

PLACE: Dobbs Building, Raleigh, North Carolina
DATE: Tuesday, October 24, 2023
TIME: 12:01 p.m. - 1:35 p.m.
DOCKETS: W-1146, Sub 13
W-1328, Sub 10
BEFORE: Commissioner Karen M. Kemeraйт
Commissioner Jeffrey A. Hughes

IN THE MATTER OF:

Application of

Red Bird Utility Operating Company, LLC
1650 Des Peres Road, Suite 303, St. Louis, Missouri
63131, and Total Environmental Solutions, Inc.,
Post Office Box 14056, Baton Rouge, Louisiana 70898,
For Authority to Transfer the Lake Royale Subdivision
Water and Wastewater Utility Systems and Public
Utility Franchise in Franklin and Nash Counties,
North Carolina, and for Approval of Rates

VOLUME 2



1 A P P E A R A N C E S:

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6 Raleigh, North Carolina 27608

8 FOR TOTAL ENVIRONMENTAL SOLUTIONS, INC.:

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10 Edward S. Finley, Jr., PLLC

11 2024 White Oak Road

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14 FOR THE LAKE ROYALE PROPERTY OWNERS ASSOCIATION:

15 David Drooz, Esq.

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17 434 Fayetteville Street

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20 FOR THE USING AND CONSUMING PUBLIC:

21 Megan Jost, Esq.

22 Public Staff - North Carolina Utilities Commission

23 4326 Mail Service Center

24 Raleigh, North Carolina 27699-4300

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(Confidential - filed under seal)		
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P R O C E E D I N G S

COMMISSIONER KEMERAIT: Good morning,
everyone. Let us come to order and go on the
record.

I am Karen M. Kemeraït, Commissioner of
the North Carolina Utilities Commission. And
with me this morning is Commissioner Jeffrey A.
Hughes.

I now call for hearing in Docket
Numbers W-1164 [sic], Sub 13 and W-1328, Sub 10,
in the matter of Application by Red Bird Utility
Operating Company, LLC and Total Environmental
Solutions, Inc. for Authority to Transfer the
Lake Royale Subdivision Water and Wastewater
Utility Systems and Public Utility Franchise in
Franklin and Nash Counties, North Carolina, and
for Approval of Rates.

Before we proceed, and as required by
the State Government Ethics Act, I remind the
members of the Commission of our duty to avoid
conflicts of interest and inquire at this time as
to whether any Commissioner has any known
conflict of interest with respect to this Docket?

(No audible response was given.)

1 COMMISSIONER KEMERAIT: Let the record
2 reflect that I have no such conflict, and my
3 fellow Commissioner has no such conflict either.

4 On June 7, 2021, Red Bird Utility
5 Operating Company, LLC, which I will refer to
6 going forward as Red Bird, and Total
7 Environmental Solutions, Inc., which I will --
8 will refer to going forward as TESI, filed with
9 the Commission an Application for transfer of
10 public utility franchise and for approval of
11 rates, and I will refer to that Application going
12 forward as the Application, seeking authority to
13 transfer the water and wastewater utility systems
14 and public utility franchise serving the Lake
15 Royale subdivision, which I will refer to going
16 forward as Lake Royale, in Franklin and Nash
17 Counties, North Carolina, from TESI to Red Bird
18 and for approval of rates.

19 Red Bird filed with the Commission
20 supplemental and additional materials in support
21 of the Application on June 8 and August 6, 2021,
22 on January 24, August 2, and September 8, 2022, and
23 on August 18, 2023.

24 On July 11, 2023, the Commission issued

1 an Order Scheduling Hearings, Establishing
2 Discovery Guidelines and Requiring Customer
3 Public Notice, which I will refer to going
4 forward as -- to as the Scheduling Order.

5 The Scheduling Order scheduled a
6 public witness hearing to be held at the
7 Franklin County Courthouse on September 25,
8 2023, as well as an expert witness hearing to
9 begin on Monday,
10 October 3, 2023, at 2:00 in this location.

11 On July 26, 2023, Red Bird filed a
12 Certificate of Service certifying that the notice
13 to customers of the hearing was mailed or hand
14 delivered to all affected customers.

15 On July 31, 2023, pursuant to the
16 requirements of Section 1-B, North Carolina
17 General Statute Section 62-111, the Commission
18 issued a Notice of Complete Application.

19 On August 30, 2023, Red Bird filed the
20 confidential direct testimony of Josiah Cox,
21 president of Red Bird, CSWR, LLC, that I'll refer
22 to going forward as CSWR, and Central States
23 Water Resources, Inc., consisting of 37 pages and
24 redacted direct testimony, consisting of 37 pages
and four exhibits.

1 On September 11, 2023, a petition to
2 intervene was filed on behalf of the Lake Royale
3 Property Owners Association. The petition was
4 accompanied by a request to hold the public
5 witness hearing, along with 67 customer emails
6 regarding the transfer of the utility.

7 On September 12, 2023, the Commission
8 granted the Lake Royale Property Owners
9 Association's petition to intervene. The
10 intervention and participation of the Public
11 Staff in this proceeding is recognized pursuant
12 to -- pursuant to North Carolina General Statute
13 Section 62-15(d) and Commission Rule R1-19E.

14 On September 19, 2023, the Public Staff
15 filed the direct testimony of John Hinton,
16 director of the Public Staff's Economic Research
17 Division, consisting of five pages, one appendix
18 and one exhibit.

19 The confidential and redacted direct
20 testimony of Evan Houser, Public Staff engineer,
21 consisting of 34 pages and one appendix, and the
22 confidential and redacted direct testimony and
23 exhibits of Lynn Feasel, regulatory supervisor of
24 the water, sewer and telephones section. Each

1 consisting of eight pages, one appendix and three
2 exhibits.

3 On September 25, 2023, the Commission
4 held a public witness hearing in Louisburg,
5 North Carolina.

6 On September 26, 2023, the Public Staff
7 filed the corrected confidential and direct
8 testimony of Public Staff witness Houser,
9 consisting of 34 pages, one appendix and three
10 exhibits.

11 On October 3, 2023, Red Bird filed the
12 rebuttal testimony of Todd Thomas, senior vice
13 president of CSWR, consisting of 28 pages and
14 three exhibits, and the confidential and redacted
15 rebuttal testimony of Katelyn O'Reilly,
16 regulatory accounting manager at CSWR, consisting
17 of six pages.

18 On October 9, 2023, Red Bird and TESI
19 filed Verified Reports on public hearing
20 testimony.

21 On October 12, 2023, Red Bird filed a
22 Motion for Substitution of Witness and Adoption
23 of Testimony.

24 On October 13, 2023, the Public Staff

1 filed its Objection to Red Bird's Motion for
2 Substitution of Witness and Adoption of
3 Testimony.

4 On October 13, 2023, the Commission
5 issued an Order delaying the start of the hearing
6 to today, Tuesday, October 24, 2023, at
7 11:00 a.m.

8 On October 20, 2023, Red Bird filed its
9 Motion for Substitution of Witness and Adoption
10 of Testimony, for Rescheduling of Expert Public
11 Witness Hearing and to Excuse One Witness.

12 In the Motion, Red Bird moved to allow
13 Red Bird Witness Cox to adopt the prefiled
14 rebuttal testimony and exhibits of Red Bird
15 Witness Thomas, and requested that the expert
16 witness hearing be delayed from 11:00 a.m. on
17 Tuesday, October 2023 -- excuse me -- on Tuesday,
18 October 23, 2023, to 12:00 p.m. on October 23,
19 2023.

20 On October 23, 2023, the Commission
21 issued an Order Granting Motion for Substitution
22 of Witness and Adoption of Testimony,
23 Rescheduling Hearing, and Excusing One Witness.

24 In the Order, the Commission delayed

1 the expert witness hearing on October 24, 2023,
2 by one hour to begin at 12:00 p.m., allowed Red
3 Bird Witness Cox to adopt Red Bird Witness
4 Thomas's rebuttal testimony and substitute for
5 him as a witness and excuse Red Bird rebuttal
6 Witness O'Reilly from appearing at the hearing.

7 On October 23, 2023, Red Bird and the
8 Public Staff filed a Settlement Agreement and
9 Stipulation.

10 On October 23, 2023, Red Bird filed the
11 supplemental testimony of Red Bird Witness Cox.

12 On October 23, 2023, the Public Staff
13 filed the joint settlement testimony of Witnesses
14 Feasel and Houser. Additional consumer
15 statements of position have been filed in the
16 Docket.

17 So, with that lengthy history, it
18 brings us to the hearing today. I now call for
19 counsel for the parties to announce their
20 appearances for the record, beginning with Red
21 Bird.

22 MR. HIGGINS: Good afternoon,
23 Commissioners. Dan Higgins, with Burns, Day &
24 Presnell, here in Raleigh, appearing on behalf of

1 Red Bird.

2 COMMISSIONER KEMERAIT: Good morning,
3 Mr. Higgins.

4 MR. FINLEY: May it please the
5 Commission, my name is Edward Finley, Raleigh,
6 North Carolina, appearing on behalf of the
7 seller, TESI.

8 COMMISSIONER KEMERAIT: Good morning,
9 Mr. Finley.

10 MR. DROOZ: David Drooz, appearing on
11 behalf of the Lake Royale Property Owners
12 Association.

13 COMMISSIONER KEMERAIT: Good morning,
14 Mr. Drooz.

15 MS. JOST: Megan Jost, with the Public
16 Staff, appearing on behalf of the using and
17 consuming public.

18 COMMISSIONER KEMERAIT: And good
19 morning to you, Ms. Jost.

20 And before we begin with the hearing,
21 are there any preliminary matters that need to be
22 addressed by any of the parties?

23 MR. HIGGINS: Not aware of any.

24 COMMISSIONER KEMERAIT: Okay. Seeing

1 that there are no preliminary matters to be
2 addressed, we will proceed with the hearing, and
3 we will begin with the Company, Mr. Higgins.

4 MR. HIGGINS: Thank you, Commissioner
5 Kemerait. Red Bird calls Josiah Cox to the
6 stand.

7 COMMISSIONER KEMERAIT: Good morning,
8 Mr. Cox.

9 MR. COX: Good morning.

10 COMMISSIONER KEMERAIT: Do you prefer
11 to be sworn or affirmed?

12 MR. COX: Sworn is fine.

13 COMMISSIONER KEMERAIT: Okay.

14 Whereupon,

15 JOSIAH COX

16 having been duly sworn, was examined

17 and testified as follows:

18 COMMISSIONER KEMERAIT: Okay. Thank
19 you.

20 THE WITNESS: Don't think I've done
21 that one before.

22 DIRECT EXAMINATION BY MR. HIGGINS:

23 Q. Good morning, Mr. Cox. Would you, please,
24 state your name and your business address for the

1 record?

2 A. My name is Josiah Cox, and my business
3 address is 1650 -- I'm Josiah Cox, the president of
4 Red Bird Utility Operating Company, 1650 Des Peres
5 Road, Suite 303, St. Louis, Missouri 63131.

6 Q. Thank you, sir.

7 And, Mr. Cox, did you cause to be prepared
8 and filed on August 30 direct testimony, consisting of
9 37 pages of written questions and answers and four
10 exhibits?

11 A. I did.

12 Q. Do you have any changes or corrections to
13 your direct testimony?

14 A. I do.

15 Q. Please tell us what those are.

16 A. On page three of my direct testimony, on
17 line ten --

18 Q. Okay. Give folks a minute to get there.

19 A. Absolutely.

20 Q. All right, sir.

21 A. At the end of line ten, it should read, "and
22 I operated" -- "I operated the system managing the
23 functioning, testing and maintenance of that system."

24 Q. Strike the word, "still"?

1 A. "Still." Correct.

2 And then the second correction is on line 11
3 at the end, instead of -- you should strike the word,
4 "also."

5 And, "act," should be changed to, "acted,"
6 in the past tense.

7 And the third correction is on line 12,
8 about middle of the -- the line there. It should say,
9 "where I" -- the -- strike, "oversee," and it should
10 say, "oversaw." All the past tense.

11 Q. Mr. Cox, subject to those changes, if I
12 asked you the questions that are set forth in your
13 prefiled direct testimony, would your answers be the
14 same as those set forth in that testimony?

15 A. Yes.

16 MR. HIGGINS: All right. At this time,
17 Commissioner Kemeraït, I'd move the admission of
18 Mr. Cox's prefiled testimony, which also
19 includes four exhibits.

20 COMMISSIONER KEMERAÏT: Mr. Higgins,
21 the direct testimony of Red Bird Witness Cox,
22 filed on August 30, 2023, consisting of 37 pages,
23 and four exhibits --

24 And I believe some of the testimony is

1 confidential; is that correct?

2 MR. HIGGINS: That is correct.

3 COMMISSIONER KEMERAIT: Okay. Shall
4 be -- so the confidential and corrected testimony
5 shall be copied into the record as if given
6 orally from the stand.

7 (Whereupon, the Prefiled Direct Testimony
8 of JOSIAH COX was copied into the record
9 as if given orally from the stand.)

10 (Confidential - filed under seal)

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. W-1146, SUB 13
DOCKET NO. W-1328, SUB 10

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of)
Application by Red Bird Utility Operating)
Company, LLC, 1650 Des Peres Road,)
Suite 303, St. Louis, Missouri 63131, and)
Total Environmental Solutions, Inc., Post)
Office Box 14056, Baton Rouge, Louisiana)
70898, for Authority to Transfer the Lake)
Royale Subdivision Water and Wastewater)
Utility Systems and Public Utility Franchise)
in Franklin and Nash Counties, North Carolina,)
and for Approval of Rates)

**NON-CONFIDENTIAL DIRECT TESTIMONY OF JOSIAH COX
ON BEHALF OF RED BIRD UTILITY OPERATING COMPANY, LLC**

INTRODUCTION

1 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

2 A. My name is Josiah Cox. My business address is 1630 Des Peres Road, Suite 140, St.
3 Louis, Missouri, 63131.

4 **Q. WHAT IS YOUR POSITION WITH RED BIRD UTILITY OPERATING**
5 **COMPANY, LLC (“RED BIRD” OR “COMPANY”)?**

6 A. I am President of Red Bird Utility Operating Company, LLC. I also am President of
7 Central States Water Resources, Inc. (“Central States”) and CSWR, LLC, (“CSWR”), each
8 a Red Bird affiliate. Later in my testimony I describe CSWR's relationship to Red Bird and
9 discuss the role CSWR would play in Red Bird's future operations if the Commission
10 approves the Joint Application for transfer of the water and wastewater systems owned by

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1 Total Environmental Solutions, Inc. ("TESI") to Red Bird. Later in my testimony I also
2 describe Central States' involvement in the proposed acquisition transaction.

3 **Q. PLEASE DESCRIBE YOUR EDUCATIONAL AND PROFESSIONAL**
4 **EXPERIENCE.**

5 A. I received a Bachelor of Science with a major in Environmental Science from the
6 University of Kansas. Professionally, I worked at the Kansas state biological survey, where
7 I performed a wildlife habitat study. I then worked at a civil engineering firm where I was
8 involved in various facets of the land development process, including permitting,
9 entitlement, civil design, project management, and construction management. I focused
10 mainly on the water and wastewater side of the civil engineering business and participated
11 in every part of that business from waste-load allocation studies (now known as the anti-
12 degradation processes), design, permitting, project management, and construction
13 management. I also ran the firm's environmental consulting division and was the second
14 private consultant to submit a water quality impact study in the State of Missouri in 2003.
15 I subsequently joined the engineering firm's executive leadership team and helped run all
16 the firm's operations.

17 Beginning in 2005, I raised money from a group of investors and formed a full-
18 service civil engineering, environmental consulting, general contracting, and construction
19 management firm. I served as the Chief Operating Officer, and finally Chief Executive
20 Officer. I obtained extensive experience with rural communities in every facet of the water
21 and wastewater compliance process, including environmental assessment, permitting,
22 design, construction, operation and community administration of the actual water and
23 wastewater (sewerage) systems. That engineering firm performed stream sampling and
24 built waste-load allocation models to determine receiving water-body protective permit-

1 able effluent pollutant loads. We did full engineering design of multiple whole community
2 wastewater and water infrastructure systems including wells, water distribution, water
3 treatment, water storage, wastewater conveyance, and wastewater treatment plants, and
4 then took those designs through federal and state administered permitting processes in
5 Missouri. That engineering firm also administered the construction of these water and
6 wastewater systems from green field site selection all the way through system startup and
7 final engineering sign-off.

8 During this time, I began the Master of Business Administration (“MBA”) program
9 at Washington University in St. Louis, from which I graduated in 2007. In addition, starting
10 in 2008, I took over the operation of an existing rural sewer district, and I still operate a
11 system managing the functioning, testing, and maintenance of that system. I also act as the
12 administrator for this municipal system where I oversee all the billing, emergency
13 response, accounts payable/accounts receivable, collections, budgeting, customer service,
14 and public town meetings required to service the community.

15 In late 2010, after working on several small, failing water and wastewater systems,
16 I created a business plan to acquire and recapitalize failing systems as investor-owned
17 regulated water and wastewater utility companies. In early 2011, I went to the capital
18 markets to raise money to implement my plan. Over a period of approximately three years,
19 I met with over 52 infrastructure investment groups trying to raise the necessary financing.
20 By February 2014, I achieved my goal, and I used the debt and equity capital I was able to
21 raise to start CSWR.

22 In 2018, I was able to attract an additional large institutional private equity investor,
23 which allowed me to expand the scope of my business plan. This new investor is allowing

1 CSWR to form companies for the purpose of acquiring water and wastewater systems in
2 additional states.

3 Since its formation, CSWR has acquired, and currently is operating through various
4 affiliates, more than 800 water or wastewater systems in Missouri, Kentucky, Louisiana,
5 Texas, Tennessee, Mississippi, Arizona, Florida, South Carolina, and Arkansas, and, up to
6 this point, two in North Carolina. In Missouri, those systems are regulated by the Missouri
7 Public Service Commission; in Kentucky they are regulated by the Kentucky Public
8 Service Commission; in Tennessee they are regulated by the Tennessee Public Utility
9 Commission; in Louisiana they are regulated by the Louisiana Public Service Commission;
10 in Texas they are regulated by the Public Utility Commission of Texas; in Mississippi they
11 are regulated by the Mississippi Public Service Commission; in Arizona they are regulated
12 by the Arizona Corporation Commission; in Florida they are regulated by the Florida
13 Public Utilities Commission; in South Carolina they are regulated by the South Carolina
14 Public Service Commission; and in Arkansas, the systems are outside the Arkansas Public
15 Service Commission's jurisdiction due to the fact each system falls below annual revenue
16 thresholds that trigger regulation in that state.

17 **Q. WHAT IS THE PURPOSE OF YOUR DIRECT TESTIMONY IN THIS CASE?**

18 A. The purpose of my testimony is to support the Joint Application for Transfer of Public
19 Utility Franchise and for Approval of Rates filed in these dockets ("Joint Application"),
20 which seeks Commission authority for Red Bird to acquire all North Carolina utility assets
21 currently used by TESI and to provide water and wastewater utility services to customers
22 in the Lake Royale subdivision located in Franklin and Nash Counties. My testimony
23 describes the proposed transaction and explains why both Red Bird and TESI believe

1 authorizing consummation of the transaction is in the public interest. I also describe Red
2 Bird's relationship to CSWR, the role CSWR would play in Red Bird's operation of the
3 systems at issue in this case, and the benefits Red Bird's relationship with CSWR would
4 bring to customers served by the TESI systems.

5 My testimony also addresses rate base in the utility assets to be acquired and
6 supports approval of an acquisition adjustment for a portion of the acquisition premium
7 Red Bird will pay for TESI's utility assets, based on the condition of the TESI systems,
8 their compliance issues and history.

BACKGROUND INFORMATION REGARDING
RED BIRD AND ITS AFFILIATES

9 **Q. PLEASE PROVIDE SOME BACKGROUND INFORMATION ABOUT RED**
10 **BIRD AND CSWR.**

11 A. Red Bird is a North Carolina limited liability company formed to acquire water and
12 wastewater assets in this state and to operate those assets as a regulated public utility. In
13 Docket No. W-1328, Sub 7, the Commission authorized Red Bird to acquire and operate
14 the four wastewater systems previously owned by the Homeowners Associations,
15 respectively, of Ocean Terrace, Pine Knoll Townes I, II and II, all of which are located in
16 Pine Knoll Shores, North Carolina. In February 2023, the Commission also authorized Red
17 Bird to acquire facilities previously owned by Bear Den Acres Development in Spruce
18 Pine, North Carolina. Most recently, the Commission approved Red Bird's acquisition of
19 the utility assets and franchise of Crosby Utilities, Inc. in Wake County, North Carolina.
20 In addition to the Joint Application in this docket, Red Bird currently has Applications for
21 Transfer of Public Utility Franchise and for Approval of Rates pending before the
22 Commission in nine other dockets, as well as two pending applications for Certificates of

1 Public Convenience and Necessity. As is the case with the TESI systems, many of the
2 systems which Red Bird seeks to acquire in North Carolina are either distressed or troubled
3 systems, or they require the infusion of capital investment that the current owners are either
4 unable or unwilling to provide. If the Commission grants the Joint Application in this
5 docket, Red Bird will acquire, own, and operate the wastewater and water system currently
6 owned by TESI.

7 Red Bird is an affiliate of CSWR, a Missouri limited liability company formed to
8 provide managerial, technical, and financial support to its utility operating affiliates. A
9 corporate organization chart illustrating that relationship was filed with the Commission
10 on August 2, 2022,, in support of the Joint Application.

11 To date, CSWR-affiliated utility operating companies have acquired and are
12 operating water and/or wastewater systems in Missouri, Kentucky, Louisiana, Texas,
13 Tennessee, Mississippi, Arizona, Florida, South Carolina, and Arkansas, as well as the
14 Ocean Terrace/Pine Knoll Townes and Bear Den systems in North Carolina. In addition to
15 Red Bird's other applications pending before the Commission, CSWR affiliates have
16 applications pending in Mississippi, Florida, Louisiana, Tennessee, Arizona, Missouri,
17 South Carolina, Mississippi, California, and Texas seeking authority to acquire more such
18 systems.

19 **Q. WHAT IS CSWR'S BUSINESS PLAN WITH REGARD TO THE**
20 **ACQUISITION AND OPERATION OF SMALL AND TROUBLED, DISTRESSED**
21 **OR UNDERCAPITALIZED WATER AND WASTEWATER SYSTEMS?**

22 A. CSWR's business plan is to pursue the purchase and recapitalization of small water and
23 wastewater systems and to operate those systems as investor-owned regulated utilities.
24 Many of the systems CSWR hopes to acquire are not currently regulated. Of those that are

1 regulated, many, if not most, are out of compliance with utility commission rules and/or
2 with federal and/or state pollution, environmental and/or safety laws and regulations.
3 Indeed, many systems we acquire do not even have the federal or state permits required to
4 lawfully operate. We also have found that many regulated systems we acquire have not
5 increased their rates for a decade or more and, as a result, lack the financial resources
6 necessary to cover normal operating costs and/or to maintain and replace assets used to
7 provide service or bring their operations into compliance with rapidly changing
8 environmental and water quality regulations. Some systems we acquire are in receivership
9 and, therefore, lack the ability to raise capital necessary to improve their systems. Owners
10 of other systems are unable or unwilling to provide capital necessary to maintain their
11 systems. CSWR's business plan has been and continues to be making investments in and
12 taking the risks necessary to bring small water and wastewater systems into compliance
13 with current statutes, rules, and regulations. Through its affiliates, CSWR has been able to
14 acquire distressed, troubled or undercapitalized systems, invest capital necessary to
15 upgrade or repair physical facilities, and operate those systems in a way that satisfies
16 customers, regulators, and investors alike.

17 CSWR's business plan and the expertise its personnel provide to affiliates have
18 convinced regulators in Missouri, Kentucky, Louisiana, Texas, Tennessee, Mississippi,
19 Florida, South Carolina, and Arizona to allow those affiliates to acquire and operate
20 numerous small water and wastewater systems in those states. In more than 100 separate
21 orders – several involving the acquisition of multiple discrete systems – regulators in each
22 of those states have determined our affiliate group has the technical, managerial, and
23 financial qualifications necessary to acquire, own, and operate water and/or wastewater

1 systems. This Commission made the same determination when it authorized Red Bird to
2 acquire and serve several small systems in this state, and we are hopeful we will be
3 authorized to acquire additional systems here in the future. If the Commission authorizes
4 Red Bird to acquire the TESI water and wastewater systems, it will become part of the
5 portfolio of systems the Company seeks to build in North Carolina. We hope the
6 Commission will give Red Bird the same opportunity it did in the Ocean Terrace/Pine
7 Knoll Townes, Bear Den, and Crosby Utilities dockets so we can continue our efforts to
8 replicate in North Carolina the record of success our affiliate group has achieved elsewhere.

9 **Q. PLEASE DESCRIBE RED BIRD AFFILIATES' EXPERIENCE WITH WATER**
10 **AND WASTEWATER SYSTEMS.**

11 A. Red Bird is part of an affiliate group that currently owns and operates wastewater
12 systems serving approximately 219,000 customers and drinking water systems serving
13 approximately 145,000 customers in Missouri, Arkansas, Kentucky, Louisiana, Texas,
14 Tennessee, Mississippi, Florida, South Carolina, North Carolina, and Arizona. By virtue
15 of that affiliation Red Bird has the financial, technical, and managerial ability to acquire,
16 own, and operate the TESI water and wastewater systems in a manner that fully complies
17 with applicable health, safety, environmental protection, and regulatory laws and
18 regulations, and to provide reliable, safe, and adequate service to customers.

19 On the wastewater side of the business, the CSWR affiliate group has purchased
20 wastewater treatment plants with associated pressure systems and sewer pumping stations,
21 gravity force mains, and gravity conveyance lines. With the approval of state wastewater
22 regulatory authorities, since March 2015 CSWR-affiliated companies have designed,
23 permitted, and completed construction of numerous sanitary sewer system improvements.
24 These improvements include wastewater line repairs to eliminate infiltration and inflow,

1 building numerous sewer main extensions, building and/or repairing hundreds of lift
2 stations, the closure of a number of existing regulatory impaired wastewater systems,
3 building new or refurbishing over 150 activated sludge plants, constructing dozens of
4 moving bed bio-reactor plants, converting multiple failing wastewater systems into sludge
5 storage/flow equalization and treatment basins, converting failed mechanical systems to I-
6 Fast systems, and constructing various other wastewater treatment supporting
7 improvements.

8 On the water side of the business, since March 2015 the CSWR affiliate group has
9 designed, permitted, and completed construction – with the approval of state regulatory
10 authorities – upgrades and improvements to numerous drinking water systems. Those
11 upgrades and improvements include construction of a large number of ground water
12 storage tanks and drinking water pressurization pump assemblies, drilling water wells,
13 erecting or rehabilitating well houses, closing failed wells, blasting/coating water storage
14 tanks, replacing meter pits with new meters, replacing or repairing numerous water
15 distribution lines, installing numerous isolation valve systems, installing a large number of
16 flush hydrants, repairing hundreds of leaking lines, and constructing or rehabilitating
17 various other improvements to existing drinking water systems.

18 The CSWR-affiliated group of companies is likely the most qualified utility in the
19 United States to service TESI's North Carolina customers based on the number of systems
20 we own, the number of systems we have purchased and brought into (and kept in)
21 environmental compliance, and our personnel having the most relevant experience running
22 small water and wastewater utilities. Our affiliate group currently owns and operates more
23 than 800 water and wastewater plants within our eleven-state operational footprint. On a

1 daily basis we deliver, on average, more than 14.6 million gallons of water to our more
2 than 58,000 water connections and treat almost 20 million gallons of wastewater from our
3 more than 58,000 water connections. In Louisiana, alone, our affiliate has removed 59
4 systems from Agreements on Consent with the Louisiana Department of Environmental
5 Quality – the fastest timeframe ever for a large group of systems – and we are 100%
6 compliant with environmental compliance agreements entered into with state regulators.
7 These agreements are necessary because of the extremely distressed nature of many
8 systems our group acquires, and our record of compliance with and removal from these
9 agreements is testament to our ability to own and operate such systems in a manner that
10 complies with applicable laws and provides safe and reliable service to customers.

11 **Q. DOES CSWR HAVE PERSONNEL QUALIFIED TO PERFORM THE**
12 **SERVICES YOU IDENTIFIED IN YOUR PRECEDING ANSWER?**

13 A. Yes, it does, as evidenced by the fact CSWR already is providing those and other similar
14 services for water and wastewater systems in Missouri, Arkansas, Kentucky, Louisiana,
15 Texas, Tennessee, Mississippi, Florida, South Carolina, and Arizona as well as for the
16 Ocean Terrace/Pine Knoll Townes and Bear Den systems in North Carolina. I already
17 described my background and experience in the water and wastewater utility industry. The
18 other key members of CSWR's senior team who are involved in Red Bird's operations are
19 equally well-qualified to meet the demands and needs of Red Bird and its customers and
20 of this Commission and other regulators charged with overseeing Red Bird's operations.
21 The members of CSWR's senior team were identified in Attachment D to the Joint
22 Application. Because some of those individuals and their respective responsibilities have
23 changed since the Joint Application was filed in June 2021, I have provided an update to
24 that attachment as **Cox Direct Exhibit 1**.

1 CSWR will provide Red Bird the same level of experience and expertise CSWR
2 currently provides to its affiliated systems located both within and outside North Carolina.
3 The types and quality of services CSWR provides Red Bird are not usually available to
4 small systems such as the TESI systems involved here. CSWR's business model was
5 developed to provide support, expertise, and experience to affiliates and to do so while
6 achieving economies of scale attributable to CSWR's centralized management structure.
7 Not only would CSWR and Red Bird provide current TESI customers with expertise not
8 generally available to small water and sewer systems, but it can realize economies of scale
9 that would not be possible if Red Bird had to acquire or provide such expertise and support
10 on a company or system-specific basis.

11 **Q. PLEASE DESCRIBE THE ECONOMIES OF SCALE YOU JUST MENTIONED**
12 **AND HOW THOSE WOULD BENEFIT TESI'S CUSTOMERS.**

13 A. CSWR's size and its consolidation of many small systems under one financing and
14 managerial entity will result in cost efficiencies in the operation of TESI's water and
15 wastewater systems, particularly in the areas of:

- 16 • Commission and environmental regulatory reporting;
- 17 • Managerial and operational oversight;
- 18 • Utility asset planning;
- 19 • Engineering planning;
- 20 • Ongoing utility maintenance;
- 21 • Utility record keeping;
- 22 • Customer service responsiveness; and

- 1 • Access to capital necessary to repair and upgrade the TESI systems as necessary to
2 ensure compliance with all health and environmental requirements and ensure
3 service to customers remains safe and reliable.

4 CSWR/Red Bird believes that TESI's customers would benefit from economies of scale
5 and other advantages available through CSWR. While these economies would not
6 necessarily reflect cost savings compared to TESI's current operations expenses, the
7 advantages of this acquisition are reflected in CSWR's resources pertaining to customer
8 service, an advanced computerized maintenance management system, and personnel with
9 years of experience across over 800 plants in eleven states, making CSWR the largest
10 operator of small water and sewer systems in the United States. After owning and operating
11 the TESI systems for an initial period, Red Bird will be able to accurately assess needs and
12 costs to more accurately identify the actual operating needs and characteristics of those
13 systems, and address those needs.

14 **Q. HAVE THE CSWR AFFILIATED COMPANIES TAKEN STEPS TO IMPROVE**
15 **SERVICES AT THE SYSTEMS THEY NOW OPERATE?**

16 A. Yes. In addition to the capital improvements made on systems our affiliate group has
17 acquired, we have built from scratch and implemented customer service systems that meet
18 or exceed regulatory commission rules and provide numerous benefits to customers.

19 If the Joint Application is approved, Red Bird would implement operational
20 changes to improve and enhance service to TESI's current customers. For example, those
21 customers would have access to a 24-hour phone line to report any utility service issues.
22 Those calls initially would be answered by emergency service personnel who are required
23 to respond to emergency service calls within prescribed time limits. Those calls would then
24 be transferred into the computerized maintenance management system and converted into

work orders, which create a historical record of all reported service issues. The work order also will ensure contracted customer service personnel can commence work required to deal quickly and efficiently with any customer service issues. In addition, Red Bird would ensure customers have access to customer service representatives during normal business hours to discuss any customer concerns and would establish a utility-specific webpage and dedicated email address to keep customers informed about their utility service. These types of customer service and operational resources generally are typically not available to customers served by small utilities like TESI.

Information available on Red Bird's website, which is updated regularly, would include dissemination of state-mandated information, up-to-date website bulletins about service issues, and procedures for service initiation or discontinuance. Mirroring relevant utility homepage information, Red Bird would provide a dedicated social media page to offer another avenue of communication with customers about utility matters. The social media account is manned by customer service representatives that can answer customer questions. These resources also would provide customers with bulletins on current service status and educational information relevant to their utility service. Finally, Red Bird's platforms offer online bill paying options to customers, including e-checks, debit card, and credit cards.

Because of the resources I just described, Red Bird believes the overall quality of customer service will improve if Red Bird is authorized to acquire TESI's utility assets.

Q. WHAT OTHER OPERATIONAL BENEFITS WOULD RED BIRD BRING TO THE TESI SYSTEMS AND CUSTOMERS?

A. CSWR uses the Computerized Maintenance Management System ("CMMS") program called Utility Cloud to facilitate field work, inspections, maintenance schedules, and

1 reporting for all facilities. This allows CSWR to manage data, work, and compliance across
2 plant and distributed field assets. We have implemented Utility Cloud in other jurisdictions
3 to assist in avoiding compliance and equipment failures with real-time data monitoring
4 across people, machines, and sensors throughout all our service areas.

