

**STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH**

DOCKET NO. W-1328, SUB 11

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application by Red Bird Utility Operating	)	
Company, LLC d/b/a Red Bird Water for a	)	ORDER APPROVING
Certificate of Public Convenience and	)	STIPULATION AND RATES,
Necessity to Provide Water and Wastewater	)	GRANTING FRANCHISE, AND
Utility Service to the Pine Mountain Lakes	)	REQUIRING BOND AND
Subdivision in Burke County, North Carolina,	)	CUSTOMER NOTICE
and for Approval of Rates	)	

BY THE COMMISSION: On September 30, 2021, Red Bird Utility Operating Company, LLC d/b/a Red Bird Water (Red Bird) filed with the Commission an Application for a Certificate of Public Convenience and Necessity and for Approval of Rates (Application) seeking authority to provide water and wastewater utility service to the Pine Mountain Lakes Subdivision in Burke County, North Carolina.

The Pine Mountain Lakes Subdivision water and wastewater systems (Pine Mountain) are currently owned and operated by the Pine Mountain Property Owners Association (Pine Mountain POA). The two water systems, Pine Mountain Lakes and North Ridge, collectively serve approximately 95 residential customers, three Pine Mountain POA buildings, a motel, and a restaurant. Pine Mountain’s wastewater system serves approximately 34 residential customers and the aforementioned Pine Mountain POA buildings, motel, and restaurant, all in Burke County, North Carolina.

On November 1, 2021, the Public Staff – North Carolina Utilities Commission (Public Staff) filed a deficiency letter (First Deficiency Letter) outlining information that was needed to complete the Application.

On November 3, 2021, and February 3, 2023, Red Bird filed supplemental materials to address the deficiencies identified in the First Deficiency Letter.

On June 30, 2023, North Carolina Session Law 2023-67, entitled “An Act to Expedite Transfer of Water or Wastewater Public Utilities” (Act), was signed into law by Governor Roy Cooper, having been previously ratified by the North Carolina General Assembly. The Act provides timelines for the Commission’s consideration of applications for grants or transfers of certificates of public convenience and necessity (CPCN) for certain water and wastewater systems.

Section 1.(b) of the Act applies to applications for the grant or transfer of CPCNs for water and wastewater systems currently pending before the Commission as of June 30, 2023. Among other things, this section requires the Commission to provide notice by July 31, 2023, whether any pending application is complete.

On June 30, 2023, the Commission issued an Order Requiring Report of the Public Staff and Initiating Rulemaking Proceeding which, in part, directed the Public Staff to file on or before July 25, 2023, whether each application identified by the Public Staff as subject to the provisions of Section 1.(b) of the Act is complete and identifying any deficiency in any identified application that is not complete.

On July 25, 2023, the Public Staff filed a second deficiency letter (Second Deficiency Letter) outlining additional and updated information needed to complete the Application. In the Second Deficiency Letter, the Public Staff recommended that the Commission determine the Application incomplete.

On July 31, 2023, the Commission issued its Order Finding Application Incomplete and Request for Additional Information directing Red Bird to file information sufficient to address the deficiencies noted in the Second Deficiency Letter (July 31 Order).

On October 18, 2023, Kiran H. Mehta, Molly M. Jagannathan, and Holly R. Ingram of the firm of Troutman Pepper Hamilton Sanders LLP filed their Notices of Appearance of Counsel for Red Bird.

On October 19, 2023, pursuant to the Commission's July 31 Order, Red Bird filed additional information, some of which was confidential, to address the deficiencies noted in the Second Deficiency Letter.

On October 31, 2023, Red Bird filed a motion requesting the withdrawal of Daniel C. Higgins and the firm of Burns, Day, and Presnell, P.A. as counsel of record for Red Bird, which the Commission granted on November 1, 2023.

On November 1, 2023, Mindy McGrath of the firm of Troutman Pepper Hamilton Sanders LLP filed a Notice of Appearance of Counsel for Red Bird.

On November 2, 2023, the Public Staff filed a third deficiency letter (Third Deficiency Letter) outlining remaining information needed to complete the Application. In the Third Deficiency Letter, the Public Staff recommended that the Commission determine that the Application remains incomplete.

On November 3, 2023, the Commission issued its Second Order Finding Application Incomplete directing Red Bird to file information sufficient to address the deficiencies noted in the Third Deficiency Letter (November 3 Order).

On December 15, 2023, pursuant to the Commission's November 3 Order, Red Bird filed additional information to address the deficiencies noted in the Third Deficiency Letter.

On January 3, 2024, the Public Staff filed a letter with the Commission indicating that this docket now includes all of the information required for a complete Application.

