

PLACE: Dobbs Building, Raleigh, North Carolina
DATE: Wednesday, March 8, 2023
TIME: 1:39 p.m. - 5:31 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: 4

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P R O C E E D I N G S

COMMISSIONER DUFFLEY: Let's go back on the record. We're in confidential session, and we're on Commissioner questions. We'll begin with Chair Mitchell.

(Due to the proprietary nature of the testimony found on pages 9 to 72, it was filed under seal.)

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(Confidential testimony ended
at 2:54 p.m.)

COMMISSIONER DUFFLEY: Good afternoon.

Left hand on the Bible.

Do you wish to be sworn in or affirmed?

MR. GARDNER: Sworn in is fine.

COMMISSIONER DUFFLEY: Okay.

Whereupon,

SCOTT T. GARDNER,

having first been duly sworn, was examined

and testified as follows:

DIRECT EXAMINATION BY MR. TRATHEN:

Q. Good afternoon, Mr. Gardner.

A. Good afternoon.

Q. Please state your name and official address
for the record.

A. Scott Gardner, Mayor Pro Tem with the Village
of Bald Head Island. Address is 106 Lighthouse Wynd,

1 Bald Head Island.

2 Q. Did you cause to be filed in this proceeding
3 direct testimony consisting of 24 pages and one
4 exhibit?

5 A. Yes.

6 Q. And did you also cause to be filed in this
7 proceeding supplemental direct testimony consisting of
8 12 pages and no exhibits?

9 A. Yes.

10 Q. Do you have any corrections to your
11 testimony?

12 A. I do not.

13 Q. If I asked you the questions in the prefiled
14 submissions today, would your answers be the same?

15 A. Yes.

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

18 A. I did.

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

21 A. It is.

22 MR. TRATHEN: Madam Chair, I'd ask that
23 Mr. Gardner's Direct and Supplemental Testimony be
24 copied into the record as if orally given from the

1 stand and that the corresponding exhibits be marked
2 for identification as set out in his prefiled
3 submission.

4 COMMISSIONER DUFFLEY: So the Direct and
5 Supplemental Prefiled Testimony of Scott Gardner
6 will be received into evidence and treated as if
7 given orally from the witness stand as well as the
8 exhibits will be entered into the record as
9 prefiled and marked prefiled.

10 (Scott Gardner Exhibit 1 was admitted
11 into evidence.)

12 (Whereupon, the Prefiled Direct
13 Testimony of Scott T. Gardner and the
14 Prefiled Supplemental Direct Testimony
15 of Scott T. Gardner was copied into the
16 record as if given orally from the
17 stand.)
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BEFORE THE NORTH CAROLINA UTILITIES COMMISSION**DOCKET NO. A-41, SUB 22****Direct Testimony of Scott T. Gardner****On Behalf of the Village of Bald Head Island****December 14, 2022**

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

2 A. My name is Scott Thomas Gardner. I am currently serving as the Mayor Pro Tem
3 for the Village of Bald Head Island (the “Village”), and I am a member of the
4 Village Council. My official address is 106 Lighthouse Wynd, Bald Head Island,
5 North Carolina 28461.

6 **Q. DID YOU PREVIOUSLY FILE TESTIMONY IN THE COMPANION**
7 **PROCEEDING PENDING BEFORE THE COMMISSION CONCERNING**
8 **THE REGULATION OF THE DEEP POINT TERMINAL PARKING AND**
9 **THE BARGE OPERATIONS?**

10 A. Yes. I submitted Direct and Rebuttal Testimony in Docket No. A-41, Sub 21 in
11 support of the Village’s request that the Commission issue a decision clarifying the
12 regulatory status of the parking and barge operations which are critical components
13 of the transportation system serving Bald Head Island.

14 **Q. ARE THE PARKING AND BARGE ASSETS INCLUDED IN THE**
15 **TRANSFER APPLICATION IN THIS PROCEEDING?**

1 A. No. Bald Head Island Limited, LLC (“Limited”) has not sought Commission
2 approval for the transfer of those assets despite the fact that those assets are critical
3 components of the transportation service providing access to the Island. It is the
4 Village’s position that the parking and barge assets should not be sold without
5 Commission approval and subject to the Commission’s regulatory oversight.

6 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS**
7 **PROCEEDING?**

8 A. I identify various concerns with the proposed transfer of the common carrier
9 certificate from Bald Head Island Transportation, Inc. (“BHIT”) to SharpVue
10 Capital, LLC and its affiliates (“SharpVue”). Among these concerns are: (1)
11 SharpVue has not articulated any clear plan to address existing service issues
12 plaguing the system, (2) SharpVue is a financial firm with no experience in
13 operating utility assets, and (3) SharpVue has not proposed meaningful protections
14 to ensure the continued availability of the transportation assets on reasonable terms
15 and conditions. Additionally, I seek to re-emphasize the inter-related nature of the
16 ferry/tram, parking and barge operations and how this relationship is relevant to
17 this issue in this proceeding.

