

1 PLACE: Dobbs Building, Raleigh, North Carolina  
2 DATE: Monday, November 20, 2023  
3 TIME: 6:05 p.m. - 6:55 p.m.  
4 DOCKET: W-933, Sub 12 & W-1328, Sub 0  
5 BEFORE: Commissioner Floyd B. McKissick, Jr.  
6 Commissioner Kimberly W. Duffley  
7 Commissioner Jeffrey A. Hughes  
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12 IN THE MATTER OF:

13 Joint Application by Red Bird Utility Operating  
14 Company, LLC d/b/a Red Bird Water and Etowah Sewer  
15 Company, Inc. for Transfer of Public Utility Franchise  
16 and for Approval of Rates  
17

18 VOLUME 3  
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1 A P P E A R A N C E S:  
2 FOR RED BIRD UTILITY OPERATING COMPANY, LLC d/b/a  
3 RED BIRD WATER AND ETOWAH SEWER COMPANY, INC.:  
4 Melinda L. McGrath, Esq., Esq.  
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9  
10 FOR THE USING AND CONSUMING PUBLIC  
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E X H I B I T S

IDENTIFIED / ADMITTED

Public Staff Rebuttal Panel ..... / 24  
Cross Exhibit 1

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P R O C E E D I N G S

COMMISSIONER McKISSICK: We are going to reconvene; and Public Staff, if you will continue with your testimony, eliciting your testimony.

MR. BERNIER: Thank you.

PANEL OF,

JOSIAH COX, BRENT THIES, and JAMES BECKEMEIER

having been previously sworn,

returned to the stand

and testified as follows:

CONTINUED CROSS EXAMINATION BY MR. BERNIER:

Q I believe, Mr. Beckemeier, where we left off, we were talking about the annual reports that you reviewed. I believe your testimony, if I recall correctly, was that you didn't think the annual reports were very reliable; is that correct?

A (Mr. Beckemeier) That's a general rule. I'm not speaking specifically to Etowah.

Q But you did review Etowah's annual reports.

A Yes. We reviewed all annual reports as part of the Purchase Agreement process.

Q What were you reviewing them for? Like, what were you looking for?

A We look for information related to what

1 properties they reference to see what type of due  
2 diligence might be necessary for the deal; how  
3 many tracts of land might be referenced in a  
4 report. We definitely do look at it from some of  
5 the financial representations just to get an idea  
6 of certain financial considerations but we don't  
7 put much weight in what those numbers are on the  
8 report.

9 Q Did you look at the 2022 Annual Report of Etowah?

10 A From my recollection, I think our standard  
11 processes would get the last four to five years  
12 of reports, so I can't say specifically but I  
13 believe I did.

14 Q Would you agree subject to check that the 2022  
15 Annual Report from Etowah showed the net utility  
16 plant acquisition adjustment value of \$193,518?

17 A I don't recall.

18 Q All right. It was in response attached --  
19 Mr. Thies, this was your response of DR-15  
20 included the 2022 copy of the annual report of  
21 Etowah. Do you have that in front of you?

22 A (Mr. Thies) I do not have the annual report of  
23 2022 in front of me. No, I'm sorry.

24 Q I can bring a copy to you.

1 A Wait a minute. I do. I apologize.

2 Q I believe on page 5 of the annual report. That  
3 would be, I believe, line 6. Once the net plant  
4 utility acquisition -- net utility plant  
5 acquisition adjustment.

6 A There is no value on line 6.

7 Q Sorry. Line 7, total utility plant.

8 A For the balance at the end of the year, which is  
9 the far right column, \$193,518.00.

10 Q Did any of you -- I think it's been mentioned  
11 already about the prior rate case for Etowah.  
12 Did any of the three of you look at that Order  
13 from that rate case?

14 A I did review the Order; yes.

15 Q Do you recall which sub number it was? Was it  
16 Sub 9?

17 A I do not, no. I looked at it recently looking  
18 for the tariff language but I don't remember what  
19 sub it was.

20 Q Do you recall what the net plant value was in  
21 that Order or in that rate base?

22 A No. Well, let me take that back. I recall the  
23 net rate base being negative but I don't remember  
24 any of the component values.

1 Q But you do recall the value being negative?

2 A The total rate base which would include utility  
3 plant in service less CIAC or CIAC.

4 Q Was that information available prior to Red Bird  
5 agreeing to the purchase price for Etowah?

6 A I do not believe the 2022 report would have been.  
7 I think we heard earlier that the original  
8 Purchase Agreement was 2020 -- 2019. The  
9 original filing was in November of 2020, and we  
10 would have the Purchase Agreement by that time.

11 Q But the Order in the last rate case was  
12 available, correct?

13 A Correct.

14 Q How was the purchase price determined?

15 A (Mr. Cox) So the -- our business developers  
16 always start with what they find in an annual  
17 report, and say, "hey this is what we believe the  
18 purchase price should be", and it goes from  
19 there.

20 Q And by "goes from there", generally speaking,  
21 what do you mean?

22 A I mean, then the owner throws out a crazy number.  
23 It's worth \$8 million. We're like, there's no  
24 way in heck. And it goes back and forth and back



1 and forth.

