

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,)	RED BIRD’S MOTION FOR
Suite 303, St. Louis, Missouri 63131, and)	SUBSTITUTION OF WITNESS AND
Total Environmental Solutions, Inc., Post)	ADOPTION OF TESTIMONY,
Office Box 14056, Baton Rouge, Louisiana)	FOR RESCHEDULING OF
70898, for Authority to Transfer the Lake)	EXPERT WITNESS HEARING
Royale Subdivision Water and Wastewater)	AND TO EXCUSE ONE WITNESS
Utility Systems and Public Utility Franchise)	
in Franklin and Nash Counties, North Carolina,)	
and for Approval of Rates)	

NOW COMES Red Bird Utility Operating Company, LLC (“Red Bird”) and respectfully moves the Commission to allow Josiah Cox, who prefled direct testimony on behalf of Red Bird in these dockets, to adopt the pre-filed rebuttal testimony and exhibits of witness Todd Thomas. Red Bird also requests that the Commission delay the commencement of the expert witness hearing from 11 a.m. to Noon on Tuesday, October 24, and that Red Bird rebuttal witness Caitlin O’Reily be excused from appearing at the hearing.

In support of this Motion, Red Bird respectfully shows the Commission as follows:

1. On June 7, 2021, Red Bird and Total Environmental Solutions, Inc. (“TESI”), 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 and public utility franchise serving the Lake Royale Subdivision (“Lake

Royale”) in Franklin and Nash Counties, North Carolina, from TESI to Red Bird and approval of rates. Red Bird filed with the Commission supplemental and additional materials in support of the Application on June 8, and August 6, 2021; and January 24, August 2, and September 8, 2022.

2. On July 11, 2023, the Commission issued its Order Scheduling Hearing, Establishing Procedural Deadlines, and Requiring Public Notice (“Scheduling Order”) setting dates for hearings and for the filing of direct testimony by the applicants, the Public Staff and other intervenors, and setting October 3, 2023, as the deadline for filing rebuttal testimony. The public hearing was held in these dockets on September 25 and the expert witness hearing is set for October 23, 2023.

3. On August 8, 2023, Red Bird filed a Motion for Extension of Time to file its direct testimony and to change the due date for filing of Public Staff testimony.

4. On August 28, 2023, the Commission issued its Order granting Red Bird’s Motion. Pursuant to that Order, on August 30, 2023, Red Bird filed the direct testimony and exhibits of Josiah Cox. Mr. Cox is President of Red Bird Utility Operating Company, LLC “Red Bird”). Red Bird is an affiliate of CSWR, LLC (“CSWR”) a Missouri limited liability company that provides managerial, technical, and financial support to its utility operating affiliates, such as Red Bird. Mr. Cox is also President of CSWR.

5. On September 19, 2023, Public Staff filed the testimony and exhibits of Lynn Feasel, Evan Houser and John R. Hinton.

6. Due to Mr. Cox’s inability to attend and testify at the expert witness scheduled to begin on October 23, 2023, on October 3, 2023, Red Bird prefiled the rebuttal testimony

of Mr. Todd Thomas, CSWR, LLC's Senior Vice President. Red bird also filed the rebuttal testimony of CSWR's Regulatory Accounting Manager, Caitlin O'Reilly.

7. Red Bird subsequently requested that Mr. Thomas be allowed to adopt the direct testimony filed by Mr. Cox and substitute as a witness for him. On October 13, 2023, the Commission issued its Order Delaying Hearing And Denying Motion For Substitution Of Witness. That Order rescheduled the expert witness hearing to begin at 11 a.m. on Tuesday, October 24 in an effort to provide Mr. Cox with sufficient time to fly to Charlotte that morning and then drive to Raleigh, which is the quickest means available for him to travel that morning from Baton Rouge to Raleigh from a meeting with Commissioners from the Louisiana Public Service Commission.

8. Public Staff and Red Bird have reached agreement on settlement of the issues presented in these dockets, and they plan to reduce their agreement to writing and file a Settlement Agreement and Stipulation as soon as possible, and by no later than noon on Monday, October 23.

9. It is expected that TESI will join in the Settlement Agreement and Stipulation. It is uncertain as to whether intervenor the Lake Royal Property Owners Association ("POA") will join in the settlement agreement, or whether the Commission might have questions for Mr. Cox. It is therefore uncertain at this point whether the expert witness hearing might be cancelled.

10. Given that Public Staff and Red Bird have reached agreement on settlement, and the tight timeline for Mr. Cox's travel from Baton Rouge to Raleigh on the morning of Tuesday, October 24, Red Bird requests that if the expert witness hearing is held in this matter, that it be rescheduled to commence at noon on Tuesday, October 24. The POA's

counsel must attend a real estate closing at 2 pm on October 24, but indicates that he will have limited questions for Mr. Cox.

11. Red Bird also requests that its witness Caitlin O'Reilly be excused from attending that hearing.

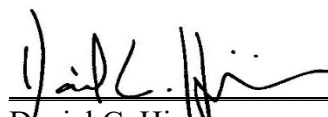
10. Counsel for the Public Staff, TESI and the POA have authorized the undersigned to represent that they all support the relief requested herein.

WHEREFORE, Red Bird respectfully requests as follows:

1. That Mr. Cox be substituted as a witness for Mr. Thomas and, if the expert witness hearing is held in this matter, that he be allowed to adopt Mr. Thomas's rebuttal testimony, and permitted to testify as to such;
2. That Red Bird witness Caitlin O'Reilly be excused from attending the expert witness hearing; and
3. That the expert witness hearing be rescheduled to commence at Noon on Tuesday, October 24, if it is to be held.

Respectfully submitted, this the 20th day of October, 2023.

BURNS, DAY & PRESNELL, P.A.



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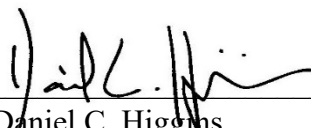
Attorneys for Red Bird

CERTIFICATE OF SERVICE

I certify that I have served a true and exact copy of the foregoing document on all parties to these dockets in accordance with Commission Rule R1-39, by United States mail, first class postage prepaid; by hand delivery; or by means of facsimile or electronic delivery upon agreement of the receiving party.

This the 20th day of October, 2023.

BURNS, DAY & PRESNELL, P.A.

By: 
Daniel C. Higgins
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Raleigh, North Carolina 27605

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Oct 20 2023