

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

Docket No. A-41, Sub 21

VILLAGE OF BALD HEAD ISLAND)	
Complainant)	
)	
v.)	POST EHARING BRIEF
)	ON BEHALF OF
BALD HEAD ISLAND TRANSPORTATION,)	BALD HEAD
INC., BALDHEAD ISLAND LIMITED, LLC,)	ASSOCIATION
Respondents)	

Final Comments of Bald Head Association regarding whether or not the NCUC should regulate the Ferry Parking and/or the Barge

Introduction

The Bald Head Association (BHA) urges the North Carolina Utilities Commission (NCUC) to regulate the BHI parking lot and the barge as ancillary to and an integral part of the BHI ferry transportation system. Specifically, the BHA recommends the NCUC adopt the “Scrutiny” or “Overview” level of regulation as detailed in the September 8, 2022 Initial Comments of the Public Staff for the parking lot along with requiring prior approval by the NCUC of any sale of the parking lot and/or the barge.

The BHI Parking Lot and Barge are Needed for BHI to Survive

The issue in this case is whether or not the NCUC should regulate the BHI ferry parking lot (located at Deep Point Marina) and/or the BHI barge. The evidence presented in this case made clear what everyone having anything to do with Bald Head Island already knows. There is only one ferry parking lot and only one barge.

In order for our members, the homeowners and lot owners on Bald Head Island, to get to their homes and lots they have to take the BHI ferry. In order to take the BHI ferry our members need to park their cars in the BHI ferry parking lot. There is no other option.

And, in order to have any and all of the food they need to live, the furnishings with which they need to furnish their homes and all the “stuff” they need to live their lives on Bald Head Island, they need to have all delivered to Bald Head Island on the barge. Again, there is no other option.

In August, 2022 We Asked Our Members if they wanted the NCUC to Regulate the Ferry Parking Lot and/or the Barge.

By August, 2022 our Members knew most of the facts as to this case. Given the imminency of the October 10, 2022 hearing in Docket No. A-41, Sub 21, we surveyed our Members and asked them if they wanted the NCUC to regulate the parking lot and/or the barge. In addition, we asked for their comments regarding the issues. The answers we received to both of these questions were and remain quite informative.

BHI property owners were given 6 days to complete the survey. In total, 533 property owners completed the survey – a return rate of 34.5%.

First, 71.5% of our Members who responded to the survey want the NCUC to regulate the parking lot and the barge.

Second, in their responses to the survey one hundred and eighty-one of our members explained their concerns and why they want what they want. All comments are included in Briggs Exhibit 4, attached hereto. A few are listed below.

Hearing the concerns of our members will assist the Commission in understanding why our members feel the way they do.

SELECTED MEMBER COMMENTS TO SURVEY

I am concerned that a private investment firm who states that they do not intend to run the ferry system will not be responsive to regulatory questions. I see no alternative but to ask for NCUC to regulate.

A new private owner could increase the price beyond what is reasonable without any viable recourse.

My concern is a private owner will increase costs for profitability purposes, and since property owners/visitors have no alternative to the private owner they will be forced to pay the higher costs. The NCUC can protect property owner/visitors from the monopoly power of the private owner to keep costs fair and reasonable.

The ferry and its appurtenances — which include the parking lot and the barge — should be viewed as part of the overall transportation system of the state as well as the Island. To that extent, all should fall within the purview of the NCUC.

We have no guarantees on how long the SharpVue will own the system before selling it to another group. We could get rate increases every time it changes ownership. The cost is high now for the home owners. We should be getting a lower costs for transportation to the island than visiting people. All of this commotion makes many homeowners nervous about the long term solutions. Not everyone is a multi- millionaire on BHI. Some of us have saved for years to buy our homes on BHI. My family enjoys

BHI very much. It is a beautiful, quiet, pet friendly place to truly unwind. We hope that the NCUC will regulate the costs for anyone who SharpVue sells the system to in the future.

