

**STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH**

DOCKET NO. A-41, SUB 22

In the Matter of	)	
Joint Application of Bald Head Island	)	
Transportation, Inc., and Bald Head	)	
Island Ferry Transportation, LLC, for	)	<b>FOURTH MOTION TO</b>
Approval of Transfer of Common Carrier	)	<b>COMPEL RESPONSES OF</b>
Certificate to Bald Head Island Ferry	)	<b>SHARPVUE CAPITAL, LLC</b>
Transportation, LLC, and Permission to	)	
Pledge Assets	)	

The Village of Bald Head Island (the “Village”), by and through counsel and pursuant to the Order Scheduling Hearing, Establishing Procedural Deadlines, and Requiring Public Notice, moves the Commission to compel SharpVue Capital, LLC (“SharpVue”)<sup>1</sup> to provide its unredacted Responses to Public Staff’s Data Request No. 6 to Bald Head Island Ferry Transportation, Inc. (“BHIFT”). Attached as Exhibits are copies of the relevant discovery requests and responses.

**BACKGROUND**

The background to this dispute is set forth in the Village’s Second Motion to Compel filed on November 22, 2022, and is incorporated herein by reference.

Pursuant to its obligations under the Village’s DR1,<sup>2</sup> on November 29, 2022, SharpVue served on the Village a copy of its responses to the Public Staff’s Data Request No. 6 to SharpVue’s affiliate, BHIFT. *See Exhibit 1* hereto. However, SharpVue only provided the Village with a public, redacted version of the responses, citing its position

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<sup>1</sup> For purposes of this motion, “SharpVue” includes reference to SharpVue Capital, LLC and its affiliated entities.

<sup>2</sup> Exhibit 2 to the Village’s Second Motion to Compel.

that the information constitutes “trade secret” information. On information and belief this “trade secret” information has been provided to the Public Staff.

Based on the foregoing, this motion seeks an order compelling the production of the complete, unredacted version of SharpVue’s responses to the Public Staff’s Data Request No. 6 to BHIFT, including any documents referenced therein and/or provided in response to that request.

### **ARGUMENT**

This Fourth Motion to Compel presents the identical issue presented in the Village’s Second and Third Motions to Compel; to wit, SharpVue has not made any cognizable objection to production of the requested information.

The parties have negotiated a Confidentiality Agreement<sup>3</sup> to facilitate the exchange of confidential information, including trade secret information. SharpVue has not made any claim that the information in issue is privileged, irrelevant, or otherwise not subject to production and therefore has waived any such arguments. *See Hairston v. Hairston*, 209 N.C. App. 750, 709 S.E.2d 601 (Table), 2011 WL 532774, at \*2 (2011) (failure to state objections to discovery requests waives objection).

SharpVue’s only basis for refusing to provide to the Village the responses in issue is its claim that the information is confidential—i.e., that it is information which SharpVue regards as “trade secret” and therefore benefits as protection from disclosure as confidential information. *See, e.g.*, G.S. § 62-34(c) (allowing the Public Staff to examine confidential information “as defined in G.S. 132-1.2”). The bare assertion that information is “trade secret” does not immunize the information in issue from production in discovery—rather

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<sup>3</sup> Exhibit 1 to the Village’s Second Motion to Compel.

it is merely a basis for asserting confidentiality.<sup>4</sup> Indeed, under North Carolina’s public records law, the assertion of “trade secret” status is a threshold requirement for designation under the “confidential information” exception. *See* G.S. § 62-132.1.2(1). If merely claiming confidentiality was a sufficient basis for non-production, the purpose of discovery would be defeated and parties would never be provided access to any information other than that which is already public. This rationale is particularly lacking merit given that the parties have negotiated a mechanism to address this precise issue. *See* Exhibit 1 to Village’s Second Motion to Compel (defining “Protected Information” as information that qualifies as “confidential information” under the Public Records Act).

Although the Village bears no burden of demonstrating relevance here,<sup>5</sup> the relevance and importance of the information is clear from the context of the questions—the responses to which have been partially redacted—which seek information relating to SharpVue’s corporate structure, ownership, and management. Given that the investment vehicle established by SharpVue for this transaction is quite small and closed in nature, the resources and capabilities of its owners is highly relevant to whether the public interest is served by SharpVue’s acquisition of the assets. Moreover, the management and control of the various affiliated entities identified by SharpVue in its Application—which is central to all issues in this proceeding—is far from clear in SharpVue’s disclosures to date. Facts relating to these matters are highly relevant to the Commission’s consideration and is

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<sup>4</sup> Additionally, SharpVue has not made any showing that the information qualifies for protection as “trade secrets”. The Village reserves its right to challenge the designation of confidentiality in future filings.