5 The main benefit Utility Cloud offers is that the system is a highly configurable,
6 easy-to-use asset management tool that helps all parties distribute work, report on
7 maintenance, and streamline compliance reports. With the system being highly
8 configurable, Red Bird can build out systems efficiently and begin tracking maintenance
9 and improvements on day one of ownership. Most operators of this system require only a
10 short training session to be able to navigate, create and assign work, and complete Work
11 Orders. The ability to get Red Bird's contract operators trained on this system so quickly
12 speaks volumes as to how easy the system is to operate.

13 Features of Utility Cloud that CSWR would implement, and that have been
14 beneficial to the operations of its utility affiliates and have streamlined time-consuming
15 processes, include:

- 16 • Automating the completion and submission of compliance reports using the exact
17 field data crews collect;
- 18 • Using custom accounts, security roles, and user rights to maintain the separation
19 between projects and managing multiple contractors while storing all CSWR's data
20 in one database;
- 21 • Managing and tracking maintenance history on all assets to assist in identifying
22 potential capital improvement projects;
- 23 • Creating custom alerts to trigger as issues arise;

- 1 • Leveraging digital standard operating procedures, manuals, and layouts helping to
- 2 standardize complex work and meet regulatory and OSHA requirements;
- 3 • Creating powerful workflows and reports for our compliance objectives;
- 4 • Integrating with the survey database to create a useable asset for field work
- 5 tracking; and
- 6 • Using real-time data and leveraging analytical tools to trend plant performance.

7 Utility Cloud is critical to the operation and maintenance of our utility facilities.
8 The ability to create custom workflows gives us the ability to collect asset and task-specific
9 data quickly and efficiently. Using this system allows CSWR's utility affiliates to quickly
10 implement new processes that apply to all our sites across the country with the click of a
11 button. This is the type of configuration scalability that CSWR requires, and Utility Cloud
12 delivers on behalf of our utility affiliates and their customers.

13 **Q. WHAT EVIDENCE CAN YOU PROVIDE TO SUPPORT YOUR CLAIMS**
14 **ABOUT THE ABILITY OF RED BIRD'S AFFILIATES TO PROVIDE THESE**
15 **SERVICES OUTSIDE NORTH CAROLINA?**

16 A. In Missouri, where CSWR-affiliated companies have operated since 2014, the Missouri
17 Public Service Commission and the Missouri Department of Natural Resources ("MDNR")
18 have recognized the solid track records of CSWR and its affiliates for acquiring,
19 rehabilitating, maintaining, and operating troubled water and wastewater systems in that
20 state. In its Order approving one of our acquisitions, the Missouri Commission noted
21 CSWR's Missouri affiliate's "sound track record in rehabilitating similarly situated [i.e.
22 troubled] systems" and its "ability to acquire, maintain, and operate the systems . . . to

1 ensure safe and adequate service.”¹ And in a letter from MDNR in June 2023, Red Bird’s
2 Missouri affiliate was praised for its

3 willingness to acquire systems with long-standing compliance issues [that]
4 has proven to be beneficial to human health and the environment by
5 bringing many of these systems into compliance with environmental laws.
6 The Department looks forward to continuing to work with [the Missouri
7 affiliate] as it continues to acquire wastewater and public water systems in
8 Missouri, in furtherance of the Department’s initiative to encourage
9 regionalization and consolidation of the many private systems in Missouri
10 that are struggling to achieve compliance with laws for the protection of
11 public health and the environment.

12 A copy of the MDNR’s letter is attached to this testimony as **Cox Direct Exhibit 2**.

13 Similar sentiments were expressed by the Mississippi State Department of Health
14 in a March 14, 2023, letter to Mississippi Public Service Commissioner Brent Bailey. In
15 that letter, the Department of Health stated:

16 As you may be aware, Great River Utility Company [Red Bird’s Mississippi
17 affiliate] has recently acquired several drinking water systems across the
18 state. Great River Utility has worked closely with the [Bureau of Public
19 Water Supply’s] compliance and field staff to maintain compliance with the
20 various rules and regulations of the Safe Drinking Water Act. A viable entity
21 such as Great River Utility desiring to help problematic drinking water
22 systems by investing in them for improved services to citizens is very
23 appreciated and supported by the Bureau.

24 A copy of that letter is attached to my testimony as **Cox Direct Exhibit 3**.

25 As further evidence of our affiliates’ capabilities, regulators in Missouri, Texas,
26 Mississippi, Arizona, Louisiana, and California have asked CSWR and its utility affiliates
27 to assume emergency operational responsibilities for distressed water and wastewater
28 systems in those states. For example, in Texas CSWR-Texas acts as an emergency
29 manager trusted by the Texas Commission to take over some of the state’s most troubled

¹ *Order Approving Stipulation and Agreement and Granting Certificates of Convenience and Necessity*, Missouri Public Service Commission File No. WM-2018-0116 (February 4, 2019), at p. 6.

1 utilities. In Louisiana CSWR was named as the first emergency manager for a water system
2 by the Louisiana Department of Health, in addition to taking more than a hundred systems
3 over pursuant to a Louisiana Department of Environmental Quality agreed order addressing
4 ongoing serious environmental compliance issues. In Arkansas and Kentucky CSWR has
5 been specifically requested to take over several distressed utilities by those states'
6 respective environmental regulators. In December 2021, the Arizona Corporation
7 Commission authorized a CSWR affiliate to acquire distressed utilities and approved
8 incentives (including the opportunity to recover all or a significant portion of the difference
9 between purchase price and net book value of acquired assets) for those acquisitions.

10 **Q. DO RED BIRD AND CSWR HAVE THE FINANCIAL CAPACITY TO**
11 **ACQUIRE, OWN, AND OPERATE THE TESI SYSTEMS?**

12 A. Yes, Red Bird and CSWR have the financial capacity to finance, own, and operate the
13 systems we propose to acquire from TESI. The affiliate group of which Red Bird is a
14 member has been able to secure an ongoing commitment from a Wall Street private equity
15 firm to provide capital necessary to purchase small, oftentimes distressed, water and
16 wastewater systems and then make investments necessary to bring those systems into
17 compliance with applicable health, safety, and environmental protection laws and
18 regulations. This investment commitment also includes providing working capital
19 necessary to operate the acquired systems until applications for compensatory rates can be
20 prepared and prosecuted. To date, CSWR, through its affiliates, has invested more than
21 \$416 million to purchase, upgrade, and operate water and wastewater systems. Although
22 those investments have been exclusively in the form of equity, at the appropriate time Red
23 Bird plans to pursue debt financing from non-affiliated commercial sources that would

1 allow the Company to balance its capital structure. Ultimately, Red Bird's objective is a
2 capital structure consisting of 50%-60% equity and 40%-50% debt.

3 **Q. IF THE AUTHORIZATION REQUESTED IN THE JOINT APPLICATION IS**
4 **GRANTED, WOULD RED BIRD HIRE CURRENT EMPLOYEES TO PROVIDE**
5 **SERVICE IN THE AREAS SERVED BY TESI?**

6 A. No, Red Bird does not plan to hire any current employees TESI may have to perform
7 any services after closing.

8 **Q. AFTER CLOSING, HOW DOES RED BIRD PROPOSE TO PROVIDE**
9 **SERVICE TO CUSTOMERS OF THOSE SYSTEMS?**

10 A. If the Joint Application is approved, Red Bird intends to hire a local, non-affiliated
11 third-party Operations and Maintenance ("O&M") firm that has knowledgeable and
12 experienced personnel, carries required state licenses, and has the insurance coverage
13 necessary to manage daily operations of the TESI systems. These contracts are
14 competitively bid to ensure that the O&M services Red Bird requires are obtained at a
15 reasonable price. This is what Red Bird has done for the Ocean Terrace/Pine Knoll Townes
16 and Bear Den systems. It also is the approach that Red Bird's affiliated utility operating
17 companies have successfully employed in every other state where CSWR affiliates operate
18 water and/or wastewater systems.

19 In addition to its service obligations during normal business hours, the O&M firm
20 would be required to have a 24-hour emergency service line to deal with customers
21 experiencing service disruptions. However, notice of all service disruption calls would be
22 forwarded to me, as CSWR's manager and the executive ultimately responsible for service
23 in the areas served by each of CSWR's utility affiliates. CSWR uses the Utility Cloud
24 centralized computerized maintenance management system to monitor the performance of
25 our drinking water and wastewater systems, which also allows us to track ongoing

1 maintenance and testing work performed by the O&M contractors we employ at each of
2 our facilities. In addition, CSWR uses geographic information system (“GIS”) survey
3 information to accurately map all infrastructure assets, which allows the company to
4 specifically target ongoing infrastructure re-investment as part of the overall managerial
5 and technical support CSWR provides each of its utility operating affiliates.

6 Red Bird also would use a non-affiliated third-party customer service firm to handle
7 service-related billing questions. Customer service representatives employed by that third-
8 party firm would be available during normal business hours, would take messages twenty-
9 four hours a day, and all customer correspondence would be recorded and logged to
10 consumers' accounts to ensure the highest level of service. This arrangement currently is
11 in place for all CSWR-affiliated utilities, including Red Bird’s current operations in North
12 Carolina.

13 While day-to-day operational and customer service functions would be provided by
14 non-employee contractors, all management, financial reporting, underground utility safety
15 and location services, Commission regulatory reporting, environmental regulatory
16 reporting and management, operations oversight, utility asset planning, engineering
17 planning, ongoing utility maintenance planning, utility record keeping, billing, and final
18 customer dispute management would be performed by personnel at CSWR's St. Louis
19 office, with a proportional share of the cost for those services passed down to Red Bird.
20 CSWR personnel would also monitor the activities of the non-employee contractors to
21 make sure the systems are being operated and maintained properly and customers’ needs
22 are being met. As I previously mentioned, the resumes of senior CSWR personnel who, in

1 addition to me, would be responsible for providing services and/or oversight to Red Bird's
2 operation, are attached to my testimony as **Cox Direct Exhibit 1**.

DESCRIPTION OF THE PROPOSED TRANSACTION

3 **Q. PLEASE DESCRIBE THE SYSTEMS RED BIRD PROPOSES TO ACQUIRE**
4 **FROM TESI.**

5 A. Red Bird proposes to acquire the water and wastewater systems owned by TESI that
6 serve the Lake Royale subdivision in Franklin and Nash Counties. The TESI systems
7 currently serve approximately 2,276 water customers and 2 commercial sewer customers.

8 Terms of the proposed asset purchase are governed by the *Agreement for the Sale*
9 *of Utility System* ("Agreement"), between TESI and Central States. A copy of that
10 Agreement was filed as Confidential Attachment F to the Joint Application. Central States
11 entered into the Agreement with TESI on February 4, 2021.

12 No closing date for the transaction has been set, but the Agreement identifies
13 various conditions precedent, including obtaining all required regulatory approvals, which
14 must be satisfied before the transaction can close. Section 18 of the Agreement also
15 authorizes Central States to assign all its rights to the acquired assets to an affiliated entity.
16 In accordance with that provision, Central States assigned its rights under the Agreement
17 to Red Bird. A copy of the document assigning Central States' contract with TESI to Red
18 Bird was filed as Attachment F2 to the Joint Application.

19 **Q. PLEASE DESCRIBE THE CONTRACT TO PURCHASE TESI'S UTILITY**
20 **ASSETS.**

21 A. Central States contracted to purchase all utility assets of TESI for [BEGIN
22 CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]. As noted earlier, Central States
23 later assigned that contract to Red Bird.

1 **Q. PLEASE DESCRIBE THE TESI SYSTEMS?**

2 A. As is our normal practice, following execution of the asset purchase agreement and as
3 part of our due diligence efforts we engage a third-party engineering firm to perform a
4 preliminary survey and analysis of the water and/or wastewater system we propose to
5 acquire. Red Bird engaged McGill Associates, an engineering firm headquartered in
6 Asheville, North Carolina, to inspect and assess the TESI systems.

7 McGill's Report, which was prepared in 2021, reflects that TESI's water service
8 area consists of the developed parcels in the Lake Royale subdivision. The water system
9 consists of one 200,000-gallon elevated water storage tank, 1,951 5/8-inch water meters and
10 a network of 70 miles of 2 to 10-inch PVC water mains, flushing hydrants, and valves
11 (according to the Local Water Supply Plan). The tank is filled through an interconnection
12 with Franklin County, via a booster pump station owned and operated by Franklin County

13 McGill's Report also reflects that TESI's sewer service area includes the developed
14 parcels in the Lake Royal Subdivision. The wastewater collection service area includes a
15 "comfort station" and the clubhouse, which each feed into separate lift stations in the
16 neighborhood. The wastewater system consists of these two lift stations with 3-inch, 4-inch
17 and 6-inch PVC force mains. The wastewater treatment facility is an 80,000 gpd plant with
18 aerators, clarifiers, chlorination and de-chlorination, return sludge, and sand drying beds.

19 **Q. ARE THERE FACTS RELATED TO THE TRANSACTION AT ISSUE IN**
20 **THIS CASE THE COMMISSION SHOULD KNOW AND CONSIDER IN**
21 **DETERMINING WHETHER RED BIRD'S ACQUISITION OF TESI'S NORTH**
22 **CAROLINA ASSETS IS IN THE PUBLIC INTEREST?**

23 A. Yes, there are. The Company's proposal to acquire TESI's North Carolina assets is
24 part of a larger transaction that also involved TESI's water and wastewater systems in
25 South Carolina and Louisiana. In terms of size, the Louisiana acquisition is by far the

1 largest with more than 18,000 total connections (water and wastewater) in Louisiana versus
2 approximately 2,280 in North Carolina and approximately 1,200 in South Carolina.

3 On April 6, 2022, the Louisiana Public Service Commission approved the
4 application of CSWR-SC's Louisiana affiliate – Magnolia Water Utility Operating
5 Company, LLC (“Magnolia”) – to acquire TESI's water and wastewater assets in that state.
6 Before it could close that transaction Magnolia was required to assume obligations imposed
7 on TESI by a federal court consent decree in effect since 2009. After extensive negotiations
8 among Magnolia, the United States Environmental Protection Agency (“EPA”), the United
9 States Justice Department, and the Louisiana Department of Environmental Quality
10 (“LDEQ”), the parties agreed to terms of a modified consent decree, which was noticed for
11 public comment in the Federal Register and in Louisiana. Magnolia was able to satisfy all
12 those entities and its acquisition of TESI's Louisiana assets closed in November 2022.

13 **Q. CAN YOU PROVIDE THE COMMISSION SOME BACKGROUND**
14 **INFORMATION REGARDING THE REASONS TESI'S LOUISIANA**
15 **OPERATIONS WERE SUBJECT TO A FEDERAL CONSENT DECREE?**

16 A. As stated in documents filed in the EPA's federal court case against TESI, the
17 original consent decree compelled TESI to implement the *Comprehensive Diagnostic*
18 *Evaluation Plan and Schedule for Sewage Treatment Plants Subject to the Consent Decree*
19 *with respect to TESI* (CDE Plan), which was originally entered in 2000. In its 2000 order,
20 the court found “[s]wift action is required to address the ongoing failure of the STPs
21 [sewage treatment plants] to comply with the applicable LPDES permits . . . The purpose
22 of this Order is to require the Parties to take action to address the ongoing failure of the
23 STPs to consistently comply with LPDES permits . . .”

1 In summary, because for years preceding the court's initial order TESI's Louisiana
2 affiliate failed to comply with permit limitations and other environmental regulations
3 applicable to its wastewater treatment facilities, the EPA and the LDEQ were forced to
4 take legal action to compel compliance.

5 **Q. WHAT IS THE SIGNIFICANCE OF ALL THE FACTS YOU JUST**
6 **RELATED REGARDING THE ACQUISITION OF TESI'S NORTH CAROLINA**
7 **ASSETS?**

8 A. By agreeing to sell all its water and wastewater assets in the three states where it
9 operated, TESI has clearly signaled it no longer wants to provide those utility services. The
10 consent decree and related court orders in Louisiana clearly show that for more than 20
11 years TESI has amassed a record of environmental non-compliance. EPA records also
12 show TESI not being able and/or willing to invest the capital necessary to bring its utilities
13 into compliance. But the lack of capital investment is only one part of the current TESI
14 company picture. In Louisiana, TESI was also unable for years to maintain the EPA's
15 mandated minimum number of licensed wastewater operators. In addition to being unable
16 to attract and maintain federally mandated staffing levels, TESI has also been unable to
17 keep up to date with reporting requirements mandated by the federal consent decree,
18 including missing mandated report submission dates, report milestones, and report
19 specifics.

20 Because regulators in both Louisiana and South Carolina already have approved
21 the sale of TESI's water and sewer assets in those states and those transactions already
22 have closed, TESI no longer has the ability to attract and retain managerial and operational
23 employees necessary to operate, on a stand-alone basis, water and wastewater systems in
24 North Carolina serving approximately 2,300 customers. And even if TESI could hire or

1 retain such talent, could it also raise capital necessary to repair, improve, and upgrade its
2 facilities to ensure they provide safe and reliable service and comply with applicable law
3 when they were unable to do that for decades for a much larger, and therefore more
4 economically attractive, group of almost 18,000 connections in Louisiana? The obvious
5 answer is “no,” so approving the transaction at issue in this case is the only way the
6 Commission can ensure that customers currently served by TESI in North Carolina will in
7 the future safe receive and reliable service that complies with all environmental and health
8 regulations.

9 In contrast to TESI, Red Bird has ready access to capital and is willing and able to
10 make investments required to repair, upgrade, improve, and maintain the water and
11 wastewater infrastructure necessary to provide customers the safe and reliable service they
12 expect and deserve.

13 **Q. WHAT IS THE RATE BASE IN THE UTILITY ASSETS TO BE ACQUIRED**
14 **FROM TESI?**

15 A. Based on our audit team’s review of TESI’s supporting documentation as well as the
16 Company’s understanding of Public Staff’s valuation, we believe the rate base value of
17 assets to be acquired from TESI is \$271,502.

18 **Q. WHAT REMEDIAL WORK ON THE TESI SYSTEMS DID MCGILL**
19 **RECOMMEND?**

20 A. McGill’s Report identified deficiencies and needs in the TESI systems. For example,
21 McGill’s 2021 inspection revealed that TESI’s lift stations do not meet the state minimum
22 design criteria outlined in 15A NCAC 02T .0305, which requires that sewer pump stations
23 with greater than 600 gallons per day of flow be equipped with duplex pumps.

1 Additionally, McGill determined that the water tank is in poor condition and various
2 abnormalities were identified.

3 In order to address operational and/or compliance issues in TESI's water and
4 wastewater treatment systems, McGill's recommendation for work to be done initially on
5 these systems was as follows:

- 6 (a) For the water system:
7 Rehabilitation of the elevated tank for continued use as part of the distribution
8 system (short term)
9 Removal of elevated tank from service (long term)
10 If Franklin County has capacity, installation of booster pumps to maintain
11 pressure
12 If Franklin does not have capacity, construction of a ground storage tank
13 that meets state storage requirements
- 14 (b) For the wastewater system:
15 For Lift Station No. 1
16 Replace existing simplex pump with duplex pumps
17 Provide connection for portable power source
18 Provide telemetry system for remote monitoring
19 Rehabilitate wet well
20 Exercise Air Release Valves and replace as needed
- 21 For Lift Station No. 9
22 Demolish and replace existing wetwell, pump, piping, and valves
23 Demolish existing holding tank and reroute sewer lines to new wetwell as
24 needed
- 25 For the treatment plant
26 Rehabilitate two aeration chambers. Replace piping and diffusers to aeration
27 chambers.
28 Rehabilitate two settling tanks.
29 Rehabilitate digester and replace piping and diffusers.
30 Replace sand media in tertiary filters.
31 Replace and reroute plant piping to remove from service chambers not being
32 rehabilitated.
33 Replace both blowers with 100 CFM blowers and motors.
34 Provide new permanent backup generator with automatic transfer switch.

Q. AFTER CLOSING, WHAT INVESTMENTS DOES RED BIRD PLAN TO MAKE TO ADDRESS ISSUES IN THE TESI SYSTEMS?

A. Based on McGill's survey, in order to address problems and compliance issues with these systems Red Bird currently estimates capital investment of at least \$692,900 will be required. This total consists of: (i) approximately \$457,900 for the work on the wastewater system listed in my prior answer; and (ii) approximately \$235,000 for the work on the water production system listed in my prior answer. McGill's reports and the associated estimates of capital requirements were Confidential Attachment H to the Joint Application.

As stated in McGill's engineering report, its survey of the TESI systems was based on data provided by the seller, information available from public records, and information gathered during a field survey of visible, above-ground assets. McGill's field survey did not include detailed investigation of system components, any system testing procedures, or an inspection or assessment of pipelines, valves, or other below-ground facilities. For those reasons the survey and capital estimates are preliminary.

Regarding the information just discussed, I want to emphasize – and the Commission should keep clearly in mind – all capital estimates prepared thus far are still preliminary. If our affiliate group's ownership and operation of more than 800 water and wastewater systems in ten other states has taught us anything, it's that we can never be sure exactly what capital investment will be required for repairs and upgrades until we have a chance to operate the systems we acquire. Only then can we truly determine the nature and full extent of the problems those systems face and the most cost-effective ways to address and remedy those problems. I'm certain we will find that true for TESI as well. Whatever problems ultimately are determined to exist and require remediation – problems that equally confront the current owner selling the TESI system as well as Red Bird or any other

1 party seeking to acquire the TESI systems – Red Bird will fix those problems in the most
2 cost-effective way possible. Our track record outside North Carolina is clear – CSWR does
3 not invest capital it's not required to invest, and it doesn't "gold plate" the systems it owns
4 and operates. We invest the capital needed to provide safe, reliable, and environmentally
5 compliant water and wastewater service. That's the same attitude and track record we will
6 bring to the TESI systems as well.

7 **Q. WHAT IS THE COMPLIANCE HISTORY OF THE TESI SYSTEMS?**

8 A. McGill's report noted that the TESI "WWTP has received a number of Notices of
9 Violation ("NOVs") for either failure to meet effluent limits or failure to monitor effluent
10 parameters at the frequency specified in the NPDES permit." Per McGill's Report, four
11 NOVs were issued to TESI by NCDEQ between February 8, 2017, and October 19, 2019.
12 Additionally, according to the EPA's ECHO database, the system is currently out of
13 compliance and has been out of compliance for the last 12 quarters. The system has had 13
14 informal and 5 formal enforcement actions against it in the last five years. The ECHO
15 database also indicates that the facility exceeded its BOD limits in Q3 2021 and Q1 2023.

16 **Q. DOES RED BIRD REQUEST APPROVAL OF AN ACQUISITION**
17 **ADJUSTMENT IN CONNECTION WITH ITS PROPOSED ACQUISITION OF**
18 **THE TESI SYSTEMS?**

19 A. Yes. Under the Agreement with TESI, CSWR agreed to pay [BEGIN
20 CONFIDENTIAL] 307,363

21 [REDACTED]
22 [REDACTED] [END CONFIDENTIAL] Given the
23 historic and apparently continuing compliance issues with the TESI systems and the
24 benefits accruing to the TESI customers from Red Bird's anticipated estimated investment

1 of at least \$692,900 in the TESI systems, we believe that it is in the best interest of the
2 TESI customers that the Commission approve the transfer of these systems to Red Bird
3 and approve an acquisition adjustment for a reasonable portion of the amount of the
4 purchase price above net book value of the acquired assets.

5 **Q. WHAT IS YOUR UNDERSTANDING OF THE STANDARD FOR APPROVAL**
6 **OF AN ACQUISITION ADJUSTMENT RELATING TO THE TESI SYSTEMS?**

7 A. I understand from our counsel that the standard set by the Commission in *In the Matter*
8 *of Utilities, Inc.*, Order Approving Transfer And Denying Acquisition Adjustment, Docket
9 W-1000, Sub 5 (January 6, 2000) (“UI Order”), is that approval of an acquisition
10 adjustment case requires the party seeking rate base treatment for an acquisition adjustment
11 to establish that the agreed upon purchase price is prudent and that the benefits of including
12 the acquisition adjustment in rate base outweigh any resulting burden to ratepayers.

13 I further understand that the Order in that docket recognized that “a wide range of factors
14 have been considered relevant in attempting to resolve this question, including the
15 prudence of the purchase price paid by the acquiring utility; the extent to which the size of
16 the acquisition adjustment resulted from an arm’s length transaction; the extent to which
17 the selling utility is financially or operationally ‘troubled;’ the extent to which the purchase
18 will facilitate system improvements; the size of the acquisition adjustment; the impact of
19 including the acquisition adjustment in rate base on the rates paid by customers of the
20 acquired and acquiring utilities; the desirability of transferring small systems to
21 professional operators; and a wide range of other factors, none of which have been deemed
22 universally dispositive.” (UI Order p. 27).

23 Distilled to its essence, I understand that this Commission’s standard is that to
24 secure rate base treatment of an acquisition adjustment the purchasing utility must establish

1 “that the price to be paid for the acquired utility is prudent and that both the existing
2 customers of the acquiring utility and the customers of the acquired utility would be better
3 off [or at least no worse off] with the proposed transfer, including rate base treatment of
4 any acquisition adjustment, than would otherwise be the case. (UI Order p. 27).

5 **Q. DOES THE ACQUISITION ADJUSTMENT YOU PROPOSE HERE SATISFY**
6 **THAT STANDARD?**

7 A. Yes. The price to be paid for the TESI systems was negotiated at arm’s length
8 between totally unrelated parties. TESI would not sell its systems to us for any less. The
9 purchase price we agreed to pay is prudent.

10 We also do not seek an acquisition adjustment for the entire purchase price, but
11 rather only for a reasonable portion of the amount of the purchase price that exceeds TESI’s
12 rate base in the assets to be acquired – which is an acquisition premium in the amount of
13 **[BEGIN CONFIDENTIAL]** [REDACTED] **[END CONFIDENTIAL]**.

14 TESI’s customers will be better off if this transaction closes with approval of an
15 acquisition adjustment, because Red Bird is able to invest the capital necessary to address
16 the near term and long term needs in the TESI systems. Those customers will also get the
17 benefit of ownership and operation of these systems by an adequately capitalized and
18 professionally run utility.

19 **Q. IF THE COMMISSION APPROVES THE JOINT APPLICATION, IS RED**
20 **BIRD WILLING AND ABLE TO MAKE ANY IMPROVEMENTS NECESSARY**
21 **TO BRING TESI’S SYSTEMS UP TO STANDARD AND INTO COMPLIANCE**
22 **WITH APPLICABLE REGULATIONS?**

23 A. Yes. If the Commission grants Red Bird the approval sought in the Joint Application,
24 Red Bird and CSWR are willing and able to invest capital necessary to bring the TESI
25 systems up to standard and into compliance with applicable regulatory and legal

1 requirements. As I described previously, the affiliate group of which Red Bird and CSWR
2 are part has access to the capital necessary to address needs and deficiencies in the TESI
3 systems and to operate those systems in a manner that is in the public interest and complies
4 with applicable statutes, rules, and regulations.

5 **Q. WHAT RATES, RULES, AND REGULATIONS WOULD BE IN EFFECT FOR**
6 **THE TESI SYSTEMS THAT ARE THE SUBJECT OF THIS DOCKET?**

7 A. Initially, Red Bird proposes to adopt the tariffs, rules, and rates currently in effect for
8 the TESI systems. However, if the rates for those systems prove to be inadequate to cover
9 reasonable and prudent operating costs and provide the opportunity to earn a fair rate of
10 return on our investment in the systems - as will likely be the case given that TESI's last
11 petition for a tariff revision for pass through of rates was filed in 2010, and given that
12 additional capital investment will be needed to address system needs – then Red Bird will
13 petition the Commission to increase rates. Red Bird may also seek authority to eventually
14 consolidate rates of the systems that are the subject of these dockets with those of other
15 water and wastewater systems it hopes to acquire and operate in North Carolina.

16 **Q. WHAT IS YOUR UNDERSTANDING REGARDING DETERMINATIONS**
17 **THE COMMISSION TYPICALLY MAKES IN A TRANSFER DOCKET LIKE**
18 **THIS, BEYOND THE ISSUE OF WHETHER RED BIRD HAS THE FINANCIAL,**
19 **TECHNICAL, AND MANAGERIAL ABILITY NECESSARY TO BE ALLOWED**
20 **TO ACQUIRE, OWN AND OPERATE THE TESI SYSTEMS?**

21 A. I was surprised to learn that the practice here, when the purchasing utility will adopt
22 the purchased utility's rates, terms and conditions for service, as Red Bird will do with the
23 TESI systems, is that the Commission typically goes beyond the threshold issue of
24 competence and establishes rate base in the acquired assets, as well as the purchaser's due
25 diligence costs associated with the acquisition. Based on our experience in other
26 jurisdictions, and since the approval of this proposed transfer is not a rate making

1 proceeding, I would have expected those issues to be deferred to the Company's initial
2 post-acquisition rate case. That type of deferral is, in effect, what the Commission did
3 when it deferred issues as to Red Bird's interim operating costs in the Ocean Terrace / Pine
4 Knoll Townes docket and would seem to be an appropriate approach in a transfer
5 proceeding such as this one.

6 I also note the law applicable to water and wastewater acquisitions has changed
7 since the Commission decided the Ocean Terrace / Pine Knoll Townes and Bear Den cases.
8 Changes to N.C.G.S. § 62-111 enacted by the General Assembly during the last legislative
9 session now provide that the Commission "shall issue an order approving an application"
10 to acquire water and wastewater system assets if the proposed acquisition "is in the public
11 interest, will not adversely affect service to the public under any existing franchise, and the
12 person acquiring said franchise . . . has the technical, managerial, and financial capabilities
13 necessary to provide public utility service to the public." By limiting the focus of the
14 Commission's inquiry in acquisition cases I believe the General Assembly has signaled
15 that extraneous issues – such as whether an acquisition adjustment should be approved –
16 should be deferred to rate and other post-acquisition proceedings.

17 **Q. WHAT COSTS HAS RED BIRD INCURRED IN CONDUCTING ITS DUE**
18 **DILIGENCE INQUIRY AND INVESTIGATION RELATING TO THE TESI**
19 **SYSTEMS?**

20 A. We won't know the total due diligence and transactional costs associated with this (or
21 any other) acquisition until the purchase actually closes. Our experience is that smaller
22 systems often require more due diligence work than larger, better managed systems,
23 because the document management, record keeping, and regulatory compliance tendencies
24 associated with smaller systems tends to be poor and often incomplete, requiring additional

1 efforts to attempt to accurately determine what exists in the ground and in areas that
2 sometimes have not been maintained for decades.

3 The due diligence activities undertaken by Red Bird in connection with the
4 acquisition of the TESI systems included surveying work, legal title work, preliminary civil
5 engineering work, environmental compliance site surveys, and accounting due diligence.
6 As shown on **Cox Direct Exhibit 4**, as of the date of my testimony Red Bird has incurred
7 costs totaling \$187,601 for due diligence, transactional and regulatory work related to
8 acquisition of the TESI systems.

9 **Q. WHAT IS THE ROLE OF DUE DILIGENCE INVESTIGATIONS IN**
10 **CONNECTION WITH EVALUATION OF POTENTIAL ACQUISITIONS?**

11 A. Due diligence efforts provide preliminary insight to a potential purchaser as to the
12 condition of a utility system and the problems and issues that must be addressed. As noted
13 above, the full scope and scale of those problems cannot be truly known until we have
14 acquired and begun to operate a system. Due diligence is not a process that is limited to
15 utility acquisitions. Any business considering a significant acquisition routinely conducts
16 due diligence to determine the condition of the assets it proposes to acquire, to confirm that
17 clear title to those assets can be acquired, and to estimate the nature and extent of required
18 future capital investments.

19 The Commission should encourage due diligence in reviewing possible utility
20 acquisitions with the knowledge that not every system that is reviewed will be acquired.
21 This is especially the case with regard to troubled and distressed systems, where investment
22 is required in order to address problems and bring systems into compliance. Without due
23 diligence it would be impossible for Red Bird to acquire systems with a reasonable
24 understanding of what will be required to operate the system in a manner that ensures

1 customers receive safe and reliable utility service provision. Without the basic knowledge
2 our due diligence activities provide about systems we acquire, achieving the objective I
3 just mentioned would be extremely difficult if not impossible. CSWR prudently
4 investigates acquisition opportunities that present themselves and this analysis necessarily
5 involves the expenditure of time by properly trained employees and the use of consulting
6 engineers, lawyers, accountants, and other experts. There are some potential acquisitions
7 which, after proper due diligence, are shown to be not in the best interests of CSWR or its
8 operating subsidiary's ratepayers. Nonetheless, these are legitimate business expenses and
9 this type "opportunity cost" should be shared with ratepayers, just as the benefits of
10 completed acquisitions are shared. These efforts are necessary in order to make prudent
11 acquisition decisions and are a reasonable and necessary part of this process. They also
12 provide information useful in determining whether an acquisition application should be
13 approved. For these and other reasons, Red Bird believes it is reasonable and appropriate
14 that the Company's due diligence costs associated with investigating the TESI systems and
15 transactional costs incurred to this point, as shown in **Cox Direct Exhibit 4**, be included
16 in rate base, subject to being recovered in the Company's first general rate case.

