commission approval to acquire Etowah's sewer utility system. Etowah was issued a Certificate of Public Convenience and Necessity (CPCN) to provide sewer utility service to the unincorporated community of Etowah in Henderson County, North Carolina in Docket No. W-933, Sub 0.

8. Etowah's wastewater system is regulated and permitted by the North Carolina Department of Environmental Quality (DEQ) and operates under two DEQ permits: Permit NC0071323, which is a National Pollutant Discharge Elimination System (NPDES) permit and is applicable to the WWTP; and Permit WQCSD0135, which is for the wastewater collection system. The WWTP has two treatment trains, including one that has been in operation since 1988 and a second that was added between 1998 and 2002. The Etowah wastewater system consists of 125,000 gallons per day of wastewater collection, treatment, and extended aeration discharge facilities.

9. A Red Bird affiliate, Central States, entered into a Purchase and Sale Agreement for the sale of the Etowah utility system (Purchase Agreement) on August 23, 2019. The Purchase Agreement was amended on October 15, 2020. According to the amended Purchase Agreement, the Purchase Agreement was assigned to Central States' affiliate, Red Bird, and closing of the sale will occur after regulatory approval is obtained in a form satisfactory to Red Bird as set forth in more detail in Section 2.05(a) of the Purchase Agreement or on another date agreed to in writing by Etowah and Red Bird.

10. After acquisition of the Etowah system, Red Bird plans to make capital improvements to the wastewater utility system. Based on its consulting engineer's 2020 projections, Red Bird estimates that the cost of necessary improvements to the Etowah sewer system will be approximately \$470,200, consisting of \$141,400 for work on the collection system and \$328,800 for work on the WWTP.

11. Upon acquisition, Red Bird intends to adopt and charge Etowah customers the present rates, fees, and additional charges approved in Docket Nos. W-933 Sub 10 and M-100, Sub 138, which have been in effect since January 1, 2016. The present and proposed rates are as follows:

<u>Monthly Wastewater Utility Service:</u>	<u>Present and Proposed</u>
Residential Flat Rate	\$26.33
Commercial Customers (metered rates)	
Base Charge, zero usage	\$26.33
Usage Charge, per 1,000 gallons	\$ 4.05
<u>Connection Charge:</u>	
Residential	\$2,300 per connection
Commercial	\$2,300, minimum per connection, plus \$6.97 per gallon of design flow over 330 gallons per day
<u>Reconnection Charge:</u>	
If wastewater service cut off by utility for good cause	\$14.99

12. Red Bird proposed that the determination of whether or to what extent it should be afforded an acquisition adjustment in connection with the proposed transfer of the Etowah wastewater utility system should be deferred to Red Bird's first general rate case for the Etowah system after the transfer to Red Bird is completed.

13. Red Bird proposed that the determination of whether or to what extent it should be permitted to recover due diligence costs incurred in connection with the proposed transfer of the Etowah wastewater utility system to Red Bird should be deferred to the first general rate case proceeding for the Etowah system after the transfer to Red Bird is completed.

14. Red Bird asserts that the determination of the appropriate rate base to be included in rates for the Etowah wastewater utility system should be deferred to the first general rate case proceeding for the Etowah system after the transfer to Red Bird is completed.

15. In this transfer proceeding, it is appropriate to determine the present amount of rate base for the Etowah wastewater system, including the amount of net plant cost, the acquisition adjustment, and the due diligence expenses to be recorded on Red Bird's books in compliance with generally accepted accounting principles (GAAP) for corporate accounting and reporting purposes. In prior transfer dockets, the Commission has followed this practice which is in the public interest. See Order Approving Transfer and Denying Acquisition Adjustment, *Petition of Utilities, Inc., for Transfer of Certificate of Public Convenience and Necessity for Providing Sewer Utility Service on North Topsail Island and Adjacent Mainland Areas in Onslow County from North Topsail Water and Sewer, Inc. and for Temporary Operating Authority*, No. W-1000, Sub 5 (N.C.U.C. Jan. 6, 2000).



16. Rate base treatment of an acquisition adjustment is not appropriate under the circumstances and evidence presented in the current docket and should not be approved for ratemaking purposes.

17. Etowah is providing safe and reliable service to its customers of the Etowah wastewater system. The provision of continuous, safe, adequate, and reliable wastewater utility service is essential to Etowah's customers.

18. The Etowah system is not a troubled system.

19. Red Bird indicated that its costs of due diligence and transactional and regulatory work related to the acquisition of the Etowah system were approximately \$317,269.22 as of the time of the filing of Red Bird witness Cox's direct testimony.

20. It is appropriate for ratepayers to bear costs for due diligence and other transactional costs in the amount of \$10,000, which is to be included in the rate base established in this proceeding. The determination of whether an amount greater than the \$10,000 amount approved herein will be recovered from customers should be determined in Red Bird's first general rate case. It is appropriate for Red Bird to amortize its due diligence and transactional costs over a period of 27.74 years, with amortization beginning in the month in which the transfer of the Etowah wastewater system to Red Bird closes.

21. The rate base for the Etowah system should be set at (\$282,207).

22. It is reasonable and appropriate for Red Bird to post a bond in a form acceptable to the Commission in the amount of \$100,000 prior to closing on the transfer of the Etowah wastewater system.

23. Red Bird has the technical, managerial, and financial capacity to own and operate the Etowah wastewater system, and the transfer should be granted, subject to the rate base, acquisition adjustment, due diligence costs, other transactional expenses, and bond amount established by the Commission herein.

### **EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 1-3**

The evidence supporting these findings of fact is contained in Red Bird's verified Application, the supplemental filings made by Red Bird in this docket, the testimony and exhibits of Red Bird witness Cox, and the Commission's records in Docket Nos. W-1328, Subs 3, 4, 7, 9, and 10; W-1040, Sub 10; W-992, Sub 8; W-1146, Sub 13, and W-1296, Sub 3, including the Commission's Utility Franchise Orders issued in each of these dockets.

Red Bird witness Cox provided testimony at the expert witness hearing regarding Red Bird, its parent holding companies, its relationship to CSWR, and the role of CSWR,

U.S. Water, Sciens Capital, and Gullfoss Investments, LLC, in financing Red Bird's operation of the Etowah system. Tr. vol. 2, 110-16.

In his direct testimony, witness Cox explained that Red Bird was formed to acquire water and wastewater assets in North Carolina and to operate those assets as regulated public utilities. Witness Cox also testified that Red Bird is an affiliate of CSWR. He is the president of Red Bird, Central States, and CSWR. *Id.* at 20, 23, 28, 113-14. He further testified at the expert witness hearing that U.S. Water acquired CSWR from him. U.S. Water is now the sole member of CSWR. *Id.* at 122-23.

The membership of U.S. Water is composed of Gullfoss Investments, LLC; Todd Thomas; and Josiah Cox. *Id.* at 131-32. Witness Cox also testified that Sciens Capital is the limited partner of U.S. Water and created U.S. Water to oversee the water sector investments of Sciens Capital, including its investments in CSWR. *Id.* at 128, 138.

The board of directors of U.S. Water consists of Dan Standen, John Rigas, and Tom Rooney. *Id.* at 107. Witness Cox, Dan Standen, John Rigas, and Tom Rooney are the same individuals that serve as directors of Central States, which is the managing entity of Red Bird and its various holding companies. *Id.* at 107, 127, 128, 145. Additionally, John Rigas and Dan Standen are also management personnel in Sciens Capital. *Id.* at 133, 138.

Based upon competent, substantial, and material evidence in the record, the Commission concludes that these findings are informational, procedural, or jurisdictional in nature and are not contested by any party.

#### **EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 4-5**

The evidence supporting these findings of fact is based on the Commission's records in the Utility Franchise Orders.

These findings of fact are also based on the direct testimony of Red Bird witness Cox that CSWR's subsidiaries have acquired and operate over 800 water and/or wastewater utility systems in Missouri, Arkansas, Kentucky, Louisiana, Texas, Tennessee, Mississippi, North Carolina, Arizona, Florida, and South Carolina. *Id.* at 26, 28-30, 32.

Based upon competent, substantial, and material evidence in the record, the Commission concludes that these findings of fact are informational, procedural, or jurisdictional in nature and are not contested by any party.

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

The evidence supporting this finding of fact is contained in Red Bird's verified Application, the supplemental filings made by Red Bird in this docket, the testimony and

exhibits of Red Bird witness Cox, and the testimony and exhibits of Public Staff witness Franklin. Tr. vol. 2, 41, 203.

Based upon competent, substantial, and material evidence in the record, the Commission concludes that this finding is informational and procedural in nature and is not contested by any party.

#### **EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 7**

The evidence supporting this finding of fact is based on the verified Application in these dockets and the Commission's records in Docket No. W-933, Sub 0. Based upon competent, substantial, and material evidence in the record, the Commission concludes that this finding of fact is uncontested.

#### **EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 8**

The evidence supporting this finding of fact is based on Confidential Attachment L to the Application, the testimony of Public Staff witness Franklin, and the Commission's records in these and other dockets relating to Etowah. Tr. vol. 2, 205.

