

**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	)	
Solutions, Inc., for Authority to Transfer the	)	ORDER GRANTING
Lake Royale Subdivision Water and	)	MOTION TO COMPEL
Wastewater Utility Systems and Public Utility	)	
Franchise in Franklin and Nash Counties,	)	
North Carolina, and for Approval of Rates	)	

BY THE PRESIDING COMMISSIONER: On September 1, 2023, the Public Staff filed a Motion to Compel in the above-captioned proceeding in response to objections filed by Red Bird Utility Operating Company, LLC (Red Bird), to Public Staff Data Request No. 13 served on August 24, 2023.

Red Bird filed objections to Public Staff Data Request No. 13 on August 30, 2023, and the Public Staff filed its Motion to Compel two days later on September 1, 2023. Red Bird filed a response to the Motion to Compel on September 6, 2023.

Data Request Nos. 13-1 to 13-5 requested information regarding the relationship between Red Bird’s parent entities and Sciens Water, Midwest Water Operations, LLC, and Clearwater Solutions, LLC, and the provision of service to Red Bird or its parent entities by the other companies. Red Bird objected to each of these data requests “on the basis that it seeks information that is overbroad, unduly burdensome, and neither relevant to any issues that are or may be involved in these dockets, nor reasonably calculated to lead to the discovery of admissible evidence [and] that it is vague, ambiguous, and indefinite, and calls for speculation.” In each case, however, despite the objection Red Bird provided a specific response.

Data Request Nos. 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). Red Bird objected to this data request on the same basis as the others and further objected on the grounds that the information was not relevant to the Commission’s consideration of the transfer in this case, namely, whether “the proposed grant or transfer . . . is in the public interest, will not adversely affect service to the public under any existing franchise, and the person acquiring said franchise or certificate of public

convenience and necessity has the technical, managerial, and financial capabilities necessary to provide public utility service to the public.”

In its Motion, the Public Staff states that the information sought in Data Request Nos. 13-1 to 13-5 “regarding affiliates of Red Bird . . . is critical for the Public Staff to gain an understanding of the corporate structure of Red Bird, parent companies, and other affiliates in order to determine the financial viability of Red Bird.” The Public Staff states that in assessing the financial viability of Red Bird, it “is seeking information regarding the upstream ownership of Red Bird and the funding commitments and arrangements between” Red Bird’s parent entities and other companies, stating that “it is vital that the Commission and the Public Staff have information regarding the existence of transfers, sales, expense allocations, agreements, and similar arrangements between Red Bird and any direct or indirect affiliates, because transfers, sales, expense allocations, agreements, and similar arrangements may necessitate such things as regulatory conditions, reporting requirements, approval of agreements, and audits”. The Public Staff further notes what it believes to be discrepancies between Red Bird’s responses and other publicly available information. Regarding Data Request No. 13-6, the Public Staff states that documents required to be produced in that case may contain information related to funding of Red Bird’s affiliate that would be relevant to this case and potentially allow the Public Staff to understand how financing is arranged between Red Bird’s parent entities and its affiliates. The Public Staff further responds that this request is not overly broad or burdensome because it requests information already gathered and provided in the Missouri proceeding.

In its response, Red Bird notes that it objected to Data Request Nos. 13-1 to 13-5; however, without waiving the asserted objections, it responded to the best of its ability to these requests. Red Bird also notes that Data Request Nos. 13-1 to 13-3 requested information about future arrangements that call for speculation. Red Bird states that it does not have information about any such future arrangements. Lastly, Red Bird states that Confluence responded to approximately 1,000 data requests in the Missouri rate case, “the overwhelming majority of which pertained exclusively to that entity,” and that “Red Bird does not intend to and should not be required to provide those voluminous responses to Public Staff.”

After careful consideration, the Presiding Commissioner finds good cause to grant the Public Staff’s Motion to Compel. To be clear, at this point the Commission is making no decision on the merits of this case or any findings of fact based on representations in the pleadings. Such determinations will be made based on the evidence before the Commission and the record developed through the evidentiary hearing.

The Commission understands that discovery is a necessary and important part of cases before it, and as stated in the Scheduling Order, the Commission expects all parties to work cooperatively in propounding and responding to discovery requests. Noting that Red Bird has provided responses to Data Request Nos. 13-1 to 13-5, notwithstanding its stated objections, the Presiding Commissioner orders Red Bird to supplement its responses to the extent necessary to be full, complete, and accurate. The Presiding

Commissioner further orders Red Bird to provide to the Public Staff a copy of the discovery responses produced by its affiliate, Confluence, in the Missouri rate case. The Presiding Commissioner is not persuaded that the information sought in Data Request No. 13 is either overbroad, unduly burdensome, vague, ambiguous, or indefinite. Indeed, the information sought in Data Request No. 13-6 is identified with particularity and should be readily accessible by Red Bird as it has already been produced in the Missouri proceeding. Moreover, 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.

IT IS, THEREFORE, ORDERED that the Public Staff's September 1, 2023 Motion to Compel is granted and that Red Bird shall provide a full and complete response to Data Request No. 13 as soon as possible and no later than Wednesday, September 13, 2023.

ISSUED BY ORDER OF THE COMMISSION.

This the 7th day of September, 2023.

NORTH CAROLINA UTILITIES COMMISSION

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

Tamika D. Conyers, Deputy Clerk