2 Q What due diligence does Red Bird do to decide  
3 what's a reasonable price?

4 A So we review their annual reports, and then they  
5 create an asset list of everything that's inside  
6 the annual reports. That gets sent to an  
7 engineering team internally with, you know,  
8 proposed line links and all that kind of stuff,  
9 to tell the due diligence was down. It's all a  
10 table-top review with a business developer doing  
11 some photographs of their initial visit.

12 Q You have not provided that to the Public Staff,  
13 have you?

14 A What?

15 Q What you -- the document you just described to  
16 support your determination of the purchase price.

17 A No, because that just goes -- that's just an  
18 internal document and then really, you know, we  
19 make sure that, hey, there's enough assets here  
20 that we think from our best professional judgment  
21 would support that.

22 Q Earlier, you testified, Mr. Cox, that the price  
23 that was settled on or agreed on was the lowest  
24 price that the seller was willing to take. Is

1           that a correct representation of your testimony?

2   A       Yes.

3   Q       Did you have to accept the seller's price?

4   A       No, we didn't have to. We didn't have to enter  
5           into the contract.

6   Q       For the three of you, and I'm not sure who would  
7           address this, how does purchase acquisition  
8           adjustment -- so let's make sure we're on the  
9           same page, with the same terminology. The  
10          purchase acquisition adjustment, essentially the  
11          price, the delta between the purchase price and  
12          net book value; do we agree on that?

13   A       For North Carolina, yes.

14   A       (Mr. Thies) (Nods in agreement).

15   Q       For North Carolina; for accounting purposes, how  
16          is that purchase acquisition adjustment booked?

17   A       So there's an account specific to the NARUC  
18          uniform system of accounts. I believe it's 114  
19          in the 1996 version. And it's held there until a  
20          Commission rules on whether it can be included in  
21          rates and then, presumably, at that time, there's  
22          an amortization schedule. So, yeah, it's subject  
23          to Commission's review in terms of amortization  
24          and allowance in rate base, but it is held in

1           that account.

2    Q     Is a depreciation process required to start as  
3           soon as a transaction close? So prior to  
4           Commission approval is what -- of that purchase  
5           acquisition adjustment.

6    A     Can you restate the question?

7    Q     Sure. When -- I'll rephrase it. When does Red  
8           Bird have to start depreciation of the purchase  
9           acquisition adjustment?

10   A     It's an interesting concept there, right?  
11           Because if we did not have an amortization  
12           schedule or timeframe or rate, if you will,  
13           approved by the Commission, we could start on  
14           something and then have it changed subject to a  
15           rate case. At the same time, if we didn't  
16           amortize it, and the Commission then inside a  
17           rate case said you should have started back here,  
18           you could -- you would just calculate what the  
19           value should be at that time. So it's a little  
20           bit irrelevant given that there's no Commission  
21           ruling on what the depreciation or amortization  
22           rate is until a rate case.

23   Q     I believe the Red Bird's position is that the, I  
24           think you all refer to CIAC, or the C-I-A-C --

1 A Yes.

2 Q -- should be included in the utility plant in  
3 service. Is that Red Bird's position?

4 A Yes. I mean, even in the North Carolina Annual  
5 Reports, the definition of CIAC includes or  
6 involves that it's an offset to assets in  
7 service. And even on -- I know this document  
8 that you-all passed out, it shows and I confirmed  
9 in the annual reports that the value of the plant  
10 in service is significantly lower than the value  
11 of the CIAC, which points to some kind of  
12 accounting, technical, procedural problem where  
13 all the CIAC was not recorded as utility plant in  
14 service.

15 Q Can you identify any Order of the Commission  
16 finding that the utility plant in service  
17 associated with the CIAC tap-on fees are the same  
18 as the CIAC gross amount?

19 A So, can you restate the question?

20 Q Well, to rephrase, it seems that Red Bird's  
21 position is that the CIAC should be included in  
22 UPIS, utility plant in service; is that correct?

23 A I think by definition of what CIAC or C-I-A-C is,  
24 it has to have an offsetting component in assets.

1 Q Can you identify any rate case that supports your  
2 position?

3 A I think the uniform system of accounts supports  
4 that that's the way it's supposed to work, but I  
5 do not have a docket number in mind from the  
6 State of North Carolina that I know about how  
7 CIAC has been handled.

8 MR. BERNIER: Commissioner McKissick, I'd  
9 like to introduce exhibit, Rebuttal Panel Exhibit  
10 Cross -- Cross Exhibit 3. Let me find it now.

11 COMMISSIONER McKISSICK: We'll have Rebuttal  
12 Cross Exhibit 3, which is about to be distributed in a  
13 minute.

14 MS. McGRATH: Commissioner McKissick, so  
15 Exhibit 3 you sustained the objection, so do we go to  
16 4 or --

17 COMMISSIONER McKISSICK: I did sustain the  
18 objection so we would go to 4. That is correct.

19 MS. McGRATH: Okay.

20 MR. BERNIER: Thank you.

21 COMMISSIONER McKISSICK: Thank you for duly  
22 noting that.

23 MS. McGRATH: Well, I have to give Mr. Mehta  
24 credit.

1                   COMMISSIONER McKISSICK: Sure. Thank you.  
2   (WHEREUPON, Public Staff  
3   Rebuttal Panel Cross  
4   Exhibit 4 is identified.)