<sup>5</sup> SharpVue has not asserted that the information in question is not relevant to the proceeding and therefore has waived any such claim. Moreover, the fact that SharpVue has provided the same information to the Public Staff, without objection, is inconsistent with any such claim.

information to which the Village is also entitled but which, to date, SharpVue has improperly withheld.

WHEREFORE, the Village respectfully requests that the Commission grant its Fourth Motion to Compel and order SharpVue to provide the Village a full, unredacted version of SharpVue's responses to the Public Staff's Data Request No. 6 to BHIFT, including any documents that may be referenced therein are provided in connection therewith, and (2) provide such other and further relief as may be appropriate.

This 30<sup>th</sup> day of November, 2022.

By: /s/ Marcus Trathen  
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*Attorneys for Village of Bald Head Island*

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing FOURTH MOTION TO COMPEL has been served this day upon all parties of record in this proceeding, or their legal counsel, by electronic mail or by delivery to the United States Post Office, first-class postage pre-paid.

This the 30th day of November, 2022.

By: /s/ Marcus Trathen

# EXHIBIT 1

**STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH**

**Docket No. A-41, Sub 22**

In the Matter of Joint Application	)	
of Bald Head Island Transportation, Inc.,	)	
and Bald Head Island Ferry	)	
Transportation, LLC, for Approval of	)	<b>RESPONSE TO PUBLIC</b>
Transfer of Common Carrier Certificate	)	<b>STAFF'S DATA REQUEST</b>
to Bald Head Island Ferry	)	<b>NO. 6 TO BHIFT</b>
Transportation, LLC, and Permission to	)	
Pledge Assets	)	
	)	

SharpVue Capital, LLC ("SharpVue"), by and through its undersigned counsel, hereby responds to the Public Staff's Data Request No. 6 to BHIFT in the above-captioned docket.

**GENERAL STATEMENT**

BHIFT (referred to as BHIFT or SharpVue) objects to the Data Requests to the extent they seek information, documents, materials, support, and/or things protected from disclosure by the attorney-client privilege, confidential business trade secret information, the work-product doctrine, consulting expert privilege, and/or the common-interest privilege. Inadvertent disclosure of any such information, documents materials, support, and/or things shall not operate as a waiver of any applicable privilege or immunity. SharpVue's production of documents or information does not waive any of SharpVue's rights to object to this request as not reasonably calculated to lead to the discovery of admissible evidence in this docket.

Certain SharpVue information provided herein is produced on the condition that it is held as confidential pursuant to applicable law. SharpVue does not agree that all requests are relevant to the legal issue raised in the Complaint, and reserves the right to object to the admissibility of

any of these responses, in whole or in part, at any further proceeding of this matter, on any grounds, including but not limited to timeliness, materiality, relevance, and privilege.

**RESPONSES TO DATA REQUESTS**

**Please provide any available responses electronically. If in Excel format, be sure to include all working formulas. In addition, please include (1) the name and title of the individual who has the responsibility for the subject matter addressed therein, and (2) the identity of the person making the response by name, occupation, and job title.**

- (1) & (2) Lee H. Roberts, Managing Partner  
SharpVue Capital, LLC  
3700 Glenwood Avenue, Suite 530  
Raleigh NC, 27612

**Topic: Follow-up to DR discussed on November 21, 2022**

\*\* [REDACTED] text is redacted in the public version.

**1. DR 2 Item 1, DR 4 Item 1 (cont.):**

- a. Please provide a listing by name, address, and ownership interest (%) of:
- i. Member(s),
  - ii. Manager(s),
  - iii. (if applicable) Officers, and
  - iv. (if applicable) Board Member(s)

for [BEGIN APPLICANT-DESIGNATED CONFIDENTIAL TRADE  
SECRET] [REDACTED]

[REDACTED]

[REDACTED]



**RESPONSE:** Objection as the information requested is a confidential business trade secret and is not relevant or likely to lead to the discovery of admissible evidence in this docket. Without waiving this objection and with the understanding that the information is being provided as confidential and will not be distributed beyond the Public Staff and NCUC, see SharpVue 1130 to 1294 which was previously provided as confidential – [REDACTED]

[REDACTED]

