

PLACE: Dobbs Building, Raleigh, North Carolina
DATE: Thursday, March 9, 2023
TIME: 9:34 a.m. - 1:27 p.m.
DOCKET NO.: A-41, Sub 22
BEFORE: Commissioner Kimberly W. Duffley, Presiding
Chair Charlotte A. Mitchell
Commissioner ToNola D. Brown-Bland
Commissioner Daniel G. Clodfelter
Commissioner Jeffrey A. Hughes
Commissioner Floyd B. McKissick, Jr.
Commissioner Karen M. Kemerait

IN THE MATTER OF:

Joint Application of

Bald Head Island Transportation, Inc., and
Bald Head Island Ferry Transportation, LLC, for
Approval of Transfer of Common Carrier Certificate to
Bald Head Island Ferry Transportation, LLC, and
Permission to Pledge Assets

VOLUME: 5

A P P E A R A N C E S:

VILLAGE OF BALD HEAD ISLAND:

Marcus Trathen, Esq.

Craig D. Schauer, Esq.

Amanda Hawkins, Esq.

Brooks Pierce McLendon Humphrey & Leonard, LLP

Wells Fargo Capital Center

150 Fayetteville Street, Suite 1700

Raleigh, North Carolina 27601

Jo Anne Sanford, Esq.

Sanford Law Office

721 North Bloodworth Street

Raleigh, North Carolina 27604

FOR BALD HEAD ISLAND TRANSPORTATION, INC. and

BALD HEAD ISLAND FERRY TRANSPORTATION, LLC:

M. Gray Styers, Jr., Esq.

Bradley M. Risinger, Esq.

Elizabeth Sims Hedrick, Esq.

Fox Rothschild LLP

434 Fayetteville Street, Suite 2800

Raleigh, North Carolina 27601

1 A P P E A R A N C E S Cont'd:

2 FOR SHARPVUE CAPITAL, LLC:

3 David Ferrell, Esq.

4 Nexen Pruet, PLLC

5 4141 Parklake Avenue, Suite 200

6 Raleigh, North Carolina 27612

8 FOR BALD HEAD ISLAND CLUB:

9 Daniel C. Higgins, Esq.

10 Burns, Day & Presnell, P.A.

11 Post Office Box 10867

12 Raleigh, North Carolina 27608

A P P E A R A N C E S Cont'd:

FOR THE USING AND CONSUMING PUBLIC:

Gina C. Holt, Esq.

William E. H. Creech, Esq.

Public Staff - North Carolina Utilities Commission

4326 Mail Service Center

Raleigh, North Carolina 27699-4300

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E X H I B I T S

IDENTIFIED/ADMITTED

1		
2		
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4	BHIT Perry Cross Examination	25/112
5	Exhibit 7	
6	BHIT Perry Cross Examination	26/112
7	Exhibit 8	
8	Village Perry Direct Redirect	56/113
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1	Confidential Exhibit JLL-3	115/-
2	Confidential Exhibit JLL-4	115/-
3	Confidential Exhibit JLL-5	115/-
4	Confidential Exhibit JLL-6	115/-

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P R O C E E D I N G S

COMMISSIONER DUFFLEY: Good morning, everyone. Let's take care of a few procedural matters before we get started today. I do want to remind all of the parties to please remember to provide the court reporter digital copies of all of the cross and redirect exhibits introduced into evidence each day at email - reporter@NCUC.net, and if you can do that within three days of the introduction of those exhibits, that would be appreciated.

MS. HAWKINS: Thank you. I think regarding the proposed documents for admission into evidence, I think we've reached an agreement as to nine of the documents. We're still discussing the discovery -- the inclusion of the discovery responses. But at this point, we're, I think, in agreement about the operating agreements and other similar documents.

COMMISSIONER DUFFLEY: Okay. And so let's introduce at this time. So it's these first nine?

MS. HAWKINS: First nine, yes.

COMMISSIONER DUFFLEY: First nine that

1 we'll introduce into the record: SVC Pelican
2 Partners, LLC Operating Agreement, Bates number
3 SharpVue 1015-1052 in the amount of 38 pages. The
4 second document, Pelican Legacy Holdings Operating
5 Agreement, SharpVue 831-882, and that consists of
6 52 pages. SharpVue -- the third document is
7 SharpVue Investors Subscription Booklet, Bates
8 number SharpVue 1410-1437. It consists of 28
9 pages. The next document is the Management
10 Agreement, Bates number 1053-1059, consisting of
11 seven pages. The next document is SharpVue Real
12 Estate Partners II AI, LP Agreement, SharpVue
13 1130-1212, consisting of 83 pages. The next
14 document is SharpVue Real Estate Partners II, LP
15 Agreement, and it's Bates number SharpVue
16 1213-1294, consisting of 82 pages. The next
17 document is Pelican Co-invest, LLC Operating
18 Agreement, SharpVue 1060-1107, consisting of 48
19 pages. The next document is Pelican Services, LLC
20 Operating Agreement, SharpVue 1113-1129, consisting
21 of 17 pages. And then the last agreed-upon
22 document is the Shared Services Agreement,
23 SharpVue 1295-1213, consisting of six pages.

24 So are you still working on the

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1 remainder of the documents within this --

2 MS. HAWKINS: Yes.

3 COMMISSIONER DUFFLEY: -- in this piece
4 of paper? So I will let you discuss those. We'll
5 come back and revisit this issue tomorrow.

6 Okay. So it is Thursday morning --

7 MR. FERRELL: Commissioner?

8 COMMISSIONER DUFFLEY: Yes, go ahead.
9 I'm sorry.

10 MR. FERRELL: I just want to make a
11 quick note on the admission of those documents. I
12 just think we should note the admission of Pelican
13 Services, LLC Operating Agreement. That is the
14 predecessor's name. That is now Bald Head Island
15 Ferry Transportation. Again, we talked about that
16 yesterday with the name change, and I thought maybe
17 the record should be clear on that.

18 COMMISSIONER DUFFLEY: So the Pelican
19 Services, LLC Operating Agreement is going to be
20 Bald Head Island?

21 MR. FERRELL: It will. Prior to -- at
22 closing.

23 COMMISSIONER DUFFLEY: Prior to closing.

24 MR. FERRELL: Those changes will be

1 formally made. I just wanted to make sure the
2 record was clear on that.

3 COMMISSIONER DUFFLEY: Give me the name
4 again?

5 MR. FERRELL: It's the Applicant
6 Bald Head Island Ferry Transportation, LLC, yes.

7 COMMISSIONER DUFFLEY: And that will be
8 changed before closing, and that's on the record
9 now.

10 MR. CREECH: Presiding Commissioner
11 Duffley, I have one other comment if I could,
12 please.

13 COMMISSIONER DUFFLEY: Hold on.

14 So all of these are confidential
15 designation?

16 MR. FERRELL: Yes. These are all
17 confidential, attorney's eyes only designations.

18 COMMISSIONER DUFFLEY: Thank you,
19 Mr. Ferrell.

20 Mr. Creech.

21 MR. CREECH: I just want to note not all
22 of these documents are final documents. So they
23 are being introduced, but it's my understanding
24 that at least two of them have not been executed,

1 so I thought we might want to make that clear as
2 well.

3 COMMISSIONER DUFFLEY: So we'll receive
4 these documents into the record at the appropriate
5 time once they're finalized.

6 MR. FERRELL: Okay. So they'll be held
7 out of the record until executed?

8 COMMISSIONER DUFFLEY: Correct. We're
9 going to leave -- we'll leave the record open for
10 the submission of those documents. I believe that
11 we're leaving the record open for some additional
12 documents after the hearing concludes. So we'll
13 leave the record open for the finalization of those
14 documents.

15 MR. FERRELL: If I might, just for point
16 of clarification. Again, we can always have a
17 witness testify to this, but it's my understanding
18 that a lot of these documents will be finalized and
19 executed as part of the closing process of the
20 transaction, and so obviously the closing of the
21 transaction is not going to occur on the
22 transportation assets prior to any ruling from the
23 Commission, so --

24 COMMISSIONER DUFFLEY: Thank you for

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1 that clarification. I'll take it under advisement,
2 and we'll talk about this issue again tomorrow
3 morning.

4 MR. FERRELL: Thank you. I wanted to
5 make sure.

6 COMMISSIONER DUFFLEY: Okay.

7 Mr. Trathen.

8 MR. TRATHEN: My apologies. Two small
9 procedural matters.

10 COMMISSIONER DUFFLEY: Sure.

11 MR. TRATHEN: First housekeeping, I had
12 neglected to seek admission into the record of
13 Mr. Gardner's Exhibit 1 to his direct testimony
14 yesterday. I'd ask that that be admitted into
15 evidence.

16 COMMISSIONER DUFFLEY: Okay. Without
17 objection, the Exhibit 1 to Mr. Gardner's testimony
18 will be received into evidence.

19 (Gardner Exhibit 1 was admitted
20 into evidence.)

21 MR. TRATHEN: His direct testimony.

22 COMMISSIONER DUFFLEY: His direct
23 testimony.
24

1 MR. TRATHEN: And there was one hangover
2 issue. We had asked for judicial notice with
3 respect to the prior testimony of Mr. Roberts in
4 the Sub 21 Docket transcript Volume 3, pages
5 254-312, his testimony on the same issues that
6 we're discussing before this Commission.

7 COMMISSIONER DUFFLEY: I'll hear from
8 you, Mr. Ferrell.

9 MR. FERRELL: Thank you. I guess as a
10 first point, we would have a concern because the
11 witness was not presented or asked any questions
12 about that prior testimony. Certainly, the witness
13 was up for several hours and could have been cross
14 examined if there was something in there that was
15 worth talking about. I went and read the pages
16 that were marked last night, and it's only the
17 cross examination of the Village. None of the
18 other questions to Mr. Roberts in the Sub 21
19 hearing are included in the request, and it's just
20 about primarily the investor presentations, again,
21 which we heard plenty about yesterday. So we would
22 have concerns with admitting it after the witness
23 testified in Direct, number one.

24 And then number two, it's incomplete

1 because Mr. Roberts' testimony starts at the
2 beginning of Volume 3 and then goes into Volume 4.
3 And they just kind of cherry-picked out their
4 cross, but had not included any of the
5 Commissioners' questions and any other lawyer's
6 cross examination questions or any of the direct
7 testimony. And so for those reasons, we would
8 object to the request.

9 COMMISSIONER DUFFLEY: Okay. Thank you,
10 Mr. Ferrell. And I'm going to take this under
11 advisement at this time, and we'll rule at a later
12 time.

13 So now, had -- so it is Thursday
14 morning. I have the witness list here. We are on
15 witness number five and we have 11 witnesses. So
16 just everyone keep that in mind. It's Thursday
17 morning.

18 We can begin.

19 Whereupon,

20 JULIE PERRY,
21 having previously been duly sworn, was examined
22 and testified as follows:

23 CONTINUED CROSS EXAMINATION BY MR. STYERS:

24 Q. Thank you. Let me just start by apologizing

1 for the challenges that I had with my exhibits
2 yesterday and thanking you for your patience during my
3 struggles with them, so I want to start with that
4 today. And I want to make sure the record is clear, so
5 I'd like to take one minute or two with Ms. Perry to
6 make sure that we have the records clear as to what's
7 been admitted as cross examination Exhibits 2-5.

8 You have the exhibits -- the cross
9 examination exhibits that I showed you yesterday,
10 Ms. Perry?

11 A. Yes, I do.

12 Q. And the document labeled BHIT Perry Cross
13 Exhibit 2 is the Commission's final Order in Docket
14 Number A-41 Sub 7; is it not?

15 A. Yes. You called it what? You called it
16 what?

17 Q. Perry Cross Examination Exhibit 2, the
18 Commission's final Order in Docket Number A-41, Sub 7.

19 A. JGP but, yeah. Is that right? I don't want
20 to mess it up.

21 Q. And on page 5 of that document, Finding of
22 Fact 8, references a Stipulation Exhibit A?

23 A. On page 5, Finding of Fact 8?

24 Q. References a Stipulation Exhibit A, correct?

1 A. Yeah.

2 Q. Stipulation Exhibit A has been labeled
3 Perry Cross Examination Exhibit 5; is that correct?

4 A. This is the one without the footnotes, yes.

5 Q. Is that correct?

6 A. Without the footnotes, yes.

7 Q. And then the numbers on that Perry Cross
8 Examination Exhibit 5 come from Jim Hoard late-filed
9 Exhibit 2, Schedule 1, which has been labeled
10 BHIT Perry Cross Examination Exhibit 3?

11 A. Yes.

12 Q. Is that correct?

13 A. That's correct.

14 Q. And the plant in service per company prior to
15 adjustments on that Exhibit 3 is a footnote referencing
16 Mayfield Exhibit 1, Schedule 2; is that correct?

17 A. Yes.

18 Q. Okay. And Mayfield 1, Exhibit 2 has been
19 labeled as BHIT Perry Cross Examination Exhibit 4; is
20 that correct?

21 A. Yes.

22 Q. Pages 2-5 of that Perry Cross Examination
23 Exhibit 4 are the plant in service depreciation expense
24 table that was part of the rate case application?

1 A. Hold on. I'm sorry. Let me put it back in
2 Order. 2-1. Schedule 2-1?

3 Q. Exhibit 1, Schedule 2-1. Pages 2-5 of what's
4 been marked as Perry Exhibit Cross Examination
5 Exhibit 4.

6 A. Yes. The pages aren't numbered but, yeah.

7 Q. They're the plant and depreciation expense
8 table, correct?

9 A. Yes, that's correct.

10 Q. Thank you very much. I just wanted to make
11 sure the record was clear in that regard.

12 The affidavit that was attached to
13 Kevin O'Donnell's testimony has an appendix that cites
14 11 cases, and you've also referenced a 12th
15 case, the Frontier Natural Gas, G-40, Sub 136 Orders
16 12th; is that correct?

17 A. That's correct.

18 Q. Okay. All of those cases are electric or gas
19 industry cases, correct?

20 A. All of those cases have happened in the
21 last 25 years under this Commission, and they're
22 electric and gas cases, yes.

23 Q. I'm just asking, the ones that you've cited
24 here as -- are all gas and electric cases?

1 A. True.

2 Q. All of the acquired companies in those cases
3 were operating regulated utilities with approved rates
4 and rate base, correct?

5 A. The acquiring utility was?

6 Q. The acquired.

7 A. The acquired utility. All of them were
8 regulated not necessarily at a rate case, but all of
9 them were regulated utilities with the CPCN.

