

**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	)	PUBLIC STAFF'S
Office Box 14056, Baton Rouge,	)	OBJECTIONS TO RED BIRD'S
Louisiana 70898, for Authority to Transfer	)	MOTION FOR SUBSTITUTION
the Lake Royale Subdivision Water and	)	OF WITNESS AND ADOPTION
Wastewater Utility Systems and Public	)	OF TESTIMONY
Utility Franchise in Franklin and Nash	)	
Counties, North Carolina, and for	)	
Approval of Rates	)	

NOW COMES the Public Staff, by and through its Executive Director, Christopher J. Ayers, and hereby respectfully objects to Red Bird's Motion for Substitution of Witness and Adoption of Testimony (Motion) filed in these dockets on October 12, 2023. In support of its objections, the Public Staff respectfully shows the Commission the following:

1. On June 7, 2021, Red Bird Utility Operating Company, LLC (Red Bird), and Total Environmental Solutions, Inc. (TESI), filed with the Commission an application seeking authority to transfer the water and wastewater utility systems and public utility franchise serving Lake Royale Subdivision in Franklin and Nash Counties, North Carolina, from TESI to Red Bird and approval of rates.

2. On July 11, 2023, the Commission issued an Order Scheduling Hearings, Establishing Discovery Guidelines, and Requiring Customer Notice which, among other things, made Red Bird's direct testimony due on August 24, 2023, and set these matters for an expert witness hearing on October 23, 2023.

3. On August 30, 2023, having been granted an extension of time *nunc pro tunc*, Red Bird filed the direct testimony of Josiah Cox. Mr. Cox is Red Bird's President and is also the President of Central States Water Resources, Inc., (Central States) and CSWR, LLC (CSWR), which are both affiliates of Red Bird.

4. Among the issues addressed by Mr. Cox in his testimony are CSWR's corporate structure, the contract between Central States and TESI to purchase the TESI systems, which Mr. Cox signed, and Mr. Cox's personal efforts to line up financing for CSWR, including his testimony that, "In 2018, I was able to attract an additional large institutional private equity investor" that "is allowing CSWR to form companies for the purpose of acquiring water and wastewater systems in additional states."

5. The Public Staff expects these issues addressed by Mr. Cox in his testimony and in discovery responses provided to the Public Staff to be the subject of its cross examination, and possibly questions from the Commission during the expert witness hearing. Given Mr. Cox's personal involvement with these issues, the Public Staff believes that is necessary that Mr. Cox personally appear and provide testimony in order to ensure a complete and accurate record. It does not

appear that Mr. Thomas would have the firsthand knowledge possessed by Mr. Cox on these issues.

6. The Commission gave 104 days' notice of the expert witness hearing date and Red Bird filed Mr. Cox's testimony on August 30, 2023. Only 11 days before the hearing does Red Bird make this motion to substitute. The Public Staff does not believe that the completeness of the evidentiary record should be jeopardized by excusing Mr. Cox from appearing.

7. The Public Staff would not object to Mr. Thomas being permitted to adopt Mr. Cox's testimony and testify in his place at the expert witness hearing on the condition that the hearing would be continued for Mr. Cox to appear and be subject to cross examination should Mr. Thomas prove unable to respond completely to questions regarding issues covered by Mr. Cox's testimony or related discovery. The Public Staff offered a similar accommodation to Red Bird, but Red Bird was unwilling to accept the Public Staff's offer.

WHEREFORE, the Public Staff moves:

1. That the Commission deny Red Bird's Motion for Substitution of Witness and Adoption of Testimony; or in the alternative;

2. That the Commission grant Red Bird's Motion on the condition that the Commission will continue the expert witness hearing should the Commission determine that Mr. Thomas is unable during the expert witness hearing to

completely respond to any question regarding Mr. Cox’s testimony or related discovery; and

3. For such other and further relief as the Commission may deem just and proper.

This the 13th day of October, 2023.

PUBLIC STAFF  
Christopher J. Ayers  
Executive Director

Lucy E. Edmondson  
Chief Counsel

Electronically submitted  
/s/ Megan Jost  
Megan Jost  
Staff Attorney

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CERTIFICATE OF SERVICE

I certify that I have served a copy of the foregoing Public Staff’s Objections to Red Bird’s Motion for Substitution of Witness and Adoption of Testimony on all parties of record in accordance with Commission Rule R1-39, by United States mail, postage prepaid, first class; by hand delivery; or by means of facsimile or electronic delivery upon agreement of the receiving party.

This the 13th day of October, 2023.

Electronically submitted  
/s/ Megan Jost