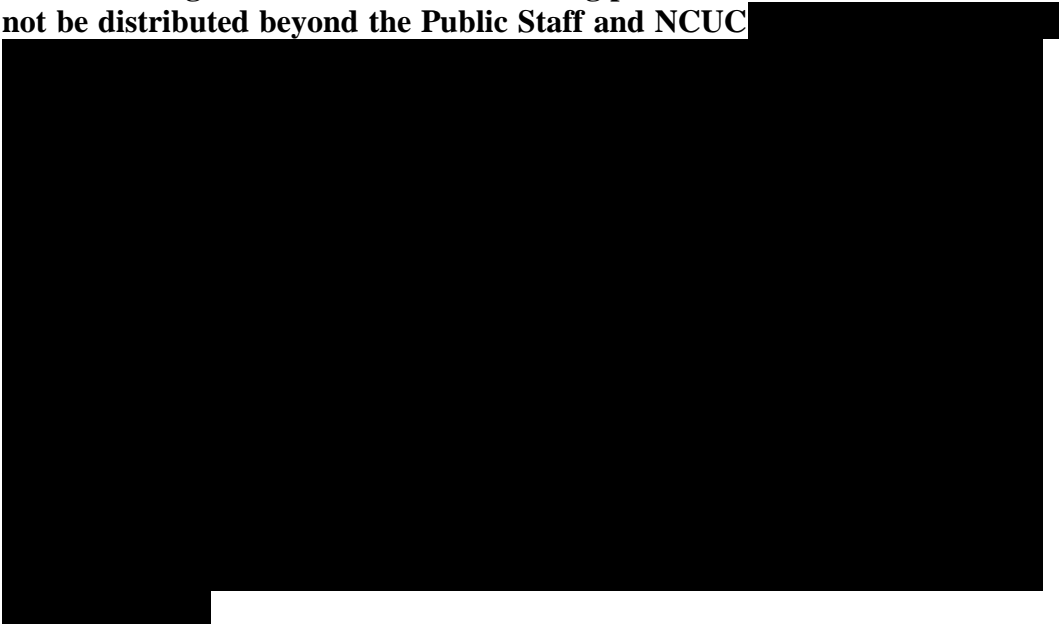
[REDACTED]

**RESPONSE:** Objection as the information requested is a confidential business trade secret and is not relevant or likely to lead to the discovery of admissible evidence in this docket. Without waiving this objection and with the understanding that the information is being provided as confidential and will not be distributed beyond the Public Staff and NCUC, SharpVue believes it has previously produced relevant organizational documents for the relevant entities [REDACTED]

[REDACTED]

[REDACTED]

**RESPONSE:** Objection as the information requested is a confidential business trade secret and is not relevant or likely to lead to the discovery of admissible evidence in this docket. Without waiving this objection and with the understanding that the information is being provided as confidential and will not be distributed beyond the Public Staff and NCUC



**[END APPLICANT-DESIGNATED CONFIDENTIAL TRADE SECRET]**


**2. Visual depiction of ownership & control of Holdings and BHIFT (Exhibit B cont.):** Please provide a diagram showing chain of ownership and control of Pelican Legacy Holdings, LLC and BHIFT until an LLC is identified that has corporations or (identified) individuals among its members.

For the avoidance of doubt, the intent of this question is to provide a visual depiction – for the benefit of the Public Staff and ultimately the Commission – of ownership and control (down to the individual or corporation level) over Holdings and BHIFT.

This should in essence provide a far more granular depiction than the existing Exhibit B to the applicants' application; it is the Public Staff's understanding that the applicant is already in the process of preparing such a depiction.

**RESPONSE:** Objection as the information requested is a confidential business trade secret and portions of the information are not relevant or likely to lead to the discovery of admissible evidence in the docket. Without waiving the objection and with the understanding that the information is being provided as confidential and will not be distributed beyond the Public Staff and NCUC, see SharpVue NO. 1295.

**3. Investment Management Agreement (cont.):** What is the underlying purpose and benefit of the Investment Management Agreement, and the resulting added layer of complexity? Please identify any tax, liability, or other advantages that inure from operating under an Investment Management Agreement, beyond SharpVue experience previously cited by the applicant.

**RESPONSE:** Objection as the information requested is a confidential business trade secret and not relevant or likely to lead to the discovery of admissible evidence in this docket. Without waiving the objection and with the understanding that the information is being provided as confidential and will not be distributed beyond the Public Staff and NCUC, and as described previously, 

This the 29<sup>nd</sup> day of November, 2022.

NEXSEN PRUET PLLC

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing RESPONSES TO THE PUBLIC STAFF'S DATA REQUEST NO. 6 TO BHIFT has been served this day upon all parties of record in this proceeding, or their legal counsel, by electronic mail.

This the 29<sup>nd</sup> day of November, 2022.

By: /s/ David P. Ferrell