18 **Q. GIVEN THESE CONCERNS, WHAT IS THE VILLAGE’S POSITION AS**
19 **REGARDS THE TRANSFER OF THE COMMON CARRIER**
20 **CERTIFICATE TO SHARPVUE?**

21 A. The Village is not presently in a position to support the application given
22 (1) SharpVue’s opposition to the Commission’s assertion of regulatory authority

1 over parking and the barge and the unresolved legal issues concerning these assets,
2 (2) the absence of measures sufficient to protect the public interest going forward
3 in continued access to the transportation system on reasonable terms and
4 conditions, and (3) significant unanswered questions concerning SharpVue's
5 capabilities and plans for operating the system. I would note that this position is
6 consistent with the sentiment of Island stakeholders, as illustrated by a recent
7 survey sent by the Bald Head Association in November to over 1,500 property
8 owners. Only 23% of the respondents supported the transfer of the certificate in
9 this proceeding, while 56% opposed the transfer and another 22% didn't have
10 sufficient information to form an opinion. I appreciate the difficulties of conducting
11 a survey on an issue this complex, but the survey results are generally consistent
12 with my communications with Islanders – there is significant concern with, and
13 unanswered questions about, this transaction and the public does not perceive the
14 proposal, as currently framed, as serving the Island's long-term best interests.

15 **Q. LIMITED HAS EMPHASIZED THE NEED FOR CLOSURE OF THIS**
16 **SALE, CITING THE NEEDS OF THE MITCHELL ESTATE. WHAT IS**
17 **YOUR RESPONSE TO THIS CONCERN?**

18 A. I appreciate that Limited wishes to disentangle itself from the Island, but any
19 “crisis” (for which no evidence has been presented) is of Limited's own creation:
20 the only reason that the transaction has not already occurred is that Limited has
21 been unable to justify its transaction price—which greatly exceeds the tax valuation
22 of the assets. Concerns over the original transaction price were raised by multiple

1 members of the Local Government Commission in reviewing the financing
2 application submitted by the Bald Head Island Transportation Authority, and
3 Limited was unable, or unwilling, to provide sufficient justification to the agency.
4 The LGC was concerned that the deal, as proposed, amounted to an unsubstantiated
5 “transfer of wealth” from users of the system (who are largely hourly employees
6 and contractors) to the wealthy owners in Texas. As I observed in the Sub 21
7 proceeding, it is unfortunate that the developer—seeking to exit its involvement
8 with the Island—seems to be focused on maximizing its financial return rather than
9 ensuring the long term success of the Island. Relatedly, I would observe that no
10 representatives of the Mitchell Family have appeared before the Commission to
11 articulate exigencies related to their business affairs.

12 **Q. YOU REFERENCED THE INTER-RELATED NATURE OF THE**
13 **FERRY/TRAM, PARKING AND BARGE OPERATIONS. HOW DOES**
14 **THIS RELATE TO THE PRESENT PROCEEDING?**

15 A. The Commission has before it in the Sub 21 docket extensive testimony and
16 evidence on the inter-related nature of the ferry/tram, parking and barge operations.
17 Each service is dependent on the other: i.e., without parking there would be no
18 ferry, and, without the barge’s services, there would be no need for the ferry to
19 transport the public to the island. Given this, all of these assets should be treated
20 as components of an integrated, regulated service offering, and it makes little sense
21 for the sale of the ferry/tram assets to be considered separately from the sale of the
22 other assets—points which were reiterated by witnesses Brawner (Tr. Vol. 1, pp.

1 26-27) and Belch (Tr. Vol. 1, pp. 76-77) at the Commission's November 1, 2022
2 public hearing in Bolivia. If these assets are not treated as integrated components
3 of a single service, there is risk that any individual component could be divested
4 separately from the others, devoted to non-utility uses, or otherwise disposed of
5 outside the authority of the Commission and without consideration of the impact to
6 the other dependent services.

7 Similarly, proposed concessions relating to the ferry/tram service risk being
8 ineffectual if the other services are not subject to the Commission's regulatory
9 authority. For example, SharpVue has pledged that it will not "seek to recover any
10 transaction costs or acquisition premiums related to this transaction from
11 passengers."¹ However, this pledge seems rather hollow given that SharpVue is free
12 to recover these costs by raising parking or barge fees—thereby recouping its
13 acquisition costs from ratepayers without having to raise ferry ticket prices. In
14 discovery, the Village asked if SharpVue would promise to not seek to recover any
15 portion of transaction fees and the acquisition premium from barge and parking
16 customers, and SharpVue refused to provide such a commitment.²

17 **Q. DO SHARPVUE'S PROPOSED COMMITMENTS IN THE SUB 21**
18 **DOCKET ADDRESS THESE CONCERNS?**

19 **A.** No, they do not.

20 First, I would note that SharpVue has made no effort to work with the

¹ Roberts Direct Testimony, at 7.

² SharpVue Responses to Village Second Data Requests, at DR 2-17 (Exhibit 1 hereto).

1 Village to address its concerns. There has been no communication that I am aware
2 of where SharpVue has solicited the Village's input concerning current operations
3 of the transportation assets, its concerns regarding the proposed transaction, and
4 measures that might be implemented to address these concerns. This is surprising
5 given the obvious need for the parties to work together should the transaction be
6 consummated and the fact that the Village would be one of SharpVue's largest
7 customers.

8 With regards to the unilateral proposals made by SharpVue in the Rebuttal
9 Testimony of Lee Roberts in the Sub 21 docket, while the Village is appreciative
10 of the spirit of the proposals they do not obviate the need for regulation of all the
11 transportation assets nor do they fully protect the public. Among the concerns are:

- 12 • SharpVue's promises as regards parking are contingent on the
13 Commission not exercising regulatory authority over those assets.
14 This contingency nullifies any benefit of the promise itself since
15 virtually all parties agree that the Commission should exercise some
16 level of authority over parking.
- 17 • SharpVue's promises regarding continued access to parking and rate
18 increases would not bind a subsequent owner. This means that if
19 SharpVue sells, or leases the operation of, the parking facilities to a
20 third party, then SharpVue's promises made to secure transfer of the
21 ferry/tram certificate would be worthless and there would be no
22 regulatory oversight or remedy available for service or rate issues as
23 regards the new owner. Even if SharpVue pledges to "assign" its
24 promises to the new owner, it is uncertain whether the Commission
25 could compel the new owner to comply with the assigned promises
26 in the absence of a clear order establishing the regulatory status of
27 those assets.³ In the absence of such a determination, the

³ SharpVue and Limited have already signaled the specter of this argument, claiming in opposition to the Village's preliminary injunction motion that there was a "jurisdictional issue of first impression" of whether the Commission could enjoin a transaction involving a transfer to an unregulated entity. *See* Respondents' and SharpVue's Response in Opposition to Complainant's Motion for Preliminary Injunction, Docket No. A-41, Sub 21, at n.4 (Oct. 4, 2022).