5                   MR. BERNIER: So this -- for the record,  
6 this Exhibit 4 is Red Bird's response to Public  
7 Staff's Data Request Number 15. I have not included  
8 the exhibits that accompanied the response. Those  
9 exhibits, at least one of them I know, is  
10 confidential, so this is just the Response.

11 BY MR. BERNIER:

12 Q Do you have Exhibit 4 in front of you, Mr. Thies?

13                   COMMISSIONER McKISSICK: Let's make sure  
14 Ms. McGrath doesn't have any objections.

15                   MS. McGRATH: No objection.

16                   COMMISSIONER McKISSICK: No objection. You  
17 may proceed.

18 BY MR. BERNIER:

19 Q In question 1.c., the Public Staff asked Red Bird  
20 to identify the production where it provided a  
21 detailed explanation of Red Bird's amount for  
22 plant in service.

23                   In response, Red Bird wrote: "No, the  
24 referenced amounts are not included in any of Red

1 Bird's responses to Public Staff's data requests  
2 because Red Bird had not received the most up to  
3 date financial information from the seller until  
4 shortly before filing rebuttal testimony".

5 The question I have is when -- what updated  
6 financial data are you referring to?

7 A (Mr. Thies) So, you're talking about on page 2,  
8 our response, letter "c". You're talking about  
9 the referenced amounts are not included in  
10 Staff's data requests.

11 I think -- you know, I don't know that there  
12 was any extra information that was specific to  
13 the numbers that we're talking about here but we  
14 certainly did receive the 2022 Annual Report  
15 late, at least our team did, and that was our  
16 last bit of information that helped us kind of  
17 formulate an analysis of rate base. And so that  
18 obviously would have been in the Public Staff's  
19 possession as well.

20 Q And that 2022 Annual Report that was filed  
21 April 17th, 2023?

22 A I don't --

23 Q Subject to check, you agree?

24 A Yes. It's back here buried somewhere so I don't

1 know for sure.

2 MR. BERNIER: Commissioner McKissick, I  
3 would like to go into closed session to address one of  
4 the confidential exhibits that were attached to the  
5 response of DR-15?

6 COMMISSIONER MCKISSICK: Okay. We will now  
7 ask anybody in the hearing room that is not allowed to  
8 be a party to be present when testimony provided  
9 related to confidential matters to leave the hearing  
10 room at this time. It looks is as if everybody here  
11 is entitled to be present.

12 If you will identify this particular exhibit  
13 and it will be -- and let us know when to closed  
14 session to receive confidential testimony.

15 (WHEREUPON, the following  
16 testimony is confidential  
17 and shall be filed under  
18 seal.)

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

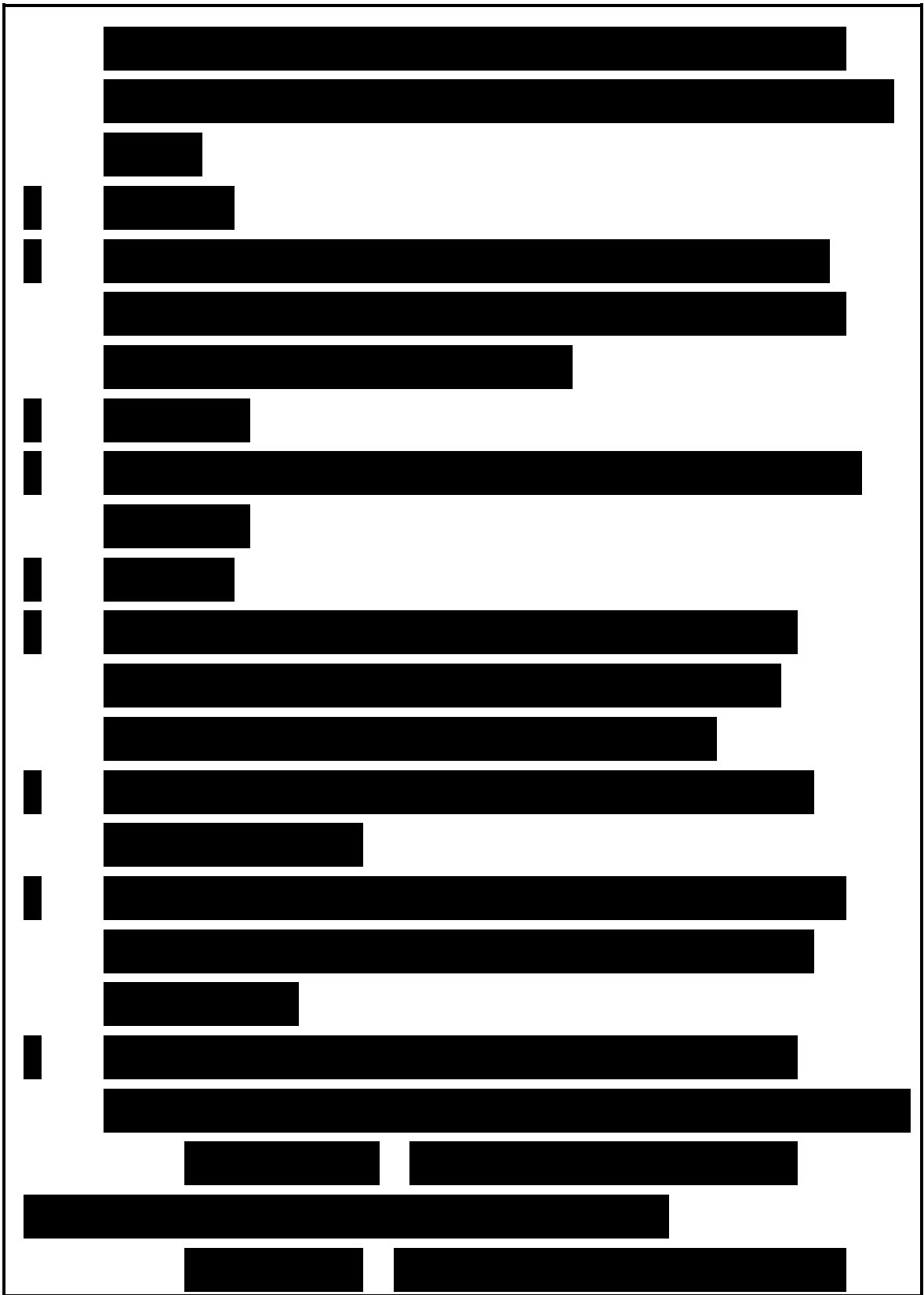
24 [REDACTED]



