



**NORTH CAROLINA
PUBLIC STAFF
UTILITIES COMMISSION**

March 31, 2023

Ms. A. Shonta Dunston, Chief Clerk
North Carolina Utilities Commission
4325 Mail Service Center
Raleigh, North Carolina 27699-4300

Re: Docket Nos. W-992, Sub 8 and W-1328, Sub 9 - Proposed Transfer of the Crosby Public Utility Franchise, to Red Bird Utility Operating Company, LLC, d/b/a Red Bird Water and for Approval of Rates

Dear Ms. Dunston:

Attached for filing in connection with the above-referenced docket is the Settlement Agreement and Stipulation.

By copy of this letter, we are forwarding copies to all parties of record.

Sincerely,

Electronically submitted
s/ John Little
Staff Attorney
john.little@psncuc.nc.gov

Attachment

Executive Director
(919) 733-2435

Communications
(919) 733-5610

Economic Research
(919) 733-2267

Legal
(919) 733-6110

Transportation
(919) 733-7766

Accounting
(919) 733-4279

Consumer Services
(919) 733-9277

Electric
(919) 733-2267

Natural Gas
(919) 733-4326

Water
(919) 733-5610

4326 Mail Service Center • Raleigh, North Carolina 27699-4300
An Equal Opportunity / Affirmative Action Employer

OFFICIAL COPY

Mar 31 2023

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. W-992, SUB 8
DOCKET NO. W-1328, SUB 9

In the Matter of		
Application by Red Bird Utility Operating)	
Company, LLC, 1650 Des Peres Road, Suite)	
303, St. Louis, Missouri 63131, and Crosby)	
Utilities, Inc., 7536 NC Hwy 39, Zebulon,)	
North Carolina 27597, for Authority to)	SETTLEMENT AGREEMENT
Transfer the Baywood Forest Subdivision)	AND STIPULATION
Water and Wastewater Utility Systems and)	
the Cottonwood Subdivision Wastewater)	
Utility System in Wake County, North)	
Carolina, and for Approval of Rates)	

Red Bird Utility Operating Company, LLC (Red Bird or Company), and the Public Staff – North Carolina Utilities Commission (Public Staff) (collectively the Stipulating Parties), through counsel and pursuant to N.C. Gen. Stat. § 62-69 and Rule R1-24(c) of the Rules and Regulations of the North Carolina Utilities Commission (Commission), respectfully submit the following Settlement Agreement and Stipulation (Stipulation) for consideration by the Commission in this proceeding. The Stipulating Parties hereby stipulate and agree as follows:

I. BACKGROUND

A. On October 22, 2020, Red Bird and Crosby Utilities, Inc. (Crosby), filed with the Commission an Application for Transfer of Public Utility Franchise and for Approval of Rates (Application) seeking authority to transfer the water and wastewater utility systems serving the Baywood Forest Subdivision and the wastewater utility system serving the Cottonwood Subdivision and the public utility

franchise serving all of Crosby's service areas in Wake County, North Carolina, from Crosby to Red Bird and for approval of rates. Red Bird filed with the Commission supplemental and additional materials in support of the Application on May 27, May 28, and October 8, 2021, June 14 and July 18, 2022, and on February 2, 2023.

B. On September 22, 2022, the Commission issued its Order Scheduling Hearing, Establishing Discovery Guidelines, and Requiring Customer Notice (Scheduling Order). The Commission attached as Appendix A to its Scheduling Order a Notice to Customers stating that a public witness hearing has been scheduled for January 23, 2023, and that the Commission may decide the matter without a public witness hearing if no significant protests are received by January 9, 2023.

C. On October 3, 2022, Red Bird filed a certificate of service stating that the Notice to Customers was mailed or hand delivered to all affected customers by the date specified in the Scheduling Order.

D. Due to the lack of significant customer protest, on January 11, 2023, Public Staff filed a Motion for Order Canceling Public Witness Hearing And Requiring Customer Notice, as well as a Proposed Order.

E. On January 17, 2023, the Commission issued its Order Canceling Public Witness Hearing And Requiring Customer Notice.

F. On January 19, 2023, Red Bird filed a certificate of service stating that the Notice to Customers required by the January 17, 2023 Order was mailed or hand delivered by the date specified in the Order.

G. Subsequent to the filing of Red Bird's Application in this docket, the Public Staff engaged in substantial discovery of Red Bird regarding the matters addressed by the Company's Application and supplemental and additional materials filed with the Commission in support of its Application.

H. On February 2, 2023, Red Bird filed the direct testimony of Josiah Cox, President of Red Bird Utility Operating Company, LLC, and CSWR, LLC, a Missouri limited liability company formed to provide managerial, technical, and financial support to its utility operating affiliates, including Red Bird. The Cox testimony included two confidential exhibits: a spreadsheet reflecting Red Bird's computation of rate base in the utility assets to be acquired from Crosby and a schedule showing the due diligences expenses incurred by Red Bird as of the date the Cox direct testimony was filed.

I. On February 23, 2023, Public Staff filed the testimony of D. Michael Franklin.

J. February 23, 2023, Public Staff also filed the testimony of Lynn Feasel, which included three exhibits.

K. On March 15, 2023, Red Bird filed the rebuttal testimony of Josiah Cox, which included three exhibits.

L. March 15, 2023, Red Bird also filed the rebuttal testimony of Brent Thies.

M. After settlement negotiations, in which concessions from their litigation positions were made by both parties, the Stipulating Parties were ultimately able to arrive at a settlement, the terms of which are reflected in the following sections of this Stipulation.