1 Commission would only be left with potentially seeking a
2 “contractual” remedy in Superior Court to enforce the promises
3 made by SharpVue.

- 4 • As regards SharpVue’s offering to continue the imputation of
5 \$523,725 of annual revenues per the 2010 rate case, this is already
6 required under the prior Commission order. Moreover, it is my
7 understanding that evidence presented in the Sub 21 proceeding
8 shows that this imputation substantially underestimates the
9 contribution that should be attributed from the parking operations.

10 **Q. AS REGARDS THE FERRY/TRAM OPERATIONS, YOU REFERENCED**
11 **CONCERNS WITH THE EXISTING OPERATIONS. PLEASE DESCRIBE**
12 **THESE OPERATIONAL CONCERNS.**

13 A. My primary concern is with the abysmal on-time performance of the ferry service,
14 particularly during the periods of highest demand. Especially during the weekends
15 in summer months, the ferry boats tend to fall behind schedule early in the morning
16 and then they never catch up for the rest of the day. These delays have an adverse
17 effect on all aspects of the transportation service. As the ferries start running late,
18 the baggage system often gets backed up on both the Island and mainland side.
19 Frequently during these periods luggage will not be placed on the same boat as the
20 passengers so people get to the Island and have to wait for another ferry—or
21 sometimes two—to get their luggage. The same thing happens when passengers
22 are leaving the Island. It is common to see luggage piled up on the sidewalk in
23 huge piles at both the Deep Point and Island terminals. Also, the tram service
24 schedules get thrown off because of the ferry delays and having to wait on luggage
25 to arrive on a different boat. Keep in mind that trams are required to be scheduled

1 in advance, so passengers create their travel schedules around the schedules
2 published by BHIT.

3 **Q. WHAT SORT OF PROBLEMS DO THESE SERVICE ISSUES CREATE**
4 **FOR RIDERS?**

5 A. These delays and luggage problems wreak havoc on users of the ferry. For visitors
6 who are excited about starting their vacation on the Island with their families, it is
7 extremely aggravating—to say the least—having to wait, potentially for hours, to
8 get on the ferry, retrieve their luggage, and then access the tram to their destination.
9 For workers trying to get to their Island jobs on time—or trying to get home after a
10 day’s work—these problems are enormously frustrating and discouraging. For
11 people who are on a schedule—for example, they are trying to get off-Island to
12 catch a plane or make a doctor’s appointment—these problems create enormous
13 stress and additional expense as appointments are missed and flights are re-booked.
14 These issues are compounded if you consider the conditions, especially on the
15 Island-side where there is insufficient terminal space for passengers and luggage.
16 Oftentimes, at both Deep Point and the Bald Head Island Marina, riders are left
17 waiting outside during extreme summer heat or during summer rainstorms which
18 exacerbates the level of frustration. Finally, these issues make it more challenging
19 for Island businesses to recruit and retain employees, and they disrupt business
20 activity as employees are delayed in getting to and from their jobs.

21 **Q. HOW PERVASIVE ARE THESE PROBLEMS?**

22 A. The most recent quarterly report submitted by BHIT to the Commission in Docket

No. A-41, Sub 7A demonstrates this issue. Copied below is the portion of the report showing on-time performance of the ferries through September of this year.

BHIT Quarterly Report, Docket No. A-41, Sub 7A (Nov. 9, 2022)

BALD HEAD ISLAND TRANSPORTATION, INC.
Report of Passengers Boarded by Fare Class
On-Time Performance (OTP) Information

TYPE TICKET	2022	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	TOTAL
Class I GENERAL		3,014	4,250	7,828	12,982	14,431	17,625	21,109	15,285	12,728				109,230
Class II BULK 40		1,928	2,457	3,390	3,713	4,072	4,057	3,668	3,117	3,155				29,547
Class III BULK 80		150	159	172	183	213	212	178	177	158				1,602
Class IV NO FRILLS		474	476	676	745	806	990	1,245	995	702				7,113
Class V CONTRACTOR		2,412	2,663	3,419	3,450	3,721	3,843	3,233	3,570	3,809				30,120
Class VI EMPLOYEE		7,718	8,265	10,180	11,241	11,970	12,970	13,478	13,281	11,089				100,192
Class VII CHILDREN		176	391	943	1,884	1,804	3,371	4,034	2,870	1,490				16,863
Class VII CHILDREN NO COST		41	65	167	367	493	612	717	563	487				3,512
Class VIII ANNUAL PASS		138	171	191	127	143	60	65	119	154				1,168
Class X ONE-WAY TICKET		131	145	175	340	397	457	610	345	252				2,852
TOTAL (w/ Class X ONE-WAY)		16,051	18,897	26,956	34,772	37,456	43,740	47,727	38,978	33,770	0	0	0	299,347
TOTAL (w/ Class X ONE-WAY)		16,182	19,042	27,131	35,112	37,853	44,197	48,337	40,323	34,022	0	0	0	302,199
Class IXa OVERSIZED BAGGAGE		45	122	217	403	355	632	607	487	368				3,434
Class IXb EXCESS BAGGAGE		0	0	0	3	3	2	0	2	1				11
TICKETED TRAM RIDERS / ¹		1,701	2,635	5,031	8,617	9,713	11,662	14,008	8,768	7,948				70,081
INVOICED TRAM RIDERS		0	0	0	0	0	0	0	0	0				0
INVOICED INTERCO SHUTTLE BUS RIDERS		0	0	0	0	0	0	0	0	0				0
INVOICED NON-INTERCO SHUTTLE BUS RIDERS		0	0	0	0	0	0	0	0	0				0
FERRY DEPARTURES ON-TIME		88%	86%	85%	86%	69%	56%	47%	51%	55%				67%
NUMBER DAYS WITH A LATE DEPARTURE		17	20	25	29	28	29	31	31	29				27