10 Q. Correct. And to your knowledge, they all had
11 rates -- they had approved rates prior to the
12 acquisition?

13 A. They had approved rates, but some of them
14 were not set in this Commission, as far as the rate
15 case-type scenario.

16 Q. So your affidavit -- do you have the
17 affidavit in front you, Ms. Perry?

18 A. I can in a second. I do.

19 Q. So your affidavit on page 3 of 5,
20 paragraph 7, do you have it in front of you?

21 A. I do.

22 Q. Three lines from the bottom of that paragraph
23 says, "Commission's past Orders have always included
24 language in regulatory conditions disallowing the

1 recovery of any acquisition premium and other
2 merger-related costs from ratepayers." Is that what
3 your affidavit states?

4 A. That is true. And that's the reason because
5 you have that three-part test that the Commission has
6 given -- I think you guys and the Applicants even
7 listed that out, as far as the Public Staff where
8 there's a three-part test for approving mergers.

9 Q. I'm just asking --

10 A. I know, and yeah, that's one of the reasons
11 why you have to look first at the three-part test for
12 approving mergers, which eventually somebody needs to
13 walk through, and then part of that three-part test is
14 to protect ratepayers, and acquisition premium impact
15 can harm ratepayers in most cases, and so that's why we
16 have excluded that in these cases.

17 Q. Do you have the summary, your summary, of
18 your testimony with you?

19 A. I didn't have to read it, but yeah. Let's
20 see. Yes, I do. Yes, sir.

21 Q. So if you would turn to page 2 of your
22 summary, the first full paragraph there before the
23 paragraph back up at the top of page 2. Your last
24 sentence of that paragraph at the top of page 2 notes

1 that, "Although there may be a few exceptions in the
2 water utility industry, this Commission has
3 consistently disallowed the recovery of acquisition
4 premiums for ratepayers and all other regulated
5 industries." Is that what --

6 A. That is what that says. And that's because,
7 basically, water is completely different. It has the
8 Safe Drinking Water Act. And they have a lot of
9 exceptions, and everyone needs their clean drinking
10 water, but that is true. And we're trying to show that
11 this case has got the merger conditions, everything
12 laid out like every other merger in the case. I mean,
13 you guys have done merger conditions. Public Staff has
14 done merger conditions. And everything is laid out
15 just like these 25 or -- these however many I listed,
16 11, 12 customers. I mean, it's more in line with the
17 traditional mergers that we've seen over the years.

18 Q. I understand your position. I just want to
19 make sure I read your summary correctly.

20 A. That's exactly what it says, yeah.

21 Q. But you do note that it's not always, but
22 there have been a few exceptions? You would agree with
23 that?

24 A. Only in the water industry.

1 Q. So the regulatory principles of ratemaking
2 and the right to earn a reasonable return on investment
3 are the same for all utilities; are they not,
4 Ms. Perry?

5 A. Of course. That's regulation for you.
6 That's ratemaking. You have a monopoly. You have
7 CPCNs. And you're allowed to earn a reasonable ongoing
8 level of typically your original cost assets.

9 Q. And that principle applies to all utilities
10 regardless if they're electric, gas, water, or ferries?
11 You would agree with that for a general principle?

12 A. Of course, but it's got to be a reasonable
13 ongoing level. We were always charged as the Public
14 Staff as keeping the rates as low as possible for the
15 most reasonable level for customers and to provide good
16 service, so I mean, you've got to take all those
17 principles into account.

18 Q. I understand. I distributed to the room
19 yesterday two other exhibits that have not yet been
20 labeled for identification, so I'd like to label those
21 at this time. And Ms. Perry, did I hand up to you the
22 Orders in Docket W-274, Sub 122, and Docket W-1000,
23 Sub 5?

24 A. No. But I know them well. I may as well

1 have them.

2 MR. STYERS: May I approach?

3 COMMISSIONER DUFFLEY: You may.

4 THE WITNESS: Thank you.

5 MR. STYERS: So I'd like --

6 COMMISSIONER DUFFLEY: Mr. Gray [sic],
7 we need one more. Commissioner Brown-Bland, which
8 one do you need?

9 COMMISSIONER BROWN-BLAND: Sub 5.

10 COMMISSIONER DUFFLEY: Sub 122 case.

11 MR. STYERS: Okay. Yes ma'am. May I
12 approach? We were trying to distribute things in
13 advance during the break as directed by the Chair.

14 Okay. And does everyone else have
15 those.

16 COMMISSIONER BROWN-BROWN I don't
17 have the 122.

18 COMMISSIONER DUFFLEY: We need one more.

19 COMMISSIONER MCKISSICK: I think I have
20 two copies of Sub 5.

21 MR. STYERS: So you need the 122 as
22 well?

23 COMMISSIONER HUGHES: I need 122 as
24 well.

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1 COMMISSIONER MCKISSICK: I don't have
2 enough. Thank you, sir.

3 MR. STYERS: And if there are only --
4 and I can certainly distribute more. Again, I was
5 trying to do this during the afternoon break.

6 COMMISSIONER DUFFLEY: Okay. Let's move
7 it along. I think everybody has what they need.

8 MR. STYERS: Okay. Thank you. So the
9 document that is the Order in Docket Number W-274,
10 Sub 122, I'd like to be marked for identification
11 as BHIT Perry Cross Examination Exhibit 7.

12 COMMISSIONER DUFFLEY: The document
13 that's Docket Number W-274, Sub 122, will be
14 identified and marked as Bald Head Island
15 Transportation Perry Cross Number 7.

16 (Bald Head Island Transportation (BHIT)
17 Perry Cross Examination Exhibit 7 was
18 marked for identification.)

19 MR. STYERS: And the document that has
20 at the top "Order Approving Transfer and Denying
21 Acquisition Adjustment" in Docket W-1000, Sub 5, I
22 would ask be marked for identification as BHIT
23 Exhibit Perry Cross Examination Exhibit 8.

24 COMMISSIONER DUFFLEY: Okay. The Order

1 in Docket Number W-1000, Sub 5, will be identified
2 as Bald Head Island Transportation Perry Cross
3 Number 8.

4 (Bald Head Island Transportation (BHIT)
5 Perry Cross Examination Exhibit 8 was
6 marked for identification.)

7 Q. So I'd like to refer you to the W-274,
8 Sub 122, Perry Cross Examination 7 document.

9 A. Sure.

10 Q. This case was not listed in the exhibit to
11 your affidavit, was it Ms. Perry?

12 A. No, because this is -- this is water, and,
13 like I said, there's exceptions in the water industry,
14 but not necessarily what we consider what's relevant in
15 this proceeding.

16 Q. Okay. This case -- having handed out
17 yesterday, you said you were familiar with -- you'd
18 have the chance to review it; is that correct?

19 A. I'm sorry, what?

20 Q. Having handed it out to your counsel
21 yesterday, I think you said earlier you were familiar
22 with this?

23 A. No. I didn't say get it from them. I
24 researched it just because I saw it in your client's

1 testimony.

2 Q. So you're familiar with this Order?

3 A. I'm very familiar with this Order.

4 Q. So would you refer to -- turn to page 11. So
5 the top first full paragraph reads, does it not,
6 "Heater admits that Hardscrabble water system is
7 currently in good condition, requiring little
8 improvement, but argues that this is not a good reason
9 to deny the acquisition adjustment since the long-term
10 viability of the system is significantly improved by
11 the transfer to Heater."

12 Is that what that paragraph reads, Ms. Perry?

13 A. That is. Now there's other language later on
14 that explains that a little further. That really talks
15 about the long-term viability and people buying larger
16 utilities, buying smaller utilities and necessarily --
17 they don't think you just have to buy utilities that's
18 in disrepair, and that's kind of where that's coming
19 from in this case.

20 Q. So the bottom of that same page, the last
21 paragraph, page 11 states, "The Commission concludes
22 that the acquisition is in the best interests of the
23 customers and that Heater should be allowed to make the
24 requested debit acquisition adjustment to rate base

1 after the transfer has been completed."

2 Is that what that sentence reads?

3 A. It is. But there's a lot of other things in
4 this Order that we need to go over that really -- that
5 get to that conclusion.

6 Q. And the last paragraph -- last sentence of
7 that paragraph, "The Commission believes that its
8 decision herein based upon the facts and circumstances
9 presented promotes and serves this position and is in
10 the public interest."

11 A. Yes. I think because they used the
12 three-prong test. Which, I think if you look at the
13 three-pronged test, you've got a one, two, three going
14 on, and you've got the prudent purchase price of the
15 system, you've got the arms-length transaction, and you
16 got the benefits. And in this Order, what they said
17 was -- and they further explained it in the W-1000,
18 Sub 5 Order, but they go on to say in this Order that
19 "the customers have to be in a better situation" -- and
20 this means financially, like money-wise -- "better
21 situation financially after the merger than they were
22 before." In other words, you know, your rates aren't
23 going up. In this case, they did give them the
24 acquisition premium, but they did not allow Carolina

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1 Water -- I mean Heater, or UI now, to roll them into
2 the uniform rates because customer rates would have
3 been impacted and there would have been a negative
4 financial burden on customers. So I think, yes, that's
5 what it says, but there was also some other caveats in
6 this Order, which I think is huge because it actually
7 plays into your case with the benefits, and I haven't
8 seen any quantifiable benefits in this merger. So I
9 like this Order for this reason. Sorry. Just to say.

10 Q. Can I now turn to Perry BHIT Exhibit Perry --
11 excuse me, BHIT Cross Examination Exhibit Perry
12 Number 8, the Order in W-1000, Sub 5, since you just
13 referenced that in your previous answer?

14 A. Sure. I like this Order too.

15 Q. So turn to page 27, please.

16 A. Sure.

17 Q. So the first sentence at the top of page 27
18 reads, "Assuming the appropriateness of adopting a
19 general rule prohibiting the inclusion of acquisition
20 adjustments in rate case in the absence of a showing of
21 special circumstances" --

22 A. I'm sorry. Where are we at? At the top?

23 Q. The top sentence on page 27.

24 A. Sorry. I went down low. Okay.

1 Q. That first sentence on the top of page 27
2 reads, "Assuming the appropriateness of adopting a
3 general rule prohibiting the inclusion of acquisition
4 adjustments in rate base in the absence of a showing of
5 special circumstances justifying a contrary decision,
6 the next question becomes one of identifying the
7 circumstances under which rate base treatment of
8 acquisition adjustments should be deemed proper."

9 Is that what that sentence reads, Ms. Perry?

10 A. Can I just read it one more time? Okay. I'm
11 sorry.

12 Q. Certainly.

13 A. I'm just going to look at it on a
14 case-by-case basis, basically.

15 Q. Exactly. Exactly.

16 A. Got you.

17 Q. Then in the middle of the paragraph, I've
18 tried to highlight and underlined the sentence to make
19 sure you see the sentence starting, "Although the
20 number."

21 Do you see that sentence?

22 A. I do.

23 Q. That sentence reads: "Although the number of
24 relevant considerations seems virtually unlimited, all

1 of them apparently relate to the question of whether
2 the acquiring utility paid too much for the acquired
3 utility and whether the customers of both the acquired
4 and acquiring utilities are better off after the
5 transfer than they were before the time."

6 Is that what that sentence reads? Did I read
7 that correctly, Ms. Perry?

8 A. Right. And it's basically what I just said,
9 was they have to be better off after the merger --
10 after the transfer than before the merger, financially.

11 Q. And, in this context, the Order assumes that
12 there is both an acquired utility and that -- that the
13 acquired entity is also a utility because it talks
14 about the acquired utility is how that sentence reads.
15 Does it not? It uses the term "acquired utility" in
16 that sentence?

17 A. In this case, but we're in this case, so in
18 this case --

19 Q. It refers to an acquired utility is what's
20 referenced in that sentence?

21 A. The acquiring utility page. Well, I think
22 entity utility. Okay. But in this case --

23 Q. It was an acquired utility?

24 A. Acquired. That's saying the person acquiring

1 like in this SharpVue wasn't -- would've been a
2 utility.

3 Q. Then at the end of that paragraph, the
4 Commission highlighted underlined portion and it reads,
5 does it not, "The Commission should refrain from
6 allowing rate base treatment of an acquisition
7 adjustment unless, the purchasing utility establishes
8 by the greater weight of the evidence that the price
9 the purchaser agreed to pay for the acquired utility
10 was prudent, and that both the existing customers of
11 the acquiring utility and the customer of the acquired
12 utility would be better off or at least no worse off
13 than the proposed transfer, including rate base
14 treatment of any acquisition adjustment than would
15 otherwise be the case."

16 It was really verbose, but did I just read
17 that correctly?

18 A. I'm just rereading that because I just had to
19 giggle in the middle of it. Let's see. So you're just
20 trying to highlight utility in all these words
21 basically. Would otherwise be the case but --

22 Q. And this is consistent with your earlier
23 testimony just a few minutes ago, correct?

24 A. Yeah. But Bald Head Island Limited has been

1 deemed a utility from the Commission based on statute,
2 and so SharpVue's jumping into their shoes, and they
3 would, as they keep saying -- they're ultimately a
4 utility. But I think what you're trying to get at is
5 this is all about just utility to utility. But we've
6 had -- Frontier was a -- not a utility bind, you know.
7 We had First Reserve/BlackRock. They bought a utility,
8 you know, that type of thing. So I think you've got to
9 be -- in this case, yes. Utilities are buying a
10 utility. A larger utility is buying little utility.

11 Q. And ultimately as you said a few moments ago,
12 it's ultimately a case-by-case determination based upon
13 the criteria articulated here. You would agree with
14 that?

15 A. That's what the Commission says, but I think
16 they've set it out. We looked, we did our research.
17 Thank goodness for lawyers that can pull this database
18 that I don't have access to anymore. But, you know,
19 this has pretty much been -- their three-pronged test
20 is now the situation for acquisition premiums. But I'm
21 going to reiterate you have to go back to the
22 three-part test for mergers to approve before you even
23 get to the acquisition premium to determine if this
24 merger should even be approved before you can even get

1 to this three-pronged test, which I have issues with
2 that as well. So on the three-prong test, you have
3 your prudent purchase price, which I think there's been
4 issues here that I'm not going to talk about, but I
5 don't know if it's been reevaluated or reaccessed since
6 we had this new Order in 21 come out about the
7 regulation arms-length that's not my area. That's --

8 Q. I'm just asking if I read --

9 A. You know, I'm just telling you that this is
10 what they say on a case-by-case basis. There's an
11 Order concluded that this three-prong test would be
12 done on a case-by-case basis and that there had to be
13 benefits and they had to be quantifiable benefits in
14 Order for it to happen. And no negative impacts to
15 ratepayers at all. So I think that is what the Order
16 says, but it further says the three-prong test will
17 determine the case-by-case. I just have to --

18 Q. I don't disagree with any of that,
19 Ms. Perry.

20 A. I know. I'm just saying. It's true.

21 Q. I just want to understand that this is a
22 case-by-case determination on the facts.

23 A. Right. Using the three-pronged test, yes.

24 Q. So it is your over the last five or six years

1 BHIL has been trying to sell the system to the
2 Authority and you were aware of that. We had meetings
3 to discuss about that, did we not?