17 **Q. THE PROCEDURAL ORDER ISSUED IN THIS CASE ESTIMATED A**
18 **MONTHLY RATE IMPACT OF \$3.48 FOR WATER AND \$3,339.00 FOR SEWER**
19 **PER CUSTOMER THAT WAS ATTRIBUTABLE TO THE PURCHASE PRICE**
20 **RED BIRD WOULD PAY FOR THE TESI ASSETS, THE DUE DILIGENCE**
21 **COSTS IT WOULD INCUR, AND THE CAPITAL IMPROVEMENTS IT**
22 **BELIEVES WOULD BE REQUIRED AFTER CLOSING. WHAT ARE YOUR**
23 **THOUGHTS REGARDING THAT ESTIMATE?**

24 A. Let me begin by saying I do not believe it is possible at this time to accurately estimate
25 the future impact on rates of any cost that might be incurred to consummate Red Bird's
26 proposed acquisition of the TESI systems. For one thing, the final amounts of the costs

1 referenced in the procedural order won't be known until sometime after the transaction is
2 complete. For another thing, the estimate assumes future rates for the customers served by
3 the TESI systems will be set on a stand-alone basis. In its initial North Carolina rate cases,
4 Red Bird intends to propose consolidated, statewide rates, which means the costs of
5 acquiring the TESI assets would be mixed with similar costs for all other systems Red Bird
6 acquires in North Carolina. Spreading costs over a significantly larger customer base –
7 TESI has only 2,276 water customers and two sewer customers – can significantly reduce
8 the per customer impact of acquisition-related costs. Because no one can currently know
9 the amount of transaction-related costs relating to acquisition of the TESI systems, how
10 those costs would be treated for ratemaking purposes, or what rate design would be
11 approved to recover such costs, no reliable estimate of future rates for TESI customers is
12 possible.

13 The estimated rate also is overstated because it assumes all post-closing capital
14 improvements are solely attributable to and specific to Red Bird's acquisition of the TESI
15 systems. In fact, most if not all capital improvements we have identified thus far will be
16 required to ensure the TESI systems are brought into compliance with applicable health
17 and environmental regulations and capable of providing safe and reliable service to
18 customers. Therefore, no matter who owns the system – TESI, Red Bird, or some other
19 third-party purchaser – capital necessary to upgrade and improve facilities must be invested
20 to address such issues and that investment will impact future rates. Point being that the
21 issues in the TESI systems will have to be addressed, either by Red Bird or someone else, if
22 those systems are to be brought into compliance.

1 Regarding the final cost element included in the rate impact estimate – due
2 diligence costs associated with the transaction – I think the Commission would be making
3 a mistake if it concludes that reasonable due diligence, transactional, and regulatory costs
4 can't be recovered because they likely would cause an increase in future service rates. I say
5 this for several reasons. First, as explained earlier in my testimony, due diligence and other
6 transaction-related costs are part of every acquisition transaction and are not unique to this
7 case. As mentioned previously, due diligence is required to provide Red Bird basic
8 information about a system it proposes to acquire so that when we acquire a system we are
9 able to operate it in a manner that ensures we are able to provide service to our customers.
10 Second, establishing a regulatory policy that such costs are unrecoverable in rates would
11 create a significant disincentive for future acquisitions in North Carolina, including those
12 of troubled and distressed water and/or wastewater systems whose acquisition by
13 competent and adequately capitalized companies like Red Bird clearly is in the public
14 interest. Finally, as for regulatory costs, those are unavoidable because Commission review
15 and approval of public utility acquisitions is required by law. As further evidence of how
16 “mainstream” due diligence and regulatory costs are to transactions such as the one
17 currently under consideration, I note the Uniform System of Accounts for small water and
18 wastewater companies, which was created by NARUC, expressly provides for the
19 capitalization of those costs. I therefore would not expect the Commission to deny Red
20 Bird the right to seek recovery of those costs in a future rate case.

21 There is an additional and overarching consideration that I believe precludes the
22 Commission from speculating regarding future rates in determining whether to approve
23 this proposed acquisition. I previously mentioned recent changes to N.C.G.S. § 62-111 that

1 limit the issues the Commission must consider in transfer cases such as this one. In addition
2 to factors I previously mentioned, the statute instructs the Commission to consider an
3 acquisition in the context of the “adoption of existing or proposed rates.” That means the
4 Commission’s decision in this case should not be based on speculation regarding future
5 rates. Instead, in determining whether a proposed transaction is in “the public interest” the
6 Commission should focus exclusively on rates that would be charged immediately after the
7 acquisition is closed. In this case, those rates would be TESI’s existing Commission -
8 approved rates.

9 **Q. ARE RED BIRD AND CSWR FAMILIAR WITH THE COMMISSION'S**
10 **RULES AND REGULATIONS GOVERNING WATER AND SEWER UTILITIES**
11 **AND DO THOSE COMPANIES PLEDGE TO OPERATE THE SYSTEM AT ISSUE**
12 **IN THIS DOCKET IN A MANNER THAT COMPLIES WITH THOSE RULES**
13 **AND REGULATIONS?**

14 A. Yes, CSWR and Red Bird are familiar with the Commission's rules and regulations and
15 pledge to operate the TESI systems in a manner that complies with all Commission
16 requirements and all applicable state statutes and regulations.

17 **Q. HOW DOES RED BIRD PROPOSE TO SATISFY THE FINANCIAL**
18 **SECURITY REQUIREMENTS IMPOSED BY COMMISSION RULE R7-37?**

19 A. To provide the financial security required by the Commission’s rules, Red Bird will
20 post its own bond, to be secured by a corporate surety bond in a form that complies with
21 Commission Rule R7-37.

22 **Q. DO YOU BELIEVE THE PROPOSED TRANSACTION IS IN THE PUBLIC**
23 **INTEREST?**

24 A. Yes. I believe Red Bird’s proposed acquisition of the water and wastewater systems
25 currently owned and operated by TESI will be consistent with and would promote the
26 public interest. Transfer of these systems to a well-capitalized enterprise that is a

- 1 professional utility, will be in the best interest of the TESI customers. Red Bird and CSWR
2 are fully qualified, in all respects, to own and operate those systems and to otherwise
3 provide safe and adequate service.

4 **Q. DOES THIS CONCLUDE YOUR TESTIMONY AT THIS TIME?**

- 5 A. Yes.

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Nov 07 2023

1 COMMISSIONER KEMERAIT: And the four
2 exhibits, some of which are marked confidential,
3 attached to Mr. Cox's direct testimony will be
4 marked for identification purposes as prefiled.

5 MR. HIGGINS: Thank you.

6 (Cox Direct Exhibits 1 through 4 were
7 identified as they were marked when
8 prefiled.)(Confidential - filed under
9 seal)

10 Q. Mr. Cox, did Mr. Todd Thomas, who is a senior
11 vice president at CSWR, cause to be prepared and filed
12 rebuttal testimony consisting of 28 pages and three
13 exhibits?

14 A. He did.

15 Q. Have you reviewed that testimony? Are you
16 familiar with it?

17 A. I have, and I am.

18 Q. Are you prepared to adopt that testimony and
19 answer questions relating to it?

20 A. Yes.

21 Q. Do you have any changes or corrections to
22 Mr. Thomas's testimony?

23 A. No.

24 Q. If I asked you the questions that are set

1 forth in Mr. Thomas's prefiled rebuttal testimony,
2 would your answers be the same as those set forth in
3 that testimony?

4 A. Yes.

5 MR. HIGGINS: Commissioner Kemerait, at
6 this time I'd move the admission of Mr. Todd
7 Thomas's prefiled rebuttal testimony and the
8 three exhibits attached to that testimony.

9 COMMISSIONER KEMERAIT: Seeing no
10 objection, the rebuttal testimony of Red Bird
11 Witness Todd that has been adopted by Red Bird
12 Witness Cox, consist -- filed on October 3, 2023,
13 consisting of 28 pages, will be copied into the
14 record as if given orally from the stand.

15 (Whereupon, the Prefiled Rebuttal
16 Testimony of TODD THOMAS as adopted by
17 JOSIAH COX was copied into the record
18 as if given orally from the stand.)
19
20
21
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23
24

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. W-1146, SUB 13
DOCKET NO. W-1328, SUB 10

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of)
Application by Red Bird Utility Operating)
Company, LLC, 1650 Des Peres Road,)
Suite 303, St. Louis, Missouri 63131, and)
Total Environmental Solutions, Inc., Post)
Office Box 14056, Baton Rouge, Louisiana)
70898, for Authority to Transfer the Lake)
Royale Subdivision Water and Wastewater)
Utility Systems and Public Utility Franchise)
in Franklin and Nash Counties, North Carolina,)
and for Approval of Rates)

**REBUTTAL TESTIMONY OF TODD THOMAS
ON BEHALF OF RED BIRD UTILITY OPERATING COMPANY, LLC**

I. INTRODUCTION

1 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

2 A. My name is Todd Thomas. My business address is 1630 Des Peres Road, Suite 140,
3 St. Louis, Missouri, 63131. I am Senior Vice President of t of CSWR, LLC, ("CSWR") a
4 Missouri limited liability company that has operational and managerial oversight over all
5 its affiliated utility operating companies, including Red Bird Utility Operating Company,
6 LLC ("Red Bird").

7 **Q. WHAT ARE YOUR JOB RESPONSIBILITIES AT CSWR?**

8 A. I am responsible for engaging and overseeing operations and maintenance
9 ("O&M") service providers including those contractors responsible for day-to-day
10 operations of CSWR operating affiliates like Red Bird. In addition, I am responsible for

1 engaging and overseeing customer service providers. At the present time, I oversee such
2 activities for all affiliated operating companies providing water or wastewater utility
3 services to customers in Kentucky, Missouri, Arkansas, Tennessee, Louisiana, Mississippi,
4 Texas, North Carolina, South Carolina, Arizona, and Florida.

5 **Q. PLEASE DESCRIBE YOUR EDUCATIONAL AND PROFESSIONAL**
6 **EXPERIENCE.**

7 A. My education includes a Bachelor of Science in Civil Engineering from the
8 Missouri University of Science and Technology, and a Master of Business Administration
9 from Washington University in St. Louis.

10 Before joining CSWR, I was President of Brotcke Well and Pump (the second largest
11 well driller and service provider in the Midwest); Vice President of Operations and
12 Business Development of the Midwest for American Water Contract Operations; and
13 General Manager of Midwest Operations for Environmental Management Corporation. I
14 currently serve on the East Central Missouri Board of Directors and am an Advisory Board
15 member for Public Water Supply District 2 of St. Charles County, Missouri which is the
16 largest water and sewer district in the State of Missouri serving approximately 60,000
17 connections.

18 Brotcke Well and Pump serves municipal potable, regulated potable, and industrial
19 ground water suppliers in the states of Missouri, Illinois, Kansas, Tennessee, Kentucky,
20 and Arkansas. Its total number of clients exceeds 200 and they range in size from the City
21 of Bloomington, Illinois, with 31,000 water customers, to 230 customers in the City of
22 Eminence, Missouri. Brotcke Well and Pump drills wells, cleans and treats wells, installs
23 pumps, services pumps, rebuilds pumps, tests wells for regulatory compliance, and installs

1 and services well controls. As President of Brotcke Well and Pump, I was involved in the
2 design, maintenance, and repair of all clients' well systems. I have firsthand experience
3 with how much damage can be done by lack of maintenance on a well system and how
4 much money and effort is required to restore a well system after neglect.

5 As Vice President of Operations and Business Development of the Midwest for
6 American Water Contract Operations, I was responsible for the water and wastewater
7 operations and maintenance contracts for municipal and industrial clients. These clients
8 included wastewater systems owned and operated by the City of St. Charles, in Missouri,
9 and the cities of Godfrey, Mount Vernon, Quincy, Litchfield, Lincoln, Pittsfield, and
10 Elwood in Illinois. These clients also included water and wastewater systems owned and
11 operated by the City of Foristell, Missouri, and the Illinois cities of Brighton, and
12 Monmouth. At one time I had responsibility for operating water and wastewater systems
13 serving approximately 64,000 residential connections. My responsibilities included the
14 direction and management of annual budgeting for each plant's operations and
15 maintenance, design and planning of plant upgrades and maintenance projects, regulatory
16 reporting, plant operations, and regulatory compliance of these systems.

17 My position as General Manager of Midwest Operations for Environmental
18 Management Corporation was similar to my position with American Water Contract
19 Operations with regard to the size and scope of the systems the company managed.

20 **Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?**

21 A. The subject of these dockets is the Application for Transfer of Public Utility Franchise
22 and for Approval of Rates ("Joint Application") filed in these dockets by Red Bird and

1 Total Environmental Solutions, Inc. (“TESI”). The Joint Application seeks Commission
2 approval for Red Bird to acquire all utility assets currently used by TESI and to provide
3 water and wastewater utility services to customers in the Lake Royale development, and to
4 adopt TESI’s Commission-approved rates. In testimony filed September 19, Public Staff
5 witness Evan Houser acknowledged Red Bird has the technical and managerial,
6 qualifications required to acquire, own, and operate TESI’s Lake Royale development
7 water and wastewater systems, and appears to have conditionally recommended
8 Commission approval of the Joint Application. However, Mr. Houser expressed Public
9 Staff’s concerns and reservations regarding certain aspects of the proposed transactions.
10 My rebuttal testimony addresses those concerns and reservations.

11 Specifically, my rebuttal testimony addresses the following issues raised in Mr.
12 Houser’s testimony:

- 13 • The contention that the TESI system is not a “troubled” utility;
- 14 • Public Staff’s contention that no “acquisition adjustment” should be allowed in
15 connection with the proposed acquisition;
- 16 • Concerns expressed by Mr. Houser regarding due diligence costs Red Bird will
17 incur in connection with this transaction;
- 18 • Public Staff’s claims regarding the effect approval of this acquisition would have
19 on customer rates;
- 20 • Public Staff’s recommended bond should the Commission approve the sale of
21 TESI’s assets to Red Bird; and

- 1 • The recommendation that Red Bird be required to meet semi-annually with Public
2 Staff to discuss the company's operations and financial condition.

3 I also will reiterate the many benefits Red Bird's proposed acquisition would bring
4 to customers served by the TESI water and wastewater systems both immediately and long-
5 term.

6 In addition, I will address questions and concerns expressed in the testimony of
7 Public Staff's witness John Hinton regarding CSWR's ability to provide capital necessary
8 to acquire, make required upgrades and improvements, and operate the TESI systems after
9 closing.

10 In separate rebuttal testimony filed by CSWR's Regulatory Accounting Manager,
11 Caitlin O'Reilly, Red Bird addresses accounting issues raised in the testimony of Public
12 Staff's witness Lynn Feasel.

13 **II. IS THE TESI SYSTEM A "TROUBLED" UTILITY?**

14 **Q. WHAT IS MR. HOUSER'S ASSESSMENT OF THE OVERALL**
15 **CONDITION OF TESI AND ITS UTILITY FACILITIES?**

16 A. Mr. Houser testifies that TESI provides "safe, albeit intermittently unreliable
17 service to its customers." (Houser p. 13, lines 8 – 12). The "intermittently reliable service"
18 standard Mr. Houser and Public Staff seem to believe is sufficient is a much lower bar than
19 regulators outside North Carolina have been willing to accept, and I find it hard to believe
20 it's a standard this Commission would view as satisfactory to TESI's customers. Customer
21 comments received at the September 25 public hearing strongly support that conclusion.

22 Mr. Houser strains to avoid conceding the obvious – that the TESI system is
23 troubled both from a regulatory compliance perspective and from a quality-of-service

1 perspective. He appears to base his assessment on an investigation that included a visual
2 inspection of TESI's facilities conducted August 23, 2023. Accompanying Mr. Houser on
3 this inspection were representatives of the North Carolina Department of Environmental
4 Quality ("NCDEQ"). Mr. Houser describes his observations regarding the current
5 condition of TESI's facilities, including that the sand filters in TESI's wastewater treatment
6 plant were covered with weeds to the point that they "obscured inspection of the sand filter
7 media." (Houser p. 6, lines 2-3). He states TESI has no current or recent Notices of
8 Violation ("NOV") from the NCDEQ, but also notes that between July 1, 2020, and June
9 30, 2023, the Public Staff Consumer Services Division received 28 customer complaints
10 about TESI. Based on these factors, Mr. Houser concludes TESI is not a troubled utility
11 even though it is currently and apparently, based on the testimony at the public hearing,
12 has for years been providing "intermittently unreliable service" to its customers – meaning
13 the water service provided by TESI is and has only been intermittently reliable.

14 **Q. DO YOU CONCUR WITH MR. HOUSER'S ASSESSMENT?**

15 A. I do not concur with Mr. Houser's assessment. Indeed, his observation that during
16 his visit the sand filters in TESI's wastewater treatment facility obscured inspection of the
17 sand filter media is evidence that TESI has failed to maintain its facilities appropriately.
18 Simply stated, a competent operator would not allow vegetation around a sand filter to
19 grow to the point it obscures inspection of the facility. Furthermore, if Mr. Houser was
20 unable to inspect the sand filters, how can he have any confidence they are working as
21 designed?

1 **Q. DO YOU HAVE INFORMATION TO SUPPORT YOUR OPINION THAT**
2 **TESI AND ITS UTILITY SYSTEMS ARE “TROUBLED”?**

3 A. Yes, I do. I also want to caution the Commission on relying too heavily on Mr.
4 Houser’s assessment of the condition of TESI’s water and wastewater systems based on a
5 single visit to those facilities. That single visit provides a “snapshot” of what was observed
6 on that one day and may not – especially in the face of contrary historical evidence –
7 provide an accurate picture of the true condition of TESI’s systems or how TESI has
8 operated those systems over time. Therefore, in assessing whether TESI and its systems
9 are “troubled” the Commission should take a longer-term, more wholistic view. The water
10 service quality concerns expressed at the public hearing aside, just because TESI’s systems
11 currently comply with applicable regulations does not mean they will be in compliance in
12 the future. And as I will discuss later in my testimony, TESI has itself admitted it lacks the
13 resources to ensure such future compliance.

14 **Q. WHAT EVIDENCE HAS RED BIRD IDENTIFIED IN ITS DUE**
15 **DILIGENCE ANALYSIS THAT SUGGESTS CONTINUED COMPLIANCE WILL**
16 **BE DIFFICULT, IF NOT IMPOSSIBLE, FOR TESI TO ACHIEVE?**

17 A. In Mr. Cox’s direct testimony in this case (pages 24-27) he described the
18 preliminary engineering assessment of Red Bird’s consulting engineer as to TESI’s water
19 and wastewater systems as part of its due diligence and the recommendations developed
20 for repairs and upgrades required after closing. That report, which was prepared by a third-
21 party engineering firm in May-June 2021 identified necessary water system repairs and
22 upgrades totaling almost \$200,000 and sewer system repairs and upgrades totaling more
23 than \$250,000. Because of the effects of inflation in the more than two years since those

1 recommendations and cost estimates were prepared, I would expect current cost estimates
2 of the recommended projects to be substantially greater.

3 As noted in Mr. Cox's direct testimony, the engineer's inspection revealed that
4 TESI's lift stations do not meet the state minimum design criteria, which require that sewer
5 pump stations with greater than 600 gallons per day of flow be equipped with duplex
6 pumps. Additionally, the engineers determined the water tank is in poor condition and
7 various abnormalities were identified. Well run and managed water and wastewater
8 systems do not allow their facilities to deteriorate to the degree described in the due
9 diligence engineering report.

10 **Q. DO YOU AGREE WITH MR. HOUSER'S ASSESSMENT OF TESI'S**
11 **RECORD OF COMPLYING WITH HEALTH, SAFETY, AND**
12 **ENVIRONMENTAL REGULATIONS?**

13 A. No, I do not agree. Mr. Houser seems to conclude that because TESI has no recent
14 "enforcement actions" its record of compliance with applicable health, safety, and
15 environmental regulations is satisfactory. (Houser pp. 6-10). But just because TESI's
16 actions – or inactions – didn't result in formal enforcement actions does not mean either its
17 water or wastewater operations have a satisfactory compliance record. According to the
18 U.S. Environmental Protection Agency's ECHO database, TESI's compliance record over
19 the last five years is as follows:

20 Wastewater:

- 21 • Thirteen informal enforcement actions in the last 5 years, including base program
22 violations related to late and missing DMRs, effluent exceedances, and violations
23 for unapproved operation of the facility from 2017 and 2019 which have not been
24 resolved (though a new permit was secured in 2019)
25

- 1 • Six formal enforcement actions in the last 5 years, resulting in \$1,501 in fines
2 related to these actions (Cases NC-LV-2020-0222, NC-LV-2020-0074, NC-LV-
3 2019-0375, NC-LV-2019-0267, NC-LV-2019-0169, and NC-LV-2019-0078).
4
- 5 • Twelve effluent exceedances in the last 5 years, which represent 187 days of testing
6 periods with exceedances and 9 months with exceedances. Those violations
7 included exceeding limits for BOD (daily max and monthly average exceedances),
8 ammonia, fecal coliform, and total residual chlorine.
9
- 10 • TESI's facilities were out of compliance for all 12 of the most recent quarters due
11 to effluent exceedances, unresolved violations, and missing DMR measurements in
12 all submitted DMRs over that period. In two of those quarters TESI's facilities were
13 cited for "Significant Noncompliance" for complete failure to submit DMRs.

14 Water:

- 15
- 16 • Four violations in the last 5 years, including three violations for "Revised Total
17 Coliform Rule: Report Sample Result/Fail Monitor (RTCR)" (failing to complete
18 or submit required bacteriological sampling by the due date for the reporting) and
19 one violation for "Total Haloacetic Acids (HAA5): Monitoring and Reporting
20 (DBP)" (failure to complete or submit required disinfection byproduct sampling by
21 the due date for the reporting).
22
- 23 • Twenty-six additional violations marked as "open" or "known." Violations were
24 primarily for metals and radionuclide testing, which was not completed when
25 required. Other violations were cited for failing to complete Total Coliform Rule
26 and Lead and Copper Rule testing.
27

28 I have attached as **Thomas Rebuttal Exhibit 1** copies of facilities reports taken from the
29 EPA's ECHO database documenting the violations I described above.

30 **Q. WHY DO YOU BELIEVE INCIDENCES OF NON-COMPLIANCE THAT**
31 **DON'T RESULT IN ENFORCEMENT ACTIONS ARE SIGNIFICANT?**

32 A. For TESI's water system, most of the violations cited above involve actual or
33 potential human health hazards. These include total coliform, haloacetic acids, metals, and
34 radionuclides. Testing standards and requirements were established to ensure the presence
35 of these harmful substances does not exceed levels considered to be safe for humans.
36 Failing to perform required tests defeats the purpose of those testing requirements and

1 denies customers the assurance the water they consume is safe for drinking, cooking, and
2 other intended uses. Just because TESI's failure to comply with testing standards did not
3 result in a formal enforcement action does not mean those failures were inconsequential.

4 On the wastewater side, TESI has been chronically non-compliant, as its record of
5 consistent non-compliance over the last 12 calendar quarters demonstrates. It's hard to
6 imagine a less satisfactory compliance history regardless of whether TESI's non-
7 compliance resulted in formal enforcement actions.

8 **Q. WHAT ARE THE PROSPECTS TESI'S COMPLIANCE RECORD WOULD**
9 **IMPROVE IF THE COMMISSION DENIES RED BIRD'S ACQUISITION**
10 **APPLICATION?**

11 A. I believe there are no prospects for improvement in TESI's compliance record or
12 its record more generally with respect to the operation of its water and wastewater systems
13 serving Lake Royale in a manner that ensures its customers receive safe and reliable utility
14 services. As described in Mr. Cox's direct testimony, in 2021 TESI decided it needed or
15 wanted to exit the water and wastewater utility business and as a result agreed to sell its
16 systems in Louisiana, South Carolina, and North Carolina to CSWR-affiliated utilities
17 operating in each of those states. (Cox Direct, pp 21-24) The Louisiana portion of the
18 transaction – by far the largest, involving approximately 18,000 connections – closed in
19 2021 and the South Carolina portion closed earlier this year. All that remains are the
20 systems at issue in this case.

21 Testimony TESI filed in the South Carolina transfer case, which is attached to this
22 testimony as **Thomas Rebuttal Exhibit 2**, explains why there is no prospect for
23 improvement in TESI's North Carolina compliance record. Indeed, that testimony clearly

1 establishes that there is no reason to believe TESI can continue to operate as a stand-alone
2 utility. In his testimony to the South Carolina Commission, Wayne Owens, TESI's Chief
3 Executive Officer, expressly stated "TESI is in the process of selling its water and
4 wastewater business entirely." (**Thomas Rebuttal Exhibit 2**, page 2) He explained the
5 reasons for that decision as follows:

6 The costs of maintaining the sewer and wastewater systems and
7 implementing the requirements of the Federal Consent Decree for those
8 Louisiana sewer systems still subject to that Decree have made continued
9 ownership and operation of those systems exceedingly difficult for TESI.
10 The catastrophic losses suffered because of Hurricane Ida make the need to
11 sell the two Carolina operations even more critical . . . After the sale of
12 Louisiana Assets, the North and South Carolina operations don't justify
13 maintaining management and administrative staff for these two remote
14 operations.

15
16 **Thomas Rebuttal Exhibit 2**, page 3.

17
18 Mr. Owens went on to state:

19 TESI does not possess the capital resources or the access to capital
20 necessary to invest in, maintain, and improve its systems in South Carolina,
21 Louisiana, or North Carolina. Similarly, TESI does not have the
22 wherewithal to seek to adjust its rates with this [South Carolina]
23 Commission, even though TESI's current rates have been in place since
24 2006.

25 **Thomas Rebuttal Exhibit 2**, page 3. And when asked whether TESI's current compliance
26 with the South Carolina Commission's rules suggested such performance would continue,
27 Mr. Owens responded, "[w]hile TESI may be so operating at this point in time, because of
28 the difficulties described above [i.e., TESI's decision to leave the water and wastewater
29 business and its lack of access to capital], TESI is unlikely to be able to maintain regulatory
30 compliance on a going-forward basis." (**Thomas Rebuttal Exhibit 2**, page 5)

1 Because the sales of TESI's Louisiana and South Carolina systems have already
2 been completed, the factors causing Mr. Owen to conclude TESI could not achieve
3 regulatory compliance in the future have significantly increased. Consequently, whatever
4 this Commission concludes regarding TESI's current or past compliance record in North
5 Carolina, there is no basis to believe that its service quality or compliance record can be
6 either maintained or improved upon by TESI in the future.

7 **Q. MR. HOUSER SUGGESTS TESI CAN OBTAIN LOW-COST FINANCING,**
8 **WHICH INCLUDES THE POTENTIAL FOR PRINCIPAL FORGIVENESS,**
9 **FROM THE NORTH CAROLINA DIVISION OF ENVIRONMENTAL**
10 **QUALITY'S WATER INFRASTRUCTURE FUND. DO YOU AGREE?**

11 A. No, I do not. For one thing, as Mr. Owen made clear in his South Carolina
12 testimony, TESI has decided to exit the water and wastewater business entirely. Therefore,
13 there is no reason to believe TESI is interested in pursuing and potentially borrowing
14 funding to operate its sole remaining water and wastewater operation, which is the North
15 Carolina utility business serving Lake Royale. Even if TESI were interested in such
16 funding, it appears loans or other capital from the Water Infrastructure Fund is not available
17 to investor-owned utilities. Although it appears the Water Infrastructure Fund was designed
18 to make funds available to a range of entities including investor-owned utilities, as stated
19 on its website ([https://www.deq.nc.gov/about/divisions/water-infrastructure/i-need-](https://www.deq.nc.gov/about/divisions/water-infrastructure/i-need-funding)
20 [funding](https://www.deq.nc.gov/about/divisions/water-infrastructure/i-need-funding)), for 2023 the Fund's low-interest loans and grants are only available to "local
21 governments and certain other non-profit entities." TESI doesn't qualify under either of
22 those categories.

23 Even if TESI could find a source of capital necessary to maintain and improve its
24 sole remaining system, the Commission should note that, at TESI's request, Red Bird

1 recently assumed responsibility, as a contract operator, for day-to-day operations and
2 maintenance of TESI's North Carolina water and wastewater systems. If the proposed
3 acquisition by Red Bird is not approved, it is unclear how TESI can maintain its operations
4 in this state on a stand-alone basis because TESI no longer has the operational or
5 managerial personnel necessary to do so.

III. ACQUISITION ADJUSTMENT

6 **Q. MR. HOUSER STATES IN HIS TESTIMONY THAT PUBLIC STAFF**
7 **DOES NOT SUPPORT RED BIRD RECEIVING AN ACQUISITION**
8 **ADJUSTMENT IN THIS PROCEEDING. HOW DO YOU RESPOND?**

9 A. I agree with Mr. Houser to an extent. For reasons I will further explain later in my
10 testimony, I believe the Commission *need not* authorize an acquisition adjustment for Red
11 Bird in this proceeding. Instead, the Commission can and should defer to Red Bird's initial
12 rate case involving the TESI systems any decision regarding whether an acquisition
13 adjustment should be granted. There are three primary reasons for my deferral proposal.

14 First, based on changes to the law applicable to water and wastewater acquisitions
15 that were discussed in Mr. Cox's direct testimony, the Commission's focus in these system
16 transfer dockets is limited to determining (1) whether the party seeking to acquire a system
17 possesses the technical, managerial, and financial capabilities necessary to provide public
18 utility services, and (2) whether the transaction is in the public interest. And insofar as the
19 public interest determination is concerned, that assessment is to be based on rates that will
20 be in effect immediately after closing. Because any acquisition adjustment deemed
21 appropriate in this case would affect none of the factors the Commission is to consider

1 here, it is neither necessary nor appropriate to decide that issue in a transfer / acquisition
2 case.

3 Second, there is no need for the Commission to address the acquisition adjustment
4 in this case at this time because after closing Red Bird plans to adopt and charge customers
5 TESI's currently approved rates. Therefore, any decision regarding whether an acquisition
6 adjustment should be authorized can be deferred to the initial rate case involving the TESI
7 systems when that issue and its potential impact on rates will be fully considered.

8 Finally, by deferring the acquisition adjustment issue to Red Bird's initial rate case
9 involving the TESI systems more and better information would be available regarding the
10 circumstances and factors that govern whether such an adjustment should be included in
11 rate base. As stated in the Commission's decision in the *Order Approving Transfer and*
12 *Denying Acquisition Adjustment*, issued in Socket No. W-100, Sub 5 (N.C.U.C. January 6,
13 2000) ("*North Topsail*"):

14 Although the number of relevant considerations seems virtually unlimited,
15 all of them apparently relate to the question of whether the acquiring utility
16 paid too much for the acquired utility and whether the customers of both the
17 acquired and acquiring utilities are better off after the transfer than they
18 were before that time . . . [T]he Commission should refrain from allowing
19 rate base treatment of an acquisition adjustment unless the purchasing utility
20 establishes, by the greater weight of the evidence, that the price the
21 purchaser agreed to pay for the acquired utility was prudent and that both
22 the existing customers of the acquiring utility and the customers of the
23 acquired utility would be better off [or at least no worse off] with the
24 proposed transfer, including rate base treatment of any acquisition
25 adjustment, than would otherwise be the case.

26 *North Topsail* at page 27.

27 Evidence regarding the purchase price presented by both Red Bird and Public Staff
28 in this case does not focus on whether the purchase price Red Bird will pay for TESI's

1 assets is “reasonable.” Red Bird knows that the purchase price was the lowest that could
2 be agreed upon through arms-length negotiations between two non-affiliated parties.
3 Public Staff merely notes the purchase price exceeds the net book value of the assets Red
4 Bird proposes to acquire and expresses no opinion regarding whether such a price is
5 “reasonable.” Because the transaction has not yet been completed, there is not – and cannot
6 be – any tangible evidence regarding how the proposed acquisition would affect either
7 TESI’s current customers or Red Bird’s current and future customers. Public Staff’s
8 projections regarding estimated future rate impacts of the proposed acquisition are purely
9 speculative and are unreliable for that reason. However, deficiencies in the current record
10 regarding both the reasonableness of the purchase price and the effect of the proposed
11 acquisition on customers can be cured if the acquisition adjustment issue is deferred to a
12 future rate case. And customers would not be harmed by such a deferral, because rates
13 charged to Red Bird’s and TESI’s customers will not change until the Commission decides
14 a future rate case, if the acquisition proposed in this case is approved.

15 For all the reasons just stated, I believe it makes sense to defer any decision on an
16 acquisition adjustment to Red Bird’s initial North Carolina rate case for the TESI systems.
17 As I previously noted, such a deferral will harm no one. Moreover, such a deferral is more
18 consistent with recent changes to Chapter 62 governing transfer of water and wastewater
19 utilities, which define the scope of the Commission’s inquiry in such cases.

20 **IV. DUE DILIGENCE COSTS**

21 **Q. PUBLIC STAFF RECOMMENDS THE COMMISSION APPLY A \$10,000**
22 **CAP ON DUE DILIGENCE COSTS INCURRED BY RED BIRD IN CONNECTION**
23 **WITH THE TESI ACQUISITION. HOW DO YOU RESPOND?**

1 A. I disagree with Public Staff's recommendation for at least two reasons. First, as
2 stated elsewhere in my testimony and reiterated here, changes to G.S. § 62-111 limit the
3 issues the Commission is to consider in water and wastewater transfer / acquisition cases.
4 Because the amount of due diligence costs Red Bird incurred does not reflect on its
5 technical, managerial, or financial capabilities to own and operate the TESI systems, the
6 amount of due diligence costs that should be included in rate base is an issue that should
7 be deferred to Red Bird's initial rate case involving the TESI systems. Second, because
8 Red Bird is not proposing to change rates currently in effect for the TESI systems, there is
9 no need for the Commission to deal with any issue related to transaction costs in this
10 proceeding. Deferring that issue will harm or disadvantage no one. Moreover, deferring the
11 issue to a future rate case, when the full amount of transaction-related costs is known, will
12 enable all parties to provide evidence regarding the prudence of those costs and whether
13 they should be included in the rate base to be used to set future rates.