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(WHEREUPON, confidential session has ended.)

COMMISSIONER McKISSICK: Go ahead and ask your question.

MS. NEWELL: Sure. And I'm going to omit some of the questions I had prepared since DRs-13 and 14 are in the record and I'll move to have those be marked as evidence shortly.

COMMISSIONER McKISSICK: Sure.

MS. NEWELL: But I did want to ask some pre

1 follow-up questions.

2 CROSS EXAMINATION BY MS. NEWELL:

3 Q Were material defects identified for Etowah,  
4 Mr. Beckemeier?

5 A (Mr. Beckemeier) In what context?

6 Q So, in your testimony on page 4, lines 16 to 18,  
7 you testified that, "Based on the foregoing  
8 activities, we determined that there are material  
9 defects in the title rights impacting Etowah that  
10 need to be cured prior to closing or shortly  
11 thereafter".

12 A Yes. There are title defects that were  
13 determined in the title review.

14 Q And in response to the Public Staff's data  
15 request where we asked for a list of material  
16 defects you go on to list them.

17 I don't -- I can read the entire response  
18 but it's in the DR request so I don't think I  
19 would need to.

20 COMMISSIONER McKISSICK: I think you're able  
21 to proceed unless I see an objection.

22 MS. McGRATH: No. I'm sorry. Can you just  
23 specify which response?

24 MS. NEWELL: Response 2(b) where it lists

1 the material defects?

2 MS. McGRATH: Okay, thank you.

3 MS. NEWELL: Sure.

4 BY MS. NEWELL:

5 Q And did Red Bird -- well how much due diligence  
6 costs were incurred in association with finding  
7 and resolving those defects?

8 A How much due diligence costs?

9 Q Uh-huh.

10 A I couldn't answer that question.

11 Q Okay. And did Red Bird -- well, do you have an  
12 estimate or approximation or anything?

13 A I mean, how you would determine due diligence or  
14 title defects is you have to look at the entirety  
15 of the title review of all the title documents in  
16 the realm of the record, and then you have to  
17 have surveys performed on the tracts of land that  
18 are necessary, as well as we do surveys on the  
19 pump stations for this -- like a more limited  
20 survey, and then you review everything in its  
21 totality to determine what the defects are.

22 So, from a title standpoint, you can't get  
23 to determining material defects until you've  
24 essentially done the first cumulative review of

1 all the title work.

2 Q But you did identify the material detects here.

3 A Yes. After we completed all the due diligence  
4 related to the title.

5 Q Okay. And do you have -- and you do have an  
6 estimate of what those costs were?

7 A I couldn't tell you a distinct -- I mean, the  
8 attorney's fees are set forth. There's survey  
9 engineering fees. There's a lot of GIS mapping  
10 that goes into that as well just to kind of  
11 determine where things are located. By way of  
12 example, the initial information that was  
13 provided from the seller led us to believe there  
14 were ten tracts of land that needed to be  
15 purchased, and it turned out there were only  
16 five.

17 So we had to go through a process to  
18 ascertain that to then limit it down to what  
19 actually was relevant to the operations of the  
20 system and then do further title review on those  
21 five tracts as well as all of the easements to  
22 come to that conclusion.

23 Q Sounds like a lot of work.

24 A It is a lot of work.

1 Q So did Red Bird seek a reduction in the purchase  
2 price for those costs.

3 A Not at this time.

4 Q And then I'm going to just bring your attention  
5 to your response to the Question 1.d: "Does due  
6 diligence inform the negotiation of the purchase  
7 price?"