4 A. You guys came and -- the Utility came into
5 the Public Staff and said that they were looking at --
6 the first I heard about it was when the Municipal Ferry
7 Authority came to --

8 Q. I'm just asking if that's your understanding.

9 A. That's the first time I heard about it. Then
10 I've read articles -- that's the first time, as a
11 Public Staff person, the first time I heard about them
12 selling it was when the Municipal Ferry Authority was
13 being created.

14 Q. To your knowledge, has BHIL made any
15 significant capital investments in the system over this
16 past five years it's been trying to sell the system?

17 A. Well, you just got to look at rate base from
18 year to year. So I think we have -- I mean, you can
19 look at the --

20 Q. I'm just asking to your knowledge. To your
21 knowledge, have they made any major capital investments
22 in the last five years?

23 A. Well, I'd have to go back and look at my
24 earnings calculation just to see how rate base has gone

1 up. Because you've got some rate base, some assets
2 depreciating out, and you've got things adding in. And
3 I'm not trying to be difficult but I don't have those
4 records in front of me. I used to.

5 Q. I'm just asking from your knowledge in your
6 head. Do you have any knowledge in your head --

7 A. I know that they haven't purchased a ferry
8 boat, but I know there's an engine that came on. So,
9 no -- I mean, I'm looking at the financials from 2021.
10 I've looked at them from '19 and I looked at them in
11 2010.

12 Q. So I'm just asking what you know.
13 Do you know of any major capital investments
14 that have been made in the last five years by BHIL in
15 these systems?

16 A. No.

17 Q. No.

18 A. Into what system? Can you back that question
19 up? Which system? I'm sorry. You have to clarify.
20 All three transportation systems?

21 Q. Yes. To your knowledge, the ferry and tram,
22 the parking, or the barge.

23 A. I don't know. I know they had to do some
24 things with parking with the gravel and all that kind

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1 of mess I think I heard of that in the testimony in
2 the 21 Docket and I think -- I've heard here and there
3 some things, but nothing, you know.

4 Q. Let's turn back to page 4 of your affidavit.
5 At the very top, you state that -- and I'll paraphrase
6 the beginning and then I'll quote that, you know, if
7 they were to not disallow what you characterize as the
8 acquisition premium that, quote -- am I reading this
9 correctly, "That the Commission would be opening up the
10 possibility that rates could increase to a point much
11 higher than what is reasonable and appropriate for
12 these assets and ratepayers would be harmed."

13 Did I read that correctly in your affidavit?

14 A. You did. And, I mean, I calculated the
15 impact of the acquisition premium. And I know Taylor
16 did too. By the way, there's an error in Taylor's
17 calculation. We can talk about that whenever you want
18 to on the taxes. But we do need to -- but you do need
19 to look at impact to customers. So what I found was
20 that when I looked at the acquisition premium and the
21 prices that you have signed, which I know are estimates
22 at this point in time, it made the revenue requirement
23 go higher than it is now, and they're earning 49
24 percent now on the barge and the parking.

1 Q. Do you have with you the calculations that
2 you've made regarding the rate impact if the rate base
3 was the fair market value in \$23 million? Have you
4 done those calculations?

5 A. I took Taylor's and I just sort of did it
6 right beside. I took his, and I corrected them.

7 Q. Do you have that with you?

8 A. I do. Let me see if I can find it. And I
9 don't mean to criticize, because taxes are taxes. And
10 when you do revenue requirement it's not always the
11 easiest thing to do. So Taylor did one --

12 MR. STYERS: May I approach?

13 THE WITNESS: Sure. For parking, and he
14 did one for barge. We just got them last night.
15 You guys are making me do this after I got off the
16 stand.

17 MR. SCHAUER: Commissioner Duffley and
18 Mr. Styers, we do have copies of this material of
19 Taylor's exhibit.

20 If you're going to ask questions, would
21 it be helpful to distribute those copies?

22 MR. STYERS: I could.

23 THE WITNESS: This is his. The green is
24 mine.

1 MR. STYERS: We have copiers I have not
2 planned to introduce them through this witness, but
3 if it would be helpful, I don't have an objection
4 tot that.

5 MR. SCHAUER: Sure. I mean, if you're
6 going to ask questions about it, I think it would
7 be beneficial.

8 MR. STYERS: I was asking questions
9 about Ms. Perry's --

10 COMMISSIONER DUFFLEY: Mr. Gray, let's
11 move it along. If you could distribute the
12 documents, that would be helpful.

13 THE WITNESS: I can just real quickly
14 show him and then you can distribute.

15 MR. STYERS: If I may just ask the
16 witness questions from here.

17 Q. So, in looking at parking, can you tell me
18 what you -- what --

19 A. So it looks like here what the
20 rebuttal -- this is a rebuttal exhibit, I think, from
21 parking -- from Taylor if I can remember this
22 correctly, but he's trying to show that if you give him
23 the -- if the acquisition premium is allowed, then we
24 won't be earning over 49 percent anymore. We'll be

1 back in the overall rate of return which is sort of
2 crazy. So here we go, look in here. You see how he
3 comes in here and he infers the net income from the
4 rate base, the purchase price. He takes the return,
5 right, and he gets an income. And then he assigns --
6 then he calculates interest. Basically, he left off
7 the O&M when he did the revenues to calculate taxes.
8 So taxes are double what they are in this, which makes
9 the revenue requirement higher. And I'm sorry I'm
10 glazing everyone over, but taxes can be kind of crazy.
11 It's a revenue requirement thing.

12 MR. STYERS: Would you have any
13 objection to Ms. Perry's calculations that she's
14 just showed me regarding the parking rate impact as
15 Perry Cross Examination Exhibit 9, and we'll
16 distribute that later?

17 MR. SCHAUER: I have copies of
18 Mr. Taylor's exhibit.

19 COMMISSIONER DUFFLEY: Mr. Gray, we're
20 going off the rails here.

21 MR. STYERS: Okay.

22 COMMISSIONER DUFFLEY: Get back to your
23 motions --

24 MR. STYERS: Okay. All right. Okay.

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1 COMMISSIONER DUFFLEY: -- your motions
2 and questions for the Commissions.

3 MR. STYERS: So -- yes. I will make it
4 very brief. I'll cla- -- I will finish up.

5 THE WITNESS: I'm sorry, and I just
6 calculate things like that because I'm an
7 accountant and that's what we do. And I apologize.

8 Q. The 2010 rate case was settled by stipulation
9 parties, was it not?

10 A. It was. Yes, sir.

11 Q. The settlement established ticket prices less
12 than what Bald Head Island Transportation requested?

13 A. As far as I remember, but yeah.

14 Q. And the rates were less because the
15 agreed-upon revenue requirement was less than
16 requested?

17 A. Obviously.

18 Q. Okay. And the imputation of revenue was one
19 mean by which the revenue requirement was lowered?

20 A. The what-what?

21 Q. The imputation was one way that the revenue
22 requirement was --

23 A. Yeah. There was lots of adjustments but that
24 was one of them, yes.

1 Q. And that resulted in a lower ticket price?

2 A. Along other things but, yeah.

3 Q. And that was needed for that case to settle.
4 And you would agree with that?

5 A. Well, if you did the imputation today, it
6 would be about three times that. But okay.

7 Q. I was trying to ask questions yesterday about
8 the rate case documents you kept referring to
9 imputation of parking earnings?

10 A. Yeah. Right.

11 Q. When I asked you to agree that no Commission
12 approved rates had ever allowed you recovery
13 depreciation, you agreed and you referred to the rate
14 case and the imputation; is that correct?

15 A. That and -- yes, and other things. I mean,
16 there's so many other things in that rate case that
17 were pulled in from, you know, decades ago, but yes.

18 Q. And this has been marked and distributed
19 Bald Head Perry Cross Examination 1?

20 A. Okay. Which one are we at? I'm sorry.

21 Q. The one that was --

22 A. Parking?

23 Q. -- you were asking about the imputation
24 calculating that wasn't my document but you were

1 relying upon the discuss the imputation?

2 A. Okay. I got it back from my attorney. I
3 just got to figure out where I put it. Yes, I have it.
4 Sorry.

5 Q. At the very top of that Perry Cross
6 Examination 1. The first words at the top of that page
7 are "Confidential, for settlement purposes only." Is
8 that the first word at the top of that page?

9 A. That is.

10 Q. And if I turn to page 2, the next page. The
11 very top words are "Confidential, for settlement
12 purposes only."

13 A. That's right. But the Commission, in their
14 Order -- can I just say the Sub 21 mentioned that --
15 asked for specific language in their Order. It said,
16 "Although we know it was for settlement purposes and it
17 was confidential, we are taking it -- it's too big a
18 issue and there's too many things in here that not to
19 take notice of it." So --

20 Q. And the other pages of that Exhibit 1 all are
21 noted that they are for settlement purposes only,
22 correct?

23 A. Sure. Most settlements are done that way
24 with all cases that we have.

1 Q. And I'll refer you back, if I may, to
2 Perry Exhibit Cross Examination 2 which is the Order in
3 the rate case settlement.

4 A. Okay.

5 Q. In A-41, Sub 7.

6 A. No. I'm fine. I just have all this water
7 quarters [phonetic spelling] everywhere. Got it.

8 Q. And turn to page 10, please. And finding 21
9 at the bottom of that page?

10 A. Sure.

11 Q. And that finding states, "The stipulation
12 provided that, except this provided stipulation, the
13 stipulation shall not be considered to allow support,
14 confirm, or provide a basis for Commission regulation
15 for jurisdiction over rates, service, or complaints
16 regarding the parking services provided by BHIL or the
17 assets utilized for those services in this rate case."

18 Is that what that Order states?

19 A. That is what that Order states, yes. I'm
20 answering your question. I'm trying to be better about
21 that, but, you know, you're applicants have already
22 offered the \$523,000 imputation in the case or the 21
23 case or 22 case. So by in that, they're bringing it
24 into this case which the number would be higher if you

1 calculated it in the 2021 basis, but, so yeah. I see
2 that, but I think it's important to note that all of
3 these -- all of these operations have been in
4 regulation since day one.

5 Q. I understand that's your position.

6 A. Well, they've been in service since day one.

7 MR. STYERS: No further questions.

8 MR. FERRELL: No questions.

9 CROSS EXAMINATION BY MR. HIGGINS:

10 Q. Good morning, Ms. Perry. Dan Higgins for the
11 Bald Head Island Club. Look at your Exhibit 5,
12 Cross Examination Exhibit 5, please, which is the
13 Exhibit A document which does not have the footnotes.

14 A. Thank you for that, yeah. Yes, sir.

15 Q. Tell me, please, what the numbers on line
16 number 4 represent.

17 A. Line number 4? The other operating revenues?

18 Q. Yes, ma'am.

19 A. Okay. So that basically includes -- and let
20 me just get my notes so I can exactly give you --
21 because there's quite a few things in there. There is
22 the imputation of the 523,000 in there. There's also a
23 gain on sale of the Indigo Plantation. That's the
24 marina from that -- it's a credit. So there's a lot of

1 different things in this number. But, basically, that
2 represents other income. It reduces the amount of
3 revenue increase that the company needs to request from
4 customers. And I'm going to --

5 Q. So let me ask you a question that might
6 shortcut that.

7 A. Okay.

8 Q. Would the line 4, column B, number of
9 \$771,000 be the imputation of the parking revenue and
10 the gain on sale of Indigo?

11 A. It would be. I think there's one other
12 little piece to it, that is actu- -- but that's the
13 majority of it, yes. Yes, sir.

14 Q. Are you familiar with Mr. O'Donnell's
15 testimony in the Sub 21 Docket?

16 A. I am. Yes, sir.

17 Q. Would you agree that he testified in that
18 docket that in the 2010 rate case the Public Staff
19 developed the revenue imputation from Limited's parking
20 operation which imputation went to the ferry operation
21 based on his evaluation of the parking operation as if
22 it were a regulated asset?

23 A. Yes, sir. They -- the Public Staff went in
24 and looked at the original rate base. They calculated

1 a return on it. They added in the expenses, the
2 depreciation, all of the -- everything we use when we
3 do -- when you guys usually see our NOI, our summary
4 schedules in the regulated world and you see how it's
5 broken out with income statement, the rate base --
6 basically, that's what he did. He went and calculated
7 the revenue requirement and then sort of got a
8 levelized, you know, revenue requirement and then
9 compared it to what they were actually earning at the
10 time in the 2010 timeframe. And the difference -- the
11 excess earnings over what they were earning is what was
12 the imputation.

13 Q. Okay. In calculating the revenue
14 requirement, one of the components would be
15 depreciation, correct?

16 A. Yes, sir.

17 Q. And, to be clear, yesterday Mr. Styers asked
18 you a number of questions about depreciation relating
19 to the parking assets?

20 A. Yes.

21 Q. Was depreciation of the parking assets taken
22 into account by the Public Staff in calculating the
23 excess earnings of a parking operation that were the
24 basis for the imputation?

1 A. Absolutely.

2 MR. HIGGINS: I don't have any other
3 questions. Thank you.

4 COMMISSIONER DUFFLEY: Does the Village
5 have any questions -- or Mr. Creech.

6 CROSS EXAMINATION BY MR. CREECH:

7 Q. I just have one question, if I could. The
8 Hardscrabble case, obviously, has been put before you.

9 One quick question, do you know or would you
10 agree that the applicant in that case originally solved
11 the acquisition adjustment in their initialing filing;
12 do you know?

13 A. In the Hardscrabble case?

14 Q. Yeah.

15 A. Well, they got the acquisition premium in
16 that case.

17 Q. Right. Right.

18 A. I mean, so.

19 Q. But did they request it in their initial
20 filing, do you know?

21 A. I don't know the Order said. Did the Order
22 say?

23 Q. I'd have to take a look at it.

24 A. Well, if you could point me to it, I don't

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1 recall, but I would assume they did. But I think they
2 were looking at if the acquisition premium was, like,
3 \$15,000, and I think the uniform rates of
4 Carolina Water Service were just so much larger, and
5 the per customer rate base -- and that's how they kind
6 of looked at that, was the purchase rate. So it was
7 \$100 versus \$1,500 or something. So the roll-in
8 would've been really, really detrimental to customers
9 for the rates. And so they figured if they gave them
10 this acquisition premium and they based their rates on
11 this \$15,000, the customers are a whole lot better off
12 then if they would have rolled them into Carolina
13 Services and their rates probably would've been five
14 times -- just like in this case, everything is about
15 five or six times what the original cost rate base is.