14 In addition, I find many of the arguments Mr. Houser makes regarding due
15 diligence costs to be unreasonable. For example, at page 32 of his testimony Mr. Houser
16 claims due diligence costs "should be absorbed by Red Bird as a cost of doing business
17 and not be included in rate base." While I certainly agree due diligence costs are a cost of
18 doing business, like all such costs a utility is entitled to recover them if they were prudently
19 incurred and are reasonable in amount. And although both those issues should be deferred
20 to a future rate case, I will briefly explain why I believe our due diligence costs satisfy both
21 those standards.

1 As part of the due diligence inquiry we conduct for all acquisitions made by our
2 affiliate group, we routinely engage a third-party engineering firm to assess the condition
3 of assets we propose to purchase and to project what capital improvements will be
4 necessary during the first few years we own and operate those assets. While these results
5 are preliminary – because we have found the true condition and needs of systems we
6 acquire can only truly be determined after we actually own and operate those systems –
7 these preliminary assessments are invaluable for many reasons. Among those is the need
8 to respond to questions raised by regulators in acquisition cases regarding future capital
9 plans. The Commission’s application form is a perfect example of why information
10 gathered during our engineering due diligence activities is essential to the process for
11 obtaining regulatory approval for acquisitions we seek to make. Questions 1 and 2 of the
12 Commission’s *Application for Transfer of Public Utility Franchise and for Approval of*
13 *Rates* require applicants, like Red Bird, to provide the following information:

14 1. Are there any major improvements/additions required in the next
15 five years and the next ten years? Indicate the estimated cost of each
16 improvement/addition, the year it will be made, and how it will be financed
17 (long-term debt, short-term debt, common stock, retained earnings, and
18 other (please explain)).
19

20 2. Are there any major replacements required in the next five years
21 and the next ten years? Indicate the estimated cost of each replacement, the
22 year it will be made, and how it will be financed (long-term debt, short-term
23 debt, common stock, retained earnings, and other (please explain)).
24

25 Providing such information, which is required in order for an acquisition application to be
26 deemed “complete,” would not be possible without the information gathered from the
27 engineering studies prepared as part of our acquisition due diligence. So, while the cost of
28 that due diligence is, as Mr. Houser testifies, “a cost of doing business,” it is a reasonable

1 cost that not only gives a prospective purchaser meaningful insight into the conditions and
2 issues in a system but also is necessary to complete the acquisition application and provide
3 information required by regulators.

4 **Q. DOESN'T MR. HOUSER ALSO CLAIM RED BIRD'S DUE DILIGENCE**
5 **COSTS ARE EXCESSIVE?**

6 A. Although he doesn't use the word "excessive," at page 31 of his testimony he states,
7 "[t]hese costs are significantly higher than due diligence costs requested by many previous
8 applicants." He cites two such cases as examples – Docket No. W-354, Sub 396 and Docket
9 No. W-2018, Sub 527 – but doesn't explain how applicants in those cases were able to
10 provide the kinds of capital improvement estimates required by the Commission's transfer
11 application form. The lack of such evidence – which isn't material to issues the
12 Commission must decide in an acquisition / transfer case – lends support to my contention
13 that this is an issue that need not be dealt with or decided in this docket but should, instead,
14 be deferred to Red Bird's initial rate case relating to the TESI system.

15 **V. EFFECT OF PROPOSED ACQUISITION ON CUSTOMER RATES**

16 **Q. TWO OF PUBLIC STAFF'S WITNESSES INCLUDE ESTIMATES**
17 **REGARDING THE EFFECT ON CUSTOMER RATES OF VARIOUS ASPECTS**
18 **OF THE JOINT APPLICATION. HOW DO YOU RESPOND?**

19 A. My response to Mr. Houser's and Ms. Feasel's projections regarding the proposed
20 acquisition of TESI's systems on future rates is twofold. First, because of recent changes
21 to G.S. § 62-111, which governs the Commission's consideration of water and wastewater
22 transfer / acquisitions, the only rates the Commission should consider are those the
23 purchasing utility proposes - which in this case are TESI's current Commission-approved

1 rates. Future rates – *i.e.*, those that would be set in a future rate case – are irrelevant to the
2 determination of whether an acquisition application should be granted.

3 As we made clear in the Joint Application and as reiterated in Mr. Cox’s direct
4 testimony, if Red Bird is authorized to acquire TESI’s water and wastewater systems the
5 customer rates currently in effect will continue to be charged until the Commission
6 authorizes a change in rates in a future Red Bird rate case. Accordingly, approval of the
7 Joint Application will have no impact on customer rates. Therefore, the Commission
8 should disregard the rate impact estimates included in the testimonies of both Mr. Houser
9 and Ms. Feasel. Those estimates have no relevance to the issues the Commission must
10 decide in this case – *i.e.*, whether Red Bird is technically, managerially, and financially
11 qualified to own and operate the TESI systems as a regulated public utility and whether the
12 proposed transaction is in the public interest.

13 There is another reason Public Staff’s rate impact testimony should be disregarded:
14 their projected rate impacts are just estimates. What’s more, they are estimates made based
15 on assumptions regarding all elements of ratemaking – revenue, expenses, rate base, capital
16 structure, rate of return, rate design, etc. – that may or may not be valid. For example, Red
17 Bird has made clear it intends to request in its first North Carolina rate case approval of
18 consolidated, statewide rates for both water and wastewater services. Based on the
19 experience of our affiliate group in states outside North Carolina, where such rates have
20 been approved, consolidated rates are an effective mechanism to mitigate “rate shock” that
21 otherwise would result when small, undercapitalized, and mismanaged systems are taken
22 over by experienced and technically competent owners that invest the capital required to

1 address the needs in those systems. Consolidated rates allow all customers within a state to
2 share the benefits of economies of scale our affiliated group is able to achieve, and also
3 helps to spread out the rate impact of required capital investments that have greater impacts
4 on some systems in the short term but that will affect all systems in the long run. Despite
5 Red Bird's announced intent to seek approval of consolidated rates, Public Staff's
6 estimated rate impacts, in addition to being based on estimates and assumptions, also are
7 calculated as if rates for the TESI systems would always be set on a stand-alone basis.

8 **Q. BECAUSE OF THE FACTORS YOU JUST DESCRIBED, DO YOU THINK**
9 **THE COMMISSION SHOULD CONSIDER FUTURE RATE IMPACTS IN**
10 **REACHING A DECISION IN THESE DOCKETS?**

11 A. No, I do not. The impact on future rates of Red Bird's acquisition of the TESI
12 systems will not and cannot be known at the present time, so it would be inappropriate and
13 unnecessary for the Commission to consider that issue in the current case. As a regulated
14 utility, Red Bird is prohibited by law from changing rates unless and until such a change is
15 authorized by the Commission. Under applicable law, no change in rates can be approved
16 by the Commission without a thorough consideration of a utility's rate change request, with
17 full opportunity for interested parties – like Public Staff – to present evidence and
18 arguments regarding that request. Also, as provided in Chapter 62, all rates set by the
19 Commission must be fair and reasonable. For all these reasons, it is neither necessary nor
20 appropriate for the Commission to consider possible future rate impacts in this case.
21 Consideration of rate related issues can and should be deferred to future rate cases where
22 all parties have the ability to present evidence on all factors relevant to ratemaking.
23 Following such consideration, both the utility and its customers can be assured that
24 whatever decision the Commission makes regarding rates will be based on facts – instead

1 of estimates and assumptions – and that the resulting rates are fair and reasonable to all
2 affected parties.

3 **VI. AMOUNT OF BOND REQUIRED BY N.C.G.S. § 62-110.3**

4 **Q. IF THE COMMISSION APPROVES THE PROPOSED TRANSFER OF**
5 **ASSETS, WHAT BONDS DO PUBLIC STAFF RECOMMEND THAT RED BIRD**
6 **BE REQUIRED TO POST TO SATISFY THE REQUIREMENTS OF N.C.G.S. § 62-**
7 **110.3?**

8 A, As stated in his testimony at page 33, should the Commission approve Red Bird's
9 proposed acquisition of TESI's assets Mr. Houser recommends Red Bird be required to
10 post a \$50,000 bond for the water system and a \$50,000 bond for the wastewater system.

11 **Q. DO YOU AGREE WITH PUBLIC STAFF'S RECOMMENDATIONS?**

12 A. No, I do not. In response to data requests Red Bird submitted regarding Mr.
13 Houser's bond recommendations, Public Staff stated the bond currently in effect for the
14 TESI water and wastewater system totals \$20,000. Public Staff's recommendation thus
15 represents a 400% increase in the bond required for the TESI systems. Absent a compelling
16 justification – which is not provided in Mr. Houser's testimony – the Commission should
17 reject Public Staff's recommendation.

18 **Q. DID RED BIRD ATTEMPT TO IDENTIFY THE BASIS FOR THE**
19 **SIGNIFICANT BOND INCREASE RECOMMENDED BY PUBLIC STAFF?**

20 A. Yes, Red Bird did seek such information. However, the information provided in
21 response to the company's inquiries wasn't very helpful. Following the filing of Mr.
22 Houser's testimony, Red Bird submitted several data requests seeking information
23 regarding the basis for Public Staff's bond recommendation. Those data requests and the
24 responses received were as follows:

1 26. Explain how and to what extent each of the following factors affected
 2 Public Staff's bond recommendations in this case: (a) the systems Red Bird
 3 currently owns and operates in North Carolina, and (b) the capital
 4 improvements recommended in Red Bird's preliminary engineering study
 5 of the TESI systems.

6 **Response: Both contribute to the bond recommended by Mr. Houser.**
 7 **Witness Cox testified in his prefiled direct testimony that Red Bird**
 8 **plans to pursue small systems which are out of compliance with**
 9 **environmental regulations. Red Bird also plans for substantial capital**
 10 **investment in the systems it pursues. If significant capital investment is**
 11 **indeed required in these systems, the bond should be increased.**
 12 **Additionally, Red Bird's other water and sewer franchises in North**
 13 **Carolina have not yet established a record of operation.**

14 . . .

15 27. At page 33 of his testimony Mr. Houser indicates Public Staff's bond
 16 recommendation was based, in part, on "Red Bird's limited operating
 17 experience in North Carolina." If operating experience is relevant to the
 18 determination of an appropriate bond amount, should the operating
 19 experience of Red Bird's affiliates outside North Carolina be taken into
 20 consideration? Explain all reasons for Public Staff's response.

21 **Response: N.C.G.S § 62-110.3(a)(1) requires the Commission to**
 22 **consider "Whether the applicant holds other water or sewer franchises**
 23 **in this State, and if so its record of operation." Based on § 62-110.3(a)(1)**
 24 **and the fact that other jurisdictions in which Red Bird operates have**
 25 **different regulations than those that apply to systems operated in North**
 26 **Carolina, the Commission should not consider the operating experience**
 27 **of Red Bird's affiliates outside North Carolina, but rather Red Bird's**
 28 **record of operation in North Carolina.**

29 . . .

30 28. Provide all calculations and workpapers supporting Public Staff's
 31 recommendation that Red Bird be required to post a \$50,000 bond for the
 32 Lake Royale water system and a \$50,000 bond for the Lake Royale
 33 wastewater system. Your response should explain the bond value Public
 34 Staff attributed to each of the factors in N.C.G.S. § 62-110.3(a).

35 **Response: Bond recommendations are not determined by a**
 36 **mathematical formula and as such do not have workpapers or specific**
 37 **values associated with each component.**

1 **Q. HOW DO YOU RESPOND TO THE EXPLANATIONS PUBLIC STAFF**
2 **PROVIDED FOR ITS PROPOSED INCREASE IN THE BOND APPLICABLE TO**
3 **THE TESI SYSTEMS AT ISSUE IN THIS CASE?**

4 A. My overall response is that based on Public Staff's responses to Red Bird's data
5 requests there is no justification for any increase in the bond for the TESI systems and most
6 certainly not the 400% increase Public Staff proposes. To date Red Bird has acquired three
7 water and wastewater acquisitions in North Carolina and has been required to post bonds
8 totaling \$475,000 in connection with those acquisitions. If the Commission authorizes Red
9 Bird to acquire the TESI systems, although that acquisition would increase the total number
10 of customers the company serves Public Staff has provided no explanation as to why the
11 addition of TESI's systems warrants a \$80,000 increase in that bond total – especially when
12 \$20,000 is currently deemed adequate for those same systems. Looking at the other
13 bonding criteria listed in G.S. § 62-110.3(a), the extent to which the age, condition, and
14 type of equipment will change is unknown at this point, the number of customers won't
15 change, and there is no evidence customer growth in TESI's service area would require
16 expansion of either the water or wastewater system.

17 As for Red Bird's "record of operation," although that company has a limited
18 operating history in North Carolina, CSWR – which is responsible for providing technical,
19 managerial, and financial support for all its utility operating affiliates – has demonstrated
20 its capabilities and competencies in each of the other 10 states where those affiliates
21 operate. Mr. Cox's direct testimony documents accolades CSWR has earned from
22 environmental regulators in Missouri and Mississippi, and the fact utility regulators in all

1 states where CSWR's affiliates operate continue to authorize and approve additional
2 acquisitions is testament to their satisfaction with the group's performance.

3 But perhaps the most compelling evidence of why Public Staff's bond
4 recommendation cannot be justified is its response to data request 28: "Bond
5 recommendations are not determined by a mathematical formula and as such do not have
6 workpapers or specific values associated with each component [identified in G.S. 62-
7 1103(a)]." This exposes Public Staff's bond recommendation process as arbitrary and
8 therefore unworthy of the Commission's endorsement or approval.

9 After considering all factors I believe are relevant to setting bonds for the water and
10 wastewater systems Red Bird proposes to acquire, I believe the appropriate bond amounts
11 are those currently in place. Public Staff has not provided any justification for the increases
12 it proposes.

13 **VII. PROPOSED ANNUAL REVIEW OF OPERATIONS AND**
14 **FINANCIAL CONDITION**

15 **Q. PUBLIC STAFF WITNESS HINTON PROPOSES RED BIRD BE**
16 **REQUIRED TO MEET ANNUALLY WITH PUBLIC STAFF TO DISCUSS THE**
17 **COMPANY'S WATER AND WASTEWATER OPERATIONS AND TO REVIEW**
18 **ITS FINANCIAL CONDITION. HOW DO YOU RESPOND?**

19 A. Although Red Bird is not opposed to an annual meeting with Public Staff to discuss
20 the company's operations and financial conditions, it seems to me Public Staff's efforts in
21 this area are misplaced. In response to Mr. Hinton's recommendation, Red Bird submitted
22 a data request asking Public Staff to, in part, "[i]dentify each water and/or wastewater
23 utility operating in North Carolina that currently is subject to the same or similar
24 requirement." In its response to that request, Public Staff stated, "no water/wastewater

1 utility is currently subject to the requirement to meet annually with the Public Staff.” That
2 response went on to identify four North Carolina utilities that are subject to such a
3 requirement and the cases in which that requirement was imposed. Three of those cases
4 involved mergers or corporate restructurings and the fourth involved the transfer of a
5 transportation certificate to Bald Head Island Ferry Transportation, LLC.

6 I found the list of companies required to meet annually with Public Staff puzzling
7 because I know three of those companies to be well run, well-capitalized, and profitable
8 utilities. I’m not familiar with the ferry company and therefore can’t comment on its
9 operations or financial conditions. But nowhere on the list was a small water and
10 wastewater company like TESI or the numerous other companies in North Carolina that
11 Red Bird has acquired or is seeking Commission approval to acquire. Yet those are the
12 types of utilities that warrant the kind of scrutiny Public Staff now proposes to impose on
13 Red Bird.

14 Focusing on TESI, I have attached to my testimony as **Thomas Rebuttal Exhibit**
15 **3**, excerpts from TESI’s annual reports for the years 2019 through 2022. Those excerpts
16 show TESI experienced negative net income in each of those years – ranging from a loss
17 of \$4,661 in 2020 to a loss of more than a quarter million dollars in 2022. Had Public Staff
18 required TESI to meet annually to discuss operations and finances those discussions would
19 have disclosed problems with both the company’s operations (as I described earlier in my
20 testimony) and its precarious financial situation. And there are numerous other small
21 systems in North Carolina whose operations and financial conditions are as bad or worse

1 than TESI's. Despite this fact, Public Staff seems only to require annual meetings with well
2 run and well-capitalized utilities who don't really need Public Staff's oversight.

3 **Q. WHAT ABOUT THE CONCERNS MR. HINTON EXPRESSED**
4 **REGARDING "THE ONGOING VIABILITY OF CSWR, LLC, BECAUSE IT**
5 **CONTINUES TO REPORT SIGNIFICANT LOSSES ON ITS CONSOLIDATED**
6 **INCOME STATEMENT." ARE THOSE CONCERNS VALID?**

7 A. No, they are not valid. If you focus solely on profit and loss from utility operations,
8 it's true CSWR has lost money each year the company has been in existence. But the picture
9 Mr. Hinton paints is focused too narrowly because it fails to acknowledge that neither
10 CSWR nor its utility affiliates fund day-to-day operations exclusively from revenues
11 derived from utility operations. Instead, those revenues are substantially supplemented by
12 working capital provided by investments from U.S. Water Systems, LLC (U.S. Water) –
13 the affiliate group's ultimate corporate parent.

14 As explained in Mr. Cox's direct testimony, U.S. Water invests equity in CSWR
15 sufficient to fund the purchase of systems like TESI, funds capital improvements necessary
16 to ensure those systems provide safe and reliable service that complies with applicable law,
17 and provides working capital necessary to fund day-to-day operations until rates for the
18 acquired systems can be reviewed and adjusted by state regulators, as necessary. Like
19 TESI, most systems our group acquires are losing money at the time of acquisition. And
20 because we routinely adopt the approved rates in place at the time of acquisition, those
21 losses continue after closing. Indeed, we expect losses to increase because most systems
22 we acquire were not properly or professionally operated before our acquisition, and those
23 systems usually require significant capital investment to repair, replace, and upgrade
24 infrastructure that was neglected for many years. Therefore, losing money until rates can

1 be adjusted to compensatory levels is something our company – and our investors – expect
2 and plan for. That is another reason why CSWR and its affiliates have been so successful
3 at turning around environmentally and financially distressed utilities like TESI.
4 Consequently, the financial metrics that concern Mr. Hinton need not concern the
5 Commission, especially in light of the fact current customers are being served by a utility
6 that not only is losing money but is failing to provide compliant or reliable service.

7 Since it began operations, CSWR has invested more than \$450 million to acquire,
8 improve, and operate water and wastewater systems. Of that total, approximately \$205
9 million was paid to sellers to acquire the utility assets and approximately \$195 million has
10 been invested to make capital improvements. The remaining approximately \$50 million
11 has provided working capital necessary to keep those operations going until rates can be
12 adjusted. Regulators in all other states where our affiliates operate agree this arrangement
13 satisfies the requirement that a party seeking to acquire utility assets demonstrate the
14 financial wherewithal necessary to own and operate those assets. This approach will work
15 as well in North Carolina as it does elsewhere.

16 CSWR has access to the equity capital necessary to purchase, improve, and operate
17 the water and wastewater systems our affiliates acquire. Our commitment to regulators has
18 been to invest equity sufficient to fund purchases, make necessary and prudent capital
19 improvements, and provide working capital. And because those commitments have been
20 kept, those same regulators continue to entertain and approve our acquisitions.

21 Red Bird plans to add debt to its capital structure at the appropriate time, but that
22 time is not now. Red Bird's systems in North Carolina currently have negative net income
23 and, as I have previously testified, TESI's North Carolina operations currently operate at a

1 loss. No commercial lender would lend money to a company with that kind of balance
2 sheet and income statement. That's why only three state operating companies in our
3 affiliate group – those in Missouri, Louisiana, and Mississippi – have been able to obtain
4 debt financing. But until debt funding is available, equity provided by CSWR will be
5 sufficient to fund and sustain utility operations, as Red Bird's affiliates conclusively have
6 demonstrated in other states.

VIII. CONCLUSION

7 **Q. DO YOU HAVE ANY CONCLUDING THOUGHTS YOU WANT TO**
8 **EXPRESS TO THE COMMISSION REGARDING THIS JOINT APPLICATION?**

9 A. Yes. I would like to reiterate what was said at the conclusion of Mr. Cox's direct
10 testimony in this case. Red Bird's proposed acquisition of the water and wastewater
11 systems currently owned and operated by TESI would be consistent with and would
12 promote the public interest. Transfer of these systems to a well-capitalized enterprise that
13 is a professional utility would be in the best interest of the TESI customers who are
14 currently being provided "intermittently" reliable service, potential on-going exposure to
15 human health threats, years of environmental violations and have no hope for
16 improvements from TESI. Red Bird and CSWR are fully qualified, in all respects, to own
17 and operate those systems and to otherwise provide safe and adequate service.
18 Accordingly, I respectfully ask the Commission to grant the authority sought in the Joint
19 Application.

20 **Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY AT THIS TIME?**

21 A. Yes, it does.

1 COMMISSIONER KEMERAIT: And the three
2 exhibits attached to the rebuttal testimony will
3 be marked for identification purposes as prefiled.

4 (Cox Rebuttal Exhibits 1 through 3 were
5 identified as they were marked when
6 prefiled.)

7 Q. And, Mr. Cox, did you cause to be prepared
8 and filed on October 23 supplemental testimony relating
9 to the Settlement Agreement with the Public Staff
10 consisting of five pages and one exhibit?

11 A. I did.

12 Q. Do you have any changes or corrections to
13 that testimony?

14 A. No.

15 Q. If I was to ask you the questions that are
16 set forth in that prefiled supplemental testimony,
17 would your answers be the same as those appearing in
18 the prefiled supple- -- supplemental testimony?

19 A. Yes.

20 MR. HIGGINS: Commissioner Kemerait, at
21 this time I move the admission of Mr. Cox's
22 prefiled supplemental testimony and the one
23 exhibit attached to it.

24 COMMISSIONER KEMERAIT: Seeing no

1 objection, the supplemental testimony of Red Bird
2 Witness Cox, filed on October 23, 2023,
3 consisting of five pages, will be copied into the
4 record as if given orally from the stand.

5 (Whereupon, the Prefiled Supplemental
6 Testimony of JOSIAH COX was copied into
7 the record as if given orally from the
8 stand.)
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**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. W-1146, SUB 13
DOCKET NO. W-1328, SUB 10

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of)
Application by Red Bird Utility Operating)
Company, LLC, 1650 Des Peres Road,)
Suite 303, St. Louis, Missouri 63131, and)
Total Environmental Solutions, Inc., Post)
Office Box 14056, Baton Rouge, Louisiana)
70898, for Authority to Transfer the Lake)
Royale Subdivision Water and Wastewater)
Utility Systems and Public Utility Franchise)
in Franklin and Nash Counties, North Carolina,)
and for Approval of Rates)

**SUPPLEMENTAL TESTIMONY OF JOSIAH COX
ON BEHALF OF RED BIRD UTILITY OPERATING COMPANY, LLC**

1 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

2 A. My name is Josiah Cox. My business address is 1650 Des Peres Road, Suite 303, St.
3 Louis, Missouri, 63131.

4 **Q. WHAT IS YOUR POSITION WITH RED BIRD UTILITY OPERATING**
5 **COMPANY, LLC (“RED BIRD” OR “COMPANY”)?**

6 A. I am President of Red Bird Utility Operating Company, LLC (“Red Bird”). I also am
7 President of CSWR, LLC, (“CSWR”), the corporate parent of Red Bird.

8 **Q. DID YOU PREVIOUSLY FILE TESTIMONY IN THIS DOCKET?**

9 A. Yes, my direct testimony on behalf of Red Bird was filed in these dockets on August
10 30, 2023.

11 **Q. WHAT IS THE PURPOSE OF THE TESTIMONY YOU ARE NOW FILING?**

1 A. My supplemental testimony is provided on behalf of Red Bird to support the
2 Commission's approval and adoption of the Settlement Agreement and Stipulation
3 ("Stipulation") entered into by the Public Staff and Red Bird and filed with the Commission
4 on October 23, 2023.

5 **Q. DID THE STIPULATION RESOLVE ALL DISPUTED ISSUES BETWEEN**
6 **RED BIRD AND THE PUBLIC STAFF?**

7 A. Yes, it resolved all contested issues remaining between the Company and Public Staff.

8 **Q. WHAT WERE THE UNRESOLVED ISSUES?**

9 A. The disputed issues related to the rate base in the utility assets Red Bird proposes to
10 acquire from Total Environment Solutions, Inc. ("TESI"), the extent of Red Bird's due
11 diligence and acquisitions costs to potentially be recovered in the first general rate case
12 relating to the TESI system serving the Lake Royale development, and Red Bird's request
13 for an acquisition adjustment in connection with the acquisition of the TESI systems.

14 **Q. HOW DOES THE STIPULATION RESOLVE ALL OF THOSE ISSUES?**

15 A. The Stipulation reflects Red Bird's agreement to not pursue an acquisition adjustment
16 in these dockets, establishes the net book value of the TESI water and wastewater system
17 assets to be acquired by Red Bird, and provides for Red Bird's recovery of a meaningful
18 portion of its due diligence cost and transactional costs relating to this acquisition in a
19 future rate case.

20 **Q. DID RED BIRD MAKE SIGNIFICANT CONCESSIONS IN REACHING THE**
21 **AGREEMENT ON THE STIPULATION?**

22 A. Yes, we did. That being said, the Stipulation is a product of the arms-length
23 negotiations of the parties that yielded a result that both parties could accept. Commission

1 approval of the Stipulation will also provide us with certainty moving forward as to the
2 TESI system.

3 The Stipulation is the product of the give-and-take in settlement negotiations between Red
4 Bird and the Public Staff. There are provisions of the Stipulation that are more important
5 to Red Bird, and, likewise, there are provisions that are more important to the Public Staff.
6 Nonetheless, working from different starting points and different perspectives, these parties
7 were able to find common ground and achieve a settlement. We also anticipate that the
8 Stipulation will facilitate an earlier closing of this acquisition, and thereby allow Red Bird
9 to begin operating this system and bringing the benefits of its ownership of this system to
10 TESI customers earlier than would otherwise be possible.

11 **Q. DID OTHER REASONS SUPPORT RED BIRD'S WILLINGNESS TO SETTLE**
12 **THESE FINAL ISSUES WITH THE PUBLIC STAFF?**

13 A. Yes. Red Bird has other transfer applications pending before the Commission, and we
14 look forward to adding TESI to the portfolio of systems the Company seeks to build in
15 North Carolina. As we move forward with our business model and plans here, we will
16 continue to work to replicate in North Carolina the record of success our affiliate group has
17 achieved elsewhere.

18 As shown in my direct testimony, Red Bird has the financial, technical, and managerial
19 ability to acquire, own, and operate TESI's water and wastewater systems in a manner that
20 fully complies with applicable health, safety, and environmental protection laws and
21 regulations, and to provide reliable, safe, and adequate service to customers. Red Bird is
22 part of an affiliate group that currently owns and operates wastewater systems serving
23 approximately 219,000 wastewater customers and drinking water systems serving

1 approximately 145,000 customers in Missouri, Arkansas, Kentucky, Louisiana, Texas,
2 Tennessee, Mississippi, Florida, South Carolina, North Carolina, and Arizona.

3 **Q. DID PUBLIC STAFF REQUEST THAT RED BIRD ADDRESS CERTAIN**
4 **ISSUES IN THIS SUPPLEMENTAL TESTIMONY?**

5 A. Yes; those issues are addressed in the next few questions and answers.

6 **Q. PLEASE DESCRIBE THE RELATIONSHIP BETWEEN SCIENS WATER**
7 **AND/OR SCIENS CAPITAL MANAGEMENT, LLC, AND US WATER SYSTEMS,**
8 **LLC.**

9 A. Sciens Capital Management, LLC, is an independent investment firm that provides
10 various investment opportunities to both private and institutional clients. In 2018 it
11 launched the Sciens Water Opportunities Fund, an entity that holds investor dollars to be
12 distributed to make investments in the United States water sector. U. S. Water Systems,
13 LLC (“US Water”) is a Delaware limited liability company formed by Sciens Capital
14 Management, LLC to oversee those water sector investments, including investments in
15 CSWR.

16 **Q: WHO IS THE ULTIMATE SOURCE OF THE FUNDING USED BY RED BIRD**
17 **TO ACQUIRE SYSTEMS, TO MAKE THE INVESTMENTS NECESSARY TO**
18 **ADDRESS ISSUES WITH SYSTEMS THAT ARE ACQUIRED, AND TO FUND**
19 **RED BIRD’S OPERATIONS?**

20 A. US Water is the source of equity capital that CSWR invests in its utility affiliates,
21 including Red Bird although, as stated in my previous answer, US Water’s funds are
22 provided by capital raised by Sciens Capital Management, LLC. Those affiliates use the
23 equity provided by CSWR to acquire small, oftentimes distressed water and wastewater
24 systems, make capital investments necessary to bring those systems into compliance with
25 applicable laws and regulations to ensure they provide safe and reliable service, and
26 provide working capital required to financially sustain the utility affiliates until they can
27 obtain fully compensatory rates from state regulators. Red Bird currently is using equity

provided by CSWR for the purposes I just described for the Ocean Terrace/Pine Knoll Townes, Bear Den, and Crosby Utilities acquisitions the Commission previously authorized.

Q: PLEASE EXPLAIN HOW FUNDING PROVIDED TO CSWR BY US WATER IS ALLOCATED AMONG THE CSWR AFFILIATES.

A. Funding is provided to the various CSWR utility affiliates based upon their respective capital needs. Funds are allocated based on assessments of need, with consideration for health, safety and compliance being prioritized. Those needs include the costs of acquiring the systems (including the purchase price paid for assets, due diligence costs, and acquisition costs), the costs of capital investments necessary to upgrade and improve systems to ensure compliance with applicable health, safety, and operating laws and regulations, and the working capital necessary to sustain them until they can establish fully compensatory rates. Funding from US Water is approved and pulled down to CSWR three times per year.

Q: ARE THERE ANY LIMITATIONS AND/OR CONDITIONS PLACED ON THE FUTURE FUNDING OF RED BIRD BY ANY OF RED BIRD'S UP STREAM OWNERS?

A. No.

Q: CAN YOU PROVIDE AN UPDATED VERSION OF THE EXPLANATION OF CORPORATE STRUCTURE AS A LATE FILED EXHIBIT IN THIS DOCKET?

A: Yes, attached as Cox Supplemental Exhibit 1 is an updated explanation of corporate structure provided pursuant to the request by the Public Staff.

Q. DOES THIS CONCLUDE YOUR SUPPLEMENTAL TESTIMONY?

A. Yes.

1 COMMISSIONER KEMERAIT: The one exhibit
2 attached to Mr. Cox's supplemental testimony will
3 be marked for identification purposes as prefiled.

4 (Cox Supplemental Exhibit 1 was
5 identified as it was marked when
6 prefiled.)

7 MR. HIGGINS: Thank you.

8 With that, and pursuant to the filed
9 Settlement Agreement -- Agreement and
10 Stipulation, Mr. Cox is available for cross by
11 TESI and the Property Owners Association.

12 MR. FINLEY: No questions.

13 COMMISSIONER KEMERAIT: Okay. No
14 questions from TESI's counsel.

15 Mr. Drooz?

16 MR. DROOZ: Thank you.

17 CROSS EXAMINATION BY MR. DROOZ:

18 Q. And good afternoon, Mr. Cox.

19 A. Good afternoon.

20 Q. You're aware that improvements are needed in
21 the water and sewer infrastructure serving the Lake
22 Royale community?

23 A. Absolutely.

24 Q. Okay. You heard that from the customers at

1 the public hearing; is that right?

2 A. I did. And the written comments I saw the
3 customers wrote in as well.

4 Q. Thank you.

5 And did Red Bird retain an engineering
6 consultant to do a preliminary assessment of what
7 improvements would be needed?

8 A. We did.

9 Q. Okay. Will you be doing further assessments
10 to get a full idea of what improvements are needed?

11 A. Yes, we will. And we'll -- additionally,
12 you know, we're -- we're aware of a number of leaking
13 lines that have been unaddressed. So we'll look for
14 if there's more line breaks or leaks that need
15 addressed as well.

16 Q. Great. What's your timetable for completing
17 a full assessment of the improvements that are needed?

18 A. It'll typically take about three months of
19 operating the system. Longer to make sure that we
20 have great data on it, over the last several months,
21 to make sure we know exactly what the improvements
22 should be, but I would say three more months of
23 operations.

24 Q. Okay. And once you've completed that

1 assessment will that information be made available to
2 the Property Owners Association?

3 A. I mean, if you would like us to talk about
4 the improvement -- to talk about the improvements we
5 plan on making, we have no problem doing that.

6 Q. Great. Thank you. I think they would very
7 much appreciate that. So thank you.

8 A. Yup. That's something we've done a number
9 of property owner associations across the country.
10 That's not a problem.

11 Q. Did you hear customer concerns about --
12 hearing about TESI's failure to repair some of the
13 community roads that were damaged by water leaks and
14 by the efforts of TESI to repair those leaks?

15 A. I did.

16 Q. Okay. Is Red Bird willing to commit to
17 doing everything it can to avoid road damage caused by
18 the water system in the future?

19 A. Yes.

20 Q. And if some damage is unavoidable, will Red
21 Bird commit to making prompt repairs to the roads?

22 A. Yes.

23 Q. Okay. I don't know if you recall, Grace
24 Noonan, is the manager for the Property Owners

1 Association, testified at the public hearing, saying
2 the POA had invoiced TESI -- TESI for \$16,000 for road
3 repairs that the Property Owners Association had made
4 for damage caused by the water utility. Do you recall
5 that at all?

6 A. I do not recall that. No.

7 Q. Okay. In your opinion would it be
8 reasonable for TESI to be required to either repair
9 the road damage that still exists or provide funding
10 for a contractor to do the repairs of the damage to
11 the roads caused by TESI's water system?