On January 5, 2024, the Commission issued its Order Finding Application Complete and Requiring the Public Staff to Provide Specific Application Data (January 5 Order).

On January 12, 2024, the Public Staff provided the information requested in the Commission's January 5 Order.

On January 16, 2024, the Commission issued its Order Scheduling Hearings, Establishing Discovery Guidelines, and Requiring Customer Notice (Scheduling Order) setting this matter for a public witness hearing on February 20, 2024, and an expert witness hearing on March 25, 2024.

On January 19, 2024, Red Bird filed its proposed Notice to Customers which, among other things, amended the deadline to file customer protests from February 13, 2024, to February 9, 2024; changed the date of the expert witness hearing from March 25, 2024, to April 3, 2024; and updated customer rates. The proposed Notice to Customers was agreed upon by Red Bird and the Public Staff.

On January 22, 2024, the Commission approved the proposed Notice to Customers in its Order Changing Expert Witness Hearing Date, Amending Customer Protest Deadline, and Approving Customer Notice (Notice Order).

On January 25, 2024, Red Bird filed its Certificate of Service for Customer Notice reflecting service of the Notice to Customers.

On February 7, 2024, Red Bird filed a Revised Notice to Customers (Revised Notice), as agreed to by the Public Staff, correcting the current and proposed commercial wastewater rates for the motel and restaurant served by Pine Mountain that were contained in the original Notice to Customers. Red Bird subsequently sent the Revised Notice to the motel and restaurant. Red Bird filed an updated Application reflecting the correct commercial wastewater rates for the motel and restaurant served by Pine Mountain on February 16, 2024.

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 in the Application and supplemental and additional materials filed with the Commission in support of the Application.

On February 9, 2024, Red Bird filed the Direct Testimony and Exhibits of Josiah Cox, President of Red Bird and CSWR, LLC (CSWR), a Missouri limited liability company formed to provide managerial, technical, and financial support to its utility operating affiliates, including Red Bird.

On February 13, 2024, the Public Staff filed a Motion for Order Canceling Public Witness Hearing and Requiring Customer Notice (February 13 Motion) requesting that the public witness hearing scheduled for February 20, 2024, be canceled. In the February 13 Motion, which was supported by Red Bird, the Public Staff stated that no customer statements had been filed in this docket and that the Public Staff had not received any consumer statements regarding the Application.

On February 14, 2024, the Commission granted the Public Staff's February 13 Motion and issued an Order Canceling Public Witness Hearing (February 14 Order). As a result of the February 14 Order, the public witness hearing was canceled.

On February 23, 2024, the Public Staff filed a Motion for Extension of Time to file Testimony (February 23 Motion) requesting a two-day extension of time, until February 28, 2024, to file its prefiled direct testimony. In support of its February 23 Motion, the Public Staff stated that the parties intended to engage in settlement discussions to resolve certain issues in dispute in this docket, and that the Public Staff believed that the additional time in which to file its prefiled direct testimony would allow the parties an opportunity to resolve these issues. In its February 23 Motion, the Public Staff also requested that the time for Red Bird to file any rebuttal testimony be extended by the same two-day interval to March 13, 2024.

On February 26, 2024, the Commission granted the Public Staff's February 23 Motion and issued an Order Granting Extension of Time to File Testimony.

On February 28, 2024, the Public Staff and Red Bird (together, the Joint Movants) filed a Joint Motion for Leave to File Stipulation and Settlement Testimony in Lieu of Direct and Rebuttal Testimony (Joint Motion) requesting that Joint Movants be permitted to file a settlement agreement and settlement testimony in lieu of the Public Staff filing prefiled direct testimony and Red Bird filing rebuttal testimony. In support of the Joint Motion, the Joint Movants explained that they had reached a settlement in principle but required additional time, until March 4, 2024, to memorialize the terms in a stipulation and settlement agreement and to file supporting testimony and exhibits.

On February 29, 2024, the Commission granted the Joint Motion and issued an Order Granting Extension of Time to File Settlement Agreement and Stipulation in Lieu of Testimony Nunc Pro Tunc.

On March 4, 2024, Red Bird and the Public Staff (together, the Stipulating Parties) filed a Settlement Agreement and Stipulation (Stipulation) resolving all issues between the Public Staff and Red Bird. In support of the Stipulation, Red Bird filed the Settlement

Testimony of witness Cox, and the Public Staff filed the Joint Settlement Testimony and Exhibits of witnesses Meredith L. Strickland, Shashi M. Bhatta, and John R. Hinton.