16 Mr. CREECH: All right. Thank you.

17 COMMISSIONER DUFFLEY: Okay.

18 Mr. Schauer.

19 MR. SCHAUER: Thank you.

20 REDIRECT EXAMINATION BY MR. SCHAUER:

21 Q. I'd like to start with the W-1000, Sub 5 case
22 that you were discussing with Mr. Styers at the end.

23 Do you have that in front of you?

24 A. I do. Can you give me, like, 10 seconds just

1 to get a little organized? There's just a lot of
2 papers that just, kind of, went through my hands.

3 Okay. Yes, sir?

4 Q. On 16 -- page 16 of that decision, do you see
5 the title towards the bottom of the page where it says,
6 This Transfer is in the Public Interest and Should be
7 Approved. NTWS is a Financially-Troubled, but not
8 Operationally-Troubled, Public Utility.

9 A. I do see that.

10 Q. Okay. And so the Commission in this
11 situation decided to approve the transfer because the
12 current system was operationally-troubled, correct?

13 A. Correct. Yes.

14 Q. Okay. Then the Commission ultimately denied
15 the request for an acquisition premium, correct?

16 A. Correct.

17 Q. And that was because they determined that
18 including the acquisition premium would result in an
19 increase in rates for ratepayers, correct?

20 A. That's correct. Yes.

21 Q. Can we look at the other Order Mr. Styers
22 showed you, the W-274, Sub 122 decision?

23 A. Yes, sir.

24 Q. Can you look at page 11, please?

1 A. Yes.

2 Q. The copy that you were given highlights two
3 sentences at the very bottom, the last paragraph.

4 A. Okay.

5 Q. But it doesn't highlight the sentence
6 in-between?

7 A. Right.

8 Q. Can you please read that aloud?

9 A. Sure. "The Commission has articulated a
10 position of encouraging the Orderly transfer of water
11 systems from developers and small owners to reputable
12 water utilities, like Heater, and from reputable water
13 utilities to municipals and other governmental owners."

14 Q. Is that the situation here?

15 A. No, sir.

16 Q. All right.

17 A. No, sir. I think we've seen in most of these
18 Orders that they're -- when there's an exception, it's
19 going from -- we have a smaller utility that really --
20 and they might not be in complete disrepair but they
21 need someone who is experienced that's going to hold
22 them forever, I think is one of the languages in one of
23 the Orders basically said. They know if Heater or
24 Carolina Water Service was to buy them, that they were

1 going to keep them, and they were going to run them
2 right. And they were a mature, you know, smart utility
3 that's in the business of it. And that's kind of what
4 we've seen.

5 Q. All right. And a decision that you and
6 counsel for BHIL discussed -- that we don't have a copy
7 of -- was the I believe, the BlackRock/First Reserve
8 acquisition?

9 A. Yes.

10 Q. Are you familiar with that transfer
11 proceeding?

12 A. Only way too familiar.

13 Q. You -- I believe you cited that as a
14 representative example of why an acquisition premium
15 should be denied.

16 Can you elaborate on that answer that you
17 provided to Mr. Styers?

18 A. Sure. In that case, it was the first case
19 we'd had where a private equity firm was coming in to
20 buy. Before then, they'd always been publically-traded
21 companies come in to buy. Frontier, you know, they've
22 been -- they've changed hands a number of times.
23 There's a history there. And so, in this case, the --
24 it was an out-of-state company coming in and they were,

1 like, they saw that there had been impairment
2 write-downs, negative acquisition premiums because
3 Sempra had built this system, hundreds of billions of
4 dollars of systems and they couldn't sell it. They
5 wanted to get rid of it. They realized, oh, gosh,
6 we're not in the business of gas. We need to get out
7 of the gas business. And they couldn't sell it. And
8 so they ended up selling it for pennies of the dollar.
9 Okay. Really.

10 So what happened was -- and then it was sold
11 again and that company wanted to come in and recapture
12 the impairment write-downs and negative acquisition
13 premiums and probably even the acquisition premium in
14 this case. And, actually, they asked if they could
15 hold it to the next rate case. Well, as everyone
16 knows, we have not had a Frontier rate case. So I
17 think what we found, and the Public Staff found, was
18 that it would -- the harm to customers would be
19 immeasurable. The rate pays would've been 5 times what
20 it was. There was no way that the customers could
21 sustain those rates. It wasn't good. And so we held
22 ground and said we're not going to approve the merger
23 if you give them the acquisition premium or even leave
24 it open to the possibility. Because these merger

1 conditions, merger policies of the Commission are
2 potential risk and potential harm. It doesn't have to
3 be harm that's today. It could be what if. So, you
4 know, so you got to make sure that your benefits
5 outweigh the potential harm.

6 And, in this case, most regulated utilities
7 most -- and also now, private equity firms that come in
8 know that the acquisition premium is one of the things
9 that's going to cause rates to can go up. They don't
10 ask for it. We don't even have to settle with them.
11 They just come in and say, "We're not trying to get
12 this. We're not trying to get the merger, you know,
13 cost." And that's how it plays out in these mergers.
14 So that case was very interesting because there was a
15 fight internally about the rate base. That's where the
16 rate base language came, in that case. We,
17 typically -- I think the Public Staff said, well, a
18 difference between Duke and Piedmont is there's no rate
19 base language. That's because nobody was fighting the
20 acquisition premium. And I think -- so when you're
21 looking at that, you have to make sure you're covering
22 your bases and that everything is going to be on the
23 right page. So that was an important case for us. I
24 mean, it was new. It was a private equity firm. They

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1 said they were going to hold them for 10 years. They
2 held them for 3. You know, so, you know, we -- but
3 we're learning. And it's just all learning. And I
4 think they did well while they had them, and then they
5 sold them. And so, it's just an important case to look
6 at, as far as, you can't go back and get what it was
7 paid for if it's not the original cost rate base in
8 providing service.

9 Q. Right. And consistent with the Public
10 Staff's position in the Frontier acquisition, the
11 Public Staff opposes an acquisition premium in this
12 transfer as well, correct?

13 A. Say that one more time.

14 Q. The Public Staff opposes an acquisition
15 premium in this transfer --

16 A. Yes, they do.

17 Q. -- just like they did in the Frontier case?

18 A. Yes. I thought the Public Staff did a great
19 job with their conditions. I could add some -- I love
20 to edit things. I could edit a few more, but it was
21 all good.

22 MR. SCHAUER: Commissioner Duffley, I
23 have 3 exhibits I'd like to hand out that relates
24 to the document that Ms. Perry was discussing with

1 Mr. Styers, so that document is available for the
2 Commissioners and for the record.

3 COMMISSIONER DUFFLEY: Okay. You may
4 pass them out.

5 MR. SCHAUER: Thank you.

6 Commissioner Duffley, while these are
7 being handed out, may I suggest labels for the
8 exhibits? The document that, I guess, I'd say is
9 in portrait form --

10 COMMISSIONER DUFFLEY: Okay.

11 MR. SCHAUER: -- with -- at the top
12 says, "Comparison of Rate Base," and then the first
13 line item is Parking Facilities Net Operating
14 Income. If we could label that as Village Perry
15 Direct Redirect Exhibit 1.

16 All right. Then there's a landscape --

17 COMMISSIONER DUFFLEY: That's so
18 identified.

19 (Village Perry Direct Redirect
20 Examination Exhibit 1 was marked for
21 identification.)

22 MR. SCHAUER: Thank you. There's a
23 landscape version that's very similar, but instead
24 of line 1 dealing with parking, it talks about

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1 Barge Net Operating Income. And so it's a similar
2 calculation, just applies to the barge. If we
3 could label that as Village Perry Direct Redirect
4 Exhibit 2, please.

5 COMMISSIONER DUFFLEY: It'll be so
6 identified.

7 (Village Perry Direct Redirect
8 Examination Exhibit 2 was marked for
9 identification.)

10 MR. SCHAUER: Thank you. And the third
11 document that has highlighting on it, which we'll
12 explain, but it's excerpts from the prior two
13 documents, if we can label this as Village Perry
14 Direct Redirect Exhibit 3, please.

15 COMMISSIONER DUFFLEY: That document is
16 so identified.

17 (Village Perry Direct Redirect
18 Examination Exhibit 3 was marked for
19 identification.)

20 MR. SCHAUER: Thank you.

21 Q. Ms. Perry, Mr. Styers and you were looking at
22 a document and I believe that was a version of -- we'll
23 start with Exhibit 1, which is the parking rate base
24 calculations.

1 Do you have that in front of you?

2 A. I do.

3 Q. Have you seen this document before?

4 A. I did. I think it was a rebuttal exhibit for
5 Taylor. Is that somehow -- is that one? Yeah. I have
6 seen it before.

7 Q. Was it provided by the Applicants?

8 A. Yes.

9 Q. Okay. And are you familiar with this
10 document?

11 A. I am.

12 Q. All right. Can we also look at Exhibit 2
13 which is the same calculations, but for the barge rate
14 base.

15 Do you have that document in front of you?

16 A. I do, yes.

17 Q. Have you seen this document as well?

18 A. Last night, yes.

19 Q. Was this provided by Applicants?

20 A. Yes, sir.

21 Q. And what is your understanding of what these
22 two documents are, which are Exhibit 1 and Exhibit 2?

23 A. So what I'm believing these to be is that
24 Taylor was trying to calculate revenue requirement to

1 show that, if they were able to get the acquisition
2 premium -- or they say purchase price as their rate
3 base, but acquisition premium -- in this case, that
4 they would -- they calculated their earnings, they
5 inferred a bunch of -- they took their current net
6 income, they backed in the overall -- they divided by
7 the overall rate of return in last rate case for Bald
8 Head Transportation, and came up with a rate base and
9 they looked a purchase price and they calculated the
10 revenue requirement. And they're basically trying to
11 say that if they calculate on the new purchase price
12 numbers, that their revenues would be less than they
13 are now. And I'm assuming that they're going to come
14 up here in about a day and a -- or tomorrow and say
15 that they're benefiting the customers because the rates
16 would be less -- is what I was reading into this --
17 these documents. And it does so for barge and for
18 parking.

19 Q. Ms. Perry, to move things along. I'm sorry.
20 The testimony you provided in response to some of
21 Mr. Styers' questions was that you identified an error
22 in this calculation, correct?

23 A. Yes, sir.

24 Q. Okay. Can you look at Exhibit 3, please?

1 A. Yes, sir.

2 Q. All right. To acquaint everyone with
3 Exhibit 3 and its relationship to Exhibit 1 and 2, the
4 top section where it says, "Inferred Parking Revenue
5 Requirement," and it has lines 6 through 14.

6 Do you see how -- with the exception of some
7 of the highlighted areas -- that matches Exhibit 1,
8 lines 6 through 14?

9 A. Yes, sir.

10 Q. All right. And then the second section on
11 Exhibit 3, where it says, "Barge Revenue Requirement,"
12 lines 6 through 14, do you see how that matches
13 Exhibit 2 where it says, "Inferred Barge Revenue
14 Requirement," lines 6 through 14, again, with
15 exceptions of the highlighting, which we'll talk about
16 in a second?

17 A. Yes, sir.

18 Q. Okay. Focusing on Exhibit 3 --

19 A. Okay.

20 Q. -- and the inferred parking revenue
21 requirement, am I correct that between lines 8 and 9,
22 there's an addition to the calculation on what you
23 identified is that the 2021 operating expenses,
24 excluding income taxes, needed to be added to the

1 calculation in order to correctly determine the amount
2 of income that needed to be taxed?

3 A. Yes, sir.

4 Q. And when you added that number, it increased
5 the taxes?

6 A. Yes, probably doubled it.

7 Q. Okay. And as a result of that, what happened
8 to the inferred parking revenue requirement?

9 A. So in both of these instances when -- you
10 know, when you're calculating a revenue requirement,
11 it's basically rate base times return, plus your
12 expenses and depreciation, plus taxes. That's just our
13 little real quick and dirty little calculation, but it
14 works. So if you look here, what we needed to add
15 in -- they didn't have the income to cover the O&M when
16 they calculated the taxes in this calculation. So it
17 -- and, actually, if you look at the 2021 barge
18 revenues for instance, which are in excess of earning
19 in the 40 percent at this point -- this new purchase
20 price will actually end up being the \$4 million range,
21 because taxes basically doubled when you had to add in
22 the expenses -- the revenue to cover the expenses.
23 Same thing with parking and barge. That was parking.
24 I'm sorry.

1 Q. So --

2 A. Yes.

3 Q. If I could just reiterate that testimony to
4 make it clear. So, in other words, what you did in the
5 highlighted sections, the area you identified, is it
6 should be inferred net income, which is line 8?

7 A. Yes.

8 Q. Then you add operating expenses?

9 A. Right.

10 Q. And then you subtract interest expense and
11 that gives you the income subject to tax?

12 A. Yes, sir.

13 Q. And Mr. Taylor's calculation omitted the
14 addition of operating expenses?

15 A. Right. Yes, sir.

16 Q. And as a result of your correction, it shows
17 that the revenue requirement for the parking would
18 increase, correct?

19 A. That is correct.

20 Q. And I note an error on Exhibit 3. Below line
21 14 it says, "2021 Barge Revenues," that should say
22 parking revenues.

23 A. That's where I got the --

24 Q. Sorry.

1 A. That's okay.

2 Q. And then the same correction needed to be
3 made on the lower part to the barge revenue
4 requirement, correct?

5 A. True.

6 Q. And that also showed that the inferred
7 revenue requirement, if you included the acquisition
8 premium, would be greater than the 2021 barge revenues,
9 correct?

10 A. That is correct. And keep in mind, they're
11 earning in the 40 percent range right now. So that
12 would even be higher.

13 Q. And then, in addition to these two increases
14 in rates, if you were to calculate the rate base of the
15 parking -- I'm sorry -- if you were to calculate the
16 revenue requirement for parking based on rate base, you
17 would therefore remove the imputation of parking
18 revenue to the ferry, correct?

19 A. So what ha- --

20 Q. It would no longer be needed?

21 A. Right. So if the company came in here and
22 got this acquisition premium or whatever the purchase
23 price, you know, they could come into the next rate
24 case and go, "We're no longer over earning. So guess

1 what, parking, you don't get any money." Therefore,
2 the ferry rates are going to go up. Plus, I think they
3 might go up with all these leases I keep hearing about,
4 but that's another story.