8 And I will read your response in its  
9 entirety. *Due diligence does not inform the*  
10 *Company on the initial purchase price; however,*  
11 *in some instances, the discovery of material*  
12 *defects in the due diligence process has resulted*  
13 *in a reduction to the purchase price to*  
14 *accommodate the costs associated with curing the*  
15 *defects. This did not occur with respect to the*  
16 *Etowah transaction; is that correct?*

17 A Yes. That's what was stated.

18 MS. NEWELL: Nothing further from me.

19 COMMISSIONER McKISSICK: So am I to conclude  
20 that the Public Staff has --

21 MR. BERNIER: Yes, it does. Thank you.

22 COMMISSIONER McKISSICK: Just want to make  
23 sure.

24 MR. BERNIER: I appreciate and understand.

1 Thank you.

2 MS. NEWELL: And at this time, Commissioner,  
3 I guess I would just like to make sure that we move  
4 all of our exhibits into evidence.

5 COMMISSIONER McKISSICK: Right. We will  
6 move the -- of course, we decided that my ruling on  
7 that, in terms of Rebuttal Exhibit 3, that we  
8 sustained the objection to that but we are admitting  
9 all of the other exhibits into evidence.

10 MR. BERNIER: 1, 2, 4, and 5.

11 COMMISSIONER McKISSICK: Yes. Any  
12 objection?

13 MS. McGRATH: No objection.

14 COMMISSIONER McKISSICK: Without objection,  
15 they are admitted.

16 (WHEREUPON, Public Staff  
17 Rebuttal Panel Cross  
18 Exhibits 1, 2, 4, and 5 are  
19 received into evidence.)

20 MS. McGRATH: Commissioner McKissick, my  
21 colleague is going to ask a few questions on redirect.

22 COMMISSIONER McKISSICK: All right. That's  
23 fine.

24 MS. JAGANNATHAN: Thank you, Commissioner.



1 REDIRECT EXAMINATION BY MS. JAGANNATHAN:

2 Q I just have a couple of questions for you,  
3 Mr. Thies. Can you tell me what types of  
4 information you need to know to calculate a rate  
5 impact?

6 A (Mr. Thies) Yeah. So a rate impact would be a  
7 future revenue requirement, right? That's  
8 ultimately how you would determine that. So, in  
9 order to ultimately know that, you know, lots of  
10 data needs to be known: Capital structure,  
11 returns, interest rate; in addition to the number  
12 of customers, whether consolidation is it going  
13 to be happening, point, point to happen among  
14 multiple systems, and how many, and how many  
15 connections are there. So there are a lot of  
16 details that you would need to know to kind of  
17 take one piece of data and estimate what the rate  
18 impact of that piece of -- of that number would  
19 be.

20 Q And with respect to the Etowah system, do you  
21 have any of that information at this time?

22 A No. I mean, other than being able to look at the  
23 books and estimate what the acquisition  
24 adjustment and due diligence cost would be for

1           this particular transaction, we have none of the  
2           other information.

3    Q       And all of that information would be part of a  
4           record in a rate case proceeding; isn't that  
5           correct?

6    A       That's correct.

7    Q       And in your experience testifying in rate cases,  
8           is return on equity typically a controversial  
9           issue?

10   A       The most controversial; almost every time.

11                 MS. JAGANNATHAN: Thank you. That's all I  
12           have.

13                 MS. McGRATH: Nothing further.

14                 COMMISSIONER MCKISSICK: We do have a couple  
15           of questions from the Commission so I'll go ahead and  
16           review those quickly and we'll see if my colleagues  
17           also have some questions they would like to have  
18           answered.

19   EXAMINATION BY COMMISSIONER MCKISSICK:

20   Q       Mr. Cox, you state on page 18 of your rebuttal  
21           testimony that appraisal work is included in the  
22           due diligence cost because it's necessary to  
23           determine fair value.

24                 Why is such work necessary in North Carolina

1 where fair value only applies to sales by  
2 municipalities?

3 A (Mr. Cox) It -- maybe fair value is the wrong  
4 term there. Real estate value. Because  
5 typically we've seen with owners like the owners  
6 of Etowah, they didn't include the real  
7 properties or the easement values in their ritual  
8 original net book value.

9 Q I see. So, you're not using that term "fair  
10 value" the way it is defined and utilized in the  
11 General Statute of the State of North Carolina  
12 for those types of proceedings.

13 A That is correct. Poor word choice. I apologize  
14 for that.

15 Q Okay. So, I guess the next follow-up question  
16 was why should ratepayers reimburse the Company  
17 for this expense. So I guess we can assume first  
18 that you misclassified it or used the wrong  
19 terminology. But notwithstanding that fact, why  
20 should ratepayers reimburse you these expenses or  
21 those expenses?

22 A Yeah, I think it's -- our position is,  
23 Commissioner, that those land values and easement  
24 values were never included in rate base so the

1 customers have never paid for the benefit  
2 associated with those and, thus, they're eligible  
3 for rate recovery.