On March 7, 2024, the Stipulating Parties filed a joint motion (March 7 Motion) requesting that Red Bird witness Cox and Public Staff witnesses Strickland, Bhatta, and Hinton be excused from attending the expert witness hearing in this docket; that all prefiled testimony be entered into the record; and that all exhibits, the Application, and the Stipulation be admitted into evidence.

On March 13, 2024, the Commission issued an Order Requiring Additional Information (March 13 Order) directing the Stipulating Parties to file written responses to certain clarifying questions concerning the Stipulation.

On March 15, 2024, the Stipulating Parties filed a Joint Response to the March 13 Order.

On March 19, 2024, the Commission granted the Stipulating Parties' March 7 Motion and issued its Order Excusing Witnesses, Accepting Testimony, Canceling Expert Witness Hearing, and Requiring Proposed Orders (March 19 Order). In the March 19 Order, the Commission excused witnesses Cox, Strickland, Bhatta, and Hinton from appearing and testifying at the expert witness hearing and received into the record the prefiled testimony and exhibits of these witnesses, Red Bird's Application and supplemental materials filed in this docket, and the Stipulation. The March 19 Order also canceled the expert witness hearing and required that Red Bird and the Public Staff file proposed orders, or a joint proposed order, on or before April 15, 2024.

### **DESCRIPTION OF THE STIPULATION**

The Stipulation provides, in pertinent part, the following:

1. Red Bird should be granted a CPCN to provide water and wastewater utility service to the Pine Mountain Lakes Subdivision.
2. Subject to Commission approval, at closing, Red Bird will adopt the proposed rates currently in effect for Pine Mountain water and wastewater customers,<sup>1</sup> which are as follows:

#### Monthly Water Utility Service:

Residential Flat Rate:	\$35.56
Commercial Flat Rate:	\$100.00

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<sup>1</sup> As indicated in the original Notice to Customers and the Revised Notice, the three POA buildings currently served by Pine Mountain would continue to be charged the residential water and wastewater rates, and the motel and restaurant currently served by Pine Mountain would continue to be charged the commercial water and wastewater rates.

Monthly Wastewater Utility Service:

Residential Flat Rate: \$27.72 per toilet  
Commercial Flat Rate: \$243.52

Reconnection Charge:

If water service cut off by utility for good cause: \$14.99  
If water service discontinued at customer request: \$14.99  
If sewer only service cut off by utility for good cause: \$14.99

Bills Due: On billing date

Bills Past Due: 25 days after billing date

Billing Frequency: Shall be monthly for service in arrears

Finance Charge for Late Payment: 1% per month will be applied to the unpaid balance of all bills still past due 25 days after the billing date

3. At closing, Red Bird will adopt Pine Mountain's accounting records, provide the detailed accounting records received from Pine Mountain to the Public Staff, and not adjust or make changes to those records without Commission approval.
4. The appropriate plant in service for water is \$27,060 and the appropriate plant in service for wastewater is \$0. The appropriate depreciation rate for water plant in service is 10%, beginning in 2022, and accumulated depreciation is reflected through December 31, 2023, as shown on Public Staff Settlement Exhibit 1. Plant additions after December 31, 2023, will be considered for inclusion in rates in future proceedings.
5. Rates may incorporate the following costs associated with the purchase of the Pine Mountain systems:
  - (i) \$75,201 for engineering due diligence work supported by invoices provided in response to Public Staff Data Request (PS DR) 9 and listed in Cox Direct Exhibit 5, allocating \$26,121 to water and \$49,080 to wastewater;
  - (ii) \$64,007 for legal costs related to the acquisition of the Pine Mountain systems, which is supported by invoices provided in response to PS DR 9 and listed in Cox Direct Exhibit 5, allocating \$37,764 to water and \$26,243 to wastewater; and

- (iii) That the recoverable engineering due diligence and legal costs listed in Paragraphs 5(i) and 5(ii) above are included in the calculations of the revenue requirements, which support the proposed rates for the Pine Mountain systems. The amortization rate for these costs is 4%, with amortization beginning January 1, 2024.
- 6. Red Bird will not pursue rate recovery of any additional costs associated with the acquisition, including due diligence, transactional, and regulatory costs, other than those listed in Paragraphs 5(i) and 5(ii) above and as further detailed in Public Staff Settlement Exhibit 2.
- 7. Red Bird agrees not to request an acquisition adjustment related to the Pine Mountain systems in this or any future proceeding.
- 8. Prior to closing and pursuant to future order by the Commission, Red Bird will post a bond in the amount of \$125,000 in a form acceptable to the Commission for the Pine Mountain Lakes Subdivision.
- 9. Consistent with the Settlement Agreement and Stipulation in Docket No. W-1328, Sub 10, Red Bird and key leadership from CSWR will meet annually with the Public Staff and provide an update detailing all changes in Red Bird's facilities and operations since the last annual update and discuss the Company's financial condition.