Notes:

¹ Riders whose ticket includes tram

As you can see from this report, the on-time percentage *on average* was less than 60% for June through September. In July, the on-time percentage was less than 50%, meaning the ferry was *more often late than on time*. Given that there is typically less ridership during the week, these average monthly data illustrate what Islanders have observed: weekends during peak summer months were a complete nightmare. Indeed, the report shows that nearly every day of the month between May and September experienced a late departure, and every day in July and August experienced a late departure. Late ferries, upset passengers, and stacked up luggage are not consistent with the level of service which the Island once experienced and

1 now seeks and needs.

2 **Q. HAS THIS ISSUE WORSENERED IN RECENT YEARS?**

3 A. Yes. I examined BHIT's on-time report filings for the period 2013-2022. As seen
4 from the summary below, the on-time performance of the ferries has progressively
5 worsened over time.

		% On Time Departures Only												Ave	Tot Passengers
		Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec		
2013	% On Time Departures	94	91	92	90	91	87	80	81	81	89	95	95	89	272,401
2014	% On Time Departures	95	96	99	96	96	86	80	84	94	93	94	90	92	274,873
2015	% On Time Departures	91	95	92	93	88	85	73	83	88	91	90	92	88	284,032
2016	% On Time Departures	94	95	95	95	92	89	70	77	88	94	90	93	89	303,567
2017	% On Time Departures	96	97	89	83	80	77	68	77	79	88	90	95	85	335,774
2018	% On Time Departures	95	98	91	90	78	68	71	73	87	97	98	98	87	310,998
2019	% On Time Departures	98	97	96	83	86	73	69	73	82	94	92	92	86	359,175
2020	% On Time Departures	96	95	98	77	89	99	68	61	72	75	86	89	84	292,095
2021	% On Time Departures	90	86	65	67	54	47	45	53	59	68	76	84	66	376,399
2022 YTD	% On Time Departures	88	86	85	66	69	56	47	51	55				67	302,199
							80-89								
							70-79								
							<70								

6 As compared with publicly available performance data from other ferry operations,
7 this performance is extremely poor. According to data published by the
8 Washington State Department of Transportation, the average on-time performance
9 for nine Washington State ferries for 2020 (the latest published data) was 89.8%—
10 just short of the stated goal of 95%, but substantially better than BHIT's
11 performance.⁴ For the six routes served by the New York City Ferry System, NYC
12 Ferry reports a system-wide on-time percentage between a low of 96% and a high
13 of 97% in each quarter of 2021.⁵ Consistent with the NYC Ferry performance and
14 the stated Washington ferry system goal of 95% on-time performance, certainly one

⁴ <https://wsdot.wa.gov/about/data/Multimodal-mobility-dashboard/dashboard/WSF/ontime-reliability.htm>.

⁵ See <https://www.ferry.nyc/reports-statistics/>.

1 would expect on-time metrics at or above 90% on average. In light of this sub-
2 standard performance, it is puzzling, and concerning, that SharpVue is paying what
3 appears to be a substantial premium for the business with no clear plans for
4 investing in and improving operations.

5 **Q. WHAT ARE THE REASONS FOR THIS POOR PERFORMANCE?**

6 A. While COVID may have had an impact on on-time performance in 2021, it is clear
7 that the trend of growing delays started before 2020 and has continued to worsen
8 in 2022. The thought among many Islanders is that Limited has not made the
9 necessary investment in ferry maintenance and equipment over the last several
10 years.⁶ Certainly it is a common phenomenon that sellers are less interested in
11 making necessary capital expenditures as that money is not likely to be recovered
12 before the sale. Here, Limited has been seeking to sell the transportation system
13 for the last several years, so it is quite possible that they, similarly, have failed to
14 make the necessary investments in system improvements.

15 **Q. HOW DO THESE ISSUES RELATE TO THIS PROCEEDING?**

16 A. SharpVue has not articulated any appreciation of the gravity of this situation nor
17 any plan for addressing the service deficiencies. To the contrary, SharpVue
18 characterizes BHIT as “extremely well-run,” states that it intends to “continue the

⁶ See, e.g., Testimony of Kim Scagnelli, Tr. Vol. 1, p. 89 (Commission’s questions) (“I think because all this mess about the transportation system has gone on for year now, money hasn’t been put in. Boats this summer . . . weren’t even running because they were broken and they couldn’t get the parts to fix them.”); Crista Thomas Statement of Position, Docket No. A-41, Sub 22CS (Nov. 2, 2022) (“It appears to me that the current owner has put little to no considerations into making necessary and meaningful facility repairs or staff training/recruitment in order to continue the service that many of us experienced in our early years on Bald Head.”).