Based upon competent, substantial, and material evidence in the record, the Commission concludes that this finding of fact is informational and procedural in nature and is not contested by any party.

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

The evidence supporting this finding of fact is based on filings in this docket, including the Purchase Agreement for Sale of Utility System with Etowah dated August 23, 2019, and the First Amendment to Purchase and Sale Agreement dated October 15, 2020, whereby Central States assigned its rights under the Agreement for Sale of Utility System to Red Bird as the buyer.

Based upon competent, substantial, and material evidence in the record, the Commission concludes that this finding is informational in nature and is not contested by any party.

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

The evidence supporting this finding of fact is found in Confidential Attachment L to the Application; Attachment L.1 and Confidential Attachment L.2 of the supplemental filings made by Red Bird in these dockets on May 13, 2021, and October 7, 2021, respectively; the testimony and exhibits of Red Bird witness Cox; and the testimony of Public Staff witness Franklin. *Id.* at 45, 47, 197.

Red Bird witness Cox testified that in order to address operational and/or compliance issues associated with Etowah's wastewater utility system, Red Bird's engineering consultant, McGill Associates (McGill), recommended the following work be performed:

1. Purchase portable davit crane or hoist to lift pumps for maintenance.
2. Brandy Mills Lift Station
  - a. Install transfer switches for connection to portable backup power supply
  - b. Replace pump guide rail and chains.
  - c. Install baseplate for portable mounted pump hoist.
  - d. Replace Myers 2 HP pumps
3. Jonathan Creek Lift Station
  - a. Replace pump guide rail and chains.
  - b. Install baseplate for portable mounted pump hoist.
  - c. Replace Hydromatic 5 HP pumps.
4. Sunset Ridge Lift Station
  - a. Install baseplate for portable mounted pump hoist.
  - b. Replace pump guide rail and chains.
  - c. Replace 2 HP pumps.
5. Meadows Lift Station
  - a. Dewater and clean wet well.
  - b. Install transfer switches for connection to portable backup power supply
  - c. Replace pump guide rail and chains.
  - d. Replace control panel enclosures.
  - e. Install baseplate for portable mounted pump hoist.
  - f. Replace Myers 3 HP pumps.
6. Homeplace Lift Station
  - a. Install transfer switches for connection to portable backup power supply
  - b. Replace pump guide rail and chains.
  - c. Install baseplate for portable mounted pump hoist.
  - d. Replace Myers 3 HP pumps.
7. Etowah Reach Lift Station
  - a. Install transfer switches for connection to portable backup power supply
  - b. Replace pump guide rail and chains.
  - c. Install baseplate for portable mounted pump hoist.
  - d. Replace Hydromatic 3 HP pumps.

Public Staff witness Franklin testified that the McGill survey and capital estimates are preliminary, and the existence of problems cannot be truly known until Red Bird has acquired and begun to operate the system. *Id.* at 215-16. Witness Franklin opined that

this uncertainty raises the question of whether Red Bird's willingness to make capital investments can actually be considered a tangible benefit. *Id.* at 216. Witness Franklin stated that it will be incumbent upon Red Bird to ensure that the capital improvements are reasonable and prudent for the capital investment associated with the improvements to be added to rate base and included in rates in a future rate case proceeding. *Id.* at 218.

The Commission notes Red Bird's assertion that the Etowah wastewater utility system requires maintenance and upgrades to ensure it is able to continue providing safe and reliable service to the customers it serves, along with some customers' testimony and statements that improvements to the systems are necessary. However, the Commission concludes, based upon competent, substantial, and material evidence in the record, that the scope and extent of capital improvements and repairs that are reasonable and prudent is, at this time, not adequately known or knowable by any party to this proceeding. Thus, the Commission concludes that the appropriate time and venue to determine the reasonableness and prudence of proposed and/or actual capital investments is the next general rate case involving this wastewater utility system.

#### **EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 11**

The evidence for this finding of fact is found in the verified Application, the pleadings, the testimony of Red Bird witness Cox, and the exhibits in this docket, as well as the Commission's Order Approving Tariff Revision and Requiring Customer Notice, *Etowah Sewer Company Tariff Filing to Reflect House Bill 998*, No. W-933, Sub 10 and *Implementation of House Bill 998 – An Act to Simplify the North Carolina Tax Structure and to Reduce Individual and Business Tax Rates*, No. M-100, Sub 138 (N.C.U.C. May 13, 2016).

Based upon competent, substantial, and material evidence in the record, the Commission concludes that this finding is informational in nature and is not contested by any party.

#### **EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 12-15**

The evidence supporting these findings of fact is found in the direct and rebuttal testimony of Red Bird witness Cox, the rebuttal testimony of Red Bird witness Thies, and the direct testimony of Public Staff witnesses Franklin and Feasel.

Red Bird witness Cox testified that issues pertaining to rate base, due diligence costs, and acquisition adjustment and their effect on the acquired utility's rate base and revenue requirement are more properly examined in the context of a general rate case hearing. Witness Cox also testified that Red Bird is not requesting that the Commission determine in this proceeding the rate base, the appropriateness of an acquisition adjustment, or the appropriate amount of due diligence costs, if any, and that it is premature for the Public Staff to speculate what those costs may be. *Id.* at 50.

Witness Cox provided confidential calculations of the rate base, stated the purchase price, and further stated that based on Red Bird's calculation of rate base and the difference between the purchase price of the Etowah wastewater system and the net book value of the system, Red Bird requests approval of "a reasonable portion" of the acquisition adjustment resulting in connection with the proposed acquisition of the Etowah wastewater utility system. *Id.* at 46, 47.

Red Bird witness Cox stated that he was "surprised to learn that the practice here, when the purchasing utility will adopt the purchased utility's rates, terms and conditions for service, as Red Bird proposes to do with the Etowah system, is that the Commission typically goes beyond the threshold issue of competence and establishes rate base in the acquired assets, as well as the purchaser's due diligence costs associated with the acquisition." *Id.* at 50. Witness Cox further stated that, based on Red Bird's experience in other jurisdictions, he would have expected this Commission to defer deciding these issues until Red Bird's initial general rate case after the acquisition. Witness Cox also contended that recent changes to the applicable law pertaining to water and wastewater utility acquisitions enacted by the North Carolina legislature in Session Law 2023-67 limit the focus of the Commission's inquiry in acquisition cases. Witness Cox opined that "[b]y limiting the focus of the Commission's inquiry in acquisition cases I believe the General Assembly has signaled that extraneous issues - such as whether an acquisition adjustment should be approved - should be deferred to a rate case or other post-acquisition proceedings." *Id.*

Witness Cox testified as to the costs Red Bird has incurred in conducting its due diligence inquiry and investigation relating to the Etowah wastewater system. Cox Direct Exhibit 4 indicates that although total due diligence costs would not be known until the close of the Etowah purchase, Red Bird had incurred costs totaling \$317,269.22 for due diligence, transactional, and regulatory work related to the purchase of the Etowah wastewater system. *Id.* at 51. Witness Cox further stated that Red Bird believes that the due diligence costs shown in Cox Exhibit 4 should be included in rate base and recoverable in Red Bird's first general rate case. *Id.* at 52-53. Witness Cox also testified that purchases of smaller systems often require more due diligence work than larger better managed systems, and therefore Red Bird will not know the total due diligence and transactional costs associated with the acquisition until the purchase actually closes. *Id.* at 51.

In his rebuttal testimony, witness Cox reiterated that Red Bird proposes to adopt the rates currently in effect for Etowah customers should the Commission approve the acquisition of the Etowah wastewater system. Therefore, witness Cox contended that the proposed transfer would have no impact on the customers' rates after closing. *Id.* at 283. Witness Cox noted that Public Staff witnesses Feasel and Franklin estimate future rates using projections for various components of the Red Bird's operating costs of the Etowah wastewater system and have calculated rate increases related to an acquisition adjustment, capital improvements, and due diligence costs. *Id.* at 283-84. Witness Cox again asserted Red Bird's position that rate impact estimates are irrelevant to the issues before the Commission. *Id.* at 284. In addition, witness Cox testified that the Commission

should disregard the rate impact testimony of the Public Staff, because the underlying estimates are based on assumptions regarding “all elements of ratemaking - revenue, expenses, rate base, capital structure, rate of return, rate design, etc. - that may or may not be valid.” *Id.* In introducing Red Bird’s intent to pursue establishing consolidated rates for its approved systems, witness Cox stated that, based on the experience of Red Bird’s affiliate group outside of North Carolina, “consolidated rates are an effective mechanism to mitigate ‘rate shock’ that otherwise would result when small, undercapitalized, and mismanaged systems are acquired by experienced and technically competent owners that invest the capital required to address needed capital improvements in those systems.” *Id.* at 284-85. Witness Cox further testified that calculating the acquisition’s effect on future rates would be inappropriate because the impact on future rates is not known and measurable. *Id.* at 285.

In his rebuttal testimony, Red Bird witness Thies also testified regarding how Red Bird views the underlying assumptions and calculations. Witness Thies testified that rates for the Etowah wastewater system could be significantly different if rates are set on a standalone basis versus those set on a consolidated basis. *Id.* at 301.