Based upon the foregoing, including the Application, the testimony and exhibits of the witnesses, the Stipulation, and the entire record in this proceeding, the Commission makes the following

### **FINDINGS OF FACT**

1. Red Bird is a North Carolina limited liability company in good standing. Red Bird is a wholly owned subsidiary of its sole member, Red Bird Utility Holding Company, LLC (RBUH), which is also a North Carolina limited liability company in good standing. RBUH is a wholly owned subsidiary of its sole member, North Carolina Central States Water Resources, LLC (NCCSWR), which is also a North Carolina limited liability company in good standing and a wholly owned subsidiary of CSWR.<sup>2</sup>

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<sup>2</sup> U.S. Water Systems, LLC is a Delaware limited liability company and the sole owner/member of CSWR. It was formed by independent investment firm Sciens Capital Management, LLC to oversee water sector investments using investor dollars held by Sciens Water Opportunities Fund.

2. Red Bird presently holds seven utility franchises in North Carolina.<sup>3</sup>

3. The Pine Mountain water and wastewater systems are currently owned and operated by the Pine Mountain POA. The two water systems, Pine Mountain Lakes and North Ridge, collectively serve approximately 95 residential customers, three Pine Mountain POA buildings, a motel, and a restaurant. Pine Mountain's wastewater system serves approximately 34 residential customers and the aforementioned Pine Mountain POA buildings, motel, and restaurant all located in the Pine Mountain Lakes Subdivision in Burke County, North Carolina.

4. The Pine Mountain POA operates its wastewater system under two North Carolina Department of Environmental Quality, Division of Water Resources (DWR) permits. The Pine Mountain wastewater treatment plant (WWTP) is authorized under National Pollutant Discharge Elimination System (NPDES) permit NC0036935 to discharge up to 20,000 gallons per day of treated wastewater to the Jacob Fork in the Catawba River Basin. The Pine Mountain wastewater collection system is authorized under NPDES permit WQCSD0475 to collect wastewater and transfer it to the WWTP. The Pine Mountain water system operates under DWR permit NC0112133. The Pine Mountain systems are not currently regulated by the Commission.

5. A Red Bird affiliate, Central States Water Resources, Inc. (Central States), entered into an Agreement for Sale of Utility System with the Pine Mountain POA dated March 26, 2021 (Purchase Agreement). According to the Purchase Agreement, the closing of the sale will occur after regulatory approval is obtained. Central States subsequently assigned the Purchase Agreement to its affiliate, Red Bird, pursuant to an Assignment of Contract Rights dated April 15, 2022 (Assignment). The Purchase Agreement is a confidential attachment to the Application.

6. Red Bird seeks a CPCN from the Commission to provide water and wastewater utility service to the Pine Mountain Lakes Subdivision.

7. Upon acquisition, Red Bird plans to make capital improvements to the Pine Mountain systems. Currently, based on its consulting engineer's 2021 projections, Red Bird estimates that the cost of necessary improvements will be approximately \$1.4 million over the first ten years of ownership, consisting of \$522,000 for work on the wastewater system and \$893,950 for work on the two water systems.

8. The Stipulation resolves all contested issues related to Red Bird's Application for the Pine Mountain systems. The Stipulation is the product of give-and-take in settlement negotiations between the Public Staff and Red Bird, is material evidence in

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<sup>3</sup> In addition to the systems for which Red Bird has been granted franchises in North Carolina as described above, Red Bird's indirect corporate parent, CSWR, through separate state affiliates, has acquired and currently operates more than 800 water or wastewater utility systems in Missouri, Arkansas, Kentucky, Louisiana, Texas, Tennessee, Mississippi, Arizona, Florida, and South Carolina, and provides utility service to more than 241,000 wastewater customers and over 172,000 water customers.



this proceeding, and is entitled to be given appropriate weight in this case, along with other evidence from Red Bird and the Public Staff.

9. It is appropriate for the Commission to approve the Stipulation in its entirety.

10. Red Bird has the technical, managerial, and financial capacity to provide adequate, safe, efficient, and reasonable water and wastewater utility service on an ongoing basis to customers in the Pine Mountain Lakes Subdivision.

11. Consistent with N.C. Gen. Stat. § 62-111(a), approval of the Application is justified by the public convenience and necessity and is in the public interest.

12. A bond in the amount of \$125,000 for the Pine Mountain Lakes Subdivision for water and wastewater service is just, reasonable, and appropriate.