1 track record of success,” and presents its plan to spend the first year evaluating
2 current operations and “look for opportunities to improve service.”⁷ In its discovery
3 responses, SharpVue refused to commit to making improvements to ticketing and
4 baggage handling—stating only that it “intends to continue the ferry and tram
5 operations without significant or immediate change” and that it intended to evaluate
6 operational changes post-acquisition “in due course.”⁸ Improvements to the ferry
7 system, though, are already overdue. SharpVue’s refusal to provide a plan for such
8 improvements is alarming—particularly when the passenger numbers will continue
9 to grow as additional homes are built on the Island.

10 **Q. ARE YOU AWARE OF THESE SORT OF CONCERNS BEING**
11 **EXPRESSED BY ISLANDERS?**

12 A. Absolutely. As a user of the system, I have personally observed these issues, but
13 in my role as member of the Village Council, I regularly hear from Islanders about
14 their concerns with the ferry and transportation system. Given that the Island is
15 completely dependent on this monopoly service, the proper functioning of the
16 system—and continued access to the service on reasonable terms and conditions—
17 is high on everyone’s list of the critical issues facing the Island. Certainly I heard
18 these concerns loud and clear at the Commission’s public hearing.

19 **Q. CAN YOU PROVIDE SOME EXAMPLES OF PUBLIC STATEMENTS?**

20 A. Yes. There were several members of the public who expressed concerns about the

⁷ Roberts Direct Testimony, at 6.

⁸ See SharpVue Responses to Village Second Data Requests, at DR 2-15 (attached here to as Exhibit 1).

1 operation of the ferry system at the Commission's public hearing on November 1,
2 2022 in Bolivia and in written statements submitted in these dockets.

3 Joe Brawner, a 25-year permanent resident of the Island, testified:

4 [O]perations are not what they ought to be at the moment ... [an
5 opinion] shared by a number of people according to a recent poll.
6 The real question is how does ShaprVue plan to achieve the former
7 operations standards and how will it [renew] the ferry system badly
8 [] in need of renewal? . . . The performance of the ferry system is
9 poorer today from an on-time basis and a maintenance basis than
10 any time in my recent memory.⁹

11
12 Crista Thomas, General Manager of Wendy Wilmot Properties, LLC,¹⁰

13 describes her challenges in managing an on-Island business given the service issues
14 with the ferry operation:

15 When I first starting working on BHI [in 2006], the ferries were
16 reliably on time and the ferry staff were enjoyable, cordial, and
17 engaging with riders no matter who they were – worker, guest, or
18 resident. . . . In recent years, as the ferry performance and conditions
19 continue to decline, it seems as though staff morale has also steeply
20 declined. . . . What I've witnessed is the serious decline in
21 maintenance of the boats, the trams, and the overall experience has
22 been unreliable. . . . a ferry that has ripped up seats, ceiling leaks,
23 a/c water pouring onto whomever is unfortunate enough to sit under
24 them, peeling wall paper, stained up carpeting, etc. Not to mention
25 the inordinate number of times we all hear about one or two of the
26 fleet having broken and needing repair.

27
28 In our housekeeping department we have ladies that get up early to
29 make a 7 o'clock boat to come work an 8 to 10-hour shift, depending
30 on the time of year. They try to take a 4:30 or 5:30 boat off on the
31 weekends, only to find themselves bumped to the next ferry due to
32 capacity. They often find themselves standing in long lines with the
33 strong potential of being bumped not once, but multiple times. This

⁹ Tr. Vol. 1, pp. 27-28.

¹⁰ Crista Thomas Statement of Position, Docket No. A-41, Sub 22CS (Nov. 2, 2022). Wendy Wilmot Properties is the largest real estate firm on the island. It employs 20 year-round staff and an additional 25-30 summer-only staff, and 9 year-round real estate brokers and provides management service for 50 rental homes and 15 private homes.

1 has happened to me, personally, more times that I could possibly
2 recount. . . . It is a serious problem for all workers (not just our
3 own) who absolutely need to get off on time to pick up small
4 children from school/day care.
5

6 In her statement, Ms. Thomas describes how her business is forced to utilize water
7 taxis in lieu of the ferry as a very expensive “band aid solution” in order not to lose
8 employees but that “Limited recently banned the use of water taxis while the ferry
9 is running” thus jeopardizing the availability of this workaround to a broken ferry
10 system.

11 Echoing these concerns, Kim Scagnelli, a retired social worker and Island
12 resident,¹¹ testified as to the difficulties experienced by Island workers:

13 Recently, this past summer, since we’re not renting anymore, I ran
14 into the woman . . . that used to clean our house with her crew during
15 the summers, which is a very difficult job here. They turned over 10
16 houses a day on a Saturday. I just happen to be leaving the Island on
17 a Saturday which I try not to do in the summer because it’s crazy,
18 and the system has been broken for the last couple of years. I bump
19 into her and I say, “how are you doing”? She said, “oh my God, Ms.
20 Scagnelli, it’s horrible. I’m here with my crew, we’ve been bumped.
21 We couldn’t get on the 3:30. We couldn’t get on the 4:30. We’re
22 hoping to get on the 5:30”. These people have worked for 12 hours
23 a day cleaning houses and they can’t get home. And it’s hot. And
24 there’s no air conditioning. You’re in the sun.
25

26 The issues at play here arise in many different ways. Lou Vaickus¹²
27 describes his concerns about needing adequate transportation service to support his
28 not-for-profit school on the Island:

29 [M]y wife and I are starting a not-for-profit K-8 school on BHI (BHI
30 Academy) and the teachers, assistants, admins, lecturers, and
31 students and parents will be entirely dependent on this ferry system.

