

**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, and Total Environmental	)	ORDER DENYING MOTION
Solutions, Inc., for Authority to Transfer the	)	FOR CLARIFICATION OR,
Lake Royale Subdivision Water and	)	ALTERNATIVELY, FOR
Wastewater Utility Systems and Public Utility	)	RECONSIDERATION
Franchise in Franklin and Nash Counties,	)	
North Carolina, and for Approval of Rates	)	

BY THE PRESIDING COMMISSIONER: On September 8, 2023, Red Bird Utility Operating Company, LLC (Red Bird), filed a motion for clarification or, alternatively, reconsideration (Motion) of the Commission's Order Granting Motion to Compel (Order) issued in the above-referenced dockets on September 7, 2023. In its Motion, Red Bird requests clarification or reconsideration of one aspect of the Commission's ruling – ". . . the information sought in Data Request 13-6 is identified with particularity and should be readily accessible by Red Bird as it has already been produced in the Missouri proceeding."

Red Bird asserts that the Order can be read as requiring it to produce only information or materials that were "specifically identified." Red Bird argues that the Public Staff only specifically references all Investment Memoranda produced by Confluence Rivers in its Missouri rate case, and therefore, Red Bird is only required to provide those Investment Memoranda. Additionally, Red Bird asserts that a requirement to produce all of the documents provided by Confluence Rivers in its general rate case exceeds the Public Staff's request and would be burdensomely punitive for Red Bird. Red Bird argues that it is impossible for it to recreate and compile all such responses and provide them to the Public Staff by Wednesday, September 13, 2023, because the majority of the documents were submitted via the Missouri Public Service Commission's (Missouri PSC) electronic filing system.

The Public Staff filed its response to Red Bird's Motion on September 8, 2023, and argues that Red Bird's assertion that the Public Staff specifically references only the Investment Memoranda in its Motion to Compel because those are the only materials the Public Staff is seeking in Data Request 13-6 is incorrect and contrary to communications between the Public Staff and counsel for Red Bird just hours prior to Red Bird's filing of its Motion. The Public Staff states that it has not narrowed its request and disagrees with Red Bird's interpretation of the Order – that it requires only the production of all

Investment Memoranda. The Public Staff asserts that it referenced the Investment Memoranda in its Motion to Compel merely as an example of discovery produced in the Missouri rate case that is reasonably calculated to lead to the discovery of evidence admissible before the North Carolina Utilities Commission. The Public Staff notes that Red Bird acknowledges that the Public Staff does not have access to the data requests propounded on Red Bird's affiliate during its rate case and, therefore, cannot specifically list additional materials that are relevant to the issues of public interest and financial viability in the current docket based on the common upstream ownership of Red Bird and its Missouri affiliate.

The Public Staff further argues that Red Bird's contention that it is impossible to recreate and compile all responses produced by its Missouri affiliate in its rate case for transmission to the Public Staff is confusing and contrary to prudent business practice. The Public Staff asserts that it is reasonable to expect a utility to maintain copies on its computer system of discovery served in a recent case such as the Confluence River rate case, and accordingly, the Commission should give no weight to Red Bird's contention that it cannot comply with the Order nor should it extend the time for Red Bird to respond.

The Order required "Red Bird to provide the Public Staff a copy of the discovery responses produced by its affiliate, Confluence, in the Missouri rate case." The Order stated that "the information sought in Data Request No. 13 is identified with particularity and should be readily accessible by Red Bird as it has already been produced in the Missouri proceeding." Additionally, the Presiding Commissioner determined in the Order that "because of the common upstream ownership of Red Bird and its Missouri affiliate, the information appears relevant to the issues of public interest and financial viability of Red Bird in this case or reasonably calculated to lead to the discovery of admissible evidence." Nothing presented by Red Bird in its Motion provides sufficient weight for a change in the Order.

Red Bird's argument that the Order "can be read as requiring it to produce information or materials that were 'specifically identified'" is disingenuous. Data Request No. 13-6 requested copies of "all discovery responses provided 'by any Affiliate of Red Bird' in a rate case brought before the Missouri Public Service Commission by an affiliate of Red Bird, Confluence Rivers Utility Operating Company, Inc (Confluence)." As noted by the Public Staff, the Commission did not mention the term "Investment Memoranda" in its order. Further, in the Order, Red Bird was required to provide a "full and complete response to Data Request No. 13. . .," contrary to Red Bird's assertion that the Order requires it to produce only specific information or materials, or that Red Bird's response is limited to providing "all Investment Memoranda that Confluence Rivers produced in its Missouri rate case."

Further, the Commission is not persuaded by Red Bird's argument that "because of the means by which Confluence Rivers filed the overwhelming majority of its discovery responses in the Missouri rate case – via that Commission's electronic filing system – it will be impossible for Red Bird to recreate and compile all such responses so that they could be transmitted to Public Staff by Wednesday." Red Bird's admission that the

relevant discovery responses were filed with the Missouri PSC's electronic filing system indicates that the required responses have already been created and compiled in an electronic form that can be transmitted to the Public Staff as easily as they were filed in the Missouri PSC's filing system.

After careful consideration, the Presiding Commissioner finds good cause to deny Red Bird's Motion for Clarification or, Alternatively, for Reconsideration and require Red Bird to fully comply with the Order.

IT IS, THEREFORE, ORDERED that Red Bird's September 8, 2023 Motion for Clarification or, Alternatively, for Reconsideration is denied and that Red Bird shall provide a full and complete response to Data Request No. 13-6 as soon as possible and no later than Wednesday, September 13, 2023.

ISSUED BY ORDER OF THE COMMISSION.

This the 12th day of September, 2023.

NORTH CAROLINA UTILITIES COMMISSION

A handwritten signature in black ink, reading "Tamika D. Conyers". The signature is written in a cursive, flowing style.

Tamika D. Conyers, Deputy Clerk