### **EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 1-2**

The evidence supporting these findings of fact is contained in Red Bird's Application; the supplemental filing made by Red Bird in this docket on February 16, 2024; the testimony and exhibits of Red Bird witness Cox; and the Commission's records in Docket Nos. W-1328, Subs 3, 4, 7, 8, 9, 10, and 13 including the Commission's Utility Franchise Orders issued in each of these dockets.

Red Bird witness Cox provided testimony regarding Red Bird, Red Bird's relationship to CSWR, and the role CSWR would play in Red Bird's operation of the Pine Mountain systems. Cox Direct Testimony at 6-9. In his direct testimony, witness Cox explains that Red Bird was formed to acquire water and wastewater assets in North Carolina and to operate those assets as regulated public utilities. *Id.* at 6. As of February 9, 2024, the date the testimony was filed, witness Cox testifies that in addition to the five utility franchises that Red Bird currently holds in North Carolina, Red Bird also has transfer applications to acquire public utility franchises pending before the Commission in six other dockets and one application for a CPCN pending before the Commission in one other docket. *Id.* at 6-7. Witness Cox also states that Red Bird is an affiliate of CSWR and that CSWR, through its utility operating subsidiaries, has acquired and is operating over 800 water and/or wastewater utility systems in Missouri, Arkansas, Kentucky, Louisiana, Texas, Tennessee, Mississippi, North Carolina, Arizona, Florida, and South Carolina.<sup>4</sup> *Id.* at 4.

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<sup>4</sup> Since the date witness Cox filed his direct testimony, the Commission has issued orders granting Red Bird a CPCN to provide wastewater utility service to the Kingsbridge II Subdivision in Onslow County, North Carolina in Docket No. W-1328, Sub 13, and approving the transfer of the wastewater system and public utility franchise serving the Windemere Pointe Subdivision in Montgomery County, North Carolina from Baytree Waterfront Properties, Inc. to Red Bird in Docket Nos. W-938, Sub 6 and W-1328, Sub 8.

Based upon competent, substantial, and material evidence in the record, the Commission concludes that these findings of fact are informational, procedural, and jurisdictional in nature and are not contested by any party.

#### **EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 3-4**

The evidence supporting these findings of fact is contained in Red Bird's Application; the supplemental filing made by Red Bird in this docket on February 16, 2024; and the testimony and exhibits of Red Bird witness Cox.

Based upon competent, substantial, and material evidence in the record, the Commission concludes that these findings of fact are informational in nature and are not contested by any party.

#### **EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 5**

The evidence supporting this finding of fact is contained in Confidential Attachment D to the Application, which includes the Purchase Agreement with the Pine Mountain POA dated March 26, 2021; Confidential Attachment D to the supplemental filing made by Red Bird in this docket on February 16, 2024, which includes the Purchase Agreement and all attached exhibits; Attachment D.2 of the supplemental filing made by Red Bird in this docket on March 14, 2024, which includes the Assignment of Contract Rights from CSWR to Red Bird; and the testimony and exhibits of Red Bird witness Cox.

Based upon competent, substantial, and material evidence in the record, the Commission concludes that this finding of fact is informational in nature and is not contested by any party.

#### **EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 6**

The evidence supporting this finding of fact is contained in the Application and the testimony and exhibits of Red Bird witness Cox.

Based upon competent, substantial, and material evidence in the record, the Commission concludes that this finding of fact is informational in nature and is not contested by any party.

#### **EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 7**

The evidence for this finding of fact is found in Confidential Attachment E and Attachment F to the Application and the testimony and exhibits of Red Bird witness Cox.

In Red Bird witness Cox's direct testimony, he testifies about the deficiencies and need for improvements in the Pine Mountain systems as identified by McGill Associates (McGill), Red Bird's North Carolina consulting engineers. Cox Direct Testimony at 24-26. Witness Cox states that in order to address the operational and/or compliance issues

associated with the Pine Mountain systems, McGill recommended significant improvements and upgrades. *Id.* at 25. Witness Cox testifies that based on McGill's 2021 projections, the estimated cost of necessary improvements will be approximately \$1.4 million over the first ten years of ownership, consisting of \$522,000 for work on the wastewater system and \$893,950 for work on the two water systems. *Id.* Witness Cox emphasizes, however, that these estimates are preliminary. *Id.* at 26. As such, witness Cox explains that the precise capital investments required for repairs and upgrades cannot be known until Red Bird begins operating the Pine Mountain systems. *Id.*

The Commission notes Red Bird's assertion that the Pine Mountain systems require maintenance and upgrades to ensure that they are able to continue providing safe and reliable service to the customers they serve. However, the Commission concludes, based upon competent, substantial, and material evidence in the record, that the scope and extent of capital improvements and repairs that are reasonable and prudent is, at this time, not adequately known or knowable by any party to this proceeding. Thus, the Commission concludes that the appropriate time and venue to determine the reasonableness and prudence of proposed and/or actual capital investments is the next general rate case involving these systems.