5 Q. Right. But the ferry rates are currently
6 based on an attribution of revenue from parking that
7 goes to the ferry and that results in a lower rate
8 charge for the ferry?

9 A. That lowered rates. It was the excess
10 earnings, yes.

11 Q. And if you were to calculate revenues based
12 on rate base for all three operations, that transfer of
13 money would be removed and rates would increase for the
14 ferry; is that your understanding?

15 A. If you didn't have the imputation, yes. And
16 if you did this. Because they can say, "We are now
17 earning our overall rate of return because we got the
18 acquisition premium. Yay. And parking doesn't deserve
19 any more excess earnings." And so then, yeah, ferry
20 rates would jump up. And I think that's the whole
21 point. These mergers -- before you even get to these
22 acquisition premiums, you've got to look and see if
23 it's in the best interest of the customers. And that's
24 all we're trying to do here, so.

1 MR. SCHAUER: Right. Thank you. No
2 further questions.

3 COMMISSIONER DUFFLEY: Okay. Commission
4 questions? Chair Mitchell.

5 EXAMINATION BY CHAIR MITCHELL:

6 Q. Ms. Perry, just sticking with this redirect
7 exhibit you've just been talking about, Number 3,
8 Exhibit Number 3. Just help me understand why -- why
9 does the 2021 operating expenses excluding income taxes
10 occur on line 13 as well?

11 A. We didn't pick it up. So that was their
12 number. So we -- what my attorney was trying to do was
13 just copy out of theirs. So if you look at the actual
14 formula for the inferred -- you know, basically for the
15 inferred let's go back to my thing. Rate base, times
16 return, plus expenses, plus taxes. So some of those
17 middle lines are just to calculate the income taxes.
18 So if you go in and actually look, the 1.61, for
19 instance, for barge or for parking, the \$4 million,
20 you're picking up the return -- the net offering income
21 for return which is the 1.9 the 1.4, and then you're
22 picking up the taxes which is 605 to come up with your
23 404 number.

24 Do you see what I mean?

1 Q. Okay.

2 A. So I think the reason -- the reason they are
3 not highlighted that way -- and I am so sorry that, you
4 know, Excel is Excel. You can't see the formulas this
5 way, but if you do the math I promise you it was --
6 it's that -- it's just return. It's revenues, plus
7 expenses, plus taxes.

8 Q. So what I'm understanding is that operating
9 expenses excluding income taxes isn't double counted
10 for purposes of?

11 A. No. No. That was theirs.

12 Q. Okay.

13 A. So they went in and just did the return on
14 rate base which is the revenues. And then they removed
15 the interest and then they calculated taxes. And then
16 they went back afterwards and added taxes -- I mean the
17 expenses in to cover revenue requirement, but they
18 didn't factor the expenses in when they calculated the
19 income before taxes before tax to apply tax rates to.

20 Q. Okay. Got it.

21 A. I'm sorry. I know taxes can blur everybody's
22 brains here, but I'm --

23 Q. Thank you. Okay. I want to talk some about
24 your affidavit. I just want to make sure I understand

1 correctly --

2 A. Sure.

3 Q. -- what your -- your numbers. I know you
4 amended them yesterday. So --

5 A. Yeah. Let me get it.

6 Q. And this -- we may have to go into
7 confidential session on these questions. So I don't
8 know if you want to see other Commissioner have
9 questions that are not confidential.

10 COMMISSIONER DUFFLEY: Do other
11 Commissioners have nonconfidential questions?
12 Commissioner Clodfelter.

13 EXAMINATION BY COMMISSIONER CLODFELTER:

14 Q. Ms. Perry, I think this is nonconfidential.
15 My recollection is that you were asked about BHIT Cross
16 Examination Exhibit 3 in nonconfidential session.

17 Mr. Styers, can you confirm that? That's the
18 exhibit I want to ask you about.

19 THE WITNESS: Okay. Yes. I'm sorry. I
20 don't have them memorized. Okay. Yes, sir.

21 Q. This was yesterday afternoon and you've been
22 through a lot since then, so I just want to be sure I'm
23 understanding correctly.

24 A. Okay.

1 Q. I recall your testimony, I understand what
2 you were talking about under line 4 and the column
3 titled "Settlement adjustments."

4 A. Ys.

5 Q. I recall your testimony about that. You also
6 provided some testimony about line 17 the item -- the
7 amount listed in the column titled, "Settlement
8 adjustments." And I'm not really sure I clearly heard
9 what your explanation was for that settlement
10 adjustment.

11 A. Okay. Sure.

12 Q. If you will walk me through it so I've got
13 it?

14 A. No problem. And I think the exhibits are --
15 I've got the exhibits, but we can always make those
16 available for you too. So the plant adjustment
17 incorporates -- and that's actually the -- let me go
18 back here. This is this one. So, yeah. So what
19 happened here was there was two adjustments plus some
20 cash, working capital sort of things that go along with
21 the formula approach to when things change. But the
22 Bald Head Island terminal was the biggest one in this
23 one. So they started out as Mr. Styers shows me that
24 they had a \$6 million plant --

1 Q. Slow down for a minute.

2 A. Okay.

3 Q. I need to take it in pieces.

4 A. Yes, I'm so sorry.

5 Q. If you'll -- I apologize for my interruption.

6 A. Yeah.

7 Q. I have to break it in pieces.

8 A. Okay.

9 Q. And you got it all integrated --

10 A. I'm sorry.

11 Q. -- very tightly together. So back up in
12 line 4, we were talking about an adjustment that was
13 really derived from Indigo Plantation property
14 disposition, right?

15 A. Line 4?

16 Q. Line 4, that adjustment. In part -- excuse
17 me -- in part, you were explaining that that number was
18 derived in part from Indigo Plantation?

19 A. That's the part when there's a gain on the
20 sale.

21 Q. Right. But it relates to the Indigo
22 Plantation?

23 A. Indigo Plantation, yes.

24 Q. So no we move down to line 17. We're now

1 talking about --

2 A. The Bald Head terminal.

3 Q. -- the Bald Head terminal?

4 A. Yes.

5 Q. Okay. I go that piece now. Go ahead.

6 A. Okay. I'm so sorry. So yeah, so then in the
7 rate base piece of it, not the -- that was the income
8 piece. On the rate base side of it, there are two
9 adjustments. One is just an update for plant items,
10 you know, different -- you know, they do along the
11 course, as far as they update plants. That's just the
12 normal thing. The biggest one is the \$616,000 plant
13 adjustment where the Public Staff went in and
14 determined that the lease -- the operating lease that
15 they had between Limited and Transportation, it was
16 more because of how the assets are used and how they're
17 used in the operation for providing service. I mean,
18 that literally, if you've been there, and I have a
19 million times, you know, that terminal on the island
20 was built just for that ferry. To get everybody off.
21 To get everybody on. To get the luggage on. Get
22 everybody picked up, people waiting. And so that --
23 the Public Staff said that they needed to be in rate
24 base not as a lease. Okay? And so they imputed the

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1 island terminal into rate base at original cost. And
2 they removed the lease amount and they removed the
3 lease dollars. It was a two-for-one thing but --

4 Q. So the amount listed here is \$636,380, and
5 how much of that adjustment was based upon what you
6 just described?

7 A. \$616,186.

8 COMMISSIONER CLODFELTER: Okay. Thank
9 you, Ms. Perry. That's all.

10 COMMISSIONER DUFFLEY: Commissioner
11 Kemerait.

12 EXAMINATION BY COMMISSIONER KEMERAIT:

13 Q. Good morning, Ms. Perry. I have a couple of
14 questions. The first one relates to --

15 COMMISSIONER DUFFLEY: We're getting
16 some feedback. Maybe I don't know if someone's mic
17 is on. Maybe turn the mic -- did their mic stay
18 on?

19 Okay. Try again.

20 Q. Okay. Ms. Perry, I've got a couple of
21 questions. The first one relates to page 7 of
22 Mr. O'Donnell's testimony that you adopted.

23 A. Okay. I'm sorry if you give me one second.
24 Paper everywhere. Okay. Yes, ma'am.

1 Q. And the question is, can you provide an
2 example that illustrate this concern? And then the
3 last sentence says, "To avoid situations like this, the
4 Commission is typically only allowed the original cost
5 of plant investment, less depreciation, or the net book
6 value for purchases of regulated or nonregulated
7 assets."

8 Do you have any examples of those
9 nonregulated assets that's referred to in that
10 sentence?

11 A. Well, I think --

12 Q. Or I should say, can you explain?

13 A. Yeah, what he's saying?

14 Q. Give some context to this statement about
15 nonregulated assets?

16 A. Okay. So I'm not exactly sure what -- I got
17 to read what he said before. If you give me one
18 second. I've just got to put this in context. I think
19 what they're saying and it sort of happened here.
20 Regardless of if it's held by a nonregulated affiliate,
21 it's still an affiliate. You have to look at the
22 affiliate transaction transfer price and rules. But,
23 like in this case with the Indigo Plantation, they
24 transferred it to a nonregulated utility, right, but at

1 original cost. Because they kept the original cost.
2 And I think there's some Orders out there that say,
3 "Once it's in original cost, wherever it goes it stays
4 original cost." And so that's how I interpret that
5 statement. As far as that goes, we have many, many
6 cases with all the Duke and Piedmonts where, if you're
7 going to transfer assets from regulated utility to
8 nonregulated utility, you know, the original cost
9 stays. And, you know, we were trained in these
10 regulatory -- whatever, you know, proceedings -- not
11 proceedings, but conferences with, like, Deloitte &
12 Touche. They would say, you know, when that asset goes
13 into service, public service -- it doesn't have to be
14 utility service, public service it's original cost and
15 when it transfers to whatever entity, whether it be
16 regulated or nonregulated, the original cost stays with
17 it. And that's kind of what I'm going for there.

18 Q. Okay. Thank you. That's helpful. And I
19 have got a couple questions related to what Mr. Styers
20 asked you yesterday.

21 A. Sure. Okay.

22 Q. And I'm going to ask these same questions to
23 the Public Staff and to the Applicant so this will give
24 them notice about what I'm -- what information I'll be

1 looking for.

2 A. No fair.

3 Q. And it's related to the methodology of
4 determining the rate base, not about the acquisition
5 adjustment. That's a separate issue.

6 A. The methodology?

7 Q. Methodology for the rate base.

8 A. Sure.

9 Q. And I think the applicant's position is that
10 this is a unique situation that we don't have an
11 example of how the Commission has handled the situation
12 in the past. And Mr. Styers asked you yesterday about
13 a scenario, but your answer was you don't know how this
14 was handled. But his question was about your opinion
15 about the methodology for the rate base when, for
16 example, Duke would buy a power plant from an
17 independent power producer. And you said that was --
18 you did not deal with that. So you did not have an
19 opinion on that.

20 A. Can I caveat and say they are IRP
21 proceedings. And this stuff has gotten too
22 complicated, so when you start talking about
23 transmission assets and this and that -- I mean, there
24 is a whole host of different proceedings that you guys

1 sit in these hearing rooms and listen about. And,
2 honestly, I just didn't -- there's so many moving
3 parts. I didn't intend to say I didn't know how to
4 handle rate base treatment, but I think with that
5 specific example, there are so many different things
6 out there.

7 Q. Right.

8 A. That's kind of what I was saying.

9 Q. Right. Understood and so you did not have an
10 opinion about that.

11 A. Yeah.

12 Q. I have two other scenarios -- and I will be
13 asking the other witnesses about -- to see if they have
14 an opinion about that hypothetical scenario. But, two
15 other hypothetical scenarios. I want to see if you
16 have an opinion on how the Commission has handled rate
17 base in these situations. For example, if a
18 municipality or a water or wastewater authority
19 transferred a system to a regulated water or wastewater
20 public utility, how does the Commission determine the
21 rate base for those transferred assets that come from a
22 municipality or a water or wastewater provider?

23 A. Original cost. Original cost.

24 Q. And do you have any examples of dockets off

1 the top of your head in which that has happened?

2 A. Well, okay, so. Every docket that you --
3 every transfer that you get -- and I think I walked
4 through our 1-17 yesterday saying, you got to provide
5 your original cost, you got to provide your purchase
6 price, you know, that type of thing. So every docket's
7 got the original cost in it, as far as what it is.
8 But, I mean, unless you're getting an acquisition
9 premium, you're always transferring at original cost.
10 There's no -- so, I mean, every docket, really, has got
11 just original cost in the transfer unless there's an
12 acquisition. Coming from a municipal, it would be an
13 original cost. It's very usual that if they take it
14 over, it's going to be at original cost. Now, if the
15 acquisition premium is something that's out there,
16 that's a separate decision. But, these are all
17 transferred. I don't think you -- this purchase price
18 versus fair market price, which was kind of discussed
19 yesterday, I don't even think that's a thing for --

20 Q. And let me give you another example.

21 A. Okay.

22 Q. So thank you for that information. Another
23 example would be if a developer constructs a water or
24 wastewater system and then transfers that system --

1 sells and transfers that system to a regulated water or
2 wastewater company, how is the rate base determined in
3 that instance, and then, along with that question, does
4 the Commission require developers to contribute any
5 portion of the value of those assets? How is that
6 situation handled in regard to the rate base?

7 A. Well, now this is my new consulting business
8 that we're talking about. So really, it's a contract.
9 A lot of that's going to be contractual. Okay. At the
10 very beginning, you're going to look at the tap fees.
11 You're going to look at the contribution. Some
12 developers are like, "I'm done. Here you can just have
13 it," so you're rate base is zero. Okay. You can
14 have -- most of them are going to say here's what I
15 have in it, and even if they buy it, we're going to do
16 it at original cost. I mean, original cost is the day
17 that it was placed in service for public service. I
18 mean, that's what Deloitte & Touche taught us in our
19 little, you know, ratemaking 101 sessions. And then,
20 if you transfer it, you transfer it at original cost.
21 The contributions, that type of thing that's all going
22 to be in a contract. And oh, Chuck Junis would
23 probably just ream me if I said this wrong, but I
24 think, you know, the tap fees, all that type of stuff,

1 those are water. And there's a lot of that that goes
2 on with that. But, in this case, you know, the
3 Mitchells are the first owners. The Mitchells are the
4 only owners.

5 Q. Yeah, so my specific question about that is,
6 does the Commission ever require contribution from the
7 developers? Is there a policy or a rule? Or is there
8 a -- in which the va- -- some portion of the value has
9 to be contributed during the transfer?