A Red Bird affiliate, Central States, entered into a Purchase and Sale Agreement for the sale of the Etowah wastewater utility system with Etowah Sewer Company, Inc. (Purchase Agreement) on August 23, 2019, which was filed as Confidential Attachment G to the Application. The Purchase Agreement was amended on October 15, 2020. According to the amended Purchase Agreement, the Purchase Agreement was assigned to Central States’ affiliate, Red Bird, and closing of the sale will occur after regulatory approval is obtained in a form satisfactory to the Buyer (Red Bird) as set forth in Section 2.05(a) of the Purchase Agreement or on another date agreed to in writing by Etowah and Red Bird. Section 2.05 (a) provides in pertinent part:

Section 2.05 Other Termination Rights. In addition to any other rights and remedies set out herein (including but not limited to the termination rights in Sections 2.03, 2.04, 3.02(b) and 5.02), the Buyer shall have the right to terminate this Agreement as set out below:

- (a) At any time up to and including the Closing Date if the regulatory bodies required to approve the sale of the System and the Property to the Buyer have not fully and unconditionally approved the sale upon the terms set out herein. In Buyer's sole and absolute discretion, Buyer may terminate this Agreement if the necessary regulatory approvals are not fully and unconditionally granted to Buyer in a form satisfactory to Buyer (as determined in Buyer's sole and absolute discretion) prior to the Closing by giving written notification of such termination to Seller, and upon such termination the Buyer shall receive a prompt return of the Earnest Money.

On cross-examination, witness Cox provided confirmation regarding a provision in the Purchase Agreement whereby Red Bird could terminate the Purchase Agreement

with Etowah for any reason if it does not receive regulatory approval unconditionally granted in a form satisfactory to Red Bird, as determined in Red Bird's sole and absolute discretion. Tr. vol. 2, 73-74.

Public Staff witness Franklin testified that the Public Staff does not agree with Red Bird's assertion that consideration of an acquisition adjustment and due diligence expenses should be deferred until Red Bird's first general rate case versus this transfer proceeding. *Id.* at 22 He also stated that Session Law 2023-67 provides that the Commission shall issue an order approving the application upon finding that the proposed grant or transfer, among other things, is in the public interest. Witness Franklin opined that, "[t]he Commission cannot determine if the transfer is in the public interest if it does not know the impact to rate base and customer rates of the acquiring utility's proposed acquisition adjustment and due diligence expenses." *Id.* Witness Franklin also emphasized that Red Bird has indicated that in its first general rate case proceeding it would seek uniform rates. He testified that having to decide issues pertaining to acquisition adjustments and due diligence expenses for multiple utility systems in a future rate case would, "unduly complicate and encumber the rate case proceeding." *Id.* Witness Franklin also noted that the information required for an acquisition adjustment decision and most of the due diligence expenses of Red Bird are already known. Furthermore, witness Franklin testified that deferring to Red Bird's future rate case the decisions on an acquisition adjustment and appropriate due diligence expenses would not be in the public interest. He noted that there is a long-established procedure by the Commission to address these costs as part of a transfer proceeding. *Id.* at 222. Witness Franklin cited as support the following utility transfer proceedings, which predate the Commission's precedent decision in Docket No. W-1000, Sub 5<sup>2</sup>: Docket Nos. W-274, Sub 122; W-354, Subs 39, 40, 41, 74, 79, and 81; and W-1012, Subs 2 and 3. *Id.* at 222.

Public Staff witness Feasel testified that the value of the acquisition adjustment and the rates should be determined in the current transfer proceeding as soon as the transaction is closed because Red Bird needs to record the acquisition adjustment on its books and start amortizing the acquisition adjustment immediately for corporate accounting and reporting purposes. She stated that the value of the acquisition adjustment and the depreciation rates should be determined in the current transfer proceeding so that Red Bird can meet GAAP reporting requirements. *Id.* at 253-54.

For comparison purposes, witness Feasel, calculated the estimated revenue requirement associated with the acquisition adjustment, due diligence expenses, and planned future improvements to the Etowah wastewater system that Red Bird intends to recover in its first general rate case proceeding after acquiring the Etowah wastewater system. Witness Feasel provided in her testimony a confidential table that compared Red

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<sup>2</sup> Order Approving Transfer and Denying Acquisition Adjustment, *Petition of Utilities, Inc. for Transfer of the Certificate of Public Convenience and Necessity for Providing Sewer Utility Service on North Topsail Island and Adjacent Mainland Areas in Onslow County from North Topsail Water and Sewer, Inc. and for Temporary Operating Authority*, Docket No. W-1000, Sub 5 (N.C.U.C. Jan. 6, 2000).



Bird's calculations to the Public Staff's and showed significant differences between the calculations. *Id.* at 196-97.

Witness Franklin testified as to the impact on the future rates of the Etowah customers. Witness Franklin stated that inclusion in rate base of the entire acquisition adjustment calculated by the Public Staff would equate to a \$22.23 increase in the residential monthly wastewater flat rate and commercial metered monthly base charge, which is equivalent to an 84% increase in residential wastewater monthly flat rates and commercial metered monthly base charge. *Id.* at 217-18. Witness Franklin further testified that revenue requirements to support Red Bird's due diligence costs would result in a \$6.42 per month increase in the residential monthly wastewater flat rate and commercial metered monthly wastewater base charge, zero usage rate. He stated that this is equivalent to a 24% increase in residential monthly wastewater flat rate and commercial metered monthly wastewater base charge (zero usage) of \$26.33 recommended by the Public Staff. *Id.* at 210, 220.

The Commission has a long-standing practice of establishing the rate base of a utility that is to be acquired by a purchaser. Section 62-111 of the North Carolina General Statutes governs transfers of utility franchises. On June 30, 2023, the law applicable to water and wastewater acquisitions changed with the enactment of S.L. 2023-67, which amended N.C.G.S. § 62-111 by creating, among other things, timelines for the Commission's consideration of applications for grants or transfers of CPCN's for certain water and wastewater systems. Section 62-111, Section 1.(b) applies to this Application and provides that the Commission shall issue an order approving an application, if the Commission finds 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.

Red Bird argues that the statutory language added to N.C.G.S. § 62-111 should be interpreted to require a lower level of scrutiny in determining whether a transfer is in the public interest, that determining the acquisition adjustment and due diligence expenses in this transfer docket would be premature, and that the Commission should wait to determine these issues in a general rate case. Red Bird asserts that the costs and circumstances could change between approval of the transfer and the filing of a rate case and contends that the new statute does not require consideration of these issues to determine whether a transfer is in the public interest. Additionally, Red Bird asserts that since it does not propose to change the currently approved rates, once the Commission determines that Red Bird has the technical, managerial, and financial capacity to acquire the utility, then the Commission should stop its analysis with a finding that fitness for acquisition is the equivalent of determining that the transfer is in the best interest of the ratepayers. Notwithstanding Red Bird's position that the Commission should delay

consideration of these issues until Red Bird's first general rate case, Red Bird witness Cox provided Red Bird's calculation of rate base, its due diligence expenses incurred to date, and transaction costs incurred to date, and unequivocally stated its intention to request rate base treatment for a reasonable portion of the acquisition adjustment and recovery of the due diligence and transaction expenses which are beneficial to customers when it files its first general rate case. However, none of Red Bird's witnesses were able to provide support for Red Bird's argument that the Commission should not determine such foundational issues in the transfer proceeding. During cross-examination by Commissioner McKissick and the Public Staff, witness Cox was unable to provide a basis for Red Bird's contention that a determination of technical, managerial, and financial capacity when rates will not be changed, alone proves that the transfer is in the best interest of the ratepayers.

Well-established principles of statutory interpretation in North Carolina dictate:

The intent of the General Assembly may be found first from the plain language of the statute, then from the legislative history, the spirit of the act and what the act seeks to accomplish. If the language of a statute is clear, the court must implement the statute according to the plain meaning of its terms so long as it is reasonable to do so. Courts should give effect to the words actually used in a statute and should neither delete words used nor insert words not used in the relevant statutory language during the statutory construction process. Undefined words are accorded their plain meaning so long as it is reasonable to do so. In determining the plain meaning of undefined terms, this Court has used standard, nonlegal dictionaries as a guide. Finally, statutes should be construed so that the resulting construction harmonizes with the underlying reason and purpose of the statute.

*Midrex Techs. v. N.C. Dep't of Revenue*, 369 N.C. 250, 258, 794 S.E.2d 785, 792 (2016) (internal citations omitted).