#### **EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 8-9**

These findings of fact are based on the Stipulation; the entire record in the instant docket; the settlement testimony filed by Red Bird witness Cox; and the joint settlement testimony filed by Public Staff witnesses Strickland, Bhatta, and Hinton.

Red Bird and the Public Staff are the only parties to this proceeding, and the Stipulation resolves all issues between the Stipulating Parties in this proceeding.

Based upon competent, substantial, and material evidence in the record, the Commission finds that the Stipulation represents a negotiated settlement of all issues in this proceeding and that the provisions agreed to by the Stipulating Parties are reasonable and appropriate for the purpose of this proceeding. Therefore, the Commission concludes that the provisions of the Stipulation are just and reasonable to customers of the Pine Mountain systems and all parties to this proceeding and serve the public interest. Accordingly, the Commission concludes that the Stipulation should be approved in its entirety.

In making this determination, the Commission gives substantial weight to the testimony of Public Staff witnesses Strickland, Bhatta, and Hinton and Red Bird witness Cox and recognizes that the Stipulation is the product of arm's length negotiations involving give and take between the Stipulating Parties. Based on the record as a whole, the Commission concludes that the terms of the Stipulation are just and reasonable to both Red Bird as well to current and future customers of the Pine Mountain systems.

Consistent with the Stipulation, the Commission also concludes that the appropriate plant in service for the Pine Mountain water system is \$27,060 and the

appropriate plant in service for the Pine Mountain wastewater system is \$0. The Commission also concludes that the appropriate depreciation rate for water plant in service is 10%, beginning in 2022, and accumulated depreciation is reflected through December 31, 2023. The Commission concludes that additions after December 31, 2023, will be considered for inclusion in rates in future proceedings. Furthermore, the Commission concludes that the amounts for due diligence and other transaction costs should be approved for recovery by Red Bird as described in the Stipulation, and that Red Bird has agreed not to pursue an acquisition adjustment or rate recovery for any additional costs related to its acquisition of the Pine Mountain systems.

Finally, the Commission reaffirms its conclusion in Docket Nos. W-1146, Sub 13 and W-1328, Sub 10, that it is reasonable for Red Bird and key CSWR leaders to meet with the Public Staff on an annual basis. During this meeting, Red Bird and CSWR shall provide an update to the Public Staff detailing all changes to Red Bird's facilities and operations since the last annual meeting, as well as discuss the overall financial condition of both companies. Furthermore, the Commission concludes that this meeting should not be limited only to discussing the Pine Mountain systems, but that the discussion shall also address all of Red Bird's current and future North Carolina water and wastewater systems so as to provide appropriate oversight while preventing unnecessary and duplicative efforts on the part of Red Bird and the Public Staff.

#### **EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 10**

The evidence supporting this finding of fact is found in Red Bird's Application and supplemental filings; the testimony and exhibits of Red Bird witness Cox; the Stipulation; the joint settlement testimony filed by Public Staff witnesses Strickland, Bhatta, and Hinton; and the entire record in this proceeding.

In Red Bird witness Cox's direct testimony, he testifies that Red Bird has the financial, technical, and managerial ability to acquire, own, and operate the Pine Mountain systems. *Id.* at 10. Additionally, witness Cox explains that Red Bird is part of an affiliate group that has acquired and currently operates over 800 water and/or wastewater utility systems in other states and currently provides service to approximately 241,000 wastewater customers and over 172,000 water customers. *Id.* at 10-11.

The Stipulation reflects the Public Staff's agreement that Red Bird has the technical, managerial, and financial capacity to provide water and wastewater utility service in the Pine Mountain Lakes Subdivision. In their joint settlement testimony, Public Staff witnesses Strickland, Bhatta, and Hinton agree with Red Bird witness Cox that Red Bird "has the financial, technical and managerial capabilities necessary to provide water and wastewater utility service to customers in the Pine Mountain service area." Strickland, Bhatta, and Hinton Joint Settlement Testimony at 4. The Commission also notes that it has made similar findings regarding Red Bird in Docket Nos. W-1328, Subs 3, 4, 7, 8, 9, 10, and 13; W-1040, Sub 10; W-992, Sub 8; W-1146, Sub 13; W-1296, Sub 3; and W-938, Sub 6.