II. STIPULATION AND AGREEMENT OF THE STIPULATING PARTIES

The Stipulating Parties agree and stipulate as follows:

Red Bird agrees to post a bond in the amount of \$100,000 for the Crosby service area on or before April

A. , 2023.

B. The transfer of the Crosby systems to Red Bird should be approved.

C. The Company agrees not to pursue an acquisition adjustment related to the Crosby systems in this or any future proceeding.

D. The Stipulating Parties agree that rate base for the Crosby systems should be \$188,801, plus up to \$10,000 for closing costs. The actual amount of the closing costs should be determined in Red Bird's next general rate case.

E. The Stipulating Parties agree that Red Bird may request recovery of the remaining costs associated with the transfer of the Crosby systems to Red Bird up to \$80,000 for engineering due diligence work in its next general rate case, provided that the resulting work results in reasonable and prudent capital investments to improve the Crosby systems. Any portion of the \$80,000 associated with reasonable and prudent improvements should be included as utility plant in service in the Company's next general rate case filed after the improvements become used and useful in providing service.

F. The Stipulating Parties agree that there is an open issue regarding amortization of contribution in aid of construction (CIAC) balances used by Public Staff in calculating Crosby's rate base, which CIAC related to infrastructure contributed to Crosby in or around 1992. The Stipulating Parties anticipate that they will resolve this issue through consultations between accounting personnel,

and the Stipulation Parties agree that in its first rate case Red Bird shall have the opportunity to investigate and determine the correct CIAC balance and to seek an adjustment to rate base that reflects the proper amortization or evaluation of the CIAC balance from 2008 to Red Bird's closing date on the Crosby systems.

G. Red Bird agrees not to seek recovery of any additional costs associated with the transfer, including due diligence, transactional, and regulatory costs, other than those listed in Paragraphs II.D., II.E and II.F. above.

III. AGREEMENT TO SUPPORT SETTLEMENT; NON-WAIVER.

A. The Stipulating Parties, and their agents, witnesses, and representatives, will act in good faith to support the reasonableness of this Stipulation in any hearing before the Commission and any proposed order or brief in this docket; provided, however, that the settlement of any issue pursuant to this Stipulation shall not be cited as precedent by any of the Stipulating Parties in any other proceeding or docket before this Commission or on appeal before the North Carolina Court of Appeals or North Carolina Supreme Court. The provisions of this Stipulation do not necessarily reflect any position asserted by any of the Stipulating Parties. Rather, they reflect settlement among the Stipulating Parties as to all issues and, notwithstanding the items agreed and stipulated to in Section II.A.-G. above, no Stipulating Party waives the right to assert any position on any issue in any future docket before the Commission. The Stipulating Parties further agree that this Stipulation is in the public interest because it reflects a give-and-take settlement of contested issues.

B. This Stipulation is a product of negotiation among the Stipulating Parties, and no provision of this Stipulation shall be strictly construed in favor of or against any Party.

IV. INTRODUCTION OF TESTIMONY AND WAIVER OF CROSS-EXAMINATION.

A. The Stipulating Parties agree that all pre-filed testimony and exhibits of the Stipulating Parties, including any supplemental testimony filed in support of this Stipulation, may be received in evidence without objection, and each Stipulating Party waives all right to cross examine all of the Stipulating Parties' witnesses with respect to pre-filed testimony and exhibits. If, however, questions are asked by any Commissioner or non-Stipulating Party, then any Stipulating Party may respond to such questions by presenting testimony or exhibits and cross-examining any witness with respect to such testimony and exhibits; provided, however, that such testimony and/or exhibits shall not be inconsistent with this Stipulation. There are no intervenors in these dockets and unless the Commission has questions for a Stipulating Party, the Stipulating Parties agree and request that the hearing scheduled for April 4, 2023, be cancelled.

V. STIPULATION BINDING ONLY IF ACCEPTED IN ITS ENTIRETY

This Stipulation is the product of negotiation and compromise of a complex set of issues, and no portion of this Stipulation is or will be binding on any of the Parties unless the entire Settlement Agreement and Stipulation is accepted by the Commission. If the Commission rejects any part of this Stipulation or approves this Stipulation subject to any change or condition, or if the Commission's approval of this Stipulation is rejected or conditioned by a reviewing court, the Stipulating

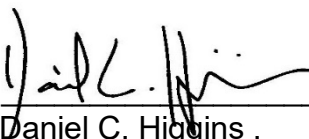
Parties agree to meet and discuss the applicable Commission or court order within five business days of its issuance and to attempt in good faith to determine if they are willing to modify the Stipulation consistent with the order. No Party shall withdraw from the Stipulation prior to complying with the foregoing sentence. If any Party withdraws from the Stipulation, each Party retains the right to seek additional procedures before the Commission, including cross-examination of witnesses, with respect to issues addressed by the Stipulation and shall not be bound or prejudiced by the terms and conditions of the Stipulation.

VI. COUNTERPARTS

This Stipulation may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute the same instrument. Execution by facsimile signature shall be deemed to be, and shall have the same effect as, execution by original signature.

The foregoing is agreed and stipulated to this the 31st day of March, 2023.

Burns, Day & Presnell, PA

By:  _____

Daniel C. Higgins .
Attorneys for Red Bird Utility Operating Company, LLC

Public Staff — North Carolina Utilities Commission

By: s/John Little
John Little
Attorney for the Public Staff