Under the plain language of the statute, the Commission must establish that the transfer is in the public interest. In fact, the very first requirement in the amended statute is a finding that the proposed acquisition is in the public interest. This was also a prerequisite before the statute was modified. The new statute does not, on its face, restrict the Commission from considering other factors in determining whether the transfer is in the public interest. If the Legislature had intended that the Commission only determine whether the applicant possessed the financial, technical, and managerial capabilities, and analyze whether existing rates and the purchaser's stated proposed rates are reasonable, it would have expressly stated so. The purpose and title of the statute, to expedite the transfer of water or wastewater public utilities, clearly does not expressly limit the Commission's review to a company's adoption of existing rates or proposed rates in determining whether the transfer is in the public interest. The statute merely says that the Commission should include certain issues in its consideration, but it does not limit its consideration of any particular issues. When there is uncontroverted evidence of the

Company's incurrence of costs, its intention to recover those costs, and the impact of that recovery on ratepayers, the Commission should take into consideration the magnitude of the impact on customer rates to determine whether ratepayers will be better or worse off after the transfer. Red Bird submits that customers will be better off with the approval of the transfer and approval of an acquisition adjustment because Red Bird is able to invest the capital necessary to address the needs of the Etowah system, and that customers will further benefit from ownership and operation of the system by an adequately capitalized and professionally run utility. Tr. vol. 2, 48.

Because there is no specific language in the amended statute that limits the Commission's consideration of factors that might affect the public interest, the Commission shall proceed with its usual, customary, and required inquiry into all aspects of anticipated service and rates occasioned by the proposed transfer. The Court of Appeals found, in *State of North Carolina ex rel. Utilities Commission v. Village of Pinehurst*, 99 NC App. 224, 393 S.E.2d 111 (1990), *aff'd* 331 NC 278, 415 S.E. 2d 199 (1992), that "the Commission is required to make inquiry into all aspects of anticipated service and rates occasioned by the proposed transfer."

The Commission is not persuaded by Red Bird's argument that the amendments to N.C.G.S. § 62-111 limit the Commission's consideration of financial issues such that an acquisition adjustment and/or due diligence expense should be ignored at the time of transfer or that such considerations play no part in determining whether the transfer is in the public interest. There is no evidence that the new statutory provisions constrain the purview of the Commission's review of transfer applications. An integral provision in the statute is that the Commission shall allow the transfer of a utility system if it is found that the transfer is in the public interest.

The Commission finds the Public Staff's arguments convincing as they are supported by the evidence in this case and longstanding practices in transfer proceedings, some of which were referenced by witness Franklin. The Commission finds persuasive and sensical the Public Staff's position that the public interest cannot be determined without consideration of the known and anticipated costs that the utility proposes to be passed on to the ratepayers.

During the public hearings held in this proceeding on November 1, 2023, and in the numerous statements of position filed in these dockets, Etowah customers stressed that they were concerned about the impact of the transfer on future rates, notwithstanding the fact that Red Bird intends to initially charge current rates. The first public witness who testified at the hearing, Ms. Julie Brandt, stated that, "Instead of the base fee we pay now, we understand it will significantly go up. Possibly triple. There was nothing included to show the proposed rates 33 months after acquisition." Tr. vol. 1, 16. The other customers who testified expressed the same concern regarding the uncertainty of a potential rate increase and the possibility that the future rates would include all of the costs sought by Red Bird and increase as large as projected by witness Franklin. The customers indicated, based on the Public Staff's projections, that they were not in favor of the transfer. *Id.* at 16-17, 22.

Red Bird witness Cox acknowledged that future increases in customer rates would be important to ratepayers. Commissioner Hughes asked witness Cox, “Would you agree, that—that the public is quite interested in what their longtime payment for water and sewer services are going to be? That that is something that they’re at least interested in?” Tr. vol. 2, 175. Witness Cox responded, “Absolutely, sir.” *Id.*

When questioned by Commissioner McKissick as to why the Commission should not establish rate base in this proceeding, witness Cox responded, “We don’t believe all the details are in on—on this.” *Id.* at 162-63. In response to cross-examination from the Public Staff as to why Red Bird would close on the Etowah transfer without first receiving the Commission’s decision on the amount of acquisition adjustment, witness Cox stated that Red Bird would like to have the opportunity at a future date to present evidence to the Commission that under Red Bird ownership “the public good was necessitated” and customers have benefitted before any rate increases were implemented. *Id.* at 75-76. Witness Cox further stated that at this time “all the facts are not in, in terms of how – how bad the system really is, how much improvements have to be made, how much benefit [Red Bird] will bring to customers”.

The Commission is not persuaded by Red Bird’s argument that determination of rate base and review of expenses would be premature because all pertinent information to establish rate base and final costs will not be available until closing or later. Commissioner Duffley questioned whether it is typical that access to invoices and other supporting information is provided during the due diligence period. Tr. vol. 3, 32. Witness Thies responded affirmatively. *Id.* Additionally, Commissioner Duffley noted that Red Bird had updated its rate base twice as of the date of the hearing to the amount of \$423,561 and asked whether that number was accurate. *Id.* at 32-33. Witness Thies stated that while he thought that Red Bird’s rate base number was accurate, there might be accumulated depreciation missing. *Id.* at 33. Witness Thies again contended that definitive information about the utility assets is not available until after Red Bird takes ownership and begins to operate the new system, particularly with small systems. *Id.* Commissioner Duffley then asked what the percentage change in calculations would be once Red Bird owned the system versus the prepurchase calculations. *Id.* at 34. Witness Thies estimated the typical range to be only a 5 to 10 percent difference. *Id.* Contrary to Red Bird’s assertion, the evidence shows that the Company has all pertinent information needed to set rate base and the possible difference in expenses is minimal.

The Commission also is not persuaded by any claim that Red Bird would be harmed or prejudiced if the Commission determines the rate base and due diligence costs in this transfer proceeding. Red Bird witness Cox testified that if the Commission denied all the due diligence costs and the acquisition adjustment then Red Bird’s investors would bear the loss. He further stated, “nothing happens in terms of benefits to customers, nothing happens to quality of service, any of those items.” Tr. vol. 2, 170-71. Witness Cox acknowledges that Red Bird was aware that the practice in North Carolina is to establish rate base in transfers. The Commission notes that the regulatory practices in other jurisdictions in which Red Bird operates have no bearing on the decision rendered in this proceeding.

The Public Staff also states in support of its position that deferring determination of rate base until Red Bird's first general rate case would unnecessarily add complexity to the rate case, especially if the Company proposes to consolidate the rates of its other acquired systems. It has been the Public Staff's historical practice to use the Commission-approved rate base, rates, and revenues from the most recent prior rate or transfer proceeding as a starting point for the utility's next rate or transfer case, and the Commission has accepted use of this methodology. *Id.* at 222, 298. Public Staff witness Feasel testified that this procedure was also used in this docket. *Id.* at 194, 243. The Commission also agrees with the Public Staff's concern regarding the increased complexity that would be created if it defers until the general rate case adjudication of issues that have occurred since the last rate case when the utility was in the hands of the previous owner who may be unavailable to provide and substantiate information that affects the rate base established in its last rate case.

In light of the facts and circumstances of this case and tenets of statutory construction, the Commission concludes that the recent amendments to N.C.G.S § 62-111 do not limit the Commission's duty to consider other issues that affect the interests of the ratepayers such as the potential impact on future rates, in addition to ensuring that the purchaser of the utility has the technical, managerial and financial capability to acquire the utility. The Commission further concludes that in order to make a determination regarding whether the transfer of the Etowah wastewater system is in the best interest of the Etowah ratepayers, the Commission must determine the rate base and, therefore, should also consider the issues of an acquisition adjustment, due diligence expenses, and transactional expenses, which, as part of this transfer proceeding, will impact the future rates of ratepayers.

Based upon the competent, substantial, and material evidence in the record, the Commission concludes that it is reasonable, appropriate, and necessary for the Commission to evaluate and establish the rate base of the utility when it is transferred to a purchaser, and to determine whether an acquisition adjustment is justified and whether some portion of the due diligence costs and other expenses should be allocated to customers.

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

The evidence and legal bases supporting this finding of fact are found in the verified Application, the testimony of Red Bird witness Cox and Public Staff witnesses Franklin and Feasel, and the records of the Commission.

As a general proposition, when a public utility buys assets that have previously been dedicated to public service as utility property, the acquiring utility is entitled to include in rate base the lesser of the purchase price or the net original cost of the acquired facilities owned by the seller at the time of the transfer. See Order Approving Transfer and Denying Acquisition Adjustment, *Petition of Utilities, Inc. for Transfer of the Certificate of Public Convenience and Necessity for Providing Sewer Utility Service on North Topsail Island and Adjacent Mainland Areas in Onslow County from North Topsail Water and*

*Sewer, Inc. and for Temporary Operating Authority*, Docket No. W-1000, Sub 5, 24 (N.C.U.C. Jan. 6, 2000) (W-1000, Sub 5 Order).

The Commission has indicated "a strong general policy against the inclusion of acquisition adjustments in rate base subject to exceptions in appropriate instances." *Id.* In the W-1000, Sub 5 Order, the Commission discussed the circumstances when the rate base treatment of acquisition adjustments is proper. The Commission stated:

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

*Id.* at 27.

In the present case, Red Bird Witness Cox testified that Red Bird determined that the purchase price was prudent because it was the only price that the acquired utility would accept. Tr. vol. 2, 61. Witness Cox's justification of the purchase price relies on the incorrect assertion that the Etowah wastewater utility system is troubled or distressed. However, that reliance is misplaced due to the absence of supporting evidence that the system is troubled and is contrary to the report of Red Bird's own expert, i.e., the McGill Report.