12 A. I'm not TESI. I don't have an answer for
13 that.

14 Q. Would it be fair or reasonable to ask TESI
15 to reimburse the Property Owners Association for the
16 \$16,000 they expended to repair damage caused by TESI?

17 A. Again, I'm not TESI. I don't have an answer
18 for that.

19 Q. If the transfer is approved without TESI
20 making those repairs for the damage caused by its
21 water system, does Red Bird plan to make the repairs
22 to the roads?

23 A. We -- we agree that any future repairs that
24 are done, that we will bring the road back to the

1 condition it was at or better for every repair we do
2 going forward.

3 Q. But that would not cover the road damage
4 that was done in the past by TESI. Do I understand
5 that correctly?

6 A. That is correct.

7 Q. Okay. So that would simply leave the
8 problem caused by the current owner for the property
9 owners to take care of?

10 A. I'm just not aware of this problem at all.

11 Q. Okay. If it is a problem, that -- then you
12 would be leaving that for the property owners to take
13 care of?

14 A. I'd have to see what the problem is.

15 Q. There was some customer concern that not
16 everyone had been getting notices about the water
17 system from TESI. And the POA wants to know if Red
18 Bird will compile a list of emails and address --
19 mailing addresses for all customers who are receiving
20 bills and ensure that they all get timely notices?

21 A. We would love that.

22 Q. Thank you.

23 And will Red Bird provide advanced notice
24 when there's work on the water system that may cause

1 discolored water or other -- or -- or low pressure or
2 other effects?

3 A. I mean, obviously, that's very situationally
4 dependent. You know, where possible we have planned
5 repairs, or, you know, planned events, we would -- we
6 strive very hard to do advanced notice of those
7 events, but, obviously, with a system like this,
8 that's almost fully depreciated, with aging
9 infrastructure and failing infrastructure we're all
10 aware of, some of these repairs are going to be
11 emergency, and will be just all about service
12 restoration. So, obviously, we can't give advanced
13 notice of those things.

14 Q. Even in a short-term emergency could you
15 provide the POA contact person an email notification,
16 so they can send out an email blast to customers?

17 A. We would love that. And we always go on
18 campaigns to try and get as much contact information
19 as we can from customers.

20 Q. Okay.

21 A. We'd rather be proactive in those. So texts
22 and emails are easier than written, obviously, or
23 signs.

24 Q. Yes. Will Red Bird commit to reading the

1 customer's meters every month, so they will receive
2 the -- the charge for actual usage, instead of some
3 estimated usage?

4 A. I believe that's in the -- that's in the
5 tariff. Yes.

6 Q. Okay. Thank you. It doesn't always happen,
7 but I'm -- I'm glad to hear your commitment to that.

8 So Red Bird filed an amended Application on
9 August 18 in this Docket. Page four of that -- and I
10 can show you, if you want, but it says, "The average
11 usage for water is unknown."

12 Do you know if TESI maintained billing
13 records that included the meter -- meter readings?

14 A. I'm unaware of that sitting here today.

15 Q. Okay. So there's also a customer notice
16 that went out in connection with this Docket, and it
17 set the average usage for residential customers on
18 water is 2,300 gallons per month. Do you know where
19 that number came from?

20 A. I believe it came from long-term estimated
21 readings of those meters, is what I believe it came
22 from.

23 Q. Okay. And -- and so that was TESI records?

24 A. I believe so.

1 Q. Okay. Do you know why the Application said,
2 "Unknown," and then the customer notice had a number?

3 A. No, I'm not.

4 Q. Okay. Now, 2,300 --

5 Oh, go ahead.

6 A. Yeah. I would add if -- it's a ton of
7 estimated use. And we know there's a ton of leakage
8 in the system. It's very hard to determine what
9 individual use is for customers.

10 Q. Okay. So it's not compiled from each
11 customer's meter, but more master meter information?

12 A. That's all we have --

13 Q. Okay.

14 A. -- is the purchased water compared to --

15 Q. Okay.

16 A. Since the meter is not being read. It's not
17 functional.

18 Q. Understood.

19 So 2,300 gallons a month seems, in my
20 limited experience, somewhat lower than typical for
21 residential usage. Do you know if that reflects usage
22 for year-round customers or seasonal customers or
23 what?

24 A. I don't -- I don't know the answer to that

1 question.

2 Q. Okay. The customer notice in this case also
3 indicated that the average -- or the bill for 2,300
4 gallons of use under current rate is about \$42.88; do
5 you recall that?

6 A. That sounds correct.

7 Q. Okay. So the notice also indicated a
8 projection that the bill for 2,300 gallons of
9 residential use could be \$73.44 after three years. Do
10 you recall that?

11 A. Yes.

12 Q. Okay. Does that projected increase and --
13 and we understand it could be more. It could be less.
14 Does that include the cost of all the needed capital
15 improvements to the water system or just those that
16 have been identified in the preliminary assessment?

17 A. Yeah, I mean, I would say a couple of
18 things. One, we don't believe that accurately
19 reflects what future rates are going to be, because we
20 typically consolidate rates, and we don't know if
21 we'll be back here for a rate increase in three years.

22 So it really depends on how much work has
23 been done, how many systems we've acquired in the
24 state. So that is not -- those initial notices were,

1 you know, required by the public counsel here, not
2 something that we think the final rates will be. So I
3 just want to say that.

4 Q. So a factor in that projection, which may or
5 may not happen, a factor is that that would involve
6 uniform rates. So it would include cost of other
7 systems too?

8 A. No.

9 Q. Okay.

10 A. No. That was a standalone. So that's
11 why --

12 Q. A standalone.

13 A. -- I believe it's inflated. Correct.

14 Q. Thank you.

15 Okay. So, on that standalone, does that
16 include the cost of water system improvements from the
17 preliminary engineering report?

18 A. It does.

19 Q. Okay. And, you know, on the standalone, if
20 it went from 42.88 to 73.44, that would be about a 71
21 percent increase; is that --

22 A. Again --

23 Q. Does that sound correct?

24 A. Again, that's not the way we believe the

1 rates will go in the future.

2 Q. Okay. In -- in rate making are you familiar
3 with the concept of rate shock, where utility
4 customers are subjected to a sudden large rate
5 increase?

6 A. I've heard the term.

7 Q. Okay. Are you also familiar with the
8 concept of gradualism in rate increases?

9 A. I've heard the term.

10 Q. Okay. What do you think of that term?

11 A. It's a regular regulatory term.

12 Q. Okay. Is it reasonable?

13 A. It can be.

14 Q. Okay. So you heard all the customer
15 concerns about leaking waterlines?

16 A. I did.

17 Q. Is there a possibility the distribution
18 system will be in such bad shape it'll need to be
19 entirely or largely replaced?

20 A. No, because you don't have enough loss from
21 the master meter to -- to say that it needs -- you
22 know, now eventually, obviously, all the lines will
23 need replaced in the entire system, but, no, it's not
24 going to be a massive undertaking the first ten years

1 were it needs replaced.

2 Q. Will there need to be some repairs for those
3 leaking lines?

4 A. Absolutely.

5 Q. Is that a pressure problem?

6 A. No. It's an age-of-infrastructure problem
7 and a lack of reinvestment over decades.

8 Q. Okay. So are the cost of repairing and
9 replacing those waterlines, is any of that included in
10 the preliminary engineering report?

11 A. No, it is not. That's a much longer term
12 project.

13 Q. Any ballpark idea how much it might cost?

14 A. No. We're still going to -- we have to work
15 on triaging the system and just getting it back to
16 functional. Getting rid of the 150 water leaks you
17 have currently.

18 Q. Okay. So, again, looking at system alone
19 projections, which I understand you -- you're saying
20 it's not likely how it's going to play out, but you go
21 from the 42 some dollars to the \$71, that, you know,
22 it looks like that would be a \$30.56 increase in three
23 years.

24 Do I understand correctly from the customer

1 notice that of that increased amount only \$3.48 on the
2 bill per month for residential is attributed to the
3 water system improvements that have been identified in
4 the preliminary engineering report?

5 A. I don't remember it like that.

6 Q. Okay. Well, let me pull out my source here.

7 I can read this to you, or if you want, I
8 can approach the witness and -- and show you the
9 wording in the customer notice. Either way.

10 A. Either way is fine with me.

11 Q. Okay. This is from page one of the Order
12 scheduling hearings and requiring customer notice.
13 The second full paragraph, there's a sentence that
14 said, "Based on Red Bird's estimated cost for these
15 improvements, due diligence cost and the purchase
16 price of Lake Royale water utility system, the
17 approximate annual revenue requirement associated with
18 the water utility system capital expenditures is 3" --
19 "is 68,692, or \$3.48 per customer per month."

20 I'm not sure if I've interpreted that
21 correctly, but that's where I got that 3.48 from.

22 A. Yeah. And the Stipulation has already
23 changed -- already changed those numbers.

24 Q. Okay. And what is that number?

1 A. I -- I don't know what the number is today.

2 Q. Okay. So does that water system capital
3 expenditures number reflect the cost of improvements
4 identified in the preliminary engineering report?

5 A. I believe it does.

6 Q. Okay. So if rates over three years are to
7 go up \$30.56 hypothetically, as identified in the
8 customer notice, but only \$3.48 of that is for water
9 system improvements, then the remainder of that
10 increase is really going to be cost allocations from
11 Red Bird down to the Lake Royale subdivision?

12 A. No.

13 Q. Okay. Where else would those costs come?

14 A. This is all hypothetical. I mean, I have no
15 idea.

16 Q. You have no idea where the projection came
17 from?

18 A. Yeah. The -- those costs come from --
19 because we disagree with the way those are done.

20 Q. And yet who provided that number for the
21 customer notice?

22 A. Well, we disagree about the way the
23 allocations are done. We disagree with every part of
24 how that number is billed.

1 Q. Okay.

2 A. None of that is real for us.

3 MR. DROOZ: Thank you. That's all of
4 my question. I appreciate it.

5 COMMISSIONER KEMERAIT: Mr. Cox, I've
6 been saying good morning, but we did start at
7 12:00. So good afternoon again.

8 I have a number of questions from
9 commission staff and also from myself. And I'll
10 preface my questions by saying that I -- I
11 recognize that some of the questions have been
12 addressed by the Stipulation, but the reason for
13 the questions is that we want to have -- the
14 Commission wants to have a better understanding
15 of -- of Red Bird's position and its Application
16 and testimony and then also the Stipulation.

17 And some of the questions that I'll be
18 asking of you will be similar questions that I'll
19 be asking the Public Staff as well.

20 EXAMINATION BY COMMISSIONER KEMERAIT:

21 Q. Okay. So starting with questions about
22 capital structure and financing, and I will refer you
23 to pages in your testimony. I'm not sure that it's
24 necessary for you to -- to flip to it, but -- but I

1 will give you the -- the page in case you need it.

2 But in your direct testimony on page 17 you
3 stated the company has invested more than \$416,000,000
4 in systems through equity and that you intend to
5 pursue debt financing at, quoting, "the appropriate
6 time."

7 Can you provide the Commission with some
8 additional information about when you anticipate that
9 appropriate time will be?

10 A. Yeah. I mean, for example, Commissioner,
11 think about the Lake Royale system. So, you know,
12 TESI has, you know, shown in their annual reports
13 they've lost money for the last number of years.

14 In fact, I think they lost \$250,000 one
15 year. So all -- you know, the -- the rates haven't
16 been changed in -- I get -- over a decade. Well over
17 a decade.

18 So none of these rates are, you know,
19 commensurate with even the cost of service. So we
20 have to use all equity when we purchase these systems.
21 Do the improvements, come back to the Commission at
22 some future date after the improvements are made,
23 after aggregation of a bunch of systems, get
24 commensurate rates in place before we could get debt

1 financing, because there's no cash flow to support any
2 debt financing in the state with these loss-making
3 systems.

4 Q. And do you have any general estimate about
5 when that time period will be, when you would be
6 seeking debt financing?

7 A. It would be after some future rate
8 proceeding.

9 Q. And then I had a similar question, but your
10 answer is probably going to be the same, but, for the
11 record, I'll ask -- I'll ask it for you.

12 Red Bird says that ultimately the capital
13 structure will be 50 to 60 percent equity and 40
14 to 40 -- 40 to 50 percent debt. And can you for
15 that -- similar question. Can you explain when that
16 change from capital structure of debt and equity you
17 anticipate might occur?

18 A. Yeah. Absolutely the same. It's after
19 rates -- you have to have cash flow to support debt
20 financing. So after future rates are done, the --
21 those cash flows then will be able to support future
22 debt.

23 Q. Okay. And this is a question from the
24 Commission staff, and they have asked that you provide

1 some insight to the Commission about the Company's
2 business plans and need for external financing, and to
3 speak generally about business plans and external
4 financing that you may be seeking.

5 A. Yeah. I mean, so we're -- you know, I
6 guess, a little bit about our company. So essentially
7 it's water resources. You know, our mission is to
8 bring safe, reliable and environmentally-sustainable
9 water resources to every community in the U.S.

10 So North Carolina faces the same issue that
11 states all across the country face. There are, you
12 know, hundreds, if not thousands, of small utilities
13 that really lack the technical, managerial, financial
14 ability to run a utility.

15 And kind of what we've seen, even with TESI
16 being a coop, they got into the water, wastewater
17 space. These are -- the day of the mom-and-pop
18 utilities has kind of passed.

19 So our plan is to buy -- we're buying small
20 troubled water and wastewater systems all over the
21 country. We came to North Carolina because North
22 Carolina is in the top ten of having the most amount
23 of compliance issues and the highest amount of
24 fragmentation.

1 So really our plan is to continue to buy
2 utilities in the state, as we have other Applications
3 before the Commission today, bring those systems back
4 into compliance, you know, which takes capital
5 investment, do the reinvestment necessary, come before
6 the Commission to get commensurate rates, and then
7 apply for debt financing after that.

8 Before that all the financing is done with
9 equity, because there is no cash flow to support any
10 debt.

11 Q. And then my next question from the staff
12 deals with capital infusions from -- and let me make
13 sure I'm pronouncing this right -- Science U.S. Water;
14 is that correct?

15 A. No. The technical group we're getting
16 equity funding from is Use Water Systems, LLC.

17 Q. Okay. And so Commission staff has asked:
18 How long will the Company's current plans and
19 contracted acquisitions continue to require equity
20 infusions from U.S. Water Systems, LLC?

21 A. Is the question, Commissioner, how many
22 years it will take?

23 Q. Right. Time period again. General time
24 period.

1 A. I mean, depending on the pace of
2 acquisitions, I imagine the next three to four years.

3 Q. Okay. And can you speak to the nature of
4 the capital that U.S. Water Systems, LLC has access
5 to?

6 And the question is, for example, is it a
7 committed pool with a life long enough to see through
8 the investments, or are the investors able to withdraw
9 it on demand?

10 Can you speak generally to the nature of
11 that capital?

12 A. No, Commissioner. You know, we're backed by
13 a New York private equity firm. I can tell you it's
14 Central States. I'm the founder of the company. So,
15 Central States Water Resources, we're -- we're kind of
16 a forever hold utility company.

17 So there are -- there are no plans for our
18 company to exit the utility business, sell assets. We
19 don't sell utilities. All of that.

20 Q. And then on page five, lines 13 and 14 of
21 your settlement testimony you state, and I'm going to
22 quote, "Funding from U.S. Water is approved and pulled
23 down to CSWR three times per year," end quote.

24 Can you explain these three funding events

1 from U.S. Water to CSWR, including the timing of the
2 funding and the minimum or maximum amounts to be
3 provided?

4 A. So there are no minimum or maximum amounts,
5 in terms of what we can pull down. It all -- it all
6 follows the business plan that we have in front of us.
7 And the business plan all centers around identifying
8 troubled utilities, identifying the costs it's going
9 to do to bring these systems back in compliance and
10 what operational costs would take to run those
11 utilities.

12 The timing is really -- it's set by Central
13 States Water Resources, how often we want to come in
14 and present. We give an annual budget for what we
15 think the following year is going to be and then just
16 draw down on that.

17 Q. So there's no time certain for those -- for
18 those timing events?

19 A. No. We -- we -- we kind of make a decision
20 internally as a company at Central States we want to
21 do that.

22 Q. Okay. And then can you -- can you talk
23 about whether there are any minimum or maximum caps on
24 funding from CSWR to the CSWR utility affiliates?

1 A. No. There are no caps.

2 Q. And so the next question is about the
3 allocation methodology. And you can -- can you
4 explain the Massachusetts allocation methodology that
5 you mentioned on the updated explanation of corporate
6 structure exhibit that you provided with your
7 settlement testimony?

8 A. Here we go. Now you're going to make me do
9 regulatory utility accounting. So, you know, I'll
10 give you the layman -- you know, the president version
11 of that.

12 Basically it's the total -- the total
13 customers. It's all the -- it's all the overhead
14 costs divided by total customers. And is a function
15 of rate base and expense, is how I would -- how I
16 would characterize that.

17 So if we have 200,000 households we -- we
18 serve across the entire country, and that 200,000
19 households has half a billion dollars of rate base, it
20 would be -- the allocation would be the subsection of
21 the state that is customers and rate base.

22 Q. And so would it be on a pro rata basis?

23 A. Pro rata. Correct.

24 Q. Okay.

1 A. And, Commissioner, I believe one of the
2 great benefits we offer, especially here in North
3 Carolina, because it's a smaller market for us, is
4 that we have this, you know, organization that we have
5 bought more small water and wastewater systems than
6 any other entity in the last 20 years.

7 And we have more experience turning them
8 around, and we're bringing all the experience at a
9 fraction of the cost, because we're spreading those
10 costs around with such a large base.

11 Q. And so can you -- can you elaborate on that
12 and talk about economy of scale that will benefit
13 North Carolina customers?

14 A. Yeah, absolutely. So you're getting the --
15 you're getting the fractional amount of all the
16 expertise passed down to every individual customer, A,
17 is what -- that's the scale you get.

18 B, you take all of these individual
19 utilities, TESI in particular, they can't attract
20 the -- you know, the talent that they need to run
21 these systems.

22 In fact, that's been one of TESI's big
23 problems even recently, is they can't keep qualified
24 operators. So we have purchasing power to do that.

1 And then we do construction projects on a
2 statewide basis. We're able to bid those out in
3 larger packages, because we're aggregating a bunch of
4 smaller utility packages into a single construction
5 package, which, one, attracts a higher tier of
6 contractors. You get better workmanship. And then,
7 two, lower prices, because it's more competitive.

8 Q. Okay. And so your answer reminds me of a
9 question that I had about the certified operator, and
10 I -- I know from the testimony that Red Bird is not
11 intending to retain the -- the operator for the TESI
12 system, and you've already hired another certified
13 operator.

14 Can you explain the -- the position about
15 Red Bird about choosing different -- or selecting
16 different operators to run systems and why you did it
17 in this particular instance?

18 A. Well, we did in this instance, because TESI
19 was in a jam. They were -- they were -- literally
20 they were losing all of their professional operators.
21 They couldn't retain staff.

22 So we were afraid that the -- the -- the
23 system would lose the basic ability to provide
24 service. So they came to us and said, we're in a --

1 you know, we're in a desperate situation here. Can
2 you please step in on a -- kind of a temporary
3 operating agreement?

4 And so that's what we did. That's why we
5 stepped into the -- into the position we did.

6 Q. And how long has the new operator been
7 operating the system?

8 A. A couple of months, I believe.

9 Q. And have you seen any improvement in
10 operations of the system since the -- you have the new
11 operator in place?

12 A. Oh, we've repaired a ton of water leaks
13 already. I think there was 150 leaks -- or 155 when
14 we walked in. I think we've knocked out, you know,
15 20 percent of those, you know, something like that --
16 like that. So we're moving very quickly.

17 Q. Okay. Well, that's a positive development,
18 certainly.

19 A. That's for sure.

20 Q. So going back to a question that I had just
21 asked. We want additional clarification about U.S.
22 Water Resources.

23 Will it be at any risk of losing the capital
24 commitments that it is using to fund capital

1 infusions, or is your answer that CSWR itself has the
2 cash flows to fund these capital needs in North
3 Carolina?

4 A. There's no risk of that -- of the cash
5 flow -- of the equity not being there.

6 Q. Okay. And can you elaborate about why there
7 is no risk?

8 A. Yeah. I mean, because, you know, we've got
9 a -- you know, a large pool of capital that's
10 available to us. I mean, we've -- we've -- I mean, I
11 believe, Commissioner, we've already proved that.

12 We've -- by the end of this year we'll put a
13 half a billion dollars in the ground, you know, kind
14 of across 12 states. That's one of my favorite things
15 about this job, we're taking Wall Street money and
16 putting it on Main Street America.

17 Q. Okay. And this -- the next question deals
18 with your due diligence cost that is addressed in the
19 Stipulation. And on page 26 of your direct
20 testimony --

21 And I -- I -- I recognize that the agreement
22 that has been reached about diligence cost is
23 different from the information that was provided in
24 your initial testimony.

1 But you did state that you can never be
2 exactly sure what capital investments will be required
3 for repairs and upgrades until you have a chance to
4 operate the systems you will require.

5 And Public Staff Witness Houser asserts that
6 your diligence costs are, as he describes it,
7 significantly higher than those previous water
8 transfer applicants.

9 And can you explain why the due diligence
10 costs that -- that are reflected in the Stipulation
11 of 40,000 -- \$40,801.23 would be, in this particular
12 instance, considered to be prudent and reasonable?

13 A. I mean, Commissioner, the only way I can
14 answer that is we've negotiated -- we've stipulated to
15 that fact. That's much less than what our actual due
16 diligence costs are.

17 So, you know, I -- you know, from our
18 perspective, we're buying troubled utilities. I mean,
19 let's take TESI for example nationally. TESI has
20 violated the Clean Water Act over 5,000 times over the
21 last ten -- the ten -- last ten years across their
22 entire national footprint.

23 So these systems -- and I believe that the
24 coop got into the business for the right reasons.

1 They had customers that they were serving electricity
2 to. So I totally understand their intentions. Water
3 and sewer is a different animal than electricity.

4 And I don't just pick on TESI. This is --
5 all these small, you know, utilities across the
6 country are facing very similar circumstances.

7 So we're buying systems that are nearly
8 fully depreciated. They have a history of
9 noncompliance. The amount of due diligence costs are
10 higher than they would be if I was buying a
11 municipality that, you know, had been well maintained,
12 been upgraded over years and years.

13 So you have to determine where the problems
14 are, how are you going to maintain service, because
15 you think health and safety is at risk. And I -- it's
16 one of the things that's frustrating for us, as
17 investor owned, is I believe that these small
18 communities are held to a lower standard than a large
19 community is in terms of compliance history, you know,
20 service reliability, all those things.

21 And we're -- we are as a company bringing --
22 bringing these systems back into full compliance. Not
23 intermittent compliance. Not intermittent
24 reliability. Full compliance.

1 And to do that we have to have a deeper dive
2 on the engineering and even just the property rights.
3 I mean, these things -- the title work is terrible. I
4 mean, everything. Just to convey the system is --
5 takes more work than a standard utility.

6 Q. And I think that this will give some
7 advanced notice to Public Staff Witness Houser, that
8 I'll be asking the same question about due diligence
9 costs.

10 And then can you turn to page 31 of your
11 direct testimony?

12 A. I'm there, Commissioner.

13 Q. Okay. And you state on that page, "That
14 changes to North Carolina General Statute,
15 Section 62-111, enacted by the General Assembly during
16 the last legislative session now provide that the
17 Commission shall" -- quote, "shall issue an Order
18 approving an Application to acquire water and
19 wastewater system assets if the proposed acquisition
20 is in the public interest, will not adversely affect
21 service of the public under any existing franchise,
22 and the person acquiring said franchise has the
23 technical, managerial and financial capabilities
24 necessary to provide public utility service to the

1 public."

2 And you proceed to also state that, "By
3 limiting the focus of the Commission's inquiry and
4 acquisition cases I believe that the General Assembly
5 has signaled that extraneous issues, such as whether
6 an acquisition adjustment should be approved, should
7 be deferred to rate and other post-acquisition
8 proceedings."

9 So I will preface my question with I
10 understand the Stipulation that the -- Red Bird and
11 the Public Staff have agreed to not seek an
12 acquisition adjustment in this proceeding, but can you
13 provide some additional information or point to any
14 language in the statute or elsewhere that -- that you
15 would -- that you would rely upon to support your
16 position that the General Assembly didn't intend the
17 Commission to determine the rate base or potentially
18 acquisition adjustments in transfer proceedings?

19 We'd like to better understand positions of
20 the parties about this new statute.

21 A. Yeah. So, again, I'm not an attorney. From
22 a layman's perspective when I read that, and I'm
23 quoting -- I've got the statute right here in front of
24 me. So I can, you know, butcher this.

1 "It will not adverse" -- "adversely affect
2 service to the public under any existing franchise."
3 That means we're not going to be worst service, coming
4 from my perspective.

5 And the -- the acquiring entity has the --
6 the acquiring entity has the technical, managerial and
7 financial -- financial capabilities to provide
8 service. And the rest of those issues are extraneous
9 and would have to be brought up and -- and brought
10 before the Commission in some future hearing.

11 And I think even the -- the confusion you
12 heard from the Property Owner Association today, the
13 way that notice went out, where we were required to
14 try and calculate standalone rates for an individual
15 system that we don't believe we would ever do.

16 And so future proceeding is a great example
17 of how that confuses the issue of, hey, this is a
18 failing utility that needs new ownership, needs new
19 capital, and -- and is our -- in this -- obviously, in
20 this proceeding, are we able to meet those thresholds?
21 That seems to me the plain reading of the text.

22 Q. Okay. Thank you.

23 And I will be asking a similar question to
24 Public Staff Witness Houser. So he can be prepared to

1 answer that question as well.

2 And then you've -- my last questions are
3 related to what -- what you've been talking about
4 generally about failing systems or troubled systems.

5 And can you -- and I -- and I recognize
6 that, the Stipulation, you've agreed not to have an
7 acquisition adjustment, but I'd like to have a better
8 understanding of Red Bird's position about what would
9 constitute a troubled system or a failing system, so
10 that we can have a better understanding of at least
11 your position of what -- what those characteristics or
12 definition might be.

13 A. So there was a -- a number of questions
14 there, Commissioner. I'm trying to answer those kind
15 of in -- you know, in some order here.

16 So the -- what I do not like about how
17 the -- the system in particular is walking onto a site
18 at any given moment is not a determination of whether
19 or not the system is failing or not.

20 When you have declining net book value over
21 decades, you have a history of noncompliance, years
22 and years of noncompliance, customer complaints at
23 hearings that say, hey, we can't get a leak fixed.
24 You take six months to a year to have them show up.

1 These are all indicative of a utility that
2 is -- should not be in the business anymore. And I
3 think -- you know, when we look at compliance history,
4 one of the things that's frustrating for us as a
5 utility when there's a fecal coliform violation in a
6 drinking water system or a lack of reporting, that is
7 a potential human health risk.

8 That is saying that this community could
9 have been exposed to human pathogens or similar
10 pathogen in the water system. And that's from our
11 perspective unaccess -- unaccessible -- unacceptable.

12 When you think about 150 water leaks in the
13 system unattended, those are all potential intrusions
14 for, you know, pathogens, bacteria, you name it, into
15 a system.

16 When you just look at the condition of this
17 system -- I've got the -- I've got a picture of the
18 water tower on the front of my book here that I'm glad
19 to pass out that just gives you a picture of how
20 dilapidated this thing is.

21 I mean, it's about ready to structurally
22 fail. It's covered in rust. The inside has not been
23 maintained for decades. You've got lift stations that
24 are undersized. They don't meet the minimum code.

1 I could just go on and on. You've got
2 vegetation growing in sand filter beds, which shows
3 that there's no maintenance. Those things are not
4 functioning. I mean, just the pure desktop review of
5 these systems shows that it's failing. The financial
6 review of the report shows it's failing.

7 So I -- you know, walking onto the site and
8 saying, today nothing is failing, even though it's
9 failed for years, doesn't seem to be an accurate
10 representation of what constitutes a failing system.

11 Q. Okay.

12 A. I think your -- your other question was
13 about the acquisition adjustment. I think this is one
14 of the most difficult things we face as an acquiring
15 utility.

16 So the -- you know, for example, with the
17 TESI system, TESI has lost money on this system for
18 years now. So they have hundreds of thousands of
19 dollars of losses. You know, we -- obviously we have
20 the Stipulation of what -- what the things are going
21 to come out at.

22 From our perspective these utility owners,
23 in regards to TESI, or mom-and-pop owners that are
24 buying other places in North Carolina, they are

1 pulling -- either they've invested money they've
2 not -- they've not been able to recoup out of the
3 system, so they've lost money.

4 They want some -- you know, some
5 consideration for that. Or was some -- much of the
6 smaller owners, even though they're running a failing
7 system, there's violations coming out of the wazoo.
8 They're still pulling money out of these systems.

9 So, you know, a regulator, any one of us can
10 say, your system is worth zero dollars. Well, if
11 you're an owner, I'm still pulling \$50,000 out of the
12 system -- or \$15,000 out of the system.

13 Or I drive a company truck, there is
14 residual economic value. And these owners need out of
15 the business. It's obvious.

16 So trying to negotiate to the lowest
17 possible number, but also realizing that, hey, it is
18 in the public interest to get a bad owner out, because
19 these are human health and safety issues and
20 reliability issues that matter a ton for a community.

21 Those are the type of considerations we
22 think warrant an acquisition adjustment.

23 Q. Okay. And then the last question, talking
24 about violations that you've -- that you've been

1 mentioning is: Should the Commission consider some
2 violations to be more significant for determining a
3 troubled system and some less significant?

4 For example, a reporting violation, should
5 that be -- should the Commission view that as less
6 significant for trying to determine whether a system
7 is troubled?

8 A. I've been asked this -- this question
9 before, Commissioner. I would say no. And -- and
10 here is why I say no.

11 A lot of the reporting violations are a
12 failure to report. And what that often tells us is
13 they don't want to report on what's happening.

14 So what we've seen, unfortunately,
15 wastewater and water operators all over the country,
16 they don't report, because they know what's going on
17 in the system in the individual moment. And those
18 failures to report oftentimes recognize the fact that
19 they think they would fail, and, thus, they're not
20 reporting.

21 And it's -- it's easier to get a slap on the
22 wrist paper violation of not reporting and rectifying
23 that in a month when you've turned around whatever,
24 you know, failed component is in the system than it is

1 to show a failure on an ongoing basis.

2 COMMISSIONER KEMERAIT: Okay. Thank
3 you, Mr. Cox, for answering those questions,
4 because I -- I do realize that they are outside of
5 what is contained in the Stipulation, but we
6 wanted to have a more full understanding with this
7 hearing of Red Bird's position about some of
8 these matters.

9 So those are all the questions that I
10 have.

11 Commissioner Hughes?

12 COMMISSIONER HUGHES: Yeah. Just a
13 couple related questions.

14 EXAMINATION BY COMMISSIONER HUGHES:

15 Q. You've talked a lot about the -- the
16 importance to your strategy and sort of the power that
17 you're going to be able to have when you own multiple
18 systems, to have a uniform rate or a standard rate
19 across -- across all -- all the systems.

20 Has that been a strategy that's been
21 successful in other states where you're operating? Is
22 that pretty much your kind of model?

23 A. Yes. We're the first water utility to get
24 consolidated rates in Missouri or -- so Missouri,

1 Kentucky, Louisiana, Mississippi, Texas. All those
2 states, we've got consolidated rates.

3 Q. And knowing in North Carolina that that is
4 something that will -- will come up at a future date,
5 do you have contingency plans for some of these
6 systems, if that does not get approved?

7 You -- you've talked about this not being a
8 true rate, because you're going to have consolidated
9 rates, but if it doesn't get approved, do you -- do
10 you have a strategy moving forward?

11 A. Absolutely. We -- we've had to use
12 standalone rates in numerous places, you know, over
13 the course of our history. So we've done both.

14 Q. And in this particular situation, we've
15 talked -- there has been a lot of focus on the capital
16 costs and what impact that will have on -- on -- on
17 rates, and it's -- it seems like you've also
18 insinuated and -- and others that the operation level
19 is insufficient, the current operation level, and that
20 that's going to cost that -- that could possibly
21 require increased costs just to have more reliable
22 contract operators, to carry out more inspections, to
23 increase the amount of repairs.

24 Could you comment a little bit about your --

1 you know, your -- your experiencing and your feelings
2 in this particular situation?

3 Is it -- are you going to have to spend a
4 lot more on operation to get it -- to get it up to
5 speed?

6 A. A 100 percent. I mean, you think right now,
7 the -- the wastewater situations, for example. You
8 have mechanical components that aren't running. You
9 have disinfection that's not being added.

10 So right now the system is not -- is not
11 even incurring the normal operating cost that it would
12 if it was being properly operated just to its design
13 standards.

14 And that's -- that's typical across the
15 entire country. These systems are not -- it's -- you
16 know, duct tape and baling wire and as few personal
17 hours as they can get out there and as few equipment
18 repairs as they think they can get away with.

19 I'm not saying that about TESI in
20 particular. I'm saying that in general, our
21 experience.

22 Q. And is that type of estimate in -- in what
23 your public noticed with the cost? Is that a mixture
24 of both capital and operating cost increase?

1 A. I believe it is.

2 COMMISSIONER HUGHES: That's it. Thank
3 you.

4 COMMISSIONER KEMERAIT: Okay.

5 Questions on Commission questions?

6 MS. JOST: No questions.

7 COMMISSIONER KEMERAIT: Mr. Drooz?

8 EXAMINATION BY MR. DROOZ:

9 Q. Yes. Mr. Cox, I'm going to ask if you can
10 help me reconcile a couple of different things I heard
11 here.

12 When we talked earlier, you indicated Red
13 Bird did not have plans to replace the water
14 distribution system in the next ten years; is that
15 correct?