¹¹ Tr. Vol. 1, p. 83.

¹² See Lou Vaickus Statement of Position, Docket No. A-41, Sub 22CS (Nov. 1, 2022).

1 In particular, we are offering a top notch education to the
2 underprivileged from Brunswick County by offsetting some or all
3 of their tuition and fees. Classes are expected to be approx 50%
4 underprivileged and special needs like dyslexia and ADHD. As
5 Chairman of the Board of BHI Academy Foundation, I implore you
6 to ensure that the ferry system has expert oversight so that we
7 maintain this vital link in our transportation system.
8

9 Underprivileged and special needs school children attending this school will be
10 dependent on the availability of reliable and affordable transportation services to
11 the Island.

12 Claude Pope,¹³ owner of the Martime Market on the Island, spoke to the
13 concerns about the current operations of the transportation system impacting his
14 business operations. He raised questions for consideration by the Commission
15 including, why haven't the boats been running on time, what's the cost versus
16 benefit of fixing the issue, what's the impact of these persistent delays on the
17 Island's employees and the contractors on their commuting time, and what's the
18 impact of these delays on homeowners and visitors?

19 Kurt Haglund, a visitor for some 20 years who recently became a full-time
20 resident, testified that he had "seen a falloff in the quality of the management of –
21 management and reinvestment in the transportation system and that worries me,
22 because the current team ... I don't think is taking care of it as well as they did
23 several years ago."¹⁴ He further noted the need for an infusion of "new energy and
24 new money" to address "dredging that has to be done[,] boats that need to be

¹³ Tr. Vol. 1, p. 45.

¹⁴ Tr. Vol. 1, p. 40.

1 fixed[,] . . . [and] basic maintenance on lots of big buildings that has to be done.”¹⁵

2 Similarly, in the survey conducted by the Bald Head Association related to
3 regulation of the parking and barge operations, several commenters noted concerns
4 about service quality—despite the fact that it was not the topic of the survey. For
5 example:¹⁶

- 6 • “I have not been happy with service since this [proposed] sale.
7 Would appreciate more reliability/consistency associated with ferry
8 service. Considering sale of [my Island] property.”
- 9
- 10 • “Since the death of George Mitchell and the virtual abandonment of
11 the properties on Bald Head Island, the ferry has been poorly [*sic*],
12 the terminal has been inadequately maintained.”
- 13
- 14 • “OH MY!! Sharpvue said they’ll carry on services as already in
15 place. That means late ferries, broken down trams, not enough island
16 parking and luggage handling.”

17 These sort of comments are not isolated concerns by “complainers”; these are
18 heartfelt concerns that I routinely encounter from users of the transportation system.

19 **Q. IN ADDITION TO THE SERVICE ISSUES YOU’VE DISCUSSED, DOES**
20 **THE VILLAGE HAVE CONCERNS ABOUT THE ACQUISITION OF THE**
21 **TRANSPORTATION SYSTEM BY A PRIVATE EQUITY FIRM?**

22 A. Yes, this is a central concern of the Village and the Island stakeholders, and there
23 are a number of layers to unpack here.

24 First, there is some question about the relationship of the various entities
25 referenced in the application. The proposed assignee is a newly-created entity, Bald

¹⁵ Tr. Vol. 1, pp. 39-40.

¹⁶ See Testimony of Alan Briggs, Bald Head Association, at Exhibit 4 (pages 9, 10, 28), Docket No. A-41, Sub 21 (Sept. 8, 2022).

1 Head Island Transportation, LLC. Obviously, as a newly-created entity it has no
2 track record, experience or credentials of success with running any business, much
3 less a utility, and it will be dependent on a small group of unidentified investors for
4 funding. It is not clear from the public record exactly what SharpVue's role will
5 be in managing the affairs of the business, who will be making managerial and
6 business decisions, and how the business will be funded going forward.

7 Second, as a private equity firm, SharpVue's primary obligation is to its
8 investors, not to ratepayers. This raises obvious questions: Will SharpVue be
9 willing to make the investments in the system that will be required to restore and
10 improve its operations or will it forego such investments in order to maximize the
11 return for its investors? Will SharpVue be focused on short-term returns or will it
12 be invested in the long-term success of the enterprise?

13 Third, SharpVue has no experience running utility systems. SharpVue's
14 exposure to utility assets is limited to seemingly irrelevant buckets of experiences:
15 SharpVue has invested in a solid-waste company and a wastewater treatment
16 facility, which SharpVue admits are services that are not analogous to the ferry
17 system.¹⁷ Additionally, Mr. Roberts of SharpVue testified in the Sub 21 proceeding
18 that, in prior roles, he helped arrange financing for infrastructure investments in a
19 fiber network, a bridge, a skyscraper, a shipping company, and a couple of waste-
20 management companies.¹⁸ Mr. Robert's past experiences as an investment banker

¹⁷ Roberts Direct Testimony, at 4.

¹⁸ Roberts Rebuttal Testimony, at 4 (filed on Sept. 28, 2022, in Docket No. A-41, Sub 21).

1 simply do not equip SharpVue to *operate* a transportation system. Indeed, should
2 SharpVue acquire the ferry system, SharpVue will rely exclusively on current
3 management to operate the system. SharpVue can add no operational knowledge
4 itself, and it has not suggested that it would ever hire new managers or engage
5 outside consultants to improve the utility's underperforming operations.