During cross examination, Witness Cox admitted that Red Bird did not provide the Public Staff with information, requested in discovery, relating to the initial offer and any subsequent counter offers. *Id.* at 69. Rather, Red Bird responded that it did not have any information responsive to the Public Staff's discovery request. Further, since the initial purchase agreement in 2019, witness Cox indicated that Red Bird has made no attempt to renegotiate the purchase price to account for depreciation in plant assets. *Id.* at 71.

Public Staff witness Feasel testified that the estimated revenue requirements would be \$129,356 if the acquisition adjustment calculated by the Public Staff is included in rate base. *Id.* at 196. Public Staff witness Franklin testified that the resultant impact to rates would be a \$22.23 increase in residential monthly wastewater flat rates and commercial metered monthly base charge, which is equivalent to an 84% increase. *Id.* at 217-18.

Based on the evidence in this proceeding and well-established precedent, the Commission concludes that approval of an acquisition adjustment is not in the public interest. The Commission notes that Red Bird's initial position in this case was to request rate base treatment of an unspecified "reasonable portion" of the acquisition premium. *Id.* at 47. The Commission further concludes that Red Bird has not established that the price it has contracted to pay was reasonable and that the benefits to Etowah's customers resulting from the allowance of rate base treatment of an acquisition adjustment in this case would offset or exceed the resulting burden or harm to customers associated therewith, including but not limited to the future rate impact of the acquisition adjustment. Further, as discussed and concluded herein, the Commission does not find the Etowah wastewater system to be a troubled system; consequently, the inclusion of an acquisition adjustment in rate base is not justified.

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

The evidence supporting this finding is the testimony of Public Staff witness Franklin, Confidential Attachment L of the verified Application, and the Commission's records in these and other dockets relating to Etowah.

Public Staff witness Franklin testified that the Public Staff's Consumer Services Division did not receive any customer complaints regarding the Etowah wastewater system between October 1, 2020, and October 9, 2023. *Id.* at 208. Witness Franklin also testified that as of October 27, 2023, six customers filed consumer statements of position about the proposed transfer, but none complained of issues with Etowah's service.

Additionally, since October 27, 2023, the Public Staff received seven additional consumer statements after the filing of the Public Staff's testimony, but all seven expressed concerns over future rate increases as a result of the transfer and not about the quality of their utility service. *Id.* at 200.

Public Staff Witness Franklin testified that on October 12, 2023, he visually inspected the wastewater system while accompanied by a representative of Etowah's maintenance contractor, A & D Maintenance, Inc. Based on his observations and expertise, the wastewater system appeared to be in fair condition. These findings were in agreement and consistent with the condition of the wastewater system as stated in Confidential Attachment L of the Joint Application, McGill Associates Engineering Memorandum, Appendices A-1 and A-2, which were based on inspections performed on December 4, 2019. Witness Franklin acknowledged that while there are areas of the wastewater collection and treatment system that need improvement, most areas were determined by the Public Staff and Red Bird's engineer, McGill, to be in either good or average condition. *Id.* at 204. Witness Franklin concluded that based on his investigation and the recent performance of the wastewater system, including the lack of customer complaints, the routine maintenance performed, and recent improvements made by Etowah as discussed below, Etowah is providing safe and reliable service to its customers of the Etowah wastewater system. *Id.* at 211.

Based upon competent, substantial, and material evidence in the record, the Commission concludes that Etowah is providing safe and reliable service to its customers.

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

The evidence for this finding of fact is found in the direct testimony and rebuttal testimony of Red Bird witness Cox and the testimony of Public Staff witness Franklin.

In his direct testimony, Red Bird witness Cox testified that the Etowah wastewater system is operationally distressed, troubled, and in need of capital investment. *Id.* at 27-28. During the evidentiary hearing, witness Cox explained that the Etowah system's poor operations history clearly indicates that the Etowah system is troubled or distressed. *Id.* at 56-58. For example, witness Cox explained that the Etowah system has been out of compliance with its wastewater discharge permit for "almost the entirety of the last five years." *Id.* at 56. Additionally, witness Cox testified that since 2020, when Red Bird entered into the contract to acquire the Etowah System, there have been eleven notices of violation (NOV) and many more instances of non-compliance. *Id.* Witness Cox testified that "any NOV is a failure . . . [and] when you have repeated failures of the same constituents, it shows the plant is not able to meet [its permit requirements]." Tr. vol. 3, 37. Witness Cox further noted that these repeated violations tell "everyone in the wastewater business, hey, this activated sludge plant is not really equipped to treat the waste down to the level it's required and on a consistent basis." *Id.* at 38.

Public Staff witness Franklin testified that there were no recent customer complaints regarding the performance of the wastewater system, and Etowah had performed routine maintenance and made recent improvements. Tr. vol. 2, 211. He



explained that the recent improvements include replacement of pumps at Sunset Ridge and the Main lift stations, installation of shut off valves at Homeplace and Jonathan Creek lift stations, and installation of additional diffuser leads to drop pipes at the WWTP. *Id.*

While there is evidence that the system has recently been issued NOVs, witness Franklin pointed out that during the three-year period between September 1, 2020, and October 1, 2023, the WWTP had a rate of 90.85%, and the wastewater collection system had a rate of 96.8%, for the number of days in regulatory compliance. *Id.* at 209. Furthermore, he noted that these NOVs associated with the WWTP had been closed, and Etowah has addressed the collection system violations identified in the January 2023 Compliance Inspection Report. *Id.* at 211-12. Witness Franklin testified that Etowah's response to DEQ's Compliance Inspection identifies actions taken to address the violations identified by DEQ, thus demonstrating that Etowah has the willingness, ability, and means to address them. Accordingly, he does not conclude the Etowah is troubled or distressed. *Id.* at 216

In his rebuttal testimony, Red Bird witness Cox disagreed with witness Franklin's operational assessment of the Etowah System. Witness Cox reiterated that the poor condition of the Etowah System facilities, combined with Etowah's substandard operations history, qualify the Etowah System as operationally distressed. *Id.* at 268.

In Docket No. W-1000, Sub 5, the Commission discussed the characteristics of a troubled system.

The evidence supports the conclusion that NTWS management routinely makes prudent use of its available capital resources to provide an adequate quality of service to its customers. Furthermore, the NTWS system does not suffer from various system deficiencies, ongoing environmental regulatory violations and frequent customer complaints that typify operationally troubled systems. The Commission finds and concludes that the facilities owned and operated by NTWS are in satisfactory condition and are currently sufficient to provide sewer utility service to the customers. Without some evidence of inadequate service currently or in the recent past, the Commission cannot conclude that NTWS is operationally troubled. The record in this case is devoid of such evidence. Accordingly, the Commission concludes that NTWS is not an operationally troubled system.

*Id.* at 21.

Similarly, this case is devoid of evidence of various system deficiencies, ongoing environmental regulatory violations, and frequent customer complaints that typify operationally troubled systems either currently or in the recent past. As such, the Commission does not conclude that Etowah is operationally troubled.

In his rebuttal testimony, Red Bird witness Cox testified that Etowah is a financially distressed utility that does not have the capital, or access to capital, to maintain and

improve its system. Tr. vol. 2, 275-76. Additionally, during the expert witness hearing, witness Cox provided detailed testimony supporting the notion that Etowah is “unbankable” – that is, Etowah does not have access to commercial financing or institutional loan money to raise the funds necessary to invest in its system. *Id.* at 158. During his live testimony, witness Cox also testified that over the last five years, there have been basically no additions to plant in service. *Id.* at 56.

The Commission acknowledges that Etowah has been seeking to sell its wastewater utility system since at least 2016,<sup>3</sup> which most likely accounts for the lack of significant capital improvements to the wastewater system in recent years. Moreover, the Commission finds the testimony of Public Staff witness Franklin persuasive in that while there have been recent operational incidents at both the WWTP and the wastewater collection system, Etowah has demonstrated the willingness, ability, and means to address them. Consequently, the Commission concludes based on the evidence in the record that Etowah is not financially troubled, and in particular, not troubled to an extent that would justify inclusion of an acquisition adjustment in rate base.

## **EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 19-20**

The evidence supporting these findings of fact is found in the direct testimony and exhibits of Red Bird witness Cox and Public Staff witnesses Franklin and Feasel and the rebuttal testimony of Red Bird witnesses Cox and Beckemeier.

In his direct testimony, Company witness Cox explained that after entering into an asset purchase agreement, Red Bird hired McGill to perform a preliminary survey and analysis of the water and/or wastewater system. *Id.* at 42. Witness Cox indicated that he was surprised to learn that it has been Commission practice to establish rate base and the purchaser’s due diligence costs associated with a transfer. *Id.* at 50. He noted that the total due diligence and transactional costs associated with the transfer would not be known until the purchase actually closes. *Id.* at 51. Witness Cox indicated that the due diligence activities for Etowah included surveying work, legal title work, preliminary civil engineering work, environmental compliance site surveys, and accounting, totaling \$317,269.22 as of the date of the filing of his direct testimony. *Id.* Witness Cox explained that due diligence gives preliminary insight to a potential purchaser regarding the system’s condition and problems to be addressed, though all issues would not be known until Red Bird begins operating the acquired utility. He testified that due diligence also includes ensuring that clear title can be acquired and determining the required future capital investments. Witness Cox also pointed out that after due diligence, Red Bird has declined to proceed with some transactions that would not be in the best interests of CSWR or ratepayers.