16 A. No. I said that's a longer term project.
17 That's something that would take ten years or longer.

18 Q. Okay.

19 A. Typically these water systems are 30 year
20 lifespans. And even after ten years past their
21 depreciated life they last. So that's a targeted
22 investment strategy.

23 Q. Do you recall customer testimony indicating
24 their thought -- the customers thought that the pipes

1 in the ground are 50 years old?

2 A. Yes.

3 Q. Okay. So -- and when you were asked by
4 Commissioner Kemerait about what is a troubled or
5 failing system, and you indicated this is a
6 dilapidated and failing system, you talked about
7 identifying 150 leaks so far.

8 Does that suggest that there's a fair chance
9 that once you do a complete assessment, this system
10 will need replacement?

11 A. So I think, you know, it's -- water
12 utilities, you don't wholesale replace all the pipes.
13 You go to the areas you have the most problems, and
14 then you start working on the system as a whole.

15 So will there be targeted replacements?
16 Absolutely. And really you do that to lower operating
17 costs. You know, it's much more expensive to go
18 repair a water main ten times from a rate-making
19 perspective than it is to replace some section of
20 water main.

21 So that's what we're talking about, in terms
22 of targeted replacements.

23 Q. Right.

24 A. Over the next 30 years all the pipe needs

1 replaced. And that's a long term, you know, prospect
2 that all these small water utilities face across the
3 state.

4 Q. Any idea how much will need replacement in
5 the next, say, five years?

6 A. No. I don't know the answer that.

7 Q. That's going to depend on your more complete
8 engineering assessment?

9 A. Right. And that -- that also comes from
10 operating the system. You start to see where your
11 problem areas are. We don't believe the books and
12 records probably accurately reflect the repairs where
13 they've been done, what's happened, and so we have to
14 get a feel for that. Just running it.

15 Q. Sure. And so you had earlier talked about a
16 more complete assessment might be done in three
17 months, give or take. Will that identify how much of
18 the waterlines need replacement?

19 A. No. That's referring to the water storage
20 tank, doing a booster pump, you know, those type of
21 repairs and just the basic service, is what I'm
22 referring to there. It's not talking about waterline
23 replacement.

24 Q. So -- so at least in the short term it'll

1 just be a case of on the waterlines themselves that
2 are leaking, you'll just repair the leaks one by one?

3 A. Or if we have an area where there's a ton of
4 leaks, then we look at replacement, rather than fixing
5 a ton of leaks in some small area.

6 MR. DROOZ: Okay. That's helpful.

7 Thank you very much.

8 THE WITNESS: Yeah.

9 EXAMINATION BY MR. HIGGINS:

10 Q. Mr. Cox, just a couple of questions.

11 You were asked questions about the contents
12 of the customer notice that was issued in this case.
13 Do you recall those questions?

14 A. Yes.

15 Q. Do you know if the Public Staff developed
16 the rate projections and the gallons of water estimate
17 that were included in that customer notice?

18 A. I believe they did.

19 Q. How do you -- or can you distinguish --
20 you've referred to both operationally and financially
21 troubled systems. How do you distinguish -- what are
22 the distinguishing characteristics in those two
23 different dimensions?

24 A. Well, they oftentimes go hand in hand, but

1 operationally challenged means they don't have the
2 qualified personnel or the -- the technical managerial
3 ability to run the utility. They don't actually
4 understand how the components work together, how
5 they're providing service.

6 On the financial side it often means they're
7 losing money. They lack access to capital markets.
8 So they get into the death spiral of noncompliance,
9 and they're cut off from capital markets. They cannot
10 make improvements to rectify the problems they have
11 inside the system.

12 MR. HIGGINS: I don't have any other
13 questions. Thank you.

14 MR. FINLEY: Move the exhibits.

15 MR. HIGGINS: I'll move the admission
16 of the exhibits that were attached to the
17 prefiled direct testimony, the Thomas rebuttal
18 testimony and the supplemental testimony at this
19 time, Commissioner Kemerait.

20 COMMISSIONER KEMERAIT: Seeing no
21 objection, your motion is allowed.

22 (Cox Direct Exhibits 1 through 4, Cox
23 Rebuttal Exhibits 1 through 3, and Cox
24 Supplemental Exhibit 1 were admitted into

1 evidence.)(Confidential - filed under
2 seal)

3 COMMISSIONER KEMERAIT: And,
4 Mr. Higgins, I think you have some additional
5 motions for the -- the testimony and including
6 the rebuttal testimony of Ms. O'Reilly. If you'd
7 like to --

8 MR. HIGGINS: Yes.

9 COMMISSIONER KEMERAIT: -- make that
10 motion now.

11 MR. HIGGINS: Thank you.

12 I would also move the prefiled
13 rebuttal testimony of Katelyn O'Reilly into
14 evidence now, which I believe had no exhibits.

15 COMMISSIONER KEMERAIT: Seeing no
16 objection, your motion is allowed. And part of
17 the -- of the rebuttal testimony, I will note, is
18 confidential.

19 MR. HIGGINS: Thank you.

20 (Whereupon, the Prefiled Rebuttal
21 Testimony of KATELYN O'REILLY was copied
22 into the record as if given orally from
23 the stand.)(Confidential - filed under
24 seal)

1 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

2 A. My name is Caitlin O'Reilly. My business address is 1630 Des Peres Road, Suite
3 140, St. Louis, Missouri, 63131.

4 **Q. WHERE ARE YOU EMPLOYED AND WHAT IS YOUR POSITION?**

5 A. I am the Regulatory Accounting Manager at CSWR, LLC ("CSWR"), the affiliated
6 company that has operational/managerial oversight over the CSWR utility operating
7 companies, including Red Bird Utility Operating Company, LLC. ("Red Bird" or
8 "Company"). I have been employed at CSWR since May of 2021. At CSWR, my
9 responsibilities include overseeing and ensuring compliance with regulatory reporting
10 requirements and accounting standards within both the Company and its various utility
11 operating affiliates. I collaborate with cross-functional teams, including the finance, legal,
12 and regulatory departments, to ensure accurate and timely reporting to regulatory
13 authorities.

14 **Q. PLEASE DESCRIBE YOUR EDUCATIONAL AND PROFESSIONAL**
15 **EXPERIENCE.**

16 A. My education includes a Bachelor of Science in Accounting and a Bachelor of
17 Science in Accounting Information Systems from Maryville University in St. Louis, MO.
18 Prior to being employed by CSWR, I worked at Mastercard and Royal Canin in various
19 accounting roles with increasing levels of responsibility.

20 **Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?**

21 A. My testimony responds to the testimony filed by Public Staff witnesses Lynn Feasel
22 and Evan Houser. Specifically, I will address some particulars of Public Staff's testimony
23 regarding calculation of rate base, acquisition adjustment and associated amortization, and
24 how the Company views the assumptions underlying that testimony.

1 **Q. HOW DID PUBLIC STAFF CALCULATE RATE BASE?**

2 A. Ms. Feasel's exhibits state that the plant in service numbers used as a starting point
3 the net book value (NBV) for TESI's assets calculated by Public Staff and approved by the
4 Commission in TESI's most recent rate cases, which concluded, respectively, in 2001 and
5 in 2007.¹ Public Staff then included additional plant added since TESI's last rate case for
6 which supporting documentation was provided and deducted additional contributions in
7 aid of construction (CIAC) that TESI received in 2022. Ms. Feasel then calculated
8 depreciation through December 31, 2023. Following all those steps, the rate base calculated
9 by Public Staff is \$148,398 for water and \$18,908 for sewer.

10 **Q. DOES RED BIRD AGREE WITH PUBLIC STAFF'S RATE BASE**
11 **CALCULATION?**

12 A. While Red Bird agrees with the process Ms. Feasel used in taking NBV from the
13 last rate case and adding additional plant based on invoice support, the Company disagrees
14 in at least two ways with Public Staff's ultimate rate base calculation and the methodology
15 it used. First, the Company does not agree with the change in depreciation rates used by
16 Public Staff. Mr. Houser used depreciation rates in his rate base calculation that are
17 different than those used by TESI over the last few years. Mr. Houser does not provide any
18 analysis or basis for reducing the depreciable lives of assets other than "previous Public
19 Staff recommendations and commonly available information," stated on page 18, line 15-
20 16 of his testimony.

21 Red Bird also disagrees with the removal of some pumps, pump repairs, and lift stations in
22 the TESI systems from rate base. Mr. Houser states that he made these adjustments because
23 these items are apparently not in service at this time (Houser page 18 line 17-21), but he

¹ Dockets W-1146, Sub 1 and Sub 3

1 later recognizes on page 19, line 20 through page 20, line 2 that Red Bird is acquiring “[a]ll
2 Seller’s water and sewer service facilities and their components parts permanently attached
3 to the water and sewer system....” If this transfer is approved, Red Bird would still acquire
4 all assets owned by the seller regardless of whether they are in service. If the assets were
5 deemed to be not useful or not needed for system operations, it would be incumbent on
6 Red Bird to record proper retirements after acquisition. See the below table for a
7 comparison of Ms. Feasel’s and Mr. Houser’s calculations compared to Red Bird’s as of
8 December 31, 2023:

<u>As of 12/31/23</u>	<u>Red Bird</u>	<u>Public Staff</u>
[BEGIN CONFIDENTIAL]		
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
Rate Base	[REDACTED]	[REDACTED]
[END CONFIDENTIAL]		

Acquisition Adjustment	96,376.41	140,057.00
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10 **Q. WHY HAS RED BIRD NOT INCLUDED CIAC IN ITS CALCULATION?**

11 A. TESI did not include CIAC in their financials provided to Red Bird. Mr. Houser
12 states on page 19 line 14 that he “imputed \$21,900 in connection charges for 73 water
13 service line installations which occurred in 2022 and are supported by invoices,” however,
14 he provides no support or analysis for Red Bird to review to verify the accuracy of this
15 number.

1 **Q. WHAT IS PUBLIC STAFF'S POSITION ON RED BIRD'S REQUESTED**
2 **ACQUISITION ADJUSTMENT AND ASSOCIATED ACCUMULATED**
3 **AMORTIZATION OF THAT ADJUSTMENT?**

4 A. Ms. Feasel calculates an acquisition adjustment and also projects the accumulated
5 amortization of her calculated acquisition adjustment into the future. I believe this is
6 inappropriate because, as Mr. Cox states in his rebuttal testimony, Red Bird believes the
7 issue of whether an acquisition adjustment is appropriate should be deferred to the first rate
8 case involving the TESI systems. If that approach is accepted, then estimates of
9 accumulated amortization of an acquisition adjustment should not part of this transfer /
10 acquisition proceeding.

11 **Q. DOES THE COMPANY AGREE WITH MS. FEASEL'S CALCULATION OF**
12 **AN ACQUISITION ADJUSTMENT AND ASSOCIATED ACCUMULATED**
13 **AMORTIZATION OF THAT ADJUSTMENT?**

14 A. Yes and no. The Public Staff derived its acquisition adjustment using proper
15 methodology by taking the purchase price less rate base. Red Bird agrees with this
16 methodology. However, as just stated Red Bird disagrees with Public Staff projecting the
17 future rate impact of the amortization of its calculated acquisition adjustment in this
18 proceeding. In addition, while I agree with Ms. Feasel's acquisition adjustment
19 methodology I continue to disagree with the actual amounts used as I believe the amounts
20 that should have been used are in the table above under the Red Bird column.

21 **Q. DO YOU AGREE WITH PUBLIC STAFF REGARDING THE DUE**
22 **DILIGENCE EXPENSES AND ACCUMULATED AMORTIZATION?**

23 A. Overall, I agree with how Public Staff treated the preliminary legal and engineering
24 expenditures, which have been identified as "due diligence." However, the Company

1 disagrees with the way Public Staff suggested handling the accumulated amortization
2 associated with these expenditures.

3 **Q. WHY DO YOU DISAGREE WITH HOW PUBLIC STAFF ACCOUNTED FOR**
4 **ACCUMULATED AMORTIZATION EXPENSE?**

5 A. Ms. Feasel suggests that accumulated amortization should commence in 2021. But
6 because Red Bird has not been authorized to acquire TESI's systems, it should not record
7 the amortization of these expenses until the systems are acquired and operating under Red
8 Bird's ownership. If the TESI systems are not acquired, the proper accounting treatment
9 for these expenditures would be to write off these items, not amortize them.

10 **Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY AT THIS TIME?**

11 A. Yes, it does.

1 COMMISSIONER KEMERAIT: So, Mr. Cox, no
2 further questions from the Commission. Thank you
3 for your testimony, and you may be excused.

4 THE WITNESS: Thank you, Commissioner.

5 COMMISSIONER KEMERAIT: Okay. Now
6 we'll move to the Public Staff.

7 MS. JOST: The Public Staff calls Lynn
8 Feasel and Evan Houser.

9 COMMISSIONER KEMERAIT: Good afternoon,
10 Ms. Feasel and Mr. Houser.

11 Whereupon,

12 LYNN FEASEL and EVAN M. HOUSER
13 having been duly sworn, were examined
14 and testified as follows:

15 COMMISSIONER KEMERAIT: Thank you.

16 DIRECT EXAMINATION BY MS. JOST:

17 Q. All right. I'm going to begin with
18 Ms. Feasel. Please state your name, business address
19 and your current position for the record?

20 A. (Lynn Feasel) My name is Lynn Feasel.
21 Business address is 430 North Salisbury Street,
22 Raleigh, North Carolina. My title is the public
23 utility regulatory analyst supervisor.

24 Q. On September 19, 2023 did you prepare and

1 cause to be filed in these Dockets testimony
2 consisting of eight pages, Appendix A and four
3 exhibits?

4 A. Yes.

5 Q. And two of your exhibits contain
6 confidential information; is that correct?

7 A. Correct.

8 Q. Do you have any corrections to that
9 testimony?

10 A. No, I don't.

11 Q. If you were asked the same questions today,
12 would your answers be the same?

13 A. Yes.

14 MS. JOST: All right. I move that the
15 prefiled testimony of Ms. Feasel be copied into
16 the record as if given orally from the stand, and
17 that her exhibits be identified as they were
18 marked when they were filed.

19 COMMISSIONER KEMERAIT: And, Ms. Jost,
20 my notes show three exhibits. Can we just
21 clarify to make sure that it's four, rather than
22 three exhibits?

23 MS. JOST: It is, in fact, four. The
24 numbering is a little strange. So we had Feasel

1 Exhibit 1, Arabic Number 1. And then we have
2 Feasel Exhibits I, II and III, with Roman
3 numerals.

4 COMMISSIONER KEMERAIT: Okay. Thank
5 you for the clarification.

6 MS. JOST: Sure.

7 COMMISSIONER KEMERAIT: So Ms. Feasel's
8 direct testimony, filed on September 19, 2023,
9 consisting of eight pages, will be copied into
10 the record as if given orally from the stand.

11 And the appendix, along with one
12 appendix, the four exhibits attached to
13 Ms. Feasel's direct testimony will be marked for
14 identification purposes as prefilled.

15 And I will note that portions of the
16 direct testimony are marked confidential.

17 (Public Staff Feasel Direct Exhibit 1 and
18 Public Staff Feasel Direct Exhibits I
19 through III were identified as they were
20 marked when prefilled.)(Confidential -
21 filed under seal)

22 (Whereupon, the Prefiled Direct
23 Testimony and Appendix A of LYNN FEASEL
24 was copied into the record as if given

1 orally from the stand.)(Confidential -
2 filed under seal)
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1 **Q. Please state your name, business address, and present**
2 **position.**

3 A. My name is Lynn Feasel. My business address is 430 North
4 Salisbury Street, Dobbs Building, Raleigh, North Carolina. I am the
5 Public Utilities Regulatory Supervisor of the Water, Sewer, and
6 Telecommunications Sections with the Accounting Division of the
7 Public Staff – North Carolina Utilities Commission (Public Staff).

8 **Q. Briefly state your qualifications and experience.**

9 A. My qualifications and experience are included in Appendix A.

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

11 A. The purpose of my testimony in this proceeding is to present the
12 results of my investigation of the application filed by Total
13 Environmental Solutions, Inc. (TESI), and Red Bird Utility Operating
14 Company, LLC (Red Bird), for authority to transfer the water and
15 wastewater systems and public utility franchise serving Lake Royale
16 Subdivision (Lake Royale) in Franklin and Nash Counties from TESI
17 to Red Bird and approval of rates. Specifically, I discuss (1) my
18 calculation of original cost rate base for the TESI systems; (2) my
19 calculation of the acquisition adjustment Red Bird seeks to include in
20 rate base; (3) my calculation of the amounts for future improvements
21 and due diligence expenses; and (4) the estimated revenue

1 requirements associated with the proposed acquisition adjustment,
2 due diligence expenses, and future improvements.

3 In his testimony, Public Staff witness Evan Houser discusses
4 anticipated increases in water and wastewater base rates that would
5 result from the revenue requirements I calculated, as well as the
6 Public Staff's recommendation regarding the proposed transfer.

7 **Q. Would you briefly describe the presentation of your testimony**
8 **and exhibits?**

9 A. Yes. My testimony discusses each issue identified through my
10 investigation, and my exhibits consist of schedules detailing the
11 calculation of rate base, net operating income, return, and revenue
12 requirement based on the Public Staff recommendations described
13 later in my testimony. Schedules 1(a) and 1(b) represent the return
14 calculated for water and wastewater operations, respectively;
15 Schedule 2 and its associated sub schedules represent the rate base
16 calculated for water and wastewater operations; Schedule 3 and its
17 associated sub schedules, represent the net operating income
18 calculated for water and wastewater operations. Revenue
19 requirements for water and wastewater are also contained in
20 Schedule 3 and its associated sub schedules.

1 **Q. Please explain your calculation of original cost rate base and**
2 **how it compares the amount calculated by Red Bird.**

3 A. In order to calculate original cost rate base, I first reviewed the net
4 book value approved in the proceedings regarding TESI's application
5 for a Certificate for Public Convenience and Necessity and the most
6 recent rate case and updated the accumulated depreciation with the
7 approved rates through December 31, 2023. I then included
8 additional plant added since the last rate case for which supporting
9 documentation was provided, additional contributions in aid of
10 construction (CIAC) the Company received in 2022 as
11 recommended by Public Staff witness Houser, and updated
12 accumulated depreciation through December 31, 2023, utilizing the
13 depreciation rates recommended by witness Houser. Based on this
14 calculation, the Public Staff's recommended original cost rate base
15 is \$148,398 for water and \$18,908 for wastewater. My calculations
16 are shown in Feasel Exhibit 1.

17 On page 24, lines 15-17 of his direct testimony, Red Bird witness
18 Josiah Cox states that, based on Red Bird's audit team's review of
19 TESI's supporting documentation and the Company's understanding
20 of the Public Staff's valuation of the assets, Red Bird believes
21 residual rate base in the TESI utility assets is \$271,502. The
22 Company's valuation of \$271,502 differs from my valuation of

1 \$167,306 because, unlike the Company, I removed plant additions
2 for which supporting documentation was not provided and I included
3 additional CIAC received in 2022. My calculations are shown in
4 Feasel Exhibit 1.

5 **Q. Please explain your calculations of the acquisition adjustment**
6 **and due diligence expenses Red Bird seeks to recover.**

7 A. As discussed above, the Public Staff's calculation of the original cost
8 rate base is \$148,398 for water and \$18,908 for wastewater. Based
9 on the 72/28 split of the purchase price between the water system
10 and wastewater system, respectively, provided by Red Bird, I
11 calculated the purchase price for the water system to be [BEGIN
12 CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] and the
13 purchase price for the wastewater system to be [BEGIN
14 CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL], resulting in
15 acquisition adjustments of [BEGIN CONFIDENTIAL] [REDACTED] [END
16 CONFIDENTIAL] for the water system and [BEGIN
17 CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] for the
18 wastewater system. The associated accumulated amortization of the
19 acquisition adjustment is [BEGIN CONFIDENTIAL] [REDACTED] [END
20 CONFIDENTIAL] for the water system and [BEGIN
21 CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] for the wastewater
22 system. My calculations are shown in Confidential Feasel Exhibits I

1 and III. A comparison of the Public Staff's and Red Bird's acquisition
2 adjustment calculations is shown in below:

[BEGIN CONFIDENTIAL]

	Red Bird	Public Staff	
	Combined	Water	Wastewater
Purchase Price	████████	████████	████████
Original Cost Rate Base	████████	████████	████████
Acquisition Adjustment, before accumulated amortization	████████	████████	████████

3 **[END CONFIDENTIAL]**

4 In regard to the due diligence expenses, the Public Staff changed
5 two expenses to the amounts shown on invoices provided by the
6 Company and removed expenses for which the Company was
7 unable to provide supporting invoices. Based on this analysis, the
8 Public Staff calculated the total due diligence expense incurred by
9 Red Bird to be **[BEGIN CONFIDENTIAL]** ██████████ **[END**
10 **CONFIDENTIAL]** for the water system and **[BEGIN**
11 **CONFIDENTIAL]** ██████████ **[END CONFIDENTIAL]** for the wastewater
12 system. The accumulated amortization of due diligence is **[BEGIN**

1 **CONFIDENTIAL** [REDACTED] **[END CONFIDENTIAL]** for the water
2 system and **[BEGIN CONFIDENTIAL]** [REDACTED] **[END CONFIDENTIAL]**
3 for the wastewater system, calculated based on the transaction
4 commencing in 2021.

5 **Q. Have you calculated the estimated revenue requirements**
6 **associated with the acquisition adjustment and due diligence**
7 **expenses?**

8 A. Yes. If the acquisition adjustment as calculated by the Public Staff is
9 included in rate base, the estimated revenue requirement is \$10,592
10 for the water system and \$9,702 for the wastewater system.

11 If the due diligence expenses recommended by the Public Staff are
12 included in rate base, the estimated revenue requirement is \$26,821
13 for the water system and \$25 for the wastewater system. My
14 calculations are shown in Feasel Exhibits I and III.

15 The Public Staff utilized a composite depreciation rate to calculate
16 the estimated revenue requirement for both the acquisition
17 adjustment and due diligence expenses.

18 **Q. Have you calculated the estimated revenue requirement**
19 **associated with future improvements to the TESI systems?**

1 A. Yes. McGill Associates, the engineering firm Red Bird engaged to
2 assess the TESI systems, estimated the necessary future capital
3 investment to be \$235,000 for the water production systems and
4 \$457,900 for wastewater systems.

5 Based on these estimates, the revenue requirement associated with
6 future improvements to the water system would be \$33,302, and the
7 revenue requirement associated with future improvements to the
8 wastewater system would be \$82,188. My calculations are shown in
9 Feasel Exhibit II.

10 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

11 A. Yes, it does.

APPENDIX A

QUALIFICATIONS AND EXPERIENCE

LYNN FEASEL

I am a graduate of Baldwin Wallace University with a Master of Business Administration degree in Accounting. I am a Certified Public Accountant licensed in the State of North Carolina. Prior to joining the Public Staff, I was employed by Franklin International in Columbus, Ohio until June 2013. Additionally, I worked for ABB Inc. from September 2013 until October 2016. I joined the Public Staff as a Staff Accountant in November 2016, and I was promoted to Financial Manager in July 2022. Since joining the Public Staff, I have worked on rate cases involving water and sewer and natural gas companies, filed testimony and affidavits in various general rate cases, calculated quarterly earnings for Carolina Water Service, Inc. of North Carolina and Aqua North Carolina, Inc., calculated quarterly earnings for various natural gas companies, calculated refunds to consumers from AH4R and Progress Residential, and reviewed new franchise, transfer, and contiguous extension filings for multiple water and sewer companies.

1 BY MS. JOST:

2 Q. All right. Mr. Houser, could
3 you, please, state your name, business address and
4 current position for the record?

5 A. (Evan M. Houser) Sure. I'm Evan Houser.
6 My business address is 430 North Salisbury Street,
7 Raleigh, North Carolina. And my position is public
8 utility -- excuse me. Public utilities engineer for
9 the Public Staff Water, Sewer and Telephone Division.

10 Q. On September 19, 2023 did you prepare and
11 cause to be filed in these Dockets testimony
12 consisting of 34 pages and an Appendix A?

13 A. Yes.

14 Q. And on September 26, 2023 did you prepare
15 and cause to be filed in these Dockets corrected
16 testimony, which also consisted of 34 pages and
17 Appendix A?

18 A. Yes.

19 Q. Do you have any additional corrections to
20 your testimony?

21 A. No.

22 Q. If you were asked the same questions today,
23 would your answers be the same as in your corrected
24 testimony?

1 A. Yes.

2 MS. JOST: I move that Mr. Houser's
3 corrected testimony be copied into the record as
4 if given orally from the stand.

5 COMMISSIONER KEMERAIT: Seeing no
6 objection, the direct testimony of Mr. Houser,
7 filed on September 19, 2023, consisting of 34
8 pages and one appendix, and also the corrected
9 direct testimony, filed on September 26 of 2023,
10 consisting of 34 pages and one appendix, will be
11 copied into the record as if given orally from
12 the stand.

13 (Whereupon, the Prefiled Corrected Direct
14 Testimony and Appendix A of

15 EVAN M. HOUSER was copied into the record
16 as if given orally from the stand.)

17 (Confidential - filed under seal)
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1 **Q. Please state your name, business address, and present**
2 **position.**

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

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

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

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

11 A. The purpose of my testimony is to provide the North Carolina Utilities
12 Commission (Commission) with the results of my investigation of the
13 application filed on June 7, 2021, by Total Environmental Solutions,
14 Inc. (TESI), and Red Bird Utility Operating Company, LLC (Red Bird),
15 for authority to transfer the water and wastewater systems and public
16 utility franchise serving Lake Royale Subdivision (Lake Royale) in
17 Franklin and Nash Counties from TESI to Red Bird and approval of
18 rates (Joint Application)¹ and my recommendation regarding whether
19 the transfer is in the best interest of the using and consuming public.

¹ Red Bird filed with the Commission supplemental and additional materials in support of the Joint Application on June 8, 2021, and on January 24, August 2, and September 8, 2022.

1 The specific areas of my investigation include customer complaints,
2 Notices of Violation (NOVs) and Notices of Deficiency (NODs) issued
3 by the North Carolina Department of Environmental Quality (DEQ),
4 and assisting the Public Staff Accounting Division in reviewing
5 expenses and plant in service.

6 **Q. Please describe the TESI service area and water and wastewater**
7 **utility systems.**

8 A. The TESI service area is located in Franklin and Nash Counties and
9 is comprised of the Lake Royale Subdivision (Lake Royale) water
10 and wastewater systems serving approximately 2,276 water
11 customers and 2 wastewater customers. The water system consists
12 of an interconnection with Franklin County, a 200,000-gallon
13 elevated storage tank, and a distribution system with approximately
14 70 miles of various diameter piping and associated appurtenances.
15 Finished water is purchased from Franklin County and pumped into
16 the elevated storage tank using a booster pump which is owned and
17 operated by Franklin County. The DEQ Public Water Supply
18 Identification number for the Lake Royale water system is
19 NC0235108.

20 **[BEGIN CONFIDENTIAL]** [REDACTED]

21 [REDACTED]

22 [REDACTED]

1 [REDACTED] [END
2 **CONFIDENTIAL]**

3 The wastewater system consists of an extended aeration wastewater
4 treatment plant (WWTP), a collection system with eight-inch gravity
5 mains, and two lift stations. The treatment plant consists of a single-
6 train aeration system, duplex clarifiers, a tertiary sand filter, and
7 chlorination and dechlorination for disinfection prior to discharge.

8 The DEQ permit number for the Lake Royale Wastewater system is
9 NC0042510.

10 The system serves two commercial customers consisting of a
11 comfort station and a community center clubhouse. Each customer
12 has a septic tank and grinder pump to convey waste to the collection
13 system. The wastewater collection system is deemed permitted.

14 **Q. Have you conducted a site visit of the TESI water and**
15 **wastewater systems and, if so, what were your observations?**

16 A. Yes. On August 23, 2023, I inspected the water and wastewater
17 systems. I was accompanied by D. Michael Franklin of the Public
18 Staff's Water, Sewer, and Telephone Division, Lynn Feasel of the
19 Public Staff's Accounting Division, Davia Newell of the Public Staff's
20 Legal Division, Emily Lester of the DEQ Public Water Supply Section,
21 Dana Hill, Director of contract operator ClearWater Solutions, LLC
22 (ClearWater), and Jack Gibbons, the system operator employed by

1 ClearWater. The water and wastewater systems appear to be in a
2 condition commensurate of their age.

3 The water system's elevated storage tank has a single riser, which
4 is accessible through a manway at the base. The exterior of the
5 elevated storage tank has visible corrosion and deterioration of the
6 coating. The interior of the riser contained visible corrosion, as well
7 as a sump containing some water which may have been condensate
8 from the pipes or water that dripped from the tank. The interior of the
9 tank was not inspected. Mr. Gibbons estimated that the tank was
10 recoated approximately ten years ago, and at that time the interior
11 coating of the tank was determined to be in satisfactory condition.

12 Mr. Gibbons indicated that the building that houses the
13 interconnection to Franklin County's water system is owned and
14 operated by Franklin County. The interconnect building contains a
15 meter, a backflow prevention valve, and a valve that can be remotely
16 opened and closed to fill the elevated storage tank with the pressure
17 from Franklin County's system.

18 Both active wastewater lift stations showed visible corrosion but
19 appeared to be functional.

20 The WWTP exterior appeared to be in acceptable condition. Exterior
21 piping, which appeared to primarily be part of the aeration system,
22 showed small amounts of corrosion. Grates covering the aerations

1 basins and clarifiers appeared to be in good condition. Both sand
2 filters contained dead vegetation that obscured inspection of the
3 sand filter media. The WWTP effluent discharge pipe was not visible
4 and is presumed to be located under a small embankment.

5 **Q. Briefly describe the results of your investigation of DEQ NOV**
6 **s and Civil Penalties issued to the Lake Royale water system.**

7 A. Between July 1, 2020, and July 1, 2023, the Lake Royale water
8 system was issued three NOV's by DEQ.

9 DEQ issued reporting violations on December 16, 2022, and January
10 18, 2023, for failure to submit total coliform sample results in the
11 October 2022 and November 2022 monitoring periods. All five of the
12 required samples were collected during the monitoring periods in
13 which the reporting violations were issued and the sample results
14 were eventually reported.

15 DEQ issued a monitoring violation on June 29, 2022, for failure to
16 collect a Total Haloacetic Acid (HAA5) sample during the second
17 quarter monitoring period of 2022. TESI collected one of the two
18 required HAA5 samples during the monitoring period for which the
19 violation was issued.

20 DEQ confirmed that each of these three violations has been returned
21 to compliance.

1 DEQ stated that three other violations were issued by DEQ for failure
2 to report chlorine residual between July 1, 2020, and July 1, 2023.
3 Each of the three violations was rescinded by DEQ because the
4 required information was provided, and the violations are no longer
5 valid.

6 No civil penalties from DEQ were identified for the Lake Royale water
7 system between July 1, 2020, and July 1, 2023.

8 The most recent water system inspection by DEQ's Public Water
9 Supply Section was conducted on May 18, 2023, at which time DEQ
10 did not identify any deficiencies. After the May 2023 inspection, DEQ
11 recommended installation of an anti-siphon device on the elevated
12 tank and evaluation of the [BEGIN CONFIDENTIAL] [REDACTED]
13 [REDACTED]
14 [REDACTED] [END CONFIDENTIAL].

15 **Q. Briefly describe the results of your investigation of the DEQ**
16 **NOVs and Civil Penalties issued to the Lake Royale wastewater**
17 **system.**

18 **A.** Between July 1, 2020, and July 1, 2023, the Lake Royale wastewater
19 system was issued one NOV, three Notices of Violation and Intent to
20 Assess Civil Penalty (NOVIs), and one Assessment of Civil Penalty
21 (Civil Penalty).

1 An NOV and an NOVI were issued by DEQ on November 5, 2021,
2 and March 14, 2023, respectively, for exceeding the daily
3 Biochemical Oxygen Demand (BOD) limit. The limit was exceeded
4 in August 2021 and January 2023.

5 Another NOVI was issued by DEQ on October 19, 2020, for failing to
6 meet the permit conditions requiring outfall information to be
7 recorded on the July Discharge Monitoring Report (DMR). In its
8 October 26, 2020 response to DEQ, TESI explained that its new
9 permit became effective on July 1, 2020, and that the Company had
10 not received a copy in the mail. TESI noticed the new fields in its
11 online DMR submission on August 25, 2020, at which time it was too
12 late to collect outfall samples for the July 2020 monitoring period.

13 The final NOVI was issued by DEQ on June 8, 2023, for failing to
14 monitor total nitrogen and phosphorus in the April DMR.

15 On August 24, 2020, DEQ issued one Civil Penalty in the amount of
16 \$285.01 for failing to meet the monthly average ammonia limit in April
17 2020.

18 The most recent wastewater system inspection was a compliance
19 sampling inspection conducted by DEQ on October 22, 2019. The
20 inspection report identified areas of concern, primarily related to
21 record keeping, proper sample collection procedure, and submission
22 of information. DEQ determined that the system was non-compliant.

1 The DEQ inspection report identified three concerns related to
2 system performance. The first concern was that the meter box was
3 old and would need replacement in the future. The second concern
4 was that the backup generator could not provide power to the entire
5 WWTP simultaneously and had to be connected to different locations
6 to provide power to different components of the plant. The third
7 concern was that the effluent discharge pipe was buried and needed
8 to be exposed in case it needed to be accessed.

9 TESI responded on February 24, 2020, and addressed each issue
10 identified by DEQ. TESI stated that it had requested an estimate from
11 and would work with a contractor to make the necessary change to
12 the backup power system. TESI also provided a photo showing that
13 the effluent discharge pipe had been exposed.