6 Fourth, although SharpVue appears to have secured "commitments" for
7 funding at a level sufficient to consummate the asset purchase, it is not clear
8 whether the buying entity will have the resources to make additional investments
9 that are necessary to operate the system, including capital improvements that need
10 to be made. The buying entities are simply special purpose investment vehicles
11 and operating shell companies, and the applicants have not stated that existing
12 investors would be required to, or have committed to, contribute additional capital
13 should the need arise.

14 **Q. DO MEMBERS OF THE PUBLIC SHARE THESE CONCERNS?**

15 A. Yes. Various members of the public spoke to these concerns at the November 1st
16 public hearing in this proceeding.

17 Mr. Pope¹⁹ spoke to his concerns as a business owner and significant user
18 of the transportation services:

19 I have not seen evidence yet that SharpVue is a capable operator and
20 one that would be customer focused. Indeed, SharpVue Capital is
21 really not an operator at all. They are quite simply an investment
22 organization. One which gathers a pool of potential investors to
23 acquire assets with a promise of a stable and fair rate of return on
24 their investment. They may well grow to become an operator in the

¹⁹ Tr. Vol. 1, p. 44.

1 future but at present I see no visible operating talent with a relevant
2 history of experience that can be deployed into a newly acquired
3 transportation entity.
4

5 Moreover, Mr. Pope noted his surprise that SharpVue had not reached out to him—
6 as one of the transportation system's largest customers—to solicit input on his
7 experiences and concerns with the system's operations.²⁰ I would note that, similar
8 to Mr. Pope's experience, SharpVue has also not reached out to the Village seeking
9 input on its concerns with current operations and hopes for a new operator.

10 Brent Belch, a full-time resident of the Island since 2008 and a visitor since
11 the 1970s, expressed his concerns:²¹

12 Look, SharpVue is a private equity firm. Private equity firms are not
13 typically, while they may own some utilities, some toll roads, et
14 cetera, but private equity firms are usually not in the business of
15 running and managing utilities. They're in the business of providing
16 a significant and often times premium return to their sole
17 constituents which are called their stakeholders. Their mission is to
18 maximize income, potentially limit services, and minimize needed
19 reserves for current and deferred maintenance if they are not getting
20 the income they need to provide the return to their investors.
21 [R]eally that's it.
22

23 Ms. Scagnelli, a retired social worker and Island resident,²² related similar
24 concerns, especially from the perspective of workers on the Island and those less
25 affluent:

26 And a private equity firm as many people have said, they're in the
27 business of taking care of the investors who have given them money.
28 They don't care about a cleaning woman that's on a ferry that can't
29 get home. And we have to put those issues as paramount. If we
30 forgot that people are important, we are going to lose the specialness
31 of this place. So I really urge the Commission to think of the more

²⁰ Tr. Vol. 1, p. 53.

²¹ Tr. Vol. 1, p. 77-78.

²² Tr. Vol. 1, p. 84.

1 common men and women that are workers and also people like us.

2
3 Kurt Haglund, a visitor to the Island for some 20-years and a full-time
4 resident for two-years, spoke to his concerns whether the proposed buyer had the
5 appropriate capital structure and access to capital investment funds at reasonable
6 rates:

7 I know a decent amount about private equity and the private equity
8 need for premium returns to their investors, and I'm concerned that
9 the main interest in the Island is getting people and commerce back
10 and forth and not necessarily in fulfilling private equities premium
11 returns. . . . [M]y opinion is if something goes wrong we are going
12 to be back here again trying to figure out how to deal with challenges
13 and I don't think that's a good use of anyone's sometime.

14
15 Further, many respondents to a survey conducted by the Bald Head Association
16 ("BHA") expressed concerns about a private entity having unregulated control of
17 these assets:²³

- 18 • "My concern is a private owner will increase costs for profitability
19 purposes, and since property owners/visitors have no alternative to
20 the private owner they will be forced to pay the higher costs. The
21 NCUC can protect property owner/visitors from the monopoly
22 power of the private owner to keep costs fair and reasonable."
- 23
24 • "We have no guarantees on how long the SharpVue will own the
25 system before selling it to another group. We could get rate increases
26 every time it changes ownership. The cost is high now for the home
27 owners."
- 28
29 • "We are not sure of the priorities of the new owners with regards to
30 reasonable profits vers[u]s the needs of the frequent users."
- 31
32 • "If the owners of the BHI transportation system do not have a vested
33 interest in the viability of the island that the system serves there is
34 no incentive to run the system in a manner that is fair to BOTH the

²³ See Testimony of Alan Briggs, Bald Head Association, at Exhibit 4 (pages 6, 8, 14, and 20), Docket No. A-41, Sub 21 (Sept. 8, 2022).

1 owners of the system AND the island that it serves. What if the new
2 owner wants to sell off the more lucrative portion of the system?
3 Then what will be left will have to fend for itself; will it do so in a
4 manner that remains fair to the homeowners, businesses and many
5 workers whose current livelihood is based on working on the
6 island.”

7 In short, property owners are especially concerned about a new owner who has no
8 vested interest in the Island taking over the ferry system; whether it will be
9 committed to the long-term interests of the Island; whether it has the necessary
10 experience with operating assets of this nature; and whether it has access to
11 necessary capital to make improvements to the operation of the system.

12 **Q. WHAT DO YOU BELIEVE THE COMMISSION SHOULD DO TO**
13 **ADVANCE THE PUBLIC INTEREST IN THIS PROCEEDING?**

14 A. This is a difficult question, and I recognize the challenge presented to the
15 Commission. I hope that the Commission will seriously consider the concerns
16 expressed with this transaction by the public which SharpVue seeks to serve,
17 including by the Village, so that we are not back before this body a few years down
18 the road in a worse position than we are in today.