10 A. I don't think -- I've never heard of a rule
11 or a statute from this Commission that requires anyone
12 to impute contributions unless it's in a contract
13 between the parties that built the system.

14 COMMISSIONER KEMERAIT: Okay. Okay.

15 That's helpful. Thank you. And I'm going to be
16 asking the same questions to the other witnesses as
17 well.

18 EXAMINATION BY COMMISSIONER DUFFLEY:

19 Q. So I have a follow-up to that, and we're
20 getting close to our morning break. But let's take the
21 example, we keep talking about utility assets versus
22 nonutility assets?

23 A. Yeah. Okay.

24 Q. And so would -- let's say that,

1 hypothetically, the appellate courts come back and say
2 the parking is not a utility asset.

3 A. Okay.

4 Q. How does that change -- change your opinion
5 on this acquisition premium?

6 A. Well, just to back up, typically, in all the
7 cases that I've ever worked on and there's a lot. It's
8 always the total acquisition premium, you know, in our
9 cases. If you look at -- if you read those Orders, we
10 actually provided the data request response to the
11 company with the actual language in there. That might
12 be helpful. For each one of those 11 or 12 Orders.
13 And it basically is saying all of the acquisition
14 premiums. Now, there's always going to be regulated
15 assets and nonregulated assets in every transfer
16 merger, typically. I mean, the Dukes, the Piedmonts,
17 this case, in general. There's always both assets.
18 And whenever we have put it in testimony, or the
19 company comes in on the application, it's the total
20 acquisition premium. Okay. So in this case, it really
21 shouldn't matter because, you know, acquisition
22 premiums are acquisition premiums. In this case,
23 SharpVue did an estimate of what they signed their
24 purchase price to be which was, you know, parking,

1 barge, and the ferry. They did less for the ferry and
2 more for parking and barge. And that's great that they
3 were able to do it. There's also another piece of the
4 acquisition premium sitting out there, but since I
5 didn't have a balance sheet for Limited, I couldn't
6 figure out what it was, so I couldn't really put that
7 in my chart. And so for acquisition premium, I don't
8 think it matters. I don't think that you would -- you
9 would, whether it's regulated or unregulated, you
10 should not get it, period. So that's where we stand.

11 Q. Okay. Another hypothetical. We heard
12 testimony yesterday about how their ridership is going
13 to increase, and more houses are going to be built on
14 Bald Head Island. And let's say that, you know,
15 there's a piece of land nearby, across the street from
16 the back parking lot, if whatever entity owns -- BHIT
17 or BHIL -- bought that piece of land to develop it for
18 parking lot, what would it be?

19 A. So right now, it's in the parking assets.
20 It's land that's in the parking assets and they're
21 going to trans- --

22 Q. No. Let's say that they purchased it before
23 closing. Let's say Bald Head Island Limited purchased
24 this property -- purchased additional property, they

1 don't own now.

2 A. It's not in the case?

3 Q. Not in the case.

4 A. Okay.

5 Q. Just, hypothetically, they go out and
6 purchase additional land before the closing?

7 A. Okay.

8 Q. And they modify the closing price a little
9 bit. How -- what would you say that would be? Would
10 that be original cost? Or would it be purchase price?

11 A. So you -- okay. I'm doing this in my head.
12 I'm visualizing.

13 Q. It's part -- and let's just hypothetically
14 assume there's a parking lot right on it. There's
15 parking spaces, they don't have to develop it. They've
16 just purchased additional parking.

17 A. Okay. So right now, what we're talking about
18 right now. It's not in any of the property that we're
19 talking about right now.

20 Q. No. This is a hypothetical.

21 A. Have we closed on the merger yet?

22 Q. No. So we're changing everything. They
23 buy -- they buy a new parking lot --

24 A. Right.

1 Q. -- during this pendency and it's, I don't
2 know --

3 A. Whose "they"?

4 Q. So Bald Head Island Limited --

5 A. Limited, okay.

6 Q. -- purchases a \$1 million parking lot?

7 A. Okay.

8 Q. And then they change the purchase price. And
9 doesn't matter what the purchase price is.

10 A. Yeah.

11 Q. But what would you say should be transferred?
12 Is it original cost?

13 A. Well, it's not part of the merger at this
14 point, because it happened outside of this proceeding
15 at this point because right now it's not part of the
16 assets that are listed from what I can imagine. And
17 then, if you did buy it and then you turned around and
18 sold it again. I mean, I assume it's going to be in a
19 nonregulated entity at that point in time, and it's not
20 providing ferry transportation or parking services,
21 from what you said. So, I mean, it would just be a
22 nonregulated transaction. Just like I think these
23 developers, they've got property on the island and that
24 type of thing so. So what we're trying -- what the

1 acquisition premium language says is it will not impact
2 the rates. It's not that you can't do it. Not that
3 you can't sell this for a nice little profit. You can.
4 Sell your land and make your profits in a couple of
5 years or whatever you're doing. But it's not going to
6 affect Bald Head Transportation rates. It's not going
7 to affect parking rates. And it's not going to affect
8 barge rates. And that's where it comes down to it is
9 that you're not going to affect the customers' rates
10 with that acquisition premium. In other words, you can
11 have an acquisition premiums on your books. Everybody
12 does. Duke, Piedmont, Public, you know. They all have
13 acquisition premiums on their books, but they're not
14 allocating them to the actually regulated utility and
15 recovering them through rates.

16 Did that help? Did it help?

17 Q. That did help me.

18 A. Okay.

19 Q. So back on page 7.

20 A. Of?

21 Q. Of O'Donnell's.

22 A. Thank you. Yes, ma'am.

23 Q. So lines 6 through 9, it says, "Placing
24 assets in rate base at market value would essentially

1 turn the keys to regulation of utility rates to
2 arbitrage specialists that would buy and sell assets on
3 an endless basis and force consumers to pay higher and
4 higher rates for assets for which they have already
5 paid."

6 Does this -- do you agree that this statement
7 assumes no action by the Utility Commission to
8 determine just and reasonable rates?

9 A. I think he's -- I think you always have
10 authority to -- and I don't write the same way Kevin
11 does. I'm going to caveat that, again. But I think
12 that what they're saying is, if a company comes in and
13 they are, you know, trying -- getting their acquisition
14 premium and that this Commission would approve it -- I
15 think is what he's saying. That leads open to future
16 people to come and go, "Oh, we're going to come and get
17 ours. Oh, we're going to come and get ours. We're
18 going to come and get ours." Or, you know, things can
19 be bought and sold and then the ratepayers are left
20 going, wait a minute, you know, how much can this asset
21 go up just because the market prices are going up?
22 That's not fair to keep rates as low. So I don't think
23 he means that there's no jurisdiction. I think it
24 means that, if the Commission was to allow acquisition

1 premiums like they haven't for 25 years, that it would
2 just set a precedent that could snow -- that he's
3 saying would snowball.

4 Is that a better way to say that?

5 Q. It is, but the public convenience and
6 necessity, that's an elastic standard, correct?

7 A. It is. But there are -- can you just ask me
8 about that? There are three things that have to go
9 into that. Okay? And, I mean, what's so important
10 with that is that, you've got no -- you know, no harm
11 to ratepayers, you know, right. And most of the time,
12 that means no acquisition premium because it does tens
13 to increase rates. You've also got no merger-related
14 costs. But you've also got this benefit thing going on
15 in there and that thing, it has to provide benefits.
16 And I know Mr. Styers crossed me on this three-pronged
17 test for acquisition premiums, but it goes back to the
18 actual benefits. And if you look at the testimony on
19 these mergers, it's always got to be quantifiable
20 benefits. We've got qualitative benefits all day long.
21 Okay. Access to capitals. We're going to do this.
22 We're going to get some ferries. But nothing's
23 concrete. Like there's nothing actually been written
24 out this is a benefit. The only benefit we have is,

1 oops -- and I hate this. I hate the way people have
2 been saying this. Somebody's passed away, and it's now
3 an estate, and nobody wants to run it. But most
4 transfers are about I don't want to run this system
5 anymore. There's nothing unique about not wanting to
6 run a system anymore. That's the reason we have these
7 transfers. But the benefits here -- the risks -- the
8 benefits have to outweigh the potential cost and risk
9 to ratepayers. And in this case, there is not one
10 quantifiable benefit. If you'll look at some of these
11 other mergers. We went in and found merger savings.
12 We went in and found bill credits, good faith, whatever
13 you want to call it, to get these mergers passed,
14 because the standards -- the three-prong standards,
15 which are elastic -- I agree with you on that -- are
16 not always -- you got to go through the check-off list
17 before you even get to the acquisition premium. You
18 got to say, "Is this merger even good for ratepayers?"
19 I mean, where's the -- are they protected enough? Is
20 the benefit there? I mean, are they getting any
21 benefit? Any benefit except that somebody else wants
22 to run the company now because the Mitchells don't. I
23 mean, that -- and that's what I just think is really
24 important when you're looking. That's the first thing

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1 we look at when we look at -- well, we used to. I'm
2 sorry. I used to be Public Staff, so I keep saying
3 that. So I think you have to be -- you just have to
4 look at both very closely. We, you know, in the last
5 Frontier two mergers they gave bill credits back on
6 savings that they knew they were going to get. And
7 they didn't even -- weren't even going to have the
8 savings for two years. But they went ahead and gave it
9 back, because they knew they knew it was coming.
10 Because they were going to change management, there
11 were going to be some things that changed, and so they
12 gave back the merger savings to the customers early on.
13 And so I think -- and that's honestly been one of the
14 biggest pieces to getting these mergers approved, is
15 making sure all three of those tests are met.

16 Q. Thank you for that, Ms. Perry. If I could
17 move to page 8 of the testimony -- Mr. O'Donnell's
18 testimony. And this -- I'm still trying to obtain
19 clarity about utility assets versus nonutility assets.
20 And utility property versus nonutility property. So on
21 page -- or on lines, I guess that's 13 and 14. He
22 talks about, "This is not analogous to the acquisition
23 of nonutility property from an unrelated to seller."
24 So if -- and this is, again, a hypothetical, if the

1 Commission were to determine that the, like, let's say,
2 parking was nonutility property for purposes of this
3 transaction, would you agree that market value should
4 be included in rate base?

5 A. I'm going to say no. But I want you to
6 repeat the question, because I don't think I caught all
7 of the first part of that question.

8 Q. Okay. So I'll let you read -- why don't you
9 read from lines 5 through 14?

10 A. That's a question and then.

11 Q. The question and then the beginning of the
12 answer.

13 A. Okay.

14 "Q. Ms. Mayfield states in her prior
15 testimony in the Sub 21 Docket that the land
16 used for parking has become increasingly
17 valuable over time and should therefore be
18 included in the rate base at market value as
19 opposed to book value. Do you agree with her
20 contention?

21 "A. No. First off. It is important to
22 acknowledge that property at issue has been
23 used since inception and in support of the
24 utility operation and owned by an affiliate

1 of the utility. This is not analogous to the
2 acquisition of nonutility property from an
3 unrelated seller."

4 Q. Okay. Stop there.

5 A. Yeah.

6 Q. So let's assume that it is nonutility
7 property from an unrelated seller.

8 Does that change that analysis?

9 A. Nonutility property from an unrelated seller.
10 You know, this is going to be a system. So they're
11 buying a system. Even then, if it's a utilities -- I
12 mean, if it's providing a utility service, which in
13 essence -- and I'm going to mess the statute up but,
14 you know, basically what they deemed Bald Head Island
15 Limited was a utility, so this is hard to say.

16 Q. Right. So I'm giving you a hypothetical, not
17 what Sub 21 stated.

18 A. You know, for the transfer pricing is going
19 from a nonregulated entity to a utility is done at the
20 higher of fair market value or cost, okay. But I think
21 in this instance, I mean, they are all integral and
22 essential in providing this utility service. I've been
23 there since 19- -- I'm going to tell you my life story
24 here -- but 1994. My son was 4 weeks old in 1998, and

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1 I took him to Bald Head. Okay. All those assets were
2 built together to provide the utility services, the
3 ferry utility service. And so I think so many of these
4 pieces -- and I get the fact that we're in appeal and
5 there's some issues about what but --

6 Q. Right. And you did answer my question
7 so --

8 A. I did. I just don't think it's pertinent
9 here. I just don't.

10 Q. I hear what you're saying.

11 A. Yeah. There's a transfer pricing. It's a
12 transfer pricing issue going back and forth. And we do
13 deal with that a lot but, I think this is not it.

14 COMMISSIONER DUFFLEY: Okay. Thank you.
15 Are there any other nonconfidential questions
16 before we move into confidential session?

17 CHAIR MITCHELL: I do have one and
18 then --

19 COMMISSIONER DUFFLEY: Okay.

20 EXAMINATION BY CHAIR MITCHELL:

21 Q. All right. Ms. Perry, this will lead in to
22 my confidential questions.

23 But do you have Jim Hoard's testimony in
24 front of you from Sub 7?

1 A. You know, I gave it to Kevin in the last
2 hearing, and he never gave it back.

3 CHAIR MITCHELL: Sub 7? Does anyone
4 have Jim Hoard's testimony they can put in front of
5 the witness?

6 THE WITNESS: I do remember it well.

7 CHAIR MITCHELL: You can use mine.

8 THE WITNESS: Yeah. Thank you. I did
9 read it this week, but I just did not make a copy.

10 CHAIR MITCHELL: It is -- well, are the
11 exhibits included on there? I want to just make
12 sure it's -- make sure because I'm gonna ask her
13 about --

14 MR. CREECH: I've got it.

15 MR. SCHAUER: We have a copy.

16 THE WITNESS: I mean, I pretty much know
17 verbatim what it says but.

18 Q. I just want to ask you about a number that's
19 why I want it in front of you.

20 A. Oh. Okay. Gotcha. Thank you.

21 Q. I'm going to ask you about Hoard Exhibit 4,
22 Schedule 1.

23 A. Okay.

24 Q. And he sort of -- he -- before we get there,

1 look at page 6 of the testimony where he's describing
2 Deep Point Terminal.

3 A. Sure.

4 Q. Just let me know when you're there.

5 A. Okay. Page 6. Yes, ma'am.

6 Q. Okay. He says the --

7 COMMISSIONER DUFFLEY: And,
8 Chair Mitchell, let me just identify this. It is
9 Hoard Testimony in Docket A-41, Sub 7, that was
10 filed on September 30th, 2010.

11 Q. Okay. So on pages 8 and 9 -- I mean, I'm
12 sorry. On lines 8 and 9 of page 6.

13 A. Okay.

14 Q. I'm going to read it to you and just want you
15 to agree with me that I've read it correctly, or tell
16 me if I've read it incorrectly. It said, "The total
17 cost of the facility was \$28.5 million, 11.8 of which
18 has been allocated to BHIT."