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<sup>3</sup> See Application for Transfer of Public Utility System (to owner exempt from regulation) filed on July 21, 2016, in Docket No. W-933, Sub 11. See also Order Rescinding Commission’s Order Approving Transfer to Owner Exempt and Requiring Customer Notice issued on March 26, 2018, in that same docket.

During cross examination, Witness Cox was shown certain redacted invoices from 21 Design provided by Red Bird to the Public Staff in discovery. Tr. vol. 2, 80; Public Staff Cox Direct Cross Exhibit 1. Witness Cox noted that Red Bird receives unredacted invoices from vendors. *Id.* Witness Cox also conceded on cross examination that certain invoices provided to the Public Staff to support Red Bird's due diligence costs did not appear to be related to Etowah, which seemed to be a mistake. *Id.*, Public Staff Cox Direct Cross Exhibit 2. He also was unable to determine whether certain other invoices provided to the Public Staff were actually related to Etowah. Tr. vol. 2, 81-82; Public Staff Cox Direct Cross Exhibit 3. In reviewing an invoice from McGill, who conducted engineering due diligence, witness Cox admitted that McGill's billing codes did not necessarily line up with its activities. Tr. vol. 2, 84; Public Staff Cox Direct Cross Exhibit 3. When witness Cox reviewed certain heavily redacted legal invoices provided to the Public Staff by Red Bird in discovery, he was unable to identify the legal work being invoiced. Tr. vol. 2, 89-90; Public Staff Cox Direct Cross Exhibit 4. Witness Cox stated that if Red Bird were seeking to recover the due diligence costs in this proceeding, it would have provided more detailed documentation. Tr. vol. 2, 91.

While witness Cox's direct testimony indicated that due diligence costs would be shared between ratepayers and shareholders, he testified on cross-examination that the due diligence costs were beneficial to ratepayers and thus the costs that directly relate to providing service to ratepayers, such as costs related to engineering (GIS mapping, asset inventories, and plans), should be recovered from ratepayers. *Id.* at 99-101. Witness Cox admitted that if the Commission denies recovery of Red Bird's due diligence costs, Red Bird's shareholders would bear those costs. *Id.* at 171.

Public Staff witness Franklin stated that the invoices provided by Red Bird to support its due diligence costs were heavily redacted with missing, vague, or uninformative descriptions of the work performed. *Id.* at 219. He recommended that \$10,000 of due diligence and transactional costs be included in rate base and that the remainder be absorbed by Red Bird's shareholders as a cost of doing business. *Id.* at 220. Witness Franklin testified that due diligence expenses are typically limited to transaction closing costs and are generally less than \$10,000. His recommendation of \$10,000 for due diligence expense is consistent with previous transfer applications, including those in Docket No. W-354, Sub 396, where the Public Staff recommended due diligence expenses of \$8,229 be included in rate base, and Docket No. W-218, Sub 527, where the Public Staff recommended, and the Commission approved, the inclusion of \$4,000 in attorney fees in rate base. Tr. vol. 2, 222.

Witness Franklin testified that the Commission cannot determine whether the transfer is in the public interest if it does not know the impact to rate base and customer rates of the acquiring utility's due diligence expenses. *Id.* at 249. Additionally, witness Franklin noted that Red Bird has indicated that in its first general rate case it would seek uniform rates. He stated that deferring the decision on the inclusion of due diligence expenses for multiple utility systems to a future rate case would unduly complicate the rate case proceeding. Witness Franklin indicated that the majority of the due diligence expenses are known and deferring a decision would not be in the public interest and

would be inconsistent with Commission precedent. *Id.* at 221-22. Witness Franklin testified that he was unaware of any other transfer case where the due diligence costs were not set by the Commission in that proceeding. *Id.* at 248. Witness Franklin testified that inclusion in rate base of Red Bird's due diligence costs would result in a \$6.42 per month increase in residential monthly wastewater flat rates and commercial metered monthly wastewater base charge, zero usage rates, which would be equivalent to a 24% increase in residential monthly wastewater flat rates and commercial metered monthly wastewater base charge, zero usage rates. *Id.* at 220.

In his rebuttal testimony, Red Bird witness Cox stated that all the due diligence costs that Red Bird incurred are a necessary part of the transaction. Red Bird's estimated due diligence costs include costs associated with engineering, valuation, and legal assessments conducted in pursuit of the underlying acquisition. *Id.* at 280. He pointed out that due diligence costs were incurred to provide information required by the Commission's application regarding major replacements required in the next five and ten years, as well as to establish that the buyer can obtain control of all real property and clear title. *Id.* at 281. Witness Cox noted that the Public Staff proposed to amortize due diligence expenses over 27.74 years, while the Company proposed a 50-year period, consistent with the Company's proposed depreciation period. *Id.* at 303-04. Company witnesses Cox and Beckemeier described the extensive due diligence and transactional work required to acquire the Etowah system. *Id.* at 308-17.

The Commission understands that an acquiring utility must incur certain due diligence and transactional costs in order to consummate a transfer. As discussed previously, the Commission agrees with Public Staff witness Franklin that these costs must be considered in the Commission's determination as to whether a transfer is in the public interest. Deferring consideration of due diligence and legal costs to be included in rate base until a future rate case, especially when Red Bird will likely be seeking to establish uniform rates for multiple newly acquired small utilities, is not appropriate.

As of the filing of witness Cox's direct testimony, Red Bird asserts that it had incurred due diligence and legal costs in excess of \$300,000, and that additional costs continue to be incurred. If the transfer is approved, Red Bird has indicated it will seek to recover those costs from ratepayers because the ratepayers should pay all the costs that are beneficial to them as customers of the utility. *Id.* at 100. The Commission finds that these costs provide a benefit to Red Bird allowing it to estimate the amount of capital that will be required to operate and maintain the system, discover legal defects to the title, and understand the operational issues specific to Etowah. Additionally, Red Bird gains valuable information regarding whether it would be beneficial for the Company to proceed with the transaction. If the transaction is consummated, the Commission acknowledges that ratepayers may also benefit from incurrence of these costs to the extent they are reasonably and prudently incurred and depending on the portion ratepayers must bear. Witness Franklin testified that the preliminary estimate of these costs provided in Cox Direct Exhibit 4 would significantly increase customer rates if the system were operated as a standalone utility. Accordingly, it would not be in the public interest to allocate all of these costs to ratepayers, as the benefits are shared by both the Company and

ratepayers. Thus, the Commission must determine the proper allocation of these costs to be included in rate base.

In determining the appropriate allocation of these costs, the Commission considers the quality of the responses provided to the Public Staff in its investigation. The evidence shows that Red Bird provided the Public Staff with heavily redacted invoices without adequate information to support them and some invoices that appeared to contain charges not related to this case. See Cox Direct Cross Exhibits 2-4. The Commission finds that these insufficient responses serve as obstacles preventing the Public Staff from conducting its investigation. The Commission understands redaction and assertion of privilege may be necessary, but Red Bird should strive to provide responses that are responsive to the Public Staff's requests and provide adequate information or properly assert privilege or reasons to withhold information. The Commission is also troubled by witness Cox's statement that Red Bird would have provided more detailed responses if it were seeking to recover the due diligence costs in this proceeding. Tr. vol. 2, 91. Red Bird should respond to discovery fully in accordance with statutes, Commission rules, and Commission orders. Red Bird cannot unilaterally choose its level of responsiveness based on what it seeks in a proceeding.

Based upon the competent, substantial, and material evidence in the record, the Commission finds it appropriate in this case to include in rate base \$10,000 of Red Bird's due diligence costs and other transactional costs included on Cox Direct Exhibit 4 as recommended by Public Staff witness Franklin. The Commission acknowledges that, in the instant dockets, the Public Staff was unable to audit the due diligence expenses because Red Bird provided redacted invoices. The Commission directs Red Bird to provide unredacted invoices pertaining to the due diligence costs and other transactional costs listed in Cox Direct Exhibit 4, related to the Etowah transfer that benefit Etowah's customers, to the Public Staff in its first general rate case. The Commission directs the Public Staff to conduct a comprehensive audit of these expenses and determine whether any amount above the \$10,000 approved herein should be recovered from customers in Red Bird's first general rate case. In making its recommendation to the Commission concerning engineering due diligence work listed in Cox Direct Exhibit 4, the Public Staff should consider whether the work performed results in reasonable and prudent capital investments to improve the wastewater system.

Further, the Commission finds that Red Bird's due diligence costs and other transactional costs should be amortized over a period of 27.74 years and the amortization of these costs should begin in the month that the transfer of the Etowah wastewater system to Red Bird is closed.

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

The evidence in support of this finding of fact can be found in the verified Application, the testimony and exhibits of Red Bird witnesses Cox and Thies, the testimony and exhibits of Public Staff witnesses Feasel and Franklin, and the entire record in this proceeding.