Based upon competent, substantial, and material evidence in the record, the Commission concludes that Red Bird has the technical, managerial, and financial capacity to provide adequate, safe, efficient, and reasonable water and wastewater utility service on an ongoing basis to customers in the Pine Mountain Lakes Subdivision.

### **EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 11**

The evidence supporting this finding of fact is found in the Stipulation; the entire record in this docket; the direct testimony and settlement testimony of Red Bird witness Cox; and the joint settlement testimony of Public Staff witnesses Strickland, Bhatta, and Hinton.

Based upon competent, substantial, and material evidence in the record, the Commission concludes that good cause exists to approve the Application. Consistent with N.C.G.S § 62-111(a), the Commission concludes that approval of the Application is justified by the public convenience and necessity and is in the public interest. This conclusion is fully supported by the direct testimony and settlement testimony of Red Bird witness Cox; the joint settlement testimony of Public Staff witnesses Strickland, Bhatta, and Hinton; and the Stipulation entered into by Red Bird and the Public Staff. Accordingly, the Commission concludes that Red Bird's Application should be approved as modified under the Stipulation, effective upon the close of the acquisition of the water and wastewater utility system assets by Red Bird from the Pine Mountain POA.

### **EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 12**

The evidence supporting this finding of fact is found in the Stipulation; the entire record in this docket; the settlement testimony of Red Bird witness Cox; and the joint settlement testimony of Public Staff witnesses Strickland, Bhatta, and Hinton.

Based upon competent, substantial, and material evidence in the record, the Commission concludes that: (1) Red Bird shall post a \$125,000 bond for the Pine Mountain Lakes Subdivision prior to closing for acceptance and approval by the Commission and shall provide the original bond documents to the Commission's Bond Administrator for acceptance and filing prior to closing; (2) Red Bird shall provide written notice to the Commission within three business days from the date of closing that the sale of the Pine Mountain systems has been completed; (3) upon closing of the transfer, Red Bird shall be granted a CPCN to provide water and wastewater utility service to the Pine Mountain Lakes Subdivision; (4) Red Bird shall adopt the tariffs and rates agreed to in the Stipulation for the Pine Mountain Lakes Subdivision; (5) Red Bird shall adopt Pine Mountain's accounting records upon closing, provide the detailed accounting records so received to the Public Staff, and not adjust or otherwise make changes to those records without Commission approval; and (6) Red Bird shall provide notice to customers that the franchise has been granted and of the approved rates.

IT IS, THEREFORE, ORDERED as follows:

1. That the Application for a Certificate of Public Convenience and Necessity and for Approval of Rates, filed by Red Bird on September 30, 2021, and supplemented as described herein, is hereby approved;
2. That the Stipulation between the Public Staff and Red Bird is hereby approved in its entirety;
3. That Red Bird shall comply with all terms of the Stipulation filed in this docket;
4. That the appropriate plant in service for the Pine Mountain water system is \$27,060 and the appropriate plant in service for the Pine Mountain wastewater system is \$0 and that the appropriate depreciation rate for water plant in service is 10%, beginning in 2022, with accumulated depreciation reflected through December 31, 2023;
5. That the following costs are appropriately included in the calculation of the revenue requirements for the Pine Mountain systems:
  - (i) \$75,201 for engineering due diligence work, as supported by invoices provided in response to PS DR 9 and listed in Cox Direct Exhibit 5, allocating \$26,121 to water and \$49,080 to wastewater; and
  - (ii) \$64,007 for legal costs related to the acquisition of the Pine Mountain systems, as supported by invoices provided in response to PS DR 9 and listed in Cox Direct Exhibit 5, allocating \$37,764 to water and \$26,243 to wastewater. The amortization rate for these costs is 4%, with amortization beginning January 1, 2024;
6. That Red Bird shall not seek recovery of any additional costs associated with the transfer, including due diligence, transactional, and regulatory costs, other than those listed herein;
7. That Red Bird agrees not to request an acquisition adjustment related to the Pine Mountain systems in this or any future proceeding;
8. That, prior to closing, Red Bird shall post a \$125,000 bond in a form acceptable to the Commission and in compliance with N.C.G.S. § 62-110.3 and that Red Bird shall provide the original bond documents to the Commission's Bond Administrator for acceptance and filing prior to closing;
9. That Red Bird is granted a CPCN to provide water and wastewater utility service to the Pine Mountain Lakes Subdivision in Burke County, North Carolina, effective upon the closing of the transfer of the Pine Mountain utility systems' assets to Red Bird;