19 Do you see that? Did I read that correctly?

20 A. You did. Yes, ma'am.

21 Q. And what is the facility that he's referring
22 to?

23 A. I'm going up top. The Deep Point facility is
24 what I'm assuming.

1 Q. Okay. And then so I want to ask you about
2 that allocation.

3 Do you know anything about that allocation
4 that he references in line 9?

5 A. No. But I think -- have you been there?

6 Q. Yes.

7 A. Okay. I'm just curious because, I mean,
8 visual is a great thing. So, you know, you got to see
9 that that they have built -- they got offices, you
10 know, in there for their people. They've got baggage
11 handling. They've also got the marina up to the right
12 that's got slips for all those other boats and that
13 type of thing too. So -- and what he did do in this --
14 just to say, is he changed the lease that was in here
15 to the --

16 Q. Well, we're going to get to that, ma'am.

17 A. Okay.

18 Q. But my question really for you --

19 A. Yeah. I don't know. I'm not sure. I'd have
20 to go back and look at the work papers.

21 Q. So he references an allocation. I mean, is
22 it reasonable to assume that the allocation relates to
23 BHIT's use of that facility for --

24 A. Yeah. I'm sure it is.

1 Q. A portion of the total facility that could be
2 attributable to BHIT?

3 A. Yeah. I mean, if you can look at individual
4 components a little further down, the main ferry
5 terminal is 80 percent. Landing's at 100 percent, the
6 marina, the bulkhead base, and then you get to the
7 maintenance pier, 95 percent. So I'm assuming that,
8 you know, certain things are -- yeah. I'm assuming
9 that's exactly what that is. It's probably how much is
10 really for Bald Head Island Transportation.

11 Q. So might some of those percentages change
12 over time as BHIT's use of that facility changes over
13 time?

14 A. If -- they may. They may.

15 Q. Okay.

16 A. There's more people. But there's also -- I'm
17 not sure --

18 Q. Meaning more passengers?

19 A. More passengers, but I'm not sure there's
20 any -- this is actually the constructed thing. I'm not
21 sure they've added any construction or any -- and
22 correct me if I'm wrong, but, I'm not sure that they've
23 added any additional slips and maybe they have. Have
24 they upgraded? I mean, they added this great waiting

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1 room, you know, for people to wait for the ferry. And
2 they may be using that for other things. And they may
3 have upgraded some of those things, but I'm not sure
4 they've actually expanded the terminal at all. And
5 that's kind of what this is. It's about that. But,
6 you know, Bald Head Island Transportation's revenues
7 has increased double since the last rate case. So it
8 looked like -- and so, yes, there may be some changes
9 in the allocation in the next rate case.

10 Q. Okay. Thank you. I was just curious as to
11 whether it would be reasonable to assume --

12 A. If I had access to the work papers, which I
13 don't, because I'm a good employee. I didn't take
14 anything with me. I could tell you, but maybe the
15 Public Staff can.

16 Q. All right. Well, maybe I'll -- I see some
17 members of the Public Staff back there. So they're on
18 notice that I may ask that same question.

19 So just looking down on line 12. You see
20 total facility; do you see that?

21 A. Yes.

22 Q. And then you've got that \$11,812,643?

23 A. Yes.

24 Q. Do you see that? Okay. And now flip

1 to -- flip to Hoard Exhibit 4, Schedule 1?

2 A. This is some little writing.

3 Q. I know. I'm going to say, for what it's
4 worth, this is what lawyers see when y'all put these
5 spreadsheets in front of them.

6 A. Okay. Really? Okay. I'm so sorry.

7 Q. It just looks like a bunch of numbers --

8 A. So, so sorry. Okay. So, like, Exhibit 1,
9 Schedule --

10 Q. -- all over the page. So, yeah. What I
11 want -- I want to ask you about that. Just look at the
12 first column is identified as plant, and I think that
13 number relates --

14 A. I'm sorry. Can you shoot me to the right
15 place again?

16 Q. Yeah. So look at the first column of
17 numbers.

18 A. I know. Which schedule? I'm sorry.

19 MR. HIGGINS: Exhibit 4.

20 Q. Exhibit 4, Schedule 1.

21 A. Okay. They don't have schedules on them.
22 Oh, Schedule 4, Exhibit 4? Okay. Is it -- I'm sorry.

23 Q. It's okay.

24 MR. CREECH: It's printed two per page.

1 THE WITNESS: I'm getting there.

2 COMMISSIONER DUFFLEY: So while you're
3 getting there, we're going to take our morning
4 break, and we'll be back at 11:25.

5 (Recess was taken from 11:15 a.m.
6 to 11:28)

7 COMMISSIONER DUFFLEY: Okay. Let's go
8 back on the record.

9 CONTINUED EXAMINATION BY CHAIR MITCHELL:

10 Q. All right. Ms. Perry, I want to, kind of,
11 move through this quickly if we can. I'm just
12 cognisant of day and time.

13 A. Yes, ma'am.

14 Q. All right. So do you have Hoard Exhibit 4,
15 Schedule 1 in front of you?

16 A. One sec. Yes.

17 Q. Okay. Okay. And do you see the column
18 labeled plant?

19 A. Yes. I'm sorry, ma'am. Yes.

20 Q. Okay. It's the first column?

21 A. Got you.

22 Q. So that 11,812,643 that matches his testimony
23 back on line 12 page 6; is that correct?

24 A. Okay. Yes.

1 Q. What is -- I mean, what is -- from where does
2 that number derive?

3 A. Okay. So this was a --

4 Q. Based on what you can tell.

5 A. Yeah. So pre- -- I almost think it's barge
6 and parking to be honest with you, because it doesn't
7 match the \$9.4 million.

8 Q. So that gets to my question but, before you
9 say that number --

10 CHAIR MITCHELL: This document that has
11 been labeled as Bald Head Perry Cross Examination
12 Exhibit 1, says at the top, "Confidential, for
13 settlement purposes only," but it's not labeled as
14 a confidential exhibit. So I need someone to help
15 me understand whether it's confidential.

16 MR. STYERS: I think at this point, this
17 many years later, there's nothing -- there's no
18 data in that information that's still confidential.

19 CHAIR MITCHELL: Okay.

20 MR. STYERS: So the point of my
21 highlighting it was, not that there's any data in
22 there that was confidential, but because it's for
23 settlement purposes only. So I have no problem
24 with you discussing it.

1 CHAIR MITCHELL: Okay. So can we then
2 strike that "Confidential, for settlement
3 purposes"?

4 MR. STYERS: You can strike that
5 confidential, yes.

6 CHAIR MITCHELL: Just for clarity of the
7 record.

8 MR. STYERS: Yes. I would have no
9 objection to that in my exhibit.

10 Q. Okay. All right. So, Ms. Perry, sort of
11 following -- I mean, you kind of picked up on where I'm
12 going. The --

13 A. Actually, it's right here on the schedule. I
14 didn't mean to interrupt you, but on Schedule 3 -- if
15 you go back one. And I apologize for -- everything on
16 adds up to this 11.8. So I can go through and pick out
17 what changed between those two numbers that we haven't
18 talked about. I didn't say. But this is what makes up
19 that 11.8.

20 Q. When you say "this"? I mean, are you
21 refe- --

22 A. On page 3. The bottom number \$11,812,643,
23 which is the top number on Schedule 4, page 1.

24 Q. Okay. What page 3 are you referring to?

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1 A. Right before. So where you have Hoard
2 Exhibit 4, Schedule 1, there was Hoard Exhibit 4,
3 Schedule 3. Gosh. I'm just looking at this the way
4 people handed it to me.

5 Q. Okay. Got it.

6 A. So if you'll look at the bottom of that page
7 right there, you'll see the total cost of 28, and then
8 the allocated cost of 11.812. So what makes up that 28
9 is all those -- and I just have to look and see what --
10 I would need to do more reconciliation just to help
11 refresh my brain on what's going on here. But that the
12 tot- -- that's the breakdown of what's in that
13 property.

14 Q. Okay. I'm not. Okay. All right. Actually,
15 I'm with you now.

16 A. Okay. Sorry.

17 Q. And then why -- what can you tell me about
18 the discrepancy between the 9,475,297 and the 11.812?

19 A. Well, that's where I need my calculator.

20 Q. I mean, why. If you don't know that's fine.
21 I recognize that this is Jim Hoard's testimony and
22 you're not Jim Hoard, so --

23 A. Well, I'm very familiar with the work papers.
24 I just don't have the in front of me. I didn't take

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1 them with me. So -- but let's -- I think we can easily
2 figure it out if we looked at the -- the work papers
3 and what we have for the settlement. The settlement
4 ended up with the 9.4 versus the 11.88. That could
5 have been the difference of the allocation that was
6 settled upon too.

7 Q. Okay.

8 A. I don't know for sure. I just -- but this is
9 where the numbers are coming from.

10 Q. When you say "this," you mean?

11 A. This is Schedule 3, it's the 28. When you
12 were saying they allocated the 28 down to the 11. And
13 so was that a settled allocation? It could've been
14 since that 9.4 is -- I mean, since this is now from
15 11.8 to 9.4, that could have been a settlement piece of
16 it. I'm not -- I could tell you if I had more time to
17 look at it, probably.

18 Q. Okay. All right. Well, I follow you there
19 and I understand that the components identified in
20 Mr. Hoard's testimony and then on the schedule of his
21 testimony illustrate, you know, how we get to that 11.8
22 plus.

23 A. But the 9.4 is more representative of what's
24 on the books for parking.

1 Q. Okay.

2 A. Okay? So if you actually looked at the
3 financials, the 9.4 that is in the settlement exhibit
4 that looks very similar to this that we talked about
5 yesterday, is more actually what's on the financial
6 statements for parking.

7 Q. Okay.

8 A. So I'm -- I would just need to do a little
9 digging.

10 Q. And there's no -- so -- but it doesn't affect
11 the number. I mean, so I think -- is it your
12 understanding that the imputation of revenue associated
13 with parking is 5.3097, I mean, as indicated in the
14 Order, and that number derives from plant and service
15 as identified as the \$11 million -- the \$11-plus
16 million dollars?

17 A. You know, this is confusing. So this is the
18 Deep Point terminal, not parking. This is why we're
19 getting confused.

20 Q. Okay.

21 A. I'm so sorry. I just had an epiphany. And
22 it'll take me 30 seconds to clear up the epiphany.
23 This is the Deep Point terminal, and all they're doing
24 is -- if they wanted to make sure the cost base -- and

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1 I think this is what he's figuring out here. The cost
2 is really 11.82 Bald Head Island terminal and they
3 determined that the lease was not cost based. It was
4 based on some other numbers. And so he turned into a
5 cost based lease base based on this, and actually
6 increase the lease expense for Limited.

7 This other Deep Point terminal, I think he
8 was just trying to show you how to get the lease
9 payments on an annualized basis, is what he's doing
10 here. And so the 11.8, he's taking this and he's --
11 because, you know, a lease payment's going to be -- is
12 basically, like when we do these special contracts --
13 which we don't want to talk about that anymore ever --
14 but, you know, you do a levelized payment over 20 years
15 or 15 years or whatever. And so -- sorry, I got to
16 make a joke every once in a while. You're going to
17 have a levelized lease payment. So it would be --
18 nobody would sign a lease that was going to change
19 every single year; you would hope, right? He's turning
20 that lease that they had into a cost-based lease and
21 making a levelized payment. I'm so sorry. This
22 confused me, because it looked so much like the
23 parking. So I apologize for that one. Does that help?

24 Q. It does, but, I guess --

1 A. What's the question -- is it.

2 Did I not answer the question?

3 Q. Let's see. So we have -- I guess, well, I'm
4 just going to leave it alone. I want to ask you about
5 you're rate base numbers. We need to go into
6 confidential session.

7 COMMISSIONER DUFFLEY: Okay. Let's move
8 into confidential session, Mr. McCoy.

9 (Due to the proprietary nature of the
10 testimony found on pages 104 to 111, it
11 was filed under seal.)

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8 (Confidential testimony ended at

9 11:46 a.m.)

10 COMMISSIONER DUFFLEY: Can someone could
11 grab the men out in the hallway, please?

12 Okay. Before we go to Commission
13 questions, any other questions from Commissioners?

14 Okay. Commission questions? Questions
15 on Commission questions?

16 MR. STYERS: No.

17 MR. SCHAUER: No. Nothing from the
18 Village.

19 COMMISSIONER DUFFLEY: Okay. Thank you,
20 Ms. Perry.

21 THE WITNESS: Let me collect my paper,
22 and I'll be out of here.

23 COMMISSIONER DUFFLEY: Very good. Thank
24 you. You may step down and you're excused.

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1 Okay. While she's gathering up, are
2 there any motions?

3 MR. STYERS: Yes. Thank you.
4 Applicants would ask that Perry Exhibit -- Cross
5 Examination Exhibits 2 through 8 be admitted into
6 the record as evidence.

7 COMMISSIONER DUFFLEY: Without
8 objection, that motion is allowed, and Cross
9 Examination Exhibits 2 through 8 will be received
10 into evidence at this time.

11 (BHIT Perry Cross Examination Exhibits 2
12 through 8 were admitted into evidence.)

13 MR. SCHAUER: The Village would move
14 that Bald Head Perry Cross Exhibit 1 will be moved
15 into evidence.

16 COMMISSIONER DUFFLEY: Without
17 objection, Perry -- how did we name it again?

18 MR. SCHAUER: This one was named
19 Bald Head Perry Cross Exhibit 1.

20 COMMISSIONER DUFFLEY: Bald Head Perry
21 Cross Exhibit Number 1.

22 MR. SCHAUER: Yes. The Village would
23 also ask to move into evidence Village Perry Direct
24 Redirect Exhibits 1, 2, and 3.

1 COMMISSIONER DUFFLEY: And without
2 objection, Village Perry Direct Redirect Exhibits 1
3 through 3 are introduced into evidence and received
4 into evidence at this time as well as the Bald Head
5 Perry Cross Number 1 will be received into evidence
6 at this time.

7 (Village Perry Direct Redirect
8 Examination Exhibits 1 through 3; and
9 Bald Head Perry Cross Examination
10 Exhibit 1 were admitted into evidence.)