I have paid very close attention to this issue, attended meetings, listened to calls, etc. and I do not know how to vote on this!! I am clearly very interested in Deep Point's operations and parking costs staying fair and balanced. But I have heard compelling arguments from both sides for and against NCUC oversight. The last thing I want to do is anything to negatively impact the sale of the ferry system...

SharpVue is a third party that does not have a vested interest in the island as Limited once did. While I am generally believe in minimal regulation, in this context some degree of regulation consistent with that of the ferry is a greater protection than risk posed by an unregulated system

I appreciate the list of advantages and disadvantages for all oversight aspects of the transportation system. Most important to us, however, is the protection of our BHI property. Without that transportation, access to the island and our home is severely limited. Yet... too high a price structure - or restrictions to park at the Deep Creek site - are "threats" to our community as well. Taking all of that into consideration, we feel most protected by a State regulated oversight authority, compared to the unregulated profit motives of a for-profit company.

Since the transportation system (ferry, tram, barge and parking) are so integral to the access of the island, and therefore the island economy, the island owners, visitors and workers should accept a fair cost of traveling to and from the island. I believe the best way to ensure the costs remain fair is to be regulated by an independent body. The NCUC is in the best position to oversee the fare structure.

Sharpvue has zero vested interest in the common welfare of BHI. They are a completely outside venture capital group. Venture capital groups have, but one interest profit. It is imperative that there is complete regulation of their ownership. It is ludicrously naive to think that they will do the best for the island if given their own druthers.

The Ferry transportation as well as the barge and parking, are all critical to the long term success and ultimate viability of the island. That is why it is critical that the NCUC must regulate the fares for the barge and parking lot just as they do with the ferry.

The Ferry and it's parking are a monopoly with critical basic public transport and safety so should be regulated . The Commission should have the appropriate authority to regulate this.

Regulation is essential to ensure that outside investors do not see these assets as an opportunity to gouge the residents, visitors and workers of BHI.

Privatization may have its advantages if there is adequate input from the people who are served. The balance of efficiency, administrative costs versus profit is difficult. Each sides aims and business models would allow one to make a clearer choice. As it stands now, it is choice of who you trust.

The ferry, barge and parking are a transportation system that sustains Bald Head Island. We as residents are dependent on all three equally, and are at the entire systems mercy with regards to rates and quality of service. If it makes sense to regulate one, then it makes sense to regulate all three. Please apply the same reasoning to regulating the parking and the barge that was used to decide to regulate the ferry.

To protect the economies of southern Brunswick County, the transportation system of BHI must be regulated.

The ferry is the lifeline of BHI and we need to guard against price-gouging given that there are no viable alternatives for access to the island which could ensure competitive rates.

Most, if not all, of the public ferry systems in NC transport passengers with their vehicles, and the state regulates the fees for passengers and vehicles. Bald Head Island is a unique situation, where cars do not make the journey to Bald Head with their passengers, but the cars must still be managed. In the case of Deep Point parking lots and the Bald Head Island Ferry, one cannot exist without the other. Both entities are tied together and should be regulated as such.

Government mandates and management of the system is not the answer and may have unintended consequences that impact overall satisfaction with the system. Free market economics is a better choice (even though it may cost a bit more). And investors are somewhat beholden to users of the system because ridership (and satisfaction with the system) needs to increase for investors to have a return on their investment.

As a homeowner I pay property taxes to the government. The only access to my home is via the ferry system. A private entity that has no accountability should not monopolize taxpayers 'access to their homes. The system should be comparable to the other ferry systems in place in NC such as those who own property on Ocracoke.

It's a monopoly! Why shouldn't it be regulated? Why is the BHA carrying BHI Limited's water?

Given the fact that the public has no choice about using the parking lot to reach Bald Head Island, the parking operation is a monopoly that should be regulated.