10. That Appendix A, attached hereto, constitutes the CPCN;

11. That all ratemaking determinations included in the Stipulation and set forth in this Order regarding ratemaking issues are hereby determined as stipulated and as set forth above;

12. That the Schedule of Rates, attached hereto as Appendix B, is hereby approved and deemed filed with the Commission pursuant to N.C.G.S. § 62-138. This Schedule of Rates shall become effective for service rendered on and after the date of the closing of the sale of the Pine Mountain systems' assets to Red Bird;

13. That Red Bird shall provide notification to the Commission within three business days of the date of closing that the sale of the water and wastewater utility systems serving the Pine Mountain Lakes Subdivision has been completed;

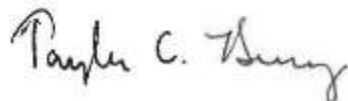
14. That within 30 days of the closing of the sale of the Pine Mountain systems, Red Bird shall file in this docket the warranty deed showing Red Bird's ownership of the required easements and all interests in land it has obtained in connection with the ownership, operation, and maintenance of the Pine Mountain systems; and

15. That a copy of this Order and Appendix B shall be mailed with sufficient postage or hand delivered by Red Bird to the customers of the Pine Mountain systems within seven days of the closing of the sale of the water and wastewater utility systems serving the Pine Mountain Lakes Subdivision and that Red Bird shall submit to the Commission the attached Certificate of Service, properly signed and notarized, not later than 15 days after the mailing or hand delivery of the Order and Appendix B.

ISSUED BY ORDER OF THE COMMISSION.

This the 15th day of May, 2024.

NORTH CAROLINA UTILITIES COMMISSION

A handwritten signature in cursive script that reads "Taylor C. Berry".

Taylor C. Berry, Deputy Clerk

**STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH**

DOCKET NO. W-1328, SUB 11

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

RED BIRD UTILITY OPERATING COMPANY, LLC

is granted this

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

to provide water and wastewater utility service

to

THE PINE MOUNTAIN LAKES SUBDIVISION

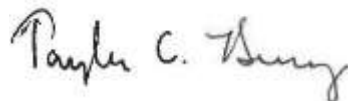
Burke County, North Carolina

subject to any orders, rules, regulations,  
and conditions now or hereafter lawfully made  
by the North Carolina Utilities Commission.

ISSUED BY ORDER OF THE COMMISSION.

This the 15th day of May, 2024.

NORTH CAROLINA UTILITIES COMMISSION

A handwritten signature in cursive script that reads "Taylor C. Berry".

Taylor C. Berry, Deputy Clerk



SCHEDULE OF RATES

for

RED BIRD UTILITY OPERATING COMPANY, LLCfor providing water and wastewater utility service

to

THE PINE MOUNTAIN LAKES SUBDIVISION

Burke County, North Carolina

Monthly Water Utility Service:

Residential Flat Rate:	\$35.56
Commercial Flat Rate:	\$100.00

Monthly Wastewater Utility Service:

Residential Flat Rate:	\$27.72 per toilet
Commercial Flat Rate:	\$243.52

Note: Commercial rates are applicable for the Motel and Restaurant.

Reconnection Charge:

If water service cut off by utility for good cause:	\$14.99
If water service discontinued at customer request:	\$14.99
If sewer only service cut off by utility for good cause:	\$14.99

Bills Due: On billing date

Bills Past Due: 25 days after billing date

Billing Frequency: Shall be monthly for service in arrears

Finance Charge for Late Payment: 1% per month will be applied to the unpaid balance of all bills still past due 25 days after the billing date.

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Issued in Accordance with Authority Granted by the North Carolina Utilities Commission in Docket No. W-1328, Sub 11, on this the 15th day of May, 2024.

CERTIFICATE OF SERVICE

I, \_\_\_\_\_, mailed with sufficient postage or hand delivered to all affected customers the attached Order and Schedule of Rates issued by the North Carolina Utilities Commission in Docket No. W-1328, Sub 11, and the Order and Schedule of Rates were mailed or hand delivered by the date specified in the Order.

This the \_\_\_\_ day of \_\_\_\_\_, 2024.

By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Name of Utility Company

The above-named Applicant, \_\_\_\_\_, personally appeared before me this day and, being first duly sworn, says that the required Order and Schedule of Rates were mailed or hand delivered to all affected customers, as required by the Commission Order dated \_\_\_\_\_ in Docket No. W-1328, Sub 11.

Witness my hand and notarial seal, this the \_\_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_  
Notary Public

(SEAL)

\_\_\_\_\_  
Printed or Typed Name

My Commission Expires: \_\_\_\_\_