11 COMMISSIONER DUFFLEY: Swearing or
12 affirming?

13 THE WITNESS: Swearing is fine.

14 Whereupon,

15 L. LEE LLOYD,
16 having first been duly sworn, was examined
17 and testified as follows:

18 DIRECT EXAMINATION BY MR. SCHAUER:

19 Q. Good morning, Mr. Lloyd.

20 A. Good morning.

21 Q. Can you please state your name and official
22 address for the record?

23 A. Lee, Lloyd, 230 North Elm Street, Suite 2000,
24 Greensboro, North Carolina.

1 Q. And can I suggest you pull the microphone a
2 little closer? Thank you. Did you cause to be filed
3 in this proceeding direct testimony, consisting of 15
4 pages and six exhibits?

5 A. I did.

6 Q. Do you have any corrections to your
7 testimony?

8 A. I do not.

9 Q. If I asked you the questions in these
10 prefiled submissions today, would your answers be the
11 same?

12 A. They would.

13 Q. Did you cause to be filed in this proceeding
14 a summary of your testimony?

15 A. Yes.

16 Q. Is that summary true and accurate to the best
17 of your information and belief?

18 A. Yes.

19 MR. SCHAUER: I would ask that
20 Mr. Lloyd's Direct Testimony be copied into the
21 record as if given orally from the stand, and that
22 the corresponding exhibits be marked for
23 identification as set out in his prefiled
24 submission.

Page

115 COMMISSIONER DUFFLEY: Without
objection, the testimony of Mr. Lloyd will be
received into evidence and treated as if given
orally from the witness stand, and the exhibits
will be identified as premarked.

(Confidential Exhibits JLL-1 through
JLL-6 were identified as they were
marked when prefiled.)

(Whereupon, the Prefiled Direct
Testimony of L. Lee Lloyd was copied
into the record as if given orally
from the stand.)

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION**DOCKET NO. A-41, SUB 22****Direct Testimony of J. Lee Lloyd****On Behalf of the Village of Bald Head Island****February 20, 2023**

1 **Q. PLEASE STATE YOUR NAME, TITLE, AND ADDRESS.**

2 A. My name is J. Lee Lloyd. I am the owner and Senior Advisor of J. Lee Lloyd, LLC,
3 an independent mergers and acquisitions/corporate finance consulting firm. My
4 business address is 230 North Elm Street, Suite 2000, Greensboro, North Carolina,
5 27401, USA.

6 **Q. ON WHOSE BEHALF ARE YOU TESTIFYING IN THIS PROCEEDING?**

7 A. I am testifying on behalf of the Village of Bald Head Island.

8 **Q. PLEASE SUMMARIZE YOUR EDUCATIONAL BACKGROUND AND**
9 **RELEVANT EMPLOYMENT EXPERIENCE.**

10 A. I earned a Bachelor of Science in Business Administration, with a Concentration in
11 Accounting, from the University of North Carolina at Chapel Hill in 1982 and
12 earned a Juris Doctor with Honors from the University of North Carolina School of
13 Law in 1986. I have previously worked with Arthur Andersen & Co. in Greensboro,
14 NC as a Certified Public Accountant in the Tax Advisory Group; with Goldman,
15 Sachs & Co. in New York City as Vice President, Investment Banking Division in
16 the Mergers and Acquisitions Group; with Lloyd & Company, a boutique middle-

1 market investment banking firm, as Chief Executive Officer and Managing
2 Director; and with Brooks, Pierce, McLendon, Humphrey & Leonard, LLP, as
3 Partner and Special Counsel with a corporate law practice concentrated in the areas
4 of mergers and acquisitions and corporate finance transactions. I have provided
5 M&A/corporate finance advisory services through my current firm, J. Lee Lloyd,
6 LLC, since January 2014. Attached as Exhibit JLL-1 is my professional biography.

7 **Q. CAN YOU DESCRIBE THE ADVISORY SERVICES YOU PROVIDE TO**
8 **CLIENTS?**

9 A. I advise business owners, corporate executives, family offices and clients of wealth
10 management and professional service firms on the financial, legal and strategic
11 considerations that impact complex M&A and corporate finance transactions. I
12 estimate that approximately 65% - 75% of my client advisory engagements since
13 2002 have included substantive interactions with private equity firms. With over 35
14 years of professional experience in investment banking, corporate law and
15 accounting, I have helped clients successfully negotiate and close M&A and
16 financing transactions ranging from \$10 million to \$6 billion, including cross-
17 border transactions in over 28 countries.

18 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS**
19 **PROCEEDING?**

20 A. I will share key observations I have made regarding the proposed transaction
21 involving Bald Head Island Transportation, Inc. ("BHIT") and SharpVue Capital,
22 LLC and its affiliates ("SharpVue"). Based on my experience and observations

1 regarding the proposed transaction, I also will identify potential risks to the Public
2 and other concerns with the proposed transfer of the common carrier certificate
3 from BHIT to SharpVue.

4 **Q. WHAT MATERIALS DID YOU REVIEW IN PREPARATION FOR YOUR**
5 **TESTIMONY?**

6 A. I reviewed the Asset Purchase Agreement, the operating agreement of Pelican
7 Legacy Holdings, LLC, SharpVue's and BHIT's responses to data requests issued
8 by the Village and the Public Staff, documents produced by SharpVue and BHIT,
9 and the Amended Application and associated testimony filed by SharpVue and
10 BHIT.

11 **Q. WHAT RELEVANT MATERIALS WERE YOU NOT GIVEN AN**
12 **OPPORTUNITY TO REVIEW IN PREPARATION FOR YOUR**
13 **TESTIMONY?**

14 A. I have not been able to review a loan commitment letter from [BEGIN AEO
15 CONFIDENTIAL] [REDACTED] [BEGIN AEO CONFIDENTIAL] or any term
16 sheets or loan proposals received by SharpVue from [BEGIN AEO
17 CONFIDENTIAL] [REDACTED] [END AEO CONFIDENTIAL] or other third-
18 party lenders. A thorough assessment of SharpVue's proposed transaction and its
19 impact on the potential risks to the Public cannot be performed without better
20 understanding the borrowing costs, minimum debt service requirements, operating
21 restrictions, and loan covenants that SharpVue will face.

I also have not been provided a summary of any incentive equity arrangements or comparable incentive compensation arrangements between SharpVue and BHIT's current senior management. In addition to understanding the economic incentives in place for SharpVue and its investors and how those incentives may affect SharpVue's operating and financial strategies in the future, the economic incentives SharpVue puts in place for senior management are also relevant in assessing the potential risks to the Public of the proposed transaction.

Q. AS BACKGROUND, CAN YOU DESCRIBE SHARPVUE'S ROLE IN THE PROPOSED TRANSACTION?

A. SharpVue is an alternative investment management firm acting as the "Sponsor" of the proposed transaction. As is typical in many private equity-backed transactions, SharpVue in its role as Sponsor is responsible for (i) identifying and preliminarily evaluating the potential transaction opportunity, (ii) negotiating the purchase price and terms of the transaction, (iii) arranging the equity funding and debt financing required to fund the purchase price and transaction expenses, (iv) ensuring that senior management is in place post-closing to capably manage the transportation operations and acquired assets, and (v) providing investment management services post-closing as Manager of Pelican Legacy Holdings, LLC ("PLH"), monitoring and optimizing the returns on its investor group's [BEGIN AEO CONFIDENTIAL] [REDACTED] [END AEO CONFIDENTIAL] equity investment in the proposed transaction. Irrespective of any actual investment SharpVue may make in the proposed transaction, SharpVue will "control" the

1 future business operations and assets of PLH through an Investment Management
2 Agreement with PLH and as Manager of PLH.

3 **Q. CAN YOU DESCRIBE SHARPVUE'S FEE STRUCTURE IN THE**
4 **PROPOSED TRANSACTION?**

5 A. As is typical in many private equity-backed transactions, SharpVue will receive

6 **[BEGIN AEO CONFIDENTIAL]** [REDACTED]

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3 [END AEO CONFIDENTIAL]

4 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

5 **A. Yes.**

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1 MR. SCHAUER: And I would also ask that
2 his summary also be entered into the record,
3 please.

4 COMMISSIONER DUFFLEY: And the summary
5 will be received into evidence at this time.

6 (Whereupon, the Prefiled Summary of the
7 Direct Testimony of L. Lee Lloyd was
8 copied into the record as if given
9 orally from the stand.)
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[REDACTED] [END AEO CONFIDENTIAL]

This concludes the summary of my direct testimony.

Page 135

1 MR. SCHAUER: All right. The witness is
2 available for cross examination.

3 CROSS EXAMINATION BY MR. HIGGINS:

4 Q. Mr. Lloyd, Dan Higgins for the BHI club.
5 Turn if you would, please, to page 9 of your testimony.
6 I'm interested in your testimony that appears there
7 between lines 3 and 12; are you with me?

8 A. Yes, sir.

9 Q. Are you saying there regarding the investor
10 presentations that have been circulated that the sale
11 -- I'm sorry.

12 MR. HIGGINS: It's just been brought to
13 my attention that this is AEO information.

14 COMMISSIONER DUFFLEY: Okay. Do we
15 have --

16 MR. HIGGINS: Perhaps I can reserve this
17 question.

18 COMMISSIONER DUFFLEY: Please reserve
19 that question when we go into confidential session.

20 Do you have nonconfidential questions?

21 MR. HIGGINS: That's the only question I
22 have.

23 COMMISSIONER DUFFLEY: Okay. Do we have
24 nonconfidential questions for Mr. Lloyd?

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1 MS. HEDRICK: I have a handful of
2 nonconfidential and then some confidential.

3 COMMISSIONER DUFFLEY: Okay. Why don't
4 you go ahead and ask your nonconfidential questions
5 at this time, and then we'll head into confidential
6 session.

7 CROSS EXAMINATION BY MS. HEDRICK:

8 Q. Mr. Lloyd, good afternoon. Or good morning,
9 I guess. We're still in morning. My name is
10 Elizabeth Hedrick. I'm one of the attorneys
11 representing Bald Head Island Transportation and Bald
12 Head Limited.

13 You testified in your prefiled testimony that
14 65 to 75 percent of your work since 2002 has involved
15 private equity firms; is that right?

16 A. That's correct.

17 Q. Did any of that work include private equity
18 transactions or advice involving utilities?

19 A. It involved several transactions involving
20 infrastructure companies, no regulated utilities.

21 Q. Okay. Has any of your work focused on
22 utilities?

23 A. I'm a generalist. I've done transactions
24 involving regulated utilities, but I'm not an expert in

1 regulated transactions.

2 Q. Okay. And so, for example, on your resume
3 that you attached to your prefiled testimony, which has
4 been premarked JLL-1, you don't list utilities on your
5 industry experience, right?

6 A. That's correct.

7 Q. Okay. Now you offered some concerns about
8 the management fee structures and incentive structure
9 in your testimony; is that right?

10 A. Yes.

11 Q. Okay. Are you aware that these types of
12 structures are not unusual for utilities?

13 A. I'm aware that these structures are not
14 unusual for private equity transactions.

15 Q. What about utilities?

16 A. If there's a private equity firm engaged in a
17 utility transaction, these would be typical.

18 Q. Do you know if that's true for non-private
19 equity utilities?

20 A. I don't engage in non-private equity utility
21 transactions as a matter of course.

22 Q. Okay. You testified that it's unlikely, in
23 your mind, that SharpVue can hold the assets long-term
24 because of investor expectations, debt service

Page 138

1 requirements, and what you perceive as SharpVue's
2 intention to avoid making investments in capital
3 improvements, right?

4 A. That's correct.

5 Q. Would you agree that you're making some
6 assumptions in drawing that conclusion?

7 A. I think my response is going to include a lot
8 of confidential information. Just so the Commission --

9 COMMISSIONER DUFFLEY: Okay. Hold this
10 question for confidential session.

11 MS. HEDRICK: I think we can go on and
12 go into confidential session, because what I'm
13 going to cover is probably going to elicit the same
14 kind of information then.

15 COMMISSIONER DUFFLEY: Okay. So let's
16 head into confidential session at this time.

17 (Due to the proprietary nature of the
18 testimony found on pages 138 to 185, it
19 was filed under seal.)

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9 (Confidential testimony ended at
10 12:57 p.m.)

11 COMMISSIONER DUFFLEY: Now, were there
12 any Commission questions on any of the questions
13 for the non-confidential questions?

14 Okay. Thank you, Mr. Lloyd. We
15 appreciate you being here and you're excused.

16 THE WITNESS: Thank you.

17 COMMISSIONER DUFFLEY: And we are going
18 to break for lunch. It's almost 1:00. So let's
19 come back at -- excuse me? You want to do
20 exhibits, the motions now?

21 MR. SCHAUER: Well, we could do it when
22 we reconvene.

23 COMMISSIONER DUFFLEY: Let's do the
24 motions when we reconvene. I'm sure people are

1 hungry.

2 So it is almost 1:00, so we'll reconvene
3 at 2:05.

4 And before we go off the record I did
5 have -- Mr. Ferrell, your objection to taking
6 judicial notice, can you remind me what are your
7 specific objections? I know the incomplete versus
8 full.

9 Do you have a second objection? Can you
10 clarify that for me?

11 MR. FERRELL: I think the first
12 objection was just the fact that we had a witness
13 on the stand, and instead of asking the witness a
14 cross examination question based on some testimony,
15 it seems like the plan is to put the testimony into
16 the record as an exhibit. And then potentially
17 cited in some subsequent brief or proposed Order
18 without the witness having a chance to, you know,
19 address the issue potentially if there was some
20 additional context that was provided on the witness
21 stand. And, again, that plus the fact that the
22 proposal was just to put in only the cross
23 examination from the Village, not any of the other
24 testimony of Mr. Roberts or any other cross

1 examination or Commission questions. So those were
2 the two primary bases.

3 COMMISSIONER DUFFLEY: Okay. Thank you
4 for that, Mr. Ferrell.

5 So we are going to go off the record for
6 lunch.

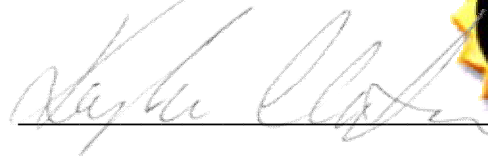
7 (The hearing recessed at 1:27 p.m.
8 and set to reconvene at 2:05 p.m. on
9 Thursday, March 9, 2023.)
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CERTIFICATE OF REPORTER

STATE OF NORTH CAROLINA)
COUNTY OF WAKE)

I, Kaylene Clayton, court reporter, the officer before whom the foregoing hearing was conducted, do hereby certify that any witnesses whose testimony may appear in the foregoing hearing were duly sworn; that the foregoing proceedings were taken by me to the best of my ability and thereafter reduced to typewritten format under my direction; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this hearing was taken, and further that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.

This the 29th of March, 2023.



KAYLENE CLAYTON

Notary Public 202228500270