Red Bird witness Cox provided testimony regarding Red Bird's rate base components, including the value of the utility assets, acquisition adjustment, and due diligence expenses. Tr. vol. 2, 21, 47, 53. Witness Cox testified that, based on Red Bird's audit of supporting documentation and its understanding of the Public Staff's valuation, it believes the rate base value of assets to be acquired is \$277,423. *Id.* at 43.

Public Staff witness Feasel testified that the original cost rate base of the Etowah system is (\$282,207). Tr. vol. 2, 194. Witness Feasel explained that she made her calculation of rate base by taking the net book value approved in the prior rate case proceedings for Etowah in Docket Nos. W-933, Sub 7 (Sub 7) and W-933, Sub 9 (Sub 9), and updating the accumulated depreciation through December 31, 2023, for the plant balance approved in the prior rate cases. Next, she added plant additions since the last rate case for which supporting documentation was provided, and removed items that should have been expensed instead of capitalized based on Public Staff witness Franklin's recommendation. She then added contributions in aid of construction (CIAC) that Etowah had received since the Sub 9 proceeding and updated accumulated depreciation through December 31, 2023, utilizing the depreciation rates recommended by witness Franklin and the amortization rates approved by the Commission in Sub 7 and Sub 9. *Id.*

Red Bird witness Thies stated in his rebuttal testimony that the final rate base determination can and should be deferred to the first rate case proceeding involving the Etowah System where necessary evidence will be available to determine the revenue requirement and to establish the appropriate rate design. *Id.* at 302. Witness Thies also testified to the differences in the Public Staff and Red Bird's rate base calculations, including differences in depreciation rates and lives, and further testified that depreciation changes should also be addressed in a rate case proceeding to allow for further evaluation and the completion of depreciation studies. *Id.* at 300.

The Commission finds the methodology employed to calculate the Public Staff's recommended original cost rate base of (\$282,207) to be reasonable, appropriate, and supported by the evidence, and is approved for use in this proceeding. The Commission declines to adopt Red Bird's proposed change to its usual practice of determining rate base at the time of a transfer proceeding. Red Bird's current proposal is unlikely to yield significant new documentation related to plant investment since the prior general rate case and would unnecessarily complicate the future general rate case in which Red Bird proposes to establish rate base.

## **EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 22**

The evidence supporting this finding of fact is contained in the verified Application, the testimony of Public Staff witness Franklin, and the rebuttal testimony of Red Bird witness Cox.

Public Staff witness Franklin recommended that Red Bird post a \$200,000 bond based on Red Bird's lack of history of operations and management in North Carolina, the

large customer base, the system improvements planned by Red Bird, and the size of the WWTP and wastewater collection system. Tr. vol. 2, 224.

Session Law 2023-137, Section 24 revised N.C.G.S. § 62-110.3(a) to require a bond “in an amount not less than twenty-five thousand dollars (\$25,000),” representing an increase in the minimum bond amount required from ten thousand dollars (\$10,000). In addition, N.C.G.S. § 62-110.3 has historically required that the bond, “shall be conditioned upon providing adequate and sufficient service within all the applicant’s service areas.” Further, N.C.G.S. § 62-110.3(a) provides:

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

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

Witness Franklin testified that Commission Rules R7-37 and R10-24 restate and reaffirm these provisions and requirements although the Commission Rules have not yet been updated to reflect the revised bond amount required by N.C.G.S. § 62-110.3. He stated that a sufficient bond amount is required to ensure the continued provision of adequate and sufficient wastewater services in the event a wastewater utility is unable to provide such service due to financial constraints, mismanagement, or other factors. Witness Franklin explained that the factors the Commission must take into consideration as set forth in N.C.G.S. § 62-110.3(a)(1) – (5) make clear that the bond amount depends heavily on the applicant’s financial, managerial, and technical expertise; the applicant’s prior performance, if any; the number of current and projected future wastewater customers; system expansion plans and needs; the complexity of the applicant’s system and facilities; and any other factors that bear upon the risk of the applicant providing inadequate, inconsistent, or insufficient wastewater services. He indicated that N.C.G.S. § 62-110.3 and Commission Rule R10-24 make it clear that a higher risk of deficient wastewater services necessitates a higher bond amount.

In his rebuttal testimony, Company witness Cox stated that Red Bird finds the Public Staff’s bond recommendation to be excessive. Tr. vol. 2, 286. He noted that witness Franklin’s response to a Red Bird data request stated that bond recommendations were not based on a mathematical formula and witness Franklin was

therefore unable to provide workpapers that quantified the Public Staff's factors in reaching its bond recommendation. *Id.* Witness Cox acknowledged that Red Bird does not have a history of operating utilities in North Carolina but emphasized that it nonetheless has significant operating and managerial experience owning and operating water and wastewater systems across its affiliate groups<sup>4</sup>. *Id.* at 287. He reiterated his direct testimony that Red Bird's affiliate groups own and operate facilities in ten other states and provide wastewater service to more than 200,000 customers and water service to more than 130,000 customers. Witness Cox added that the affiliate systems are successfully serviced and maintained by third-party operations and maintenance contractors hired to perform these services, and its North Carolina operations mirror those in the other states mentioned. *Id.* at 286-87. He further stated that, "there is no reason for the Commission - or the Public Staff - to believe Red Bird's performance here will be of lesser quality than its affiliates' performance elsewhere." *Id.* at 288. Additionally, witness Cox testified that according to Etowah's 2022 Annual Report, the bond currently required for the Etowah system is \$20,000 and the Public Staff's recommendation is ten times the current bond amount. *Id.*

Based upon the competent, substantial, and material evidence in the record, the Commission finds that Red Bird has the technical, managerial, and financial capability to operate the Etowah wastewater system; however, Red Bird is new to the state and, by its own admission, does not have a history of operations and management in North Carolina. As noted by the Public Staff, the Etowah sewer system has a large customer base, there are significant improvements planned by Red Bird, and the size of the WWTP and wastewater collection system are substantial. Based on these factors, a greater bond amount than the statutory minimum is necessary to ensure the continued provision of adequate service if Red Bird is unable to continue providing service due to financial constraints, mismanagement, or other factors. The Commission therefore finds it reasonable and appropriate based on the specific circumstances of this proceeding that a bond of \$100,000 should be posted by Red Bird.

### **EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 23**

The evidence supporting this finding of fact is found in Red Bird's verified Application and supplemental filings; the testimony and exhibits of Red Bird witnesses Cox, Thies, and Beckemeier; the testimony and exhibits of Public Staff witnesses Franklin, Feasel, and Hinton; and the entire record in this proceeding.

In his direct testimony, Red Bird witness Cox testified that Red Bird has the financial, technical, and managerial ability to: acquire, own, and operate the Etowah system in a manner that fully complies with applicable health, safety, environmental protection, and regulatory laws and regulations; and to provide reliable, safe, and adequate service to customers. Tr. vol. 2, 30-31. Additionally, he testified that Red Bird

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<sup>4</sup> Witness Cox was not accurate in his testimony regarding Red Bird's experience. The record reflects that Red Bird does not operate any water or wastewater utilities in states other than North Carolina, but instead, CSWR, its affiliate, has significant operating and managerial experience with regard to ownership and successful operation of water and wastewater systems across its affiliate groups.



is part of an affiliate group that has acquired and currently operates over 800 water or wastewater utility systems in other states and currently provides service to approximately 221,000 wastewater customers and over 146,000 water customers. *Id.* at 31-32.

In his direct testimony, Public Staff witness Franklin testified that Red Bird “has the financial, technical and managerial capabilities necessary to provide wastewater utility service to customers in Etowah’s service area.” *Id.* at 211. Public Staff witness Hinton also testified that based on his review of testimony and discovery responses provided by Red Bird, he believed Red Bird will have sufficient equity capital to acquire and improve Etowah’s wastewater system, fund system upgrades, and support other capital improvements. *Id.* at 232. Witness Hinton noted, however, that the Public Staff had concerns regarding the ongoing viability of CSWR because it has reported losses on its consolidated income statements, and financial viability largely depends on external infusions of common equity largely provided by private equity. *Id.* Witness Hinton nonetheless stated that in view of the fact that witness Franklin and other Public Staff engineers are unaware of any plant and operational problems that stem from a lack of investment capital and based on Red Bird’s business plan and record of acquiring water and sewer utility systems, he believed CSWR has sufficient capital resources to be considered financially viable. Witness Hinton noted, however, that Red Bird has not owned systems in North Carolina for very long and recommended that Red Bird meet with the Public Staff on an annual basis to discuss Red Bird’s North Carolina water and wastewater operations and address any concerns with its financial condition. *Id.* at 233.

Based upon competent, substantial, and material evidence in the record, the Commission concludes that Red Bird has the technical, managerial, and financial capacity to provide adequate, safe, efficient, and reasonable sewer utility service on an ongoing basis to customers in the Etowah service area.