More regulation introduces unneeded complexity and potential unknown risks. plus my general sense is that ferry fares have been kept artificially low because revenue from parking and barge make up for any shortfall. if parking was regulated and maybe even reduced, wouldn't any buyer push a lot harder on ferry increases?

While SharpVue represents publicly that they will not raise rates/fares above inflation, what prevents them from doing so? They are a private business, without the "on island" incentive as BHI Ltd had to keep the rates reasonable. BHI Ltd had an incentive to keep the rates reasonable in order to get people and products to the Island. What is SharpVue's incentive? We've all seen numerous times corporate promises to "not change anything" and to keep the "status quo," but after purchasing they immediately raise rates/fares and justify it by saying they had increased costs, etc. that they did not anticipate. They are a private business buying the parking and barges for a reason; profit. Nothing less. What "built in" written, contractual assurances can the Village get? Also, if SharpVue is the purchaser, there MUST be the ability to have a private water taxi system (ala Uber/Lyft) that is permitted in order to compete with SharpVue.

[End of Selected Member Comments to Survey-see attached Briggs Exhibit 4, previously admitted in evidence, for all the Comments.]

We urge you to read all the comments. They are very informative. Some members are critical of the BHA. Some are critical of the Village. Some are very appreciate overall. But these are the comments of our members and a full review will give you a more complete picture. The ones selected above are to just give you a glimpse.

In addition to receiving the opinions and the comments of our members, the six person Board of the BHA has discussed the issues in Docket No. A-41, Sub 21 at great length among ourselves on multiple occasions to form our own opinions. To be sure there is great diversity in opinions among and between our Board Members.

We also heard, saw and/or read all the written and live testimony before the NCUC on October 10-12, 2022 and have carefully reviewed all of the exhibits admitted into evidence.

The Conclusion of the Bald Head Association

Based on all the above, the Board of Directors of the BHA favors regulation of the parking lot and the barge by the NCUC and urges the NCUC to regulate the ferry and the barge at the oversight/scrutiny level.

Specifically, there are three primary areas where we believe regulation by the NCUC of the BHI parking lot and barge are needed.

First, our members need the assurance the BHI ferry parking lot and the BHI barge will be available for their use.

Second, our members need the assurance the rates charged for the parking lot and barge will be reasonable.

Third, our members need the owner of the ferry, parking lot and the barge to obtain the consent of the NCUC prior to any sale of the parking lot and/or the barge prior to any sale to a third party.

What are the reasons we believe full regulation by the NCUC is not appropriate or necessary here?

We believe "Oversight" or "Scrutiny" is the appropriate amount of regulation for which we should ask of the NCUC for our Members. Let us explain why we, the BHA Board, do not believe full regulation is necessary or appropriate.

First, the NCUC should only impose the minimum regulation necessary to achieve the objectives: 1-assurance the parking lot and the barge will still be available to all; 2-assurance the parking lot and barge are available to all at reasonable rates; 3-and assurance the ownership of the parking lot and barge will not be sold without the consent of the NCUC.

Regulation is a taking-a taking of some of the rights and benefits of the ownership of private property away from the owner. While in some instances this is appropriate, the extent of the taking should only be the minimum amount necessary to accomplish the purposes for the taking.

Here the property is owned by BHI, Ltd., the Mitchell Family. They have done nothing wrong. In fact, for forty years they have done essentially everything right. They have developed the paradise where many of our members live full time or part time.

While the ferry transportation system is a monopoly, BHI, Ltd. and BHI Transportation have never misused the monopoly power and have always had reasonable pricing for the parking lot and the barge.

Nonetheless, given the clear need of our members to access their homes and the clear need for the barge to deliver everything else which is needed for life on the island, some level of regulation is appropriate.

But, the right way to do the necessary regulation is to minimize the amount of regulation to that which is absolutely necessary.

Second, there is not presently a problem nor is there any indication there is going to be a problem in the foreseeable future, either with BHI, Ltd., or with SharpVue, regarding pricing. However, given the potential change in ownership there is a legitimate concern that with a change of ownership from the developer who has had the financial incentive to encourage people to buy lots and build homes on the island to a private owner that does not have that same incentive, there is a risk of monopolistic pricing.