14 **Q. Do you agree with Red Bird witness Josiah Cox's statement that**
15 **the system has been out of compliance for the last 12 quarters?**

16 **A.** No. Witness Cox stated in his pre-filed direct testimony that the EPA
17 ECHO database shows the wastewater system has been out of
18 compliance for the last 12 quarters. While the EPA ECHO database
19 shows that the system has had "Reportable Noncompliance" for the
20 last nine quarters, there are no enforcement actions for these
21 quarters other than those described above.

1 **Q. Do you agree with witness Cox's statement that the systems**
2 **have continuing compliance issues?**

3 A. I believe witness Cox's statement requires clarification. The Lake
4 Royale water system has had no health-based compliance issues in
5 the past three years. The water system violations are limited to
6 reporting violations and one monitoring violation. I would not
7 consider these violations to constitute "continuing compliance
8 issues."

9 Although the wastewater system was previously issued a number of
10 violations, it was only issued two limit violations in the past three
11 years. Both violations were issued for exceeding the daily BOD limit
12 and did not result in monthly average limit exceedances. The facility
13 achieved a 98.7% days-in-compliance metric over the three-year
14 period discussed previously.

15 **Q. Did Red Bird provide Notice to Customers of the proposed**
16 **transfer?**

17 A. Yes. On July 11, 2023, the Commission issued the Order Scheduling
18 Hearings, Establishing Discovery Guidelines, and Requiring
19 Customer Notice (Scheduling Order). The Scheduling Order directed
20 Red Bird to provide the Notice to Customers no later than 10 days
21 after the date of the Order and submit a signed and notarized
22 certificate of service not later than 20 days after the date of the Order.

1 On July 26, 2023, Red Bird filed a Certificate of Service stating the
2 Notice to Customers was mailed or hand delivered as of July 24,
3 2023.

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

5 A. Between July 1, 2020, and June 30, 2023, the Public Staff Consumer
6 Services Division (Consumer Services) received 28 customer
7 complaints. Twelve customer complaints were related to TESI's
8 service quality, including ten related to water outages, one was
9 related to water quality, and one was related to water pressure.

10 Of the ten complaints related to water outages, one complaint was
11 received in March 2022, seven complaints were received in April
12 2022, and the final two complaints were received in May 2022. The
13 customers with water outage complaints generally reported having
14 multiple water outages over a few weeks coupled with boil water
15 advisories. TESI responded to a number of customer complaints,
16 stating that it believed the issues were related to a valve on Franklin
17 County's side of the interconnect.

18 The customer complaint regarding water service quality was
19 received in May 2022, and dealt with water pressure and quality. The
20 consumer stated that they had been experiencing issues with their
21 water pressure and receiving boil water advisories constantly. TESI
22 responded to the customer stating that system had recently had a

1 number of leaks which TESI believed were related to a malfunction
2 of the valve, connecting the Lake Royale and Franklin County
3 systems, that allowed excess pressure into the Lake Royale system.

4 The complaint related to water quality was received in March 2021,
5 and concerned poor water quality, the need to boil water, and not
6 being notified in a timely manner of a boil water advisory. In its
7 response, TESI stated that it had dropped water pressure for a
8 significant amount of time in late February to repair a large main
9 break. TESI stated that the service area was placed on a
10 precautionary boil water advisory, which remained in effect until the
11 following week when results from bacteriological samples could be
12 received.

13 **Q. Please briefly discuss the Public Staff's participation in the**
14 **Customer Hearing Scheduled for September 25, 2023.**

15 A. The public witness hearing on this transfer application is scheduled
16 for 7:00 p.m. on Monday, September 25, 2023. A Public Staff Utilities
17 Engineer will attend the public hearing and will be available to answer
18 questions before and afterwards. A Public Staff Attorney will
19 participate in the public hearing by sponsoring customers who wish
20 to testify as witnesses.

21 TESI and Red Bird are required to file separate, verified reports
22 addressing all customer service and service quality complaints

1 expressed during the customer hearing within 14 days of the
2 conclusion of the hearing. The Public Staff will review the testimony
3 and reports and file a verified response and comments on the
4 reports.

5 **Q. Is TESI providing safe and reliable service?**

6 A. Based on my review of the customer complaints and the limited
7 number of NOVs related to water quality issued by DEQ, I believe
8 TESI is providing safe, albeit intermittently unreliable, service to its
9 customers in the Lake Royale water and wastewater systems. I
10 characterize the service as “intermittently unreliable” due to issues
11 related to water outages, which TESI appears to have tried to resolve
12 in a timely fashion.

13 The Public Staff investigated the water outages that occurred
14 between March 2022 and May 2022, and found that the outages
15 were generally caused by main breaks. The timing and severity of
16 main breaks are generally not within the control of the utility. The
17 response to Public Staff Data Request No. 12 indicated that Boil
18 Water Advisories were appropriately issued for main breaks that
19 were not repaired immediately. While the response identified the
20 advisories as Boil Water Advisories, they are commonly referred to
21 as System Pressure Advisories when due to low system pressure,
22 and similarly recommend boiling water prior to consumption.

1 **Q. What are the existing and proposed water and wastewater utility**
 2 **service rates?**

3 A. The present rates for TESI were approved in Docket Nos. W-1146,
 4 Sub 11 and M-100, Sub 138 and have been in effect for service
 5 rendered since January 1, 2017. Upon acquisition of the system, Red
 6 Bird proposes to charge the current Commission approved rates for
 7 Lake Royale. The present and proposed rates are as follows:

8 Monthly Metered Water Rates:

	<u>Present</u>	<u>Proposed</u>
9		
10 Base Charge, zero usage	\$ 29.03	\$ 29.03
11 Usage Charge, per 1,000 gallons	\$ 6.02	\$ 6.02

12 Monthly Metered Sewer Rates (Based upon metered water usage):

13	Base Charge, zero usage		
14	<1" meter	\$164.50	\$164.50
15	1" meter	\$246.75	\$246.75
16	2" meter	\$411.25	\$411.25
17	Usage Charge, per 1,000 gallons	\$ 49.03	\$ 49.03
18	<u>Water Availability Rate:</u> ^{1/}	\$ 22.95	\$ 22.95

19 Connection Charge:

20	Water	\$300.00	\$300.00
21	Sewer	Actual ^{2/}	Actual ^{2/}

		<u>Present</u>	<u>Proposed</u>
1			
2	<u>Reconnection Charges:</u>		
3	If water service cut off by		
4	utility for good cause ^{3/}	\$ 14.35	\$ 14.35
5	If water service is discontinued		
6	at customer's request ^{3/}	\$ 14.35	\$ 14.35
7	If sewer service is disconnected by		
8	Utility for good cause by disconnecting		
9	Water ^{4/}	None	None
10			
11	If wastewater service cut off by		
12	utility for good cause by any		
13	method other than above ^{4/}	Actual Cost	Actual Cost
14	Furthermore, Red Bird proposes no changes to the existing TESI		
15	additional charges and fees approved by the Commission in Docket		
16	Nos. W-1146, Sub 11 and M-100, Sub 138 and shown below.		
17	<u>Bills Due:</u>	On billing date	
18	<u>Bills Past Due</u>	25 days after billing date	
19	<u>Billing Frequency:</u>		
20	Water and Sewer Rates	Shall be monthly for	
21		service in arrears	
22	Availability Rates	Shall be annually	
23	<u>Finance Charge for Late Payment:</u>	1% per month will be	
24		applied to the unpaid	
25		balance of all bills still past	
26		due 25 days after billing	
27		date	

1 ^{1/} All availability charges accrued to a lot with no service
2 connection after January 1, 2001, will be satisfied before an
3 application for service to the lot will be accepted by Total
4 Environmental Solutions, Inc. Regardless of customer status, a lot
5 with no service connection will accrue the applicable annual fee for
6 availability of service.

7 ^{2/} Including all materials, labor, site and roadway restoration,
8 and inspection costs.

9 ^{3/} Customers who ask to be reconnected within nine months of
10 disconnection will be charged \$18.37 per month for the service
11 periods they were disconnected.

12 ^{4/} If service is disconnected at the customer's request and
13 reinstated less than nine months from the date of disconnection, the
14 customer will be responsible for all monthly customer base charges
15 that have been applicable during that period. Those charges,
16 including any disconnect and reconnect fees, are due and payable
17 before service is restored.

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

20 A. The recommended rates are the same as the current Commission-
21 approved rates for TESI and are just and reasonable.

1 **Q. Does the pending passthrough filing in Docket No. W-1146, Sub**
2 **14 have the potential to impact the rates requested in this**
3 **proceeding?**

4 A. Yes, if the Commission approves a tariff revision in Docket No. W-
5 1146, Sub 14 prior to the conclusion of the transfer proceeding, the
6 rates approved by the tariff revision would be just and reasonable
7 and should be approved for Red Bird if the transfer is approved.

8 **Q. Based on your investigation, what is your opinion of Red Bird's**
9 **ability to own and operate the Lake Royale water and**
10 **wastewater systems?**

11 A. Public Staff witness John R. Hinton addresses Red Bird's financial
12 ability to own and operate the Lake Royale systems. Based on my
13 investigation, I believe Red Bird has the technical and managerial
14 capabilities necessary to provide public utility service to the Lake
15 Royale water and wastewater systems. Therefore, I recommend the
16 Commission approve the transfer of the Lake Royale water and
17 wastewater systems from TESI to Red Bird, subject to certain
18 conditions described below.

19 **Q. Do you agree with the prefiled direct testimony of Red Bird**
20 **witness Cox that the TESI utility system is troubled?**

21 A. Based on the recent performance history of both the water and
22 wastewater systems, including a lack of health-based state

1 regulatory issues, I do not consider the water system or the
2 wastewater system to be troubled.

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

5 A. In response to Public Staff Data Request Nos. 1 and 6, TESI
6 provided plant additions since its last rate case, which concluded in
7 2002, and some supporting invoices. My adjustments include
8 reducing the estimated service lives of the sewer plant timer and
9 starter on blowers from 20 years to 5 years, wastewater pump motors
10 from 20 years to 7 years, control panel and float switches from 20
11 years to 10 years, air release valves from 20 years to 10 years, a
12 wastewater pump from 20 years to 7 years, and wastewater flow
13 meter from 20 years to 10 years. My adjustments to estimated
14 service lives, and the corresponding changes in depreciation rates,
15 are based on previous Public Staff recommendations and commonly
16 available information.

17 In addition to the foregoing adjustments, I made adjustments to
18 remove pumps and pump repair at Lift Station Nos. 2, 4, and 5, pump
19 station rehabilitation items at Lift Station Nos. 4 and 5, and a control
20 panel and duplex control at Lift Station 5. I made these adjustments
21 because Lift Station Nos. 2, 4, and 5 are not in service.

1 On March 13, 2002, the Recommended Order Granting Partial Rate
2 Increase (Sub 1 Order) was issued in Docket No. W-1146, Sub 1,
3 and subsequently became final on March 26, 2002. According to the
4 Sub 1 Order, Public Staff witness Fernald testified that, due to lack
5 of proper record keeping by the prior owner, the costs associated
6 with making connections since the last rate case were not included
7 in the plant in service amount. Therefore, witness Fernald did not
8 include the tap fees associated with those connection costs. Witness
9 Fernald subsequently included in contributions in aid of construction
10 (CIAC) the connection fees for 1993 through 1995 based on the
11 previous rate case.

12 Consistent with witness Fernald's adjustments in the most recent
13 rate case, and due to the lack of documentation supporting CIAC, I
14 imputed \$21,900 in connection charges for 73 water service line
15 installations which occurred in 2022 and are supported by invoices
16 provided in response to Data Request No. 6.

17 **Q. What assets are being acquired pursuant to the asset purchase**
18 **agreement?**

19 A. The Agreement for Sale of Utility System was filed as Attachment
20 F.1 to the Joint Application and states in Section 1.B that "All of
21 Seller's water and sewer service facilities and their component parts
22 permanently attached to the water and sewer system including but

1 not limited to lines, plant, pipes, manholes and appurtenances;”
2 would be acquired by the purchaser.

3 Attachment I to the Joint Application states that each wastewater
4 customer has a septic tank and grinder pump which conveys
5 wastewater to the collection system. It is not abundantly clear if the
6 septic tanks are owned and operated by TESI, or the customer.

7 The Public Staff recommends that Red Bird and TESI provide
8 documentation showing ownership by another party of the septic
9 tank and grinder pump at each location, or documentation showing
10 ownership by TESI and that the tanks and pumps will be transferred
11 pursuant to the purchase agreement.

12 During the site visit on August 23, 2023, the Public Staff observed
13 that Lift Station 5 was secured by a lock which ClearWater staff were
14 unable to open. In response to a discovery request asking if Lift
15 Station 5 would be transferred, Red Bird responded as follows:

16 Based on discussion with operations/former TESI staff,
17 Red Bird understands that this lift station was turned
18 back over to the Lake Royale POA when the
19 bathhouse that contributed flow to this lift station was
20 connected to a septic system instead. We don't know,
21 however, whether this lift station was officially
22 abandoned, i.e., disconnected from the sewer system,
23 etc., but it allegedly receives no flow to it because it
24 was only ever serving the one bathhouse that is now
25 on septic. That is also the reason Red Bird does not
26 have access to this lift station site.

1 The Public Staff recommends that Red Bird and TESI provide
2 documentation showing that out-of-service lift stations are owned by
3 other parties and are no longer connected to the wastewater system
4 or are connected and will be transferred pursuant to the purchase
5 agreement. Out-of-service lift stations are a liability and should be
6 properly decommissioned.

7 **Q. What are the rate impacts of Red Bird's proposed acquisition**
8 **adjustment?**

9 A. All other things remaining equal, inclusion of the ~~proposed~~
10 acquisition adjustment as calculated by the Public Staff of **[BEGIN**
11 **CONFIDENTIAL]** [REDACTED] **[END CONFIDENTIAL]** in rate
12 base and allocated as proposed by Red Bird could result in a \$0.39
13 per month increase in water rates and a \$404.25 per month increase
14 in sewer rates, based on the acquisition adjustment's annual
15 revenue requirement calculated by Public Staff witness Feasel. This
16 is equivalent to a 0.8% increase in the average monthly water bill
17 based on 3,000 gallons of usage and a 48% increase in in the
18 average monthly wastewater bill based 12,200 gallons of usage at
19 currently-approved rates.

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

1 A. The Public Staff does not support Red Bird receiving an acquisition
2 adjustment in this proceeding.

3 As a general proposition, when a public utility buys assets that have
4 previously been dedicated to public service as utility property, the
5 acquiring utility is entitled to include in rate base the lesser of the
6 purchase price or the net original cost of the acquired facilities owned
7 by the seller at the time of the transfer. See Order Approving Transfer
8 and Denying Acquisition Adjustment, *Petition of Utilities, Inc. for*
9 *Transfer of the Certificate of Public Convenience and Necessity for*
10 *Providing Sewer Utility Service on North Topsail Island and Adjacent*
11 *Mainland Areas in Onslow County from North Topsail Water and*
12 *Sewer, Inc. and for Temporary Operating Authority*, Docket No. W-
13 1000, Sub 5 (N.C.U.C. January 6, 2000) (W-1000, Sub 5 Order).

14 The Commission has indicated "a strong general policy against the
15 inclusion of acquisition adjustments in rate base subject to
16 exceptions in appropriate instances." *Id.* at 24. In the W-1000, Sub 5
17 Order, the Commission discussed the circumstances when the rate
18 base treatment of acquisition adjustments is proper. The
19 Commission stated the following:

20 As should be apparent from an analysis of the
21 Commission's previous Orders concerning this subject,
22 a wide range of factors have been considered relevant
23 in attempting to resolve this question, including the
24 prudence of the purchase price paid by the acquiring

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

40 The prefiled direct testimony of witness Cox demonstrates that he
41 understands that the customers of the acquired utility would need to
42 be better off or at least no worse off as a result of the proposed

1 transfer, including rate base treatment of any acquisition adjustment.
2 Witness Cox identifies improved customer service, asset
3 management via Utility Cloud software, professional operations, and
4 access to capital as benefits that come with Red Bird's ownership
5 and support an acquisition adjustment.

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

19 Witness Cox stated in his prefiled direct testimony that a benefit of
20 ownership by Red Bird is access to the capital necessary to repair
21 and upgrade the TESI systems. An additional option for capital
22 financing, which is available to Red Bird, a different purchaser, and

1 TESI, is funding through DEQ's Division of Water Infrastructure
2 (DWI). Loans obtained through DWI have significantly lower interest
3 rates than market rates and have the potential for principal
4 forgiveness. The Drinking Water State Revolving Fund (DWSRF)
5 website states that it can provide loans at one-half of market interest
6 rates, and that it has a limited amount of principal forgiveness loans.
7 Regardless of ownership, some level of access to low or no-cost
8 financing for capital projects may be available and should be
9 pursued. Customers would be measurably worse off if capital
10 projects that could be funded through DWSRF loans or grants were
11 instead funded using traditional financing.

12 On pages 26 and 32 of his prefiled direct testimony, Red Bird witness
13 Cox testifies that the capital estimates are preliminary and the
14 problems cannot be truly known until Red Bird has acquired and
15 begun to operate a system. This raises the question of whether the
16 capital investment is a tangible benefit due to its uncertainty. Red
17 Bird witness Cox testifies extensively that future rate impact can't be
18 known and shouldn't be a consideration in this proceeding. However,
19 on page 34 of his prefiled direct testimony, he states that "Red Bird
20 intends to propose consolidated, statewide rates, which means the
21 costs of acquiring the TESI assets would be mixed with similar cost
22 for all other systems Red Bird acquires in North Carolina" and then
23 implies a benefit of Red Bird ownership that "spreading costs over a

1 significantly larger customer base . . . can significantly reduce the per
2 customer impact of acquisition-related costs.” In addition, on page 6
3 of his prefiled direct testimony, Red Bird witness Cox testifies that
4 “many of the systems which Red Bird seeks to acquire in North
5 Carolina are either distressed or troubled systems, or they require
6 the infusion of capital investment” Witness Cox seems to want
7 the best of both worlds from his perspective, 1) indefinite benefits to
8 offset what he characterizes as unknowable costs and rate impacts
9 for the purposes of satisfying the regulatory standard and obtaining
10 approval of the transfer and 2) approval in the present proceeding of
11 recovery of those costs that he also believes should be considered
12 during a future rate case instead of the present proceeding.

13 Approval of the proposed acquisition adjustment is not in the public
14 interest because Red Bird has failed to meet its burden to show of
15 proof by the greater weight of the evidence that the benefits to
16 customers resulting from the allowance of rate base treatment of an
17 acquisition adjustment in this case would offset or exceed the
18 resulting burden or harm to customers associated therewith.

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

20 A. After completing the purchase of the Lake Royale water and
21 wastewater systems, Red Bird intends to make upgrades to the

1 water system, both lift stations, and the wastewater treatment
2 facilities identified in Attachment I to the Joint Application.

3 Improvements to the water system are intended to provide storage
4 capacity, system pressure, if Franklin County cannot provide it, and
5 to either demolish or rehabilitate the existing elevated storage tank.

6 The four possible projects to achieve those goals are demolishing
7 the existing elevated storage tank, rehabilitating and repairing the
8 existing tank, installing a new booster pump station and backup
9 generator, and installing a 200,000-gallon ground storage tank.

10 Red Bird proposes five possible scenarios, each consisting of one or
11 a combination of multiple projects:

- 12 1. Tank rehabilitation only;
- 13 2. Tank demolition with storage capacity provided from Franklin
14 County;
- 15 3. Tank demolition with a new ground storage tank;
- 16 4. Tank demolition with a new booster pump station and storage
17 capacity provided by Franklin County; and
- 18 5. Tank demolition with new booster pump station and new
19 ground storage tank.

1 The planned upgrades to Lift Station 1 include new duplex pumps, a
2 transfer switch for a portable generator, a portable generator, a
3 telemetry system, and rehabilitation of the wet well. Planned
4 upgrades to Lift Station 9 include demolishing the existing wet well
5 and its components, building a new wet well, and demolishing the
6 existing holding tank before rerouting the piping to the new wet well.

7 Planned improvements to the WWTP include rehabilitating two
8 aeration chambers, two settling tanks, and a digester; and replacing
9 sand media, plant piping, piping/diffusers in the aeration chambers
10 and digester. Red Bird also plans to install two new 100 cubic feet
11 per minute blowers, motors, and control panels as well as a new
12 permanent backup generator and automatic transfer switch.

13 Red Bird expects to [BEGIN CONFIDENTIAL] [REDACTED]

14 [REDACTED]

15 [END CONFIDENTIAL] Red Bird stated in response to Public Staff
16 Data Request 3 that the most likely scenario for the water system
17 includes [BEGIN CONFIDENTIAL] [REDACTED]

18 [REDACTED]

19 [REDACTED] [END

20 CONFIDENTIAL]

21 If necessary, the Public Staff will investigate, in a future proceeding,
22 the economical and efficient provision of wastewater service, and the

1 need for capital investment to rehabilitate a wastewater plant which
2 was designed for [BEGIN CONFIDENTIAL] [REDACTED]
3 [REDACTED]
4 [REDACTED] [END CONFIDENTIAL] Capital
5 investment in oversized plant, which is already generally in
6 compliance with environmental regulations, to serve two customers
7 will be subject to determination of whether utility property is used and
8 useful during a rate case, in relation to the applicable test period,
9 pursuant to N.C.G.S. § 62-133(b)(1).

10 **Q. What options does the Lake Royale Property Owner's**
11 **Association (POA) have regarding the proposed capital**
12 **investments?**

13 A. The POA filed numerous consumer statements from its members in
14 Docket Nos. W-1146, Sub 13 and W-1328, Sub 10 on September
15 11, 2023, as well as a Petition to Intervene, which was granted on
16 September 12, 2023. Several consumer statements raised concerns
17 regarding increased costs attributable to proposed capital
18 investments by Red Bird. One option for the POA to address the
19 concerns of its members reflected in consumer statements would be

20 [BEGIN CONFIDENTIAL] [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED] **[END CONFIDENTIAL]** Should the POA not
6 be interested in paying for the capital investments proposed by Red
7 Bird, they could move forward with **[BEGIN CONFIDENTIAL]** [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED] **[END**
11 **CONFIDENTIAL]**

12 Unlike residential customers who may be unable to move or don't
13 have other options for wastewater service, the POA can decide to no
14 longer provide services to its members should they choose to not
15 pay for the capital improvements.

1 Q. Do you agree with Red Bird's estimated due diligence
2 expenses?

3 A. No. Red Bird witness Cox stated in his prefiled direct testimony that
4 Red Bird had incurred due diligence costs totaling \$187,601. Witness
5 Cox stated that Red Bird would not know the actual due diligence
6 and transactional costs associated with the transfer until the
7 purchase closes.

8 A review of Cox Direct Exhibit 4 in conjunction with the confidential
9 responses to Public Staff Data Request No. 14 shows that, of the
10 total due diligence costs identified by Red Bird, approximately
11 [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] has
12 been spent on engineering support and [BEGIN CONFIDENTIAL]
13 [REDACTED] [END CONFIDENTIAL] has been spent on legal
14 expenses. Two invoices were removed because the invoices
15 provided in response to Public Staff Data Request No. 14 did not
16 support the claimed costs. Two other invoices were identified to be
17 slightly more in Cox Direct Exhibit 4 than the actual invoices. In total,
18 the Public Staff removed [BEGIN CONFIDENTIAL] [REDACTED] [END
19 CONFIDENTIAL] based on its review.

20 These costs are significantly higher than due diligence costs
21 requested by many previous applicants, which have normally been
22 made up of the closing costs associated with the sale of the utility

1 system. Inclusion of the current due diligence expense of [BEGIN
2 **CONFIDENTIAL** [REDACTED] **[END CONFIDENTIAL]** in rate base
3 and allocated as proposed by Red Bird could result in a \$0.98 per
4 month increase in residential water rates and a \$1.04 per month
5 increase in sewer rates, based on the annual revenue requirement
6 of the current due diligence expense calculated by Public Staff
7 witness Feasel. On page 33 of his prefiled direct testimony, Red Bird
8 witness Cox testifies that “some potential acquisitions[,] after proper
9 due diligence, are shown to be not in the best interests of CSWR or
10 its operating subsidiary’s ratepayers” and that due diligence
11 expenses are legitimate business expenses and this “opportunity
12 cost” should be shared with ratepayers, just as the benefits of
13 completed acquisitions are shared. The Public Staff’s position is that
14 the majority of these costs should be absorbed by Red Bird as a cost
15 of doing business and not be included in rate base.

16 The Public Staff recommends due diligence expenses of \$10,000 be
17 “shared with ratepayers” and included in rate base. This is consistent
18 with previous transfer applications, including those in Docket No. W-
19 354, Sub 396, where the Public Staff recommended due diligence
20 expenses of \$8,229 be included in rate base, and Docket No. W-218,
21 Sub 527, where the Public Staff recommended, and the Commission
22 approved, the inclusion of \$4,000 in attorney fees in rate base.

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

3 A. If the Commission approves the transfer, it will be the fourth
4 certificate of public convenience and necessity granted to Red Bird
5 by the Commission. Considering this, and the anticipated capital
6 expenses required for the Lake Royale water and wastewater
7 system, combined with Red Bird's limited operating experience in
8 North Carolina, I recommend that a \$50,000 bond be posted by Red
9 Bird for the Lake Royale water system and that a \$50,000 bond
10 posted for the Lake Royale wastewater system, for a total bond
11 amount for Lake Royale of \$100,000.

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

14 A. The Public Staff supports the requested transfer contingent on the
15 Commission adopting the following conditions: 1) denial of an
16 acquisition adjustment; 2) establishment of plant in service as
17 **[BEGIN CONFIDENTIAL]** [REDACTED]
18 [REDACTED] **[END CONFIDENTIAL]** based
19 on the testimony of Public Staff witness Feasel; 3) limiting
20 recoverable due diligence expenses to \$10,000; and 4) requiring a
21 total bond of \$100,000.

- 1 Q. Does this conclude your testimony?
- 2 A. Yes, it does.

APPENDIX A

QUALIFICATIONS AND EXPERIENCE

Evan M. Houser

I graduated from North Carolina State University, earning a Bachelor of Science Degree in Environmental Engineering. I am a certified Engineering Intern in the state of North Carolina. I worked for the North Carolina Department of Environmental Quality (DEQ), Public Water Supply Section for approximately three years before joining the Public Staff in 2022. Prior to working for DEQ, I worked for the engineering consulting firm Highfill Infrastructure Engineering, P.C.

My duties with the Public Staff include monitoring the operations of regulated water and wastewater utilities with regards to rates and service. These duties involve conducting field investigations; reviewing, evaluating, and recommending changes in the design, construction, and operations of regulated water and wastewater utilities; presenting expert testimony in formal hearings; and presenting information, data, and recommendations to the Commission.

1 MS. JOST: Thank you.

2 BY MS. JOST:

3 Q. Now, for the panel of Mr. Feasel and -- or
4 Ms. Feasel and Mr. Houser, on October 23, 2023, did you
5 prepare and cause to be filed in these Dockets joint
6 settlement testimony, which consisted of seven pages
7 and two exhibits?

8 A. (Lynn Feasel) Yes.

9 A. (Evan M. Houser) Yes.

10 Q. Do you have any corrections to that
11 testimony?

12 A. (Lynn Feasel) No.

13 Q. If you were asked the same questions today,
14 would your answers be the same?

15 A. Yes.

16 MS. JOST: I move that the joint
17 settlement testimony of Ms. Feasel and Mr. Houser
18 be copied into the record as if given orally from
19 the stand, and that their exhibits be identified
20 as marked when they were filed.

21 COMMISSIONER KEMERAIT: Seeing no
22 objection, the joint settlement testimony, filed
23 on October 23, 2023, consisting of seven pages,
24 will be copied into the record as if given orally

1 from the stand.

2 (Whereupon, the Prefiled Joint Settlement
3 Testimony of LYNN FEASEL and
4 EVAN M. HOUSER was copied into the record
5 as if given orally from the stand.)
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1 **Q. Ms. Feasel, please state your name, business address, and**
2 **present position.**

3 A. My name is Lynn Feasel. My business address is 430 North
4 Salisbury Street, Raleigh, North Carolina. I am the Public Utility
5 Regulatory Analyst Supervisor of the Water, Sewer, and
6 Telecommunications Sections with the Accounting Division of the
7 Public Staff – North Carolina Utilities Commission (Public Staff).

8 **Q. Are you the same Lynn Feasel who filed direct testimony on**
9 **behalf of the Public Staff in this proceeding on September 19,**
10 **2023?**

11 A. Yes.

12 **Q. Are your qualifications and duties the same as stated in your**
13 **direct testimony?**

14 A. Yes.

15 **Q. Mr. Houser, please state your name, business address, and**
16 **present position.**

17 A. My name is Evan M. Houser. My business address is 430 North
18 Salisbury Street, Raleigh, North Carolina. I am a Public Utilities
19 Engineer with the Water, Sewer, and Telephone Division of the
20 Public Staff.

1 **Q. Are you the same Evan M. Houser who filed direct testimony on**
2 **behalf of the Public Staff in this proceeding on September 19,**
3 **2023, and corrected testimony on September 26, 2023?**

4 A. Yes.

5 **Q. Are your qualifications and duties the same as stated in your**
6 **direct testimony?**

7 A. Yes.

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

9 A. The purpose of our testimony is to provide support for the Settlement
10 Agreement and Stipulation (Stipulation) filed on October 23, 2023,
11 entered into between Red Bird Utility Operating Company, LLC (Red
12 Bird) and the Public Staff (together, the Stipulating Parties) regarding
13 the transfer of the Lake Royale Subdivision water and wastewater
14 utility systems and public utility franchise in Franklin and Nash
15 Counties, North Carolina, requested jointly by Total Environmental
16 Solutions, Inc. (TESI), in Docket No. W-1146, Sub 13 and Red Bird
17 in Docket No. W-1328, Sub 10 (Joint Application).

18 **Q. Briefly describe the Stipulation.**

19 A. The Stipulation sets forth agreement between the Stipulating Parties,
20 including the Stipulating Parties' agreement that the transfer of the
21 Lake Royale systems to Red Bird should be approved and that Red

1 Bird will adopt the tariffs and rates currently in effect for the
2 customers of the acquired systems.

3 The Stipulation further provides that Red Bird agrees not to pursue
4 an acquisition adjustment related to the Lake Royale systems in the
5 present proceeding or a future proceeding, and that the Stipulating
6 Parties agree the net book value of the assets Red Bird is acquiring
7 from Total Environmental Solutions, Inc. (TESI) is \$186,541. This
8 amount is calculated based on plant additions through December 31,
9 2022, and includes depreciation and amortization calculated through
10 December 31, 2023. Public Staff Settlement Exhibit 1 shows the
11 calculation of the net book value. Pursuant to the Stipulation, the
12 Stipulating Parties reserve the right to seek a determination by the
13 Commission of whether all of the utility assets acquired by Red Bird
14 were used and useful during the applicable test period in Red Bird's
15 initial rate case. Any assets determined by the Commission not to
16 have been used and useful during the applicable test period will be
17 removed from rate base.

18 Regarding costs associated with the transfer, the Stipulation
19 provides that, in its next general rate case, Red Bird may request
20 recovery of costs for engineering due diligence work listed in Red
21 Bird witness Cox Direct Exhibit 4 up to \$40,801.23 related to the
22 water system and up to \$22,450.50 related to the wastewater

1 system, provided the work results in reasonable and prudent capital
2 investments to improve the water and wastewater systems. The
3 Stipulation also provides that Red Bird may request recovery of up
4 to \$10,000 for legal costs related to the acquisition in its next general
5 rate case. Red Bird agrees not to pursue rate recovery of any
6 remaining costs associated with the transfer, including due diligence,
7 transactional, and regulatory costs, other than those listed above.
8 The amounts of \$40,801.23 and \$22,450.50 for water and
9 wastewater engineering due diligence, respectively, were
10 determined based on Cox Direct Exhibit 4, invoices provided in
11 response to Public Staff Data Request 14, and additional information
12 provided by Red Bird during settlement discussions. The water
13 system-related engineering due diligence amount reflects all
14 engineering due diligence costs related to the water system, while
15 the wastewater system-related engineering due diligence amount
16 reflects the cost of surveying the wastewater system. Public Staff
17 Settlement Exhibit 2 provides a breakdown of these costs, including
18 by invoice.

19 The Stipulation provides that Red Bird agrees the correct gross
20 amount of contributions in aid of construction (CIAC) to be recorded
21 by Red Bird at closing is \$21,900. By amortizing the CIAC over 15
22 years, the net CIAC balance is \$19,710 as of December 31, 2023.

1 Pursuant to the Stipulation, Red Bird agrees to adopt at closing
2 TESI's accounting records, provide the detailed accounting records
3 received from TESI to the Public Staff, and refrain from adjusting or
4 making changes to those records without Commission approval.

5 If the Stipulation is approved by the Commission, beginning one year
6 after the effective date of the order approving the Stipulation, and
7 continuing annually, Red Bird and key leadership from CSWR, LLC, will
8 meet with the Public Staff and provide an update detailing all
9 changes in Red Bird's facilities and operations since the last annual
10 update and discuss the Company's financial condition.

11 Red Bird agrees to apply for funding from the North Carolina
12 Department of Environmental Quality, Division of Water
13 Infrastructure in the funding cycle preceding planned water system
14 investment of more than \$100,000 until the earlier of the conclusion
15 of Red Bird's first rate case or a Commission order modifying this
16 requirement.