4 Q Okay. And Mr. Thies, why should the Commission  
5 reach back before its orders in W-933, Sub 9 and  
6 Sub 7 rate cases to add additional rate base from  
7 activities that happened prior to them?

8 A (Mr. Thies) Thank you for the question. I  
9 think, you know, as I'm looking at this, I'm  
10 suggesting that, I think, the books and records  
11 as they've come to today have some question marks  
12 and some inaccuracies. So, I'm certainly not  
13 suggesting the Commission overturn precedent and  
14 those kinds of things. I'm simply looking at it  
15 from a, sort of, a fresh set of eyes going this  
16 doesn't all add up and then quantifying that.  
17 So, again, I'm not suggesting that the Commission  
18 change its previous rulings necessarily but just  
19 looking at the financial analysis of it and  
20 wondering why it is the way it is and why it  
21 doesn't seem to add up to me.

22 Q Okay, very good.

23 And Mr. Beckemeier, if we look at Witness  
24 Cox' testimony on page 19 of his rebuttal

1 testimony, it addresses the remaining law firm  
2 cost included in due diligence, that therein  
3 total from I guess Burns, Day, Presnell, who  
4 performed legal work required to secure  
5 Commission approval of the proposed acquisition.

6 Now, you state on page 11 of your rebuttal  
7 testimony that Burns, Day, Presnell provided the  
8 necessary legal services to assist Red Bird in  
9 meeting its obligation to properly comply with the  
10 regulatory approval process.

11 So I guess the question is, how do legal  
12 fees for filing and representing a client in a  
13 proceeding before the commission meet the  
14 definition of due diligence?

15 A (Mr. Beckemeier) Meet the definition of due  
16 diligence. I mean, my definition of due  
17 diligence would be anything that occurs prior to  
18 real estate or small M&A transactions such as  
19 this to get the deal closed. And it is very  
20 common outside of the review utility context as  
21 well as I think within the utility context that  
22 any permits or approvals that are necessary to  
23 get the deal done is part of due diligence costs.

24 Q And did the law firm of Burns, Day & Presnell

1 perform any title work for Red Bird?

2 A No, they did not.

3 Q They did not.

4 A No. I mean, we did consult with them on some of  
5 the requirements to make sure we were clear what  
6 the Public Staff was requesting from a title  
7 standpoint to make sure we had clarity of what --  
8 how things would be presented, but they did not  
9 perform any title work in my knowledge.

10 Q And I believe in response to a question from a  
11 Public Staff attorney relating to these legal  
12 fees and due diligence costs, the question was  
13 raised whether you intended to address the seller  
14 to see if there could be a change in the purchase  
15 price. And you indicated not at this time.

16 A Correct.

17 Q Do you contemplate doing it subsequent to this  
18 hearing or some later point in time so you can  
19 provide some clarity to that response?

20 A Generally, how that would work is when we got to  
21 a point where there was clarity on what the  
22 closing requirements would be, that there would  
23 be a meeting internally with Central States and  
24 my team and others to determine if it was prudent

1 to go back to the seller to seek a price  
2 reduction on certain defects that need to be  
3 cured. So that hasn't happened yet. It may  
4 happen on this transaction but I can't say for  
5 certain if it will.

6 Q And if for some reason this transaction was not  
7 approved, is there a mechanism in the agreement,  
8 the sales contract, that would allow you to  
9 recover a portion of the due diligence costs that  
10 have been incurred in connection with this  
11 proceeding?

12 A No, there is none. All the dollars spent in due  
13 diligence costs would be if the deal is  
14 terminated, unless there was a breach by the  
15 seller, would be borne by the buyer and would  
16 not -- they have no legal remedy to go back to  
17 the seller to request reimbursement.

18 COMMISSIONER McKISSICK: Thank you. I don't  
19 have any further questions that are here from  
20 Commission side. Let me recognize my fellow  
21 Commissioners. Commissioner Duffley.

22 COMMISSIONER DUFFLEY: I have a few.  
23 Good evening, gentlemen. I'm going to try to make  
24 these quick. So, the first is for Mr. Thies.

1 EXAMINATION BY COMMISSIONER DUFFLEY:

2 Q So, Red Bird takes the position you don't really  
3 have the financial information regarding plant in  
4 service until closing. But isn't it typical that  
5 access to invoices and other supporting  
6 information is provided during due diligence?

7 A (Mr. Thies) Yes. I mean, to the extent that we  
8 ask and we're providing, provided with some  
9 information. Certainly, there can be other  
10 information that comes from our actual operators  
11 and staff getting in there and seeing what the  
12 assets have actually had done to them. And so  
13 that's the information that's not there is an  
14 actual running of the system and hands-on  
15 operation and understanding of what's actually  
16 been done up to the day of closing.

17 Q And so on page 5, you know we -- of your  
18 testimony, your rebuttal testimony, you know,  
19 you've updated that rate base number twice now.  
20 You updated it again today. What's the accuracy  
21 of that number; level of accuracy?