But a risk, no matter how imminent that risk is to becoming real, is only a risk. It is not a justification to overreact.

We feel the BHA and its members are justified in asking the NCUC for help to minimize this risk to prevent problems from happening. But the BHA does not feel it appropriate to ask the Commission for more regulation than is necessary.

Third, regulation is expensive. Very expensive. The cost of going through a rate case is very, very high. As Lee Roberts testified at the hearing, just look around the hearing room and count the number of lawyers present. Multiply that by the hourly rate for each lawyer and we all know what happens. Then add on the costs for the experts that are also necessary. Millions of dollars get spent.

And the bottom line is, **all** of that expense is borne directly or indirectly by our BHA Members. Our members are the ones who wind up paying the costs of regulation.

Therefore, for our Members, we are asking for enough regulation to achieve the objectives, but no more.

How Much is Enough Regulation But Not Too Much?

Here we really have to defer to the expertise of the Public Staff of the NCUC and to the Commissioners of the NCUC. So long as the three critical issues we addressed earlier are met (the parking lot and barge remain, the rates are reasonable and neither the parking lot nor the barge can be sold without prior approval from the NCUC), we are satisfied it is the right amount of regulation for our members.

In the initial comments of the Public Staff filed on September 8, 2022 they stated:

*While owning and operating a parking lot is not a utility service per se, the availability of adequate and reasonably priced parking is required for this unique utility to provide service to its customers. Nonetheless, requiring that the utility provide this service does not require the Commission to approve or regulate the specific terms and conditions of the parking service or include particular assets in rate base, as long as the parking is adequate and reasonably priced. However, it does warrant Commission **scrutiny** to ensure that ferry customers are protected through adequate parking at reasonable rates.*

*While the courts have found ancillary services such as telephone yellow pages to be unregulated, it nonetheless has deemed some level of **oversight** short of regulation by the Commission to be appropriate. The same approach is appropriate in this case. While the parking operation is not a regulated service, the Commission should exercise its **oversight** to ensure BHIT provides adequate parking at a reasonable rate to provide adequate service to its customers.*

[Initial comments, p. 5-8.] [emphasis added.]

This “scrutiny” or “oversight” is the level of regulation we, the BHA, on behalf of our Members feel justified in asking of the NCUC. It appears to us that this level of regulation protects our Members, and, at the same time, has as much fairness as possible to all others concerned.

We, the BHA, must and willingly do defer to the Commission and the Public Staff on the appropriate metes and bounds and detail of this scrutiny or oversight and exactly how it should work. We are happy to help in any way we can to achieve resolution and a long-term solution.

Limitation on these Comments

The Bald Head Association is an intervenor in this case. As we have stated all along our desire has been to review all the filings, review all the discovery, listen to all the witnesses, read and study all the exhibits, listen carefully to all our members have to say and reach a conclusion ourselves as to what end result we feel is best for our members.

We did not cross-examine witnesses at trial because we are not advocating the position of one side or the other in this case.

Additionally, our Comments here are not intended to be a review of the “law” that applies to the issues in this case.

Our comments are just that-our comments, for whatever value the Commission may find in them. They are more like a closing argument than a legal brief.

We do recognize that the Commission does not decide matters such as this just based on what the public wants. The Commission is primarily guided by the law.

The Village, BHI, Ltd., SharpVue and the Public Staff all have excellent lawyers addressing the legal issues. We are not seeking to duplicate that legal work.

Our final comments here are to pass on to the Commission in our closing comments our views as to how we think our Members can be best served with a result that we think is just and fair to all.

Respectfully submitted this 8th day of November 2022.

Edward S. Finley, Jr.

/s/ Edward S. Finley, Jr.

Edward S. Finley, Jr.

Counsel for Bald Head Association