## **CONCLUSION**

The Commission concludes that: (1) Red Bird’s adoption of Etowah’s existing rates should be approved effective upon the date of closing on the transfer; (2) Red Bird shall post a \$100,000 bond for the Etowah service area prior to closing and provide the original bond documents to the Commission’s Bond Administrator for acceptance and filing prior to closing; (3) Red Bird shall provide written notice to the Commission within three business days of closing that closing of the sale of the Etowah system has been completed; (4) upon closing of the transfer, Red Bird shall be granted a CPCN to provide wastewater utility service to the Etowah service area; (5) Red Bird shall adopt Etowah’s accounting records upon closing, provide the detailed accounting records so received to the Public Staff, and make no adjustment or changes to those records without Commission approval; and (6) Red Bird shall provide notice to customers that the franchise has been granted and that the existing rates have been approved.

Consistent with the recommendations of the Public Staff, the Commission also concludes that the rate base of the Etowah assets Red Bird will acquire is (\$282,207) and that no acquisition adjustment related to this transfer should be recovered in this

proceeding, Red Bird's first general rate case, or any future proceedings. Further, the Commission concludes that an amount of \$10,000 in due diligence and transactional costs as recommended by the Public Staff should be included in the rate base established in this proceeding. However, the Commission directs Red Bird to provide the Public Staff unredacted supporting invoices supporting the expenses included on Cox Direct Exhibit 4 such that the Public Staff may conduct a comprehensive audit of all expenses in Red Bird's first general rate case and determine whether any amount above the \$10,000 approved herein should be recovered from customers. In making its recommendation to the Commission concerning engineering due diligence work listed in Cox Direct Exhibit 4, the Public Staff should consider whether the work performed results in reasonable and prudent capital investments to improve the wastewater system.

Finally, the Commission concludes that that Red Bird's due diligence costs and other transactional costs should be amortized over a period of 27.74 years, and the amortization of these costs should begin in the month that the transfer of the Etowah wastewater system to Red Bird is closed.

IT IS, THEREFORE, ORDERED as follows:

1. That the Application for Transfer of Public Utility Franchise and for Approval of Rates, jointly filed on October 8, 2020, by Red Bird and Etowah is hereby approved;
2. That Etowah is hereby authorized to transfer its wastewater utility system and public utility franchise serving the Etowah Community in Henderson County, North Carolina, to Red Bird;
3. That Red Bird is granted a Certificate of Public Convenience and Necessity to provide wastewater utility service in the Etowah service area, effective upon the closing of the transfer of the sewer utility system assets to Red Bird;
4. That Red Bird is hereby authorized to adopt and charge Etowah customers the present rates, fees, and additional charges approved in Docket Nos. W-933, Sub 10, and M-100, Sub 138, which have been in effect since January 1, 2016;
5. That the original cost rate base for the Etowah wastewater utility system assets shall be (\$282,207) as of December 31, 2023;
6. That Red Bird shall not recover any purchase acquisition adjustment related to this transfer in this proceeding, the first general rate case proceeding, or any future proceeding;
7. That due diligence, legal, and transactional costs of \$10,000 shall be included in rate base in Red Bird's first general rate case;

8. That whether any amount of due diligence and transactional costs above the \$10,000 amount approved herein may be recovered from customers shall be determined in Red Bird's first general rate case;

9. That Red Bird's due diligence costs and other transactional costs shall be amortized over a period of 27.74 years, and the amortization of these costs shall begin in the month that the transfer of the Etowah wastewater system to Red Bird is closed;

10. That prior to closing, Red Bird shall post a bond in the amount of \$100,000 for the Etowah sewer utility service area in a form acceptable to the Commission and in compliance with N.C.G.S. § 62-110.3, and shall provide the original bond documents to the Commission's Bond Administrator for filing;

11. That the Certificate of Public Convenience and Necessity granted to Etowah in Docket No. W-933, Sub 0 is cancelled effective on the date when Red Bird files with the Commission written notification that the closing of the transfer of the wastewater system has been completed;

12. That Etowah's surety bond held by the Commission shall be released to Etowah upon receipt of written notification to the Commission that closing of the transfer of the Etowah utility systems has been completed;

13. That Red Bird shall provide notification to the Commission within three business days of the date of closing that the sale of the wastewater utility systems serving the Etowah Service Area has been completed;

14. That within 30 days of the closing of the sale of the Etowah wastewater utility systems, 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 Etowah wastewater utility system;

15. That Appendix A constitutes the Certificate of Public Convenience and Necessity;

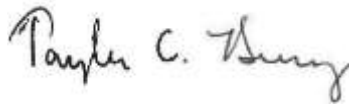
16. That the Schedule of Rates, attached as Appendix B, is approved and deemed to be filed with the Commission pursuant to N.C.G.S. § 62-138 and is authorized to become effective for service rendered on and after the date of closing on the transfer; and

17. That the Notice to Customers, attached as Appendix C, shall be mailed with sufficient postage or hand delivered by the Applicant to all customers affected by the transfer no later than 15 days after the date of this Order, and that the Applicant shall submit to the Commission the attached Certificate of Service properly signed and notarized not later than 30 days from the date of this Order.

ISSUED BY ORDER OF THE COMMISSION.

This the 7th day of February, 2024.

NORTH CAROLINA UTILITIES COMMISSION

A handwritten signature in dark ink, appearing to read "Taylor C. Berry". The signature is written in a cursive, flowing style.

Taylor C. Berry, Deputy Clerk

Commissioner Kimberly W. Duffley did not participate in this decision.

**STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH**

DOCKET NO. W-1328, SUB 0

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

RED BIRD UTILITY OPERATING COMPANY, LLC d/b/a RED BIRD WATER

is granted this

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

to provide wastewater utility service

to

ETOWAH COMMUNITY

in

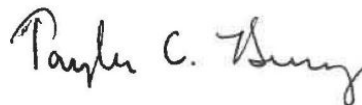
Henderson County, North Carolina

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 7th day of February, 2024.

NORTH CAROLINA UTILITIES COMMISSION

A handwritten signature in dark ink, appearing to read "Taylor C. Berry". The signature is fluid and cursive, with the first name "Taylor" and last name "Berry" clearly distinguishable.

Taylor C. Berry, Deputy Clerk

SCHEDULE OF RATES

for

RED BIRD UTILITY OPERATING COMPANY, LLCfor providing wastewater utility service toETOWAH COMMUNITY

Henderson County, North Carolina

Monthly Wastewater Utility Service:

Residential Flat Rate	\$26.33
Commercial Customers (metered rates)	
Base Charge, zero usage	\$26.33
Usage Charge, per 1,000 gallons	\$ 4.05

Connection Charge

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

Reconnection Charge:

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

Bills Due: On billing dateBills Past Due: 15 days after billing dateBilling 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 billing date

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Issued in Accordance with Authority Granted by the North Carolina Utilities Commission in Docket No. W-1328, Sub 0 on this the 7th day of February, 2024.

**STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH**

DOCKET NO. W-933, SUB 12  
DOCKET NO. W-1328, SUB 0

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of  
Joint Application by Red Bird Utility )  
Operating Company, LLC d/b/a Red Bird )  
Water and Etowah Sewer Company, Inc. ) **NOTICE TO CUSTOMERS**  
for Transfer of Public Utility Franchise )  
and for Approval of Rates )

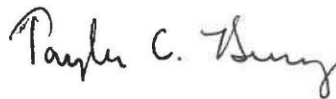
NOTICE IS HEREBY GIVEN that the Commission has approved the application by Etowah Sewer Company, Inc. (Etowah), P.O Box 1659, Etowah, North Carolina 28729-1659, and Red Bird Utility Operating Company, LLC d/b/a Red Bird Water (Red Bird), 1650 Des Peres Road, Suite 303, St. Louis, Missouri 63131, to transfer the Etowah wastewater utility system and public utility franchise, in Henderson County, North Carolina, from Etowah to Red Bird. The rates approved for Red Bird are the present rates charged by Etowah and approved by the Commission for Etowah in Docket Nos. W-933, Sub 10 and M-100, Sub 138, effective January 1, 2016.

Information regarding this proceeding and the Commission's Order approving the transfer can be accessed from the Commission's website at [www.ncuc.gov](http://www.ncuc.gov) under Docket Number "W-1328 Sub 0."

ISSUED BY ORDER OF THE COMMISSION.

This the 7th day of February, 2024

NORTH CAROLINA UTILITIES COMMISSION



Taylor C. Berry, Deputy Clerk

CERTIFICATE OF SERVICE

I, \_\_\_\_\_, mailed with sufficient postage or hand delivered to all affected customers copies of the attached Notice to Customers and Appendix B as issued by the North Carolina Utilities Commission in Docket Nos. W-933, Sub 12 and W-1328, Sub 0, and the said Notice to Customers and Appendix B were mailed or hand delivered by the date specified in the Order.

This the \_\_\_\_ day of \_\_\_\_\_, 2024.

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 and Appendix B was mailed or hand delivered to all affected customers, as required by the Commission Order dated \_\_\_\_\_ in Docket Nos. W-933, Sub 12, and W-1328, Sub 0.

Witness my hand and notarial seal, this the \_\_\_\_ day of \_\_\_\_\_, 2024.

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

\_\_\_\_\_  
Address

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