17 Finally, pursuant to the Stipulation, Red Bird agrees to post a
18 \$100,000 bond for the Lake Royale service areas.

19 **Q. What benefits does the Stipulation provide for ratepayers?**

20 A. Red Bird's agreement pursuant to the Stipulation not to seek an
21 acquisition adjustment and the limitations on the amount of due

1 diligence and legal costs Red Bird can recover will minimize the
2 magnitude of future rate increases. In addition, the conditions
3 attached to Red Bird's recovery of engineering due diligence costs
4 will help ensure that those costs are related to system improvements
5 that help to maintain or improve service quality and reliability. The
6 agreed-upon amount of imputed CIAC reduces rate base and will
7 thereby minimize the magnitude of future rate increases. Annual
8 meetings between Red Bird and the Public Staff will keep the Public
9 Staff apprised of changes to the systems and Red Bird's financial
10 condition and maintain open dialogue between the parties. Finally,
11 Red Bird's agreement to seek North Carolina Department of
12 Environmental Quality, Division of Water Infrastructure funding prior
13 to planned water system capital investments could result in
14 additional cost savings to customers.

15 Based on the foregoing, we recommend that the Commission
16 approve the Stipulation.

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

18 **A.** Yes, it does.

1 COMMISSIONER KEMERAIT: The two exhibits
2 attached to the settlement testimony will be marked
3 for identification purposes as prefiled.

4 (Public Staff Settlement Exhibits 1
5 and 2 were identified as they were marked
6 when prefiled.)

7 MS. JOST: Thank you.

8 The panel is available for questions from
9 the POA and TESI and the Commission.

10 MR. DROOZ: No questions.

11 COMMISSIONER KEMERAIT: Okay. Seeing
12 no questions from the parties, I do have a few
13 questions from -- for both of you.

14 EXAMINATION BY COMMISSIONER KEMERAIT:

15 Q. Beginning with Ms. Feasel. This relates to
16 the Stipulation about the net book value. And the
17 public -- and I recognize that -- that there is a
18 stipulation between the Public Staff and Red Birdabout
19 what the net book value number is to be.

20 The Public Staff had initially calculated the
21 rate base to be \$167,306, and the Stipulation, it
22 is higher than the initial calculation.

23 So the Stipulation, the net book value, is
24 \$186,541. Can you explain the difference between

1 those two numbers and how you arrived at the
2 approximately --

3 A. (Lynn Feasel) Yes.

4 Q. -- \$186,000 amount?

5 A. Yes. Previously when we filed the original
6 testimony, I take the recommendation --

7 (COURT REPORTER'S CLARIFICATION.)

8 THE WITNESS: Sorry. Yes.

9 So when we filed the original
10 testimony, I came up with the 167 number net book
11 value. That is because I take the recommendation
12 of Witness Houser.

13 I started with the Order that was
14 pulled from the last rate case and add in proper
15 additions with invoice supporting documentation.
16 And I also removed some plans that are suggested
17 by Witness Houser that should be removed, because
18 they were not in service.

19 Now, in the settlement testimony, the
20 number is higher, because I add in additional
21 \$26,701 for what has been removed in my original
22 testimony as -- for settlement purpose.

23 Q. And the approximately \$26,000 that had been
24 removed, was that for plant and service? Is that --

1 is -- is that where that number came from?

2 A. Yes.

3 Q. Okay. So you added it back in --

4 A. Yes.

5 Q. -- to the net book value?

6 A. Uh-huh.

7 Q. And then on Public Staff Settlement,
8 Exhibit 1, Schedule 2-1. And this would be on lines
9 13, 20, 21 and 23.

10 And I'll wait until you -- until you get
11 there.

12 A. Exhibit -- which exhibit?

13 Q. It is Exhibit 1.

14 A. Uh-huh.

15 Q. Schedule 2-1. And this is -- excuse me.
16 Settlement Exhibit 1.

17 A. Okay.

18 Q. Okay. And there is the -- the lines 13, 20,
19 21 and 23 show some red lettering. Can you explain
20 what the significance of the red lettering is?

21 A. There is no special difference between what
22 is marked as red or black. Is -- maybe just is when I
23 do my calculation, I mark something as if there's any
24 adjustment, but, no, there is no difference.

1 Q. Okay. Okay. Thank you.

2 And then this is, again, the same exhibit.

3 It's Settlement Exhibit 1, Schedule 2-1. And this
4 would be lines 20 -- excuse me. Lines 22 and 23. And
5 they provide the total plant additions since the water
6 rate case proceeding and the sewer CPCN proceeding.

7 A. Uh-huh.

8 Q. And then if you can look to Column C that
9 provides the year placed in service, and it states,
10 "Various"?

11 A. Yeah.

12 Q. Okay. And then Column E -- and I'm sorry.
13 I'm going to go through the entire question first.

14 A. Uh-huh.

15 Q. Column E provides the asset life that is
16 blank.

17 A. Uh-huh.

18 Q. And then Column F provides the number of
19 years in service. And it states, "Various."

20 A. Yeah.

21 Q. So, with all of that information, can you
22 explain the assumptions used to calculate the amount
23 of annual depreciation expense and accumulated
24 depreciation listed in the Columns G and H for lines

1 22 and 23?

2 A. Yes. So the reason why I listed, "Various,"
3 for the life and the years in service is because the
4 total plan additions for both water and the sewer, it
5 includes multiple different types of plants.

6 And I have the details on the document to
7 support the life for each type of plant, which are --
8 are -- are not the same for every single one. So
9 that's why I cannot list the life -- exact life in
10 this summary exhibit, but I can file the supporting
11 document if the Commission wants to support the
12 numbers.

13 And the way I calculate the annual
14 depreciation and the community depreciation is the
15 same as how I calculated for the prior plants which
16 were approved in the last rate case, I used half year
17 commission method to calculate the community
18 depreciation.

19 COMMISSIONER KEMERAIT: Thank you for
20 that explanation. And we would request the
21 supporting documentation filed as a late-filed
22 exhibit.

23 THE WITNESS: Okay. I can do that.

24 COMMISSIONER KEMERAIT: That's all of

1 the questions that I have for you, Ms. Feasel.

2 Commissioner Hughes may have some
3 questions, but I'm going to move on to
4 Mr. Houser.

5 Q. And some of the questions that I'll be
6 asking, I think you probably have been given a preview
7 of what I may be asking, but I'm going to start with
8 the last questions that I had for Mr. Cox about what is
9 a -- a failed or failing and trouble -- a troubled
10 water or wastewater system.

11 And I'd like to hear from the Public Staff
12 what the Public Staff views, what characteristics or
13 what the Public Staff would view as a troubled or
14 failing system that would be in the context of
15 considerations for acquisition adjustments.

16 A. (Evan M. Houser) As far as -- I would look
17 for criteria, such as failing to maintain compliance --
18 excuse me. Sorry. You can't hear me.

19 I would look for things like failing to be
20 able to maintain compliance with their environmental
21 standards. That would be an indicator.

22 And that would be routine regular issues
23 with probably the same type of analytes or
24 contaminants or things like that.

1 Excuse me. I'm being general.

2 Q. Uh-huh.

3 A. I would look -- I would look to compliance
4 history as an indicator.

5 Q. And I asked Mr. Cox about, are there some
6 compliance violations that are -- could be more
7 significant than others? For example, a reporting
8 violation. How would the Public Staff view a
9 reporting violation?

10 A. I personally would view health-based
11 violations as a more -- as more significant than
12 reporting and monitoring violations.

13 While no noncompliance is recommended or
14 good, certainly the violations that tie to health
15 issues and contaminates that are known should be
16 treated -- I think should be looked at more than
17 things that are based on failure to collect samples or
18 failure to -- you know, those are -- those are
19 failures to maintain compliance, but they're not
20 necessarily indicative of a health issue unless -- I
21 mean -- excuse me. I'd be speculating.

22 In cases where there's not other examples of
23 continuing compliance issues with that particular
24 analyte, for example, repeated E. coli -- E. coli

1 ECL's and then a monitoring violation, you could maybe
2 considered that different than a monitoring violation,
3 which was for something that there have been no
4 previous issues with.

5 Q. And are there any -- does the Public Staff
6 look to any firm definitions or kind of like black
7 letter type of definitions, for example, to determine
8 what a troubled system is?

9 For example, does the North Carolina
10 Department of Environmental Quality, do they have a
11 definition for a troubled or failing system?

12 And, if so, do you know what that definition
13 is?

14 A. Not that I'm aware of.

15 Q. Okay. And then I had a couple of questions
16 that I did not ask Mr. Cox about, but this relates to
17 the bond. And I recognize that this is also an issue
18 that has been addressed in the Stipulation, but the
19 --the -- the issue about what the Public Staff's
20 recommendation for the bond was -- was in dispute
21 before the -- the Stipulation.

22 And can you talk about whether the Public --
23 what position the Public Staff has about increasing
24 the -- its -- increasing the amount of bonds for its

1 recommendation in the past few years?

2 Because my understanding is the Public Staff
3 has increased -- has been requesting higher bonds in
4 the past several years than it previously did.

5 A. So I -- I can't speak strongly for our
6 change in bond recommendations over time. I can speak
7 to the recommendation in this case.

8 Q. Okay.

9 A. So could --

10 Q. Yes. Please explain the -- the basis for
11 this recommendation.

12 A. So I believe the minimum now is \$25,000 for
13 each water and sewer utility. And in this case
14 there's a large number of water customers, and there's
15 potentially a large amount of capital investment
16 proposed for the system.

17 So I think those could both be contributing
18 factors to a requested bond -- or an increased bond
19 amount. And that was -- that is also what was agreed
20 upon in the Stipulation Agreement.

21 Q. Okay. And then a question about the -- the
22 due diligence costs portion of the -- the Stipulation.
23 And I believe that the Public Staff had originally
24 recommended \$10,000 for due diligence costs.

1 And Mr. Cox has testified that due diligence
2 is for -- for these smaller mom-and-pop systems can
3 be -- can be greater or higher than -- than some other
4 systems that would be transferred.

5 And can you talk about the -- the
6 reasonableness of the almost \$41,000 due diligence
7 cost in -- in the Stipulation?

8 A. Yes. So the due diligence costs that were
9 included in the Stipulation are tied to
10 engineering-related costs, which can reasonably --or
11 -- excuse me. Can be evaluated -- I'm going to back
12 up.

13 They're tied to engineering costs, which
14 could result in improvements to the water and
15 wastewater system. And so the Stipulation also ties
16 them to seeking recovery when there are -- excuse me.

17 It ties the due diligence amounts to
18 improvements in the water and wastewater system.

19 Q. Okay. And then -- so this -- this relates
20 to a question about information about cost, but a
21 quantity of 2,300 gallons per month of water usage was
22 used to calculate the average monthly bill for a
23 residential water customer in the Commission's
24 Scheduling Order that we've heard some testimony

1 about from Mr. Cox today.

2 The Scheduling Order was issued on July 11
3 of 2023. And how was the 2,300 gallons per month of
4 water usage calculated for the average residential
5 customer for purposes of that Scheduling Order?

6 A. So I believe that was calculated based on
7 response to a billing DR. I don't know the exact --
8 off the top of my head, the exact way that was
9 calculated.

10 Q. Okay.

11 A. But I can look into it. And if you're okay
12 with it, provide you an additional document supporting
13 that amount or explaining how it was arrived at.

14 COMMISSIONER KEMERAIT: Yes. We
15 would -- we would request that explanation as a
16 late-filed exhibit, since there has been some
17 concern from Red Bird about that -- that
18 calculation.

19 So that's all of the questions that I
20 have.

21 Commissioner Hughes?

22 COMMISSIONER HUGHES: Yeah. Yes.

23 EXAMINATION BY COMMISSIONER HUGHES:

24 Q. Both -- both you and Mr. Cox talked about

1 water quality violations being an indicator of -- of
2 some type of problem with a system.

3 What weight does the Public Staff put for
4 service quality complaints that -- that came in?

5 Mr. Cox mentioned the -- the complaints at
6 the public hearing and the complaints that they've
7 received in -- that's been filed into the record.

8 How does that -- how does that play into a
9 view about a system's ability to continue?

10 A. (Evan M. Houser) "Ability to continue" --

11 Q. Just, you know, an ability to be a viable
12 system, when there's a history of -- of complaints,
13 and there's just a large number of complaints, even if
14 the -- the violations maybe aren't as serious as
15 other -- other systems, but the actual customers are,
16 frankly, unhappy?

17 A. I -- I believe that the customer concerns
18 should be considered. I do think that Red Bird -- Red
19 Bird and TESI both filed reports addressing the
20 customer complaints at the hearing.

21 I think they did a reasonable job addressing
22 them. It does sound like Red Bird may -- whether or
23 not this will actually come to fruition, may have some
24 plans to address the customer concerns in the future.

1 COMMISSIONER HUGHES: Okay. No further
2 questions. Thanks.

3 COMMISSIONER KEMERAIT: Okay.
4 Questions on commission questions?

5 MS. JOST: Just a couple.

6 EXAMINATION BY MS. JOST:

7 Q. Ms. Feasel, I believe Commissioner Kemerait
8 asked you about the assumptions underlying some of the
9 references to, "Various," in your Settlement
10 Exhibit 1, Schedule 2-1.

11 A. (Lynn Feasel) Yeah.

12 Q. Would those assumptions be in the native
13 version of that exhibit?

14 A. Yes.

15 Q. And it is -- is it your understanding that
16 that is, as a routine matter, filed -- or -- or
17 submitted to the Commission?

18 A. Yes.

19 Q. Okay. And now for Mr. Houser, you were
20 asked about the calculations in the customer notice
21 and -- and the inclusion of 2,300 gallons per month is
22 the average usage.

23 Do you recall that that information came
24 from the Company's response to Public Staff data

1 request two?

2 A. (Evan M. Houser) I'm not sure the specific
3 number, but yes, it was in response to a data request.

4 Q. Okay. So that's -- that was based on
5 information provided by the company? It wasn't just a
6 number that the Commission -- or the Public Staff came
7 up with on its own entirely?

8 A. That's my interpretation.

9 MS. JOST: Okay. Just let me check my
10 notes for a moment, please.

11 Okay. Those are all of my questions.
12 Thank you.

13 MR. DROOZ: No questions from me.

14 COMMISSIONER KEMERAIT: Okay. Seeing
15 no questions, Ms. Jost, do you have any motions
16 you would like to make for these witnesses?

17 MS. JOST: I do. Thank you.

18 I move the admission of Public Staff
19 Feasel Exhibits Arabic Number 1 and Roman
20 Numerals I, II and III and Public Staff
21 Settlement Exhibits 1 and 2.

22 COMMISSIONER KEMERAIT: Seeing no
23 objection, your motion is allowed.

24 MS. JOST: Thank you.

1 (Public Staff Feasel Direct Exhibit 1,
2 Public Staff Feasel Direct Exhibits I
3 through III, and Public Staff Settlement
4 Exhibits 1 and 2 were admitted into
5 evidence.)(Confidential - filed under
6 seal)

7 COMMISSIONER KEMERAIT: Okay. And
8 with that, Ms. Feasel and Mr. Houser, you may be
9 excused.

10 MS. FEASEL: Okay.

11 MS. JOST: At this time the Public
12 Staff calls John Hinton.

13 COMMISSIONER KEMERAIT: Good afternoon,
14 Mr. Hinton.

15 MR. HINTON: Good afternoon.

16 Whereupon,

17 JOHN R. HINTON
18 having been duly sworn, was examined
19 and testified as follows:

20 COMMISSIONER KEMERAIT: Thank you.

21 DIRECT EXAMINATION BY MS. JOST:

22 Q. Could you please state your name, business
23 address and current position for the record?

24 A. My name is John Robert Hinton. My business

1 address is 430 North Salisbury Street, Raleigh, North
2 Carolina. I'm the director of the Economic Research
3 Division for the Public Staff.

4 Q. On September 19, 2023 did you prepare and
5 cause to be filed in these Dockets testimony that
6 consisted of five pages and Appendix A and one
7 exhibit?

8 A. Yes.

9 Q. Do you have any corrections to that
10 testimony?

11 A. No, I do not.

12 Q. If you were asked the same questions today,
13 would your answers be the same?

14 A. Yes.

15 MS. JOST: I request that Mr. Hinton's
16 prefiled testimony be copied into the record as
17 if given orally from the stand, and that his
18 exhibit be identified as marked when filed.

19 COMMISSIONER KEMERAIT: And, Ms. Jost,
20 I -- I was looking at something else. Was there
21 an appendix that was attached to Mr. Hinton's
22 direct testimony?

23 MS. JOST: Yes. It's his
24 qualification. Yes.

1 COMMISSIONER KEMERAIT: Okay. So the
2 direct testimony of Mr. Hinton, filed on
3 September 19 of 2023, consisting of five pages
4 and one exhibit, shall be copied into the record
5 as if given orally from the stand.

6 (Whereupon, the Prefiled Direct Testimony
7 of JOHN R. HINTON was copied into the
8 record as if given orally from the
9 stand.)
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1 **Q. Please state your name, business address, and present**
2 **position.**

3 A. My name is John R. Hinton, and my business address is 430 North
4 Salisbury Street, Raleigh, North Carolina. I am the Director of the
5 Economic Research Division of the Public Staff. My qualifications
6 and experience are provided in Appendix A.

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

8 A. The purpose of my testimony in this proceeding is to present the
9 results of my investigation of the application filed on June 7, 2021,
10 by Total Environmental Solutions, Inc. (TESI), and Red Bird Utility
11 Operating Company, LLC (Red Bird), for authority to transfer the
12 water and wastewater systems and public utility franchise serving
13 Lake Royale Subdivision (Lake Royale) in Franklin and Nash
14 Counties from TESI to Red Bird and approval of rates as it relates to
15 the financial viability of Red Bird.

16 **Q. Please describe your investigation.**

17 A. I reviewed Red Bird's application, responses to data requests, the
18 direct testimony of Company witness Josiah Cox, and the direct
19 testimony of David Murray filed on the behalf of the Missouri Office
20 of the Public Counsel in Case No. WR-2023-0006, a rate case filed

1 with the Missouri Public Service Commission by Red Bird's affiliate,
2 Confluence Rivers Utility Operating Company, Inc.

3 **Q. Please describe the Organizational Chart provided to the Public**
4 **Staff in response to a data request.**

5 A. The Central States Water Resources Corporate Entity
6 Organizational Chart attached to this testimony as Public Staff
7 Hinton Exhibit 1 shows that Red Bird is owned by the North Carolina
8 CSWR, LLC, in a similar fashion as the other utility operations in the
9 11 other state jurisdictions. In addition, US Water Systems, LLC, is
10 the sole member of CSWR, LLC, and it owns 100% of CSWR, LLC.

11 **Q. Do you agree with witness Cox that Red Bird and CSWR, LLC,**
12 **have the financial capacity to acquire, own, and operate the**
13 **TESI systems?**

14 A. Yes. Based on data request responses and the testimony of witness
15 Cox, US Water Systems, LLC, and CSWR, LLC, will provide Red
16 Bird with sufficient equity capital to acquire and improve its water and
17 wastewater systems, fund system upgrades, and support other
18 capital improvements. However, the Public Staff has some concerns
19 regarding the ongoing viability of CSWR, LLC, because it continues
20 to report significant losses on its consolidated income statements. As

1 such, the Company's financial viability largely depends on external
2 infusions of common equity.

3 **Q. Does CSWR, LLC depend only on equity capital that is, in part,**
4 **provided by private equity?**

5 A. No. CSWR, LLC, has been approved for three loans with CoBank in
6 other state jurisdictions and Red Bird's eventual plans are to
7 rebalance its capital structure from being comprised of 100% equity
8 to offsetting equity with 40% to 50% debt capital.

9 **Q. Has the Public Staff observed any ongoing issues with any of**
10 **Red Bird's North Carolina operations that suggest sufficient**
11 **capital is not available?**

12 A. No. My understanding is that Public Staff witness Houser is unaware
13 of any plant and operational problems that stem from a lack of
14 capital. However, it should be noted that Red Bird has not owned its
15 systems in North Carolina for very long. The Public Staff will continue
16 to monitor capital investment in the acquired systems.

17 **Q. In view of your financial concerns, do you have any**
18 **recommendations?**

19 A. Yes. I recommend that Red Bird meet with the Public Staff on an
20 annual basis to discuss Red Bird's North Carolina water and
21 wastewater utility operations and address any concerns with its

1 financial condition. I propose that these meetings continue until the
2 Company's capital structure has been rebalanced to acceptable
3 levels and all viability concerns have been resolved.

4 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

5 **A.** Yes, it does.

QUALIFICATIONS AND EXPERIENCE

JOHN R. HINTON

I received a Bachelor of Science degree in Economics from the University of North Carolina at Wilmington in 1980 and a Master of Economics degree from North Carolina State University in 1983. I joined the Public Staff in May of 1985. I filed testimony on the long-range electrical forecast in Docket No. E-100, Sub 50. In 1986, 1989, and 1992, I developed the long-range forecasts of peak demand for electricity in North Carolina. I filed testimony on electricity weather normalization in Docket Nos. E-7, Sub 620, E-2, Sub 833, and E-7, Sub 989. I filed testimony the level of funding for nuclear decommissioning costs in Docket No. E-2, Sub 1023; Docket Nos. E-7, Sub 1026 and E-7, Sub 1146. I have filed testimony on the Integrated Resource Plans (IRPs) filed in Docket No. E-100, Subs 114 and 125, and I have reviewed numerous peak demand and energy sales forecasts and the resource expansion plans filed in electric utilities' annual IRPs and IRP updates.

I have been the lead analyst for the Public Staff in numerous avoided cost proceedings, filing testimony in Docket No. E-100, Subs 106, 136, 140, 148, and Sub 158. I have filed a Statement of Position in the arbitration case involving EPCOR and Progress Energy Carolinas in Docket No. E-2, Sub 966. I have filed testimony in avoided cost related to the cost recovery of energy efficiency programs and demand side management programs in Dockets Nos. E-7, Sub 1032, E-7, Sub 1130, E-2, Sub 1145, and E-2, Sub 1174.

I have filed testimony on the issuance of certificates of public convenience and necessity (CPCN) in Docket Nos. E-2, Sub 669, SP-132, Sub 0, E-7, Sub 790, E-7, Sub 791, and E-7, Sub 1134.

I filed testimony on the merger of Dominion Energy, Inc. and SCANA Corp. in Docket Nos. E-22, Sub 551, and G-5, Sub 585.

I have filed testimony on the issue of fair rate of return in Docket Nos. E-22, Subs 333 412, and 532; P-26, Sub 93; P-12, Sub 89; G-21, Sub 293; P-31, Sub 125; P-100, Sub 133b; P-100, Sub 133d (1997 and 2002); G-21, Sub 442; G-5, Subs 327, 386; and 632; G-9, Subs 351, 382, 722 and Sub 781, G-39, Sub 47, W-778, Sub 31; W-218, Subs 319, 497, and 526; W-354, Subs 360; 364, 384, and 400 and in several smaller water utility rate cases. I have filed testimony on credit metrics and the risk of a downgrade in Docket No. E-7, Sub 1146.

I have filed testimony on the hedging of natural gas prices in Docket No. E-2, Subs 1001, 1018, and 1292. I have filed testimony on the expansion of natural gas in Docket No. G-5, Subs 337 and 372. I performed the financial analysis in the two audit reports on Mid-South Water Systems, Inc., Docket No. W-100, Sub 21. I testified in the application to transfer the CPCN from North Topsail Water and Sewer, Inc. to Utilities, Inc., in Docket No. W-1000, Sub 5. I have filed testimony on rainfall normalization with respect of water sales in Docket No. W-274, Sub 160.

I was a member of the Small Systems Working Group that reported to the National Drinking Water Advisory Council with the EPA and I have published an article in the

1 COMMISSIONER KEMERAIT: The one exhibit
2 shall be -- shall be prefiled for identification
3 purposes.

4 (Hinton Direct Exhibit 1 was identified
5 as it was marked when prefiled.)

6 MS. JOST: Thank you.

7 Mr. Hinton is available for questions
8 from the POA, TESI and the Commission.

9 MR. DROOZ: No questions.

10 MR. FINLEY: No questions.

11 MR. HIGGINS: No.

12 COMMISSIONER KEMERAIT: Mr. Hinton, it
13 looks like you're not going to get many
14 questions, but I do have one question for you.

15 EXAMINATION BY COMMISSIONER KEMERAIT:

16 Q. In your testimony you spoke to the Public
17 Staff's concerns about Red Bird's ongoing cash needs.

18 Can you explain how the terms of the
19 Stipulation will give you confidence that Red Bird
20 will have the necessary capital going forward until
21 its operations are self-sustaining?

22 A. I can't say the Stipulation does that much,
23 other than the fact we -- they agreed to meet with us
24 on an annual basis. And we'll monitor the Company, as

1 we will be doing an ongoing basis.

2 The -- the item that -- that I'm most
3 concerned about is having sufficient capital to make
4 the capital improvements that Mr. Cox spoke of and
5 identified in our testimonies. So the Stipulation
6 doesn't give me that much, other than that particular
7 avenue.

8 My confidence about the ongoing capital that
9 would be available to the Company is largely based on
10 the testimony of Mr. Cox and his prefiled testimony,
11 and the other items addressed in my testimony, which
12 largely were the product of a lot of research with the
13 Missouri Public Utilities Commission out there,
14 dealing with the analyst out there, who is very
15 familiar with the operations of -- of Central States
16 Water Resources.

17 He explained to me the -- kind of the -- the
18 items identified in Mr. Cox's supplemental testimony,
19 where the -- the funds arranged for private capital
20 assigns management as part of that process, and the
21 U.S. Water, LLC and the smaller systems make requests
22 of fund, and they -- they provide funding for the
23 Company.

24 I am reasonably comfortable that the Company

1 will be able to acquire additional capital and make
2 the capital investments. I say that with -- in the
3 concept that, yeah, I would like to see a -- some
4 statements like financial statements that Duke Energy
5 has, who has a fair amount of common equity and -- and
6 the ability to raise capital pretty -- relatively
7 painlessly.

8 This is a private company. It depends on
9 private equity. But, again, I -- my research has
10 indicated there's no reason to think this company
11 cannot do as Mr. Cox testified to.

12 Is there any risk? Yes, but it's -- it's so
13 small it's within the realm of reasonableness to
14 accept Mr. Cox's commitment to provide capital on an
15 ongoing basis to Red Bird operations in North
16 Carolina.

17 So that is why I believe they're financially
18 viable. Those concerns have been abated. To say
19 they've been completely removed? No. But that's --
20 that's thinking like in a perfect world. We don't --
21 they way utilities in North Carolina -- especially
22 these small water utilities, they do struggle, as --
23 as we all are familiar with.

24 That death spiral that Mr. Cox spoke of, I

1 think it's real. But this company has not been in for
2 a rate case. It needs to get some capital infusion,
3 and it needs to get ready to recover. And I believe
4 that this -- this entity that Mr. Cox is chairman of
5 will -- will provide such capital and improvement in
6 the conditions and water service in North Carolina.

7 Q. And, just to sum up your testimony, so my
8 understanding is, is that your -- the Public Staff's
9 concerns about Red Bird have been sufficiently
10 answered or resolved, so that you are comfortable
11 recommending approval of this Application; is that
12 correct?

13 A. Yes, I am. I mean, again, I say they --
14 they need private equity infusions. They're --
15 they're consolidated financial statements demonstrate
16 they have needed that, but I believe they'll continue
17 to receive capital infusions to provide adequate
18 service going forward. Yes.

19 COMMISSIONER KEMERAIT: Okay. No --
20 thank you, Mr. Hinton. No further questions from
21 the Commission.

22 MS. JOST: Just one question.

23 EXAMINATION BY MS. JOST:

24 Q. So you were asked about the benefit of

1 the -- the settlement, the Stipulation, to your
2 concerns about Red Bird's ability to finance their
3 acquisitions.

4 Would you agree that prior to the filing of
5 the settlement testimony the Public Staff had some
6 questions or points of uncertainty about the corporate
7 structure and how funding flowed through that
8 structure?

9 A. Yes. There -- there was some -- there was
10 much concern about that. Again, it was abated to me
11 with my research with the Missouri Commission, but --
12 but I can testify the Commission -- to the Commission
13 that the Public Staff has concerns, and I believe we
14 did our -- we did our due diligence.

15 Q. And do you believe that the settlement
16 testimony and the exhibit that was attached to
17 Mr. Cox's settlement testimony provides a great deal
18 of clarity about the corporate structure and how the
19 financing flows through it?

20 A. Very much so. The prefiled testimony
21 have -- left us with some questions unanswered. The
22 data request came in, and -- but I think this -- the
23 supplemental testimony that you speak of, of Mr. Cox,
24 did provide a lot of clarity and -- and gives us

1 additional level of comfort.

2 MS. JOST: Thank you. Those are all my
3 questions.

4 MR. HIGGINS: Just a couple of
5 questions, Mr. Hinton.

6 EXAMINATION BY MR. HIGGINS:

7 Q. You're aware that in the context of TESI,
8 that TESI's been losing money for years, operating at
9 a loss?

10 A. Yes.

11 Q. And am I right that last year they lost a
12 quarter of a million dollars?

13 A. I'll accept that, subject to check.

14 Q. Subject to check. Fair enough.

15 And would you agree that an enterprise with
16 that kind of balance sheet is not a candidate for debt
17 financing at this point, and that equity is the only
18 possible way that Red Bird could hope to acquire this
19 system?

20 A. I'll agree to that. I mean, other than some
21 other entity with -- with a combination of debt and
22 equity could do it, but not TESI.

23 Q. And, in fact, your research has disclosed
24 that in other jurisdictions, where things have --

1 where positive cash flow has been achieved, Red Bird
2 has been -- actually has gotten debt financing through
3 CoBank, hasn't it?

4 A. Correct. That -- there are -- I know of at
5 least three different loans to CoBank that have
6 occurred. So the company is moving.

7 It's doing -- as Mr. Cox has identified,
8 it's -- the startup company has to be 100 percent
9 equity, but as they make capital investments in the
10 utility of business and capital calls for recovery
11 takes place, they can earn enough returns to, I think,
12 qualify for debt.

13 And that's how it was explained to me with
14 the Missouri operations by Mr. -- the analyst out
15 in -- with the Commission.

16 MR. HIGGINS: Thank you, sir. I don't
17 have any other questions.

18 COMMISSIONER KEMERAIT: Ms. Jost, and
19 motions?

20 MS. JOST: Yes. I would move admission
21 of Public Staff Hinton Exhibit 1.

22 COMMISSIONER KEMERAIT: Seeing no
23 objection, your motion is allowed.

24 (Hinton Direct Exhibit 1 was admitted

1 into evidence.)

2 COMMISSIONER KEMERAIT: And,
3 Mr. Hinton, thank you for your testimony. You
4 may be excused.

5 MR. HINTON: Thank you.

6 COMMISSIONER KEMERAIT: So I think that
7 brings us to the end of the witnesses who are
8 testifying. Is that correct?

9 MS. JOST: Yes.

10 COMMISSIONER KEMERAIT: And, before we
11 adjourn the hearing, are there any additional
12 matters that need to be addressed by the
13 attorneys?

14 MS. JOST: I don't believe so.

15 MR. HIGGINS: I'm not aware of any.

16 COMMISSIONER KEMERAIT: Okay. There is
17 one matter that I will address. It's in regard
18 to proposed Orders. And we typically have
19 proposed Orders due 30 days after preparation and
20 delivery of the transcript, but in this case we
21 have a -- a fairly aggressive time schedule for
22 getting the Order issued.

23 So the proposed Orders will be due
24 sooner than what we typically allow. So proposed

1 Orders will be due on November 22, 2023.

2 And I want to advise the attorneys that
3 we will not be allowing extensions of time for
4 the -- the proposed Orders.

5 With that, is there anything else?

6 MR. HIGGINS: No.

7 MS. JOST: No.

8 COMMISSIONER KEMERAIT: Okay. Well, I
9 want to thank everyone and the witnesses for
10 their testimony. Appreciate all of the
11 information that was provided to the Commission.

12 And the hearing is adjourned.

13 (Brief pause.)

14 COMMISSIONER KEMERAIT: Let's go back
15 on the record.

16 The hearing has been reconvened. I had
17 adjourned it, but we're reconvening it. It has
18 been brought to my attention that the
19 Stipulation among the parties has not been
20 admitted into evidence. So we need to have a
21 motion in regard to the Stipulation.

22 MR. HIGGINS: Commissioner Kemerait, I
23 would move the admission of the Settlement
24 Agreement and Stipulation filed with the

1 Commission yesterday, October 23rd, into the
2 record in this -- these dockets.

3 COMMISSIONER KEMERAIT: Okay. Seeing
4 no objection, your motion is allowed.

5 (Settlement Agreement and Stipulation,
6 filed October 23, 2023, was admitted into
7 evidence.)

8 COMMISSIONER KEMERAIT: And with that,
9 we will adjourn the hearing again. Thank you
10 very much.

11 MR. HIGGINS: Thank you.

12 (Hearing adjourned at 1:35 p.m. on
13 Tuesday, October 24, 2023.)
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1 CERTIFICATE OF REPORTER

2
3 STATE OF NORTH CAROLINA)

4 COUNTY OF DURHAM)

5
6 I, Lisa A. DeGroat, RPR, the officer before whom
7 the foregoing proceedings were taken, do hereby
8 certify that the proceedings were taken by me to the
9 best of my ability and thereafter reduced to
10 typewriting under my direction; that I am neither
11 counsel for, related to, nor employed by any of the
12 parties to the action in which these proceedings were
13 taken, and further that I am not a relative or
14 employee of any attorney or counsel employed by the
15 parties thereto, nor financially or otherwise
16 interested in the outcome of the action.

17 This the 3rd day of November, 2023.
18
19
20

21 

22
23 LISA A. DeGROAT, RPR

24 Notary Public #19952760001