22 A Of the rate base?

23 Q So, I think it's updated to \$423 -- or is that  
24 a -- that's not confidential, correct?



1 A No, it's not.

2 Q \$423,561. What's the level of accuracy of that  
3 number?

4 A So, I think that is accurate, but for the Staff  
5 pointed out that there's a possibility some  
6 accumulated depreciation is missing. So we would  
7 want to make sure that that's all included there.

8 Q Okay. So there's not any other information that  
9 you need other than that?

10 A Right.

11 Q Thank you. And so what other information do you  
12 need after closing?

13 A Again, it comes to --

14 Q I think, yes, you were -- on redirect, was it  
15 your testimony on redirect? But go ahead, I  
16 interrupted.

17 A (Mr. Thies) Yes. So I think, again, seeing what  
18 is there with the systems. And at times we will  
19 discover things that were on an asset list that  
20 aren't installed or vice-versa things that are  
21 there that we weren't provided information on so  
22 then we go back and ask questions about why do  
23 you have three pumps instead of the two that you  
24 told us about. So, it really takes owning and

1 operating for us to feel like we actually have  
2 all the information about the assets that were  
3 there on the day that we took over.

4 Q And typically, in your acquisitions, what's the  
5 percentage change once you're owning and  
6 operating versus prepurchase.

7 A Yeah. I mean, overall, and think 200 plus  
8 acquisitions. It's not a huge percentage but  
9 it -- the smaller the system, the greater the  
10 percentage probably. So in terms of -- and  
11 smaller is not the right word. The more  
12 distressed and question about historic accounting  
13 practices and those kinds of things, the more  
14 percentage we would get there. So, I suspect  
15 something here. I wouldn't venture to gamble on  
16 what that percentage would be now because  
17 obviously it's subject to check.

18 Q But what's your typical range?

19 A I would say it's 5 to 10 percent.

20 Q Okay, thank you.

21 So Witness Cox, I believe you testified  
22 earlier today that Etowah's rates are set on the  
23 operating ratio method. And I just want to  
24 clarify for the record, isn't it true that for

1 small water companies, like Etowah, that the  
2 Public Staff recommends to the Commission whether  
3 to use the rate base method or the operating  
4 ratio method?

5 A (Mr. Cox) That sounds correct and that's very  
6 typical from a system we would consider  
7 distressed that they can't use rate base.

8 Q Okay. And let's move to that, the distress  
9 system. If you could turn to page 4 of your  
10 rebuttal testimony.

11 A Yes, ma'am.

12 Q So I understand that your testimony is that the  
13 systems are failing. And I understand that it's  
14 because that the systems received 11 NOVs from  
15 September 1st of 2020 through October 1st of  
16 2023; is that accurate?

17 A Yes, Commissioner. And in addition to that, for  
18 the prior years, the three prior years, they had  
19 only one quarter of compliance.

20 Q Okay. And do you know whether any of these NOVs  
21 resulted in further action resulting in a civil  
22 penalty?

23 A Yes. At least one resulted in a civil penalty.  
24 In addition to that, there's still a couple of

1 NOVs that are not -- they are still open with  
2 DEQ.

3 Q Okay. And I think you may have received some  
4 questions, but for your current operating  
5 systems, Red Bird operating systems, have they  
6 received any NOVs in North Carolina?

7 A We have not had any -- yeah, we've not had any  
8 Notice of Violation. They were not covered in  
9 our agreement and consent or agreed order  
10 sustained against us in the last 10 years.

11 Q Can you explain that further?

12 A Absolutely. So, for example, I'll use Kentucky  
13 for example. So, in Kentucky, we had an agreed  
14 order, so that's agreement with the Division of  
15 Water. And the Division of Water says that you  
16 have called 24 months to do all of the  
17 improvements necessary to bring these systems  
18 back in compliance. In the interim period, we  
19 do, like I said earlier was triage work, where I  
20 think we're replacing motors and electrical  
21 components and all of that that are failed. And  
22 then we're going through final engineering to get  
23 the final fixes because most of these plants are  
24 not designed to treat waste to modern EPA

1 requirements.

2 So in that interim, the plant is still not  
3 treating for ammonia, for example, until final  
4 improvements are made and that's covered inside  
5 that agreed order. But the Department of Water  
6 will issue us a Notice of Violation and say that  
7 this violation is subject to the agreed order.

8 Q So you mentioned that's a procedure in Kentucky.

9 A Yes.

10 Q Is it also a procedure in North Carolina?

11 A It is. We've met DEQ with a similar proposal.

12 Q Thank you. And do you know what the percent of  
13 wastewater systems in the State of North Carolina  
14 received NOV's between the same period of  
15 September 1st of 2020 through October 1st of  
16 2023?

17 A I'm sorry. I do not know the answer to that.

18 Q Okay. So how are you able to assess that 11 NOV's  
19 during that period of time is a failing system?

20 A Because any NOV is a failure. And then when you  
21 have repeated failures of the same constituents,  
22 it shows the plant is not able to meet it.

23 So, for example, the BOD fine failures and  
24 ammonia failures that we've mentioned as part of

1           this NOVs, right? Well, that really is telling  
2           everyone in the wastewater business, hey, this  
3           activated sludge plant is not really equipped to  
4           treat the waste down to the level it's required  
5           and on a consistent basis.

6    Q       So let's, hypothetically, assume that the  
7           wastewater, all of the wastewater treatment  
8           plants within North Carolina have received a  
9           similar amount of NOVs during this same period of  
10          time. Would you consider all of those wastewater  
11         systems failing?

12   A       Commissioner, I believe if that happened, the EPA  
13          would start to step in and put the DEQ into  
14          receivership which has happened at least once in  
15          U.S. history.

16   Q       So, hypothetically, you would say yes, that all  
17          of those systems would be failing?

18   A       Yes. That would be a very bad answer.

19   Q       Thank you. And then with respect to -- let me  
20          see, Mr. Thies, I'm going to go back to you just  
21          for one question.

22                 On page 9 of your rebuttal testimony you  
23          refer to the depreciation, NARUC. It's lines 13  
24          through 16. You talk about the depreciation

1 practices for small water utilities and the  
2 amortization based on small water. So, and you  
3 guys, I'm trying to get clarification of the  
4 record.

5 A Sure.

6 Q I thought that I heard Mr. Cox state that once  
7 all of these, if all of the transfers go through  
8 and are consolidated you may not be a small water  
9 company or a small -- or meet the requirements of  
10 a small water system. Is that accurate? And  
11 then, what does that do with respect to this  
12 testimony?

13 A Yes. I think there are a couple of thoughts  
14 there. One, economically, a small utility, and  
15 in other states it's Class A, B, C, or D. I'm  
16 not exactly sure what the levels are in North  
17 Carolina. It's often thought about to be revenue  
18 based. But what we're dealing with are small  
19 isolated plants, generally, and so when you think  
20 about depreciation they sort of properly do fall  
21 under small water plant components and those  
22 kinds of things.

23 I think the other note is that 50 years for  
24 collection of distribution lines a pretty

1 standard number even for larger systems, larger  
2 water utilities. So, I'm referencing this  
3 because I know we're dealing with a very  
4 particular case and this is a manual that NARUC  
5 put out specific to small water utilities and not  
6 significantly different for a larger utility over  
7 the same assets.

8 COMMISSIONER DUFFLEY: Thank you. I have  
9 nothing further.

10 COMMISSIONER McKISSICK: Commissioner  
11 Hughes, any questions?

12 COMMISSIONER HUGHES: No.

13 COMMISSIONER McKISSICK: In light of the  
14 hour, I'm going to pass on additional questions that  
15 came to my mind. I don't think they are that  
16 enlightening and insightful that we would be able to  
17 deem answers by reviewing the record. So that pretty  
18 much brings us to the conclusion of the hearing.

19 First, I want to make sure that any -- Yes.  
20 Questions on Commissioner questions? I'm ready to  
21 bring it to an end. I apologize.

22 MS. NEWELL: The Public Staff has no  
23 questions.

24 MR. BERNIER: No questions.



1 MS. McGRATH: No questions from the Company.

2 COMMISSIONER McKISSICK: That was what I was  
3 assuming. So we're at the conclusion of the hearing.  
4 Have all exhibits been entered into the record that  
5 need to be entered into the record? Is anybody aware  
6 of anything that has been omitted? If so, this is the  
7 time to get it officially into the record at this  
8 time.

9 (No response)

10 I'm seeing everybody nodding. Nobody is  
11 speaking but I assume that that means that there is  
12 nothing additional.

13 MS. NEWELL: I don't believe so. I guess  
14 I'll make a general motion that any exhibits that have  
15 not previously been entered be entered into the record  
16 at this time.

17 COMMISSIONER McKISSICK: Without objection,  
18 your motion is allowed, even though it is probably  
19 redundant and unnecessary.

20 MS. McGRATH: Yes. Totally fine.

21 COMMISSIONER McKISSICK: All right. With  
22 that note, I believe there was one document, a  
23 late-filed exhibit.

24 MS. McGRATH: Yes. One late-filed exhibit

1 that we will be providing that is responsive to one of  
2 the data requests.

3 COMMISSIONER McKISSICK: Excellent. If you  
4 can get that in within two weeks of today's date, that  
5 would be excellent. If for some reason that two weeks  
6 does not look like it's feasible, then please get back  
7 with the Commission Staff and let us know what  
8 additional time would be necessary.

9 MS. McGRATH: Yes, will do.

10 COMMISSIONER McKISSICK: I would ask that  
11 proposed orders, any briefs of any issues you find  
12 appropriate to be filed within 21 days of the  
13 availability of a transcript if that is acceptable.

14 And on that note, that brings us to the  
15 conclusion of today's hearing. Let me thank you-all  
16 for being here. Let me thank you for your endurance  
17 and tenacity and hanging in here til about 6:55 p.m.  
18 and 26 seconds.

19 I hope that you-all have a very happy  
20 Thanksgiving. Thank you.

21 (The proceedings were adjourned)

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C E R T I F I C A T E

I, KIM T. MITCHELL, do hereby certify that the Proceedings in the above-captioned matter were taken before me, that I did report in stenographic shorthand the Proceedings set forth herein, and the foregoing pages are a true and correct transcription to the best of my ability.

Kim T. Mitchell

Kim T. Mitchell