19 Notwithstanding these concerns expressed by the public, if the Commission
20 determines that there is sufficient evidence to move forward with this application,
21 I would urge the Commission to address several key issues. First and foremost, I
22 must re-emphasize the Village’s position in the Sub 21 proceeding: the
23 Commission should regulate the parking facilities and the barge to ensure that those
24 indispensable services are available to the public at reasonable rates and on fair
25 terms. A strong affirmation that the parking and barge are subject to the

Commission's regulatory authority would go a long way to alleviate many of the systemic concerns raised by the public with ensuring continued access to the Island. Second, the Commission should require SharpVue to detail and commit to a plan for improving the ferry system, including departure times, the physical condition of the ferries, and the terminal facilities. Third, the Commission should condition any transfer of the ferry assets on SharpVue demonstrating how it will finance the capital expenditures needed to make such improvements—whether that be deploying the excessive revenue from the highly profitable parking and barge operations, raising more equity from its investor pool, or securing responsible amounts of debt on favorable financing terms. Fourth, the Commission should ensure that appropriate ratepayer and user protections are in place to ensure continued access, into the future, to the consolidated transportation system on reasonable terms and conditions.

Q. DO YOU HAVE ANY CONCLUDING REMARKS?

A. Yes. I would like to emphasize that the Village's interest in this proceeding is in protecting the Island into the future. That's it. There is no ulterior motive, and certainly, as a governmental entity, the Village is not chasing profits. We seek a safe, reliable, reasonably priced transportation system that is appropriate to serve the needs of the Island and its various stakeholders, not just today, but over time.

That said, the Village has concerns that the current proposal may not be in the best interests of the Island, and we are not in a position to support the

1 Application based on the information presented in the filing and the responses
2 provided to date in discovery.

3 One big step the Commission could take that would help preserve the
4 transportation assets going forward is to confirm the public utility status of all
5 components of the unified transportation system, including parking and the barge.
6 By doing so, the Commission would help to ensure continued regulatory oversight
7 over the operation of the system in the public interest for so long as it remains
8 privately owned. The Commission's continued oversight is the only security to
9 Bald Head Island and its future that the system will return to what we once had – a
10 safe, reliable, reasonably priced transportation system. We implore the
11 Commission to protect the public interest here with this assertion of regulatory
12 authority.

13 **Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?**

14 **A. Yes.**

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION**DOCKET NO. A-41, SUB 22****Supplemental Direct Testimony of Scott T. Gardner****On Behalf of the Village of Bald Head Island****February 20, 2022**

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

2 A. My name is Scott Thomas Gardner. I am currently serving as the Mayor Pro Tem
3 for the Village of Bald Head Island (the “Village”), and I am a member of the
4 Village Council. My official address is 106 Lighthouse Wynd, Bald Head Island,
5 North Carolina 28461.

6 **Q. DID YOU PREVIOUSLY PRE-FILE DIRECT TESTIMONY IN THIS**
7 **PROCEEDING?**

8 A. Yes, I submitted pre-filed Direct Testimony on December 14, 2022, which was
9 prior to the issuance of the Commission’s Order Ruling on Complaint and Request
10 for Determination of Public Utility Status in Docket No. A-41, Sub 21 – which I
11 will refer to as the “Sub 21 Order”.

12 **Q. CAN YOU SPEAK TO THE VILLAGE’S MOTIVATION FOR**
13 **PARTICIPATION IN THIS TRANSFER PROCEEDING?**

14 A. The Village’s interest in this proceeding is in protecting the Island. We seek a safe,
15 reliable, reasonably priced transportation system that is appropriate to serve the
16 needs of the Island and its various stakeholders, not just today, but over time. I

1 cannot overemphasize the critical importance of the transportation system to
2 everything that happens on the Island: the success of the Island depends on a
3 properly functioning, efficient, and affordable means of public access. Given that
4 the Village Council is comprised of full-time residents of the Island, who utilize the
5 transportation systems on a frequent basis, and who are on the “front lines” when
6 citizens and stakeholders have questions or concerns about the operation of the
7 system, the Council is uniquely situated to advocate for the interests of the public.
8 And in doing so, we have no preconceived notions about who should own and
9 operate the transportation system: we only seek the arrangement that is most
10 advantageous to the long-term interests of the Island and the public, and our
11 preference is to seek collaboration around mutual goals wherever possible.

12 **Q. WHAT IS THE PURPOSE OF THIS SUPPLEMENTAL DIRECT**
13 **TESTIMONY?**

14 A. My supplemental testimony addresses developments subsequent to the filing of my
15 pre-filed Direct Testimony, including the Amended Application for Transfer of
16 Common Carrier Certificate filed by Bald Head Island Transportation, Inc.
17 (“BHIT”), Bald Head Island Limited, LLC (“BHIL”), and Bald Head Island Ferry
18 Transportation, LLC (“BHIFT”) on January 24, 2023 which was necessitated to
19 comply with the Commission’s Sub 21 Order.

20 **Q. WHAT DID THE COMMISSION DECIDE IN THE SUB 21 ORDER?**

21 A. In the Sub 21 Order the Commission agreed with the position of the Village that
22 the parking and barge operations of BHIL are subject to the Commission’s

1 jurisdiction and authority. The Commission reserved for later decision the exact
2 scope and degree of regulation that would be exercised over the parking and barge
3 operations, but determined that N.C.G.S. § 62-111(a) prohibited the sale, transfer
4 or pledge of the parking and barge assets and operations without Commission
5 approval and granted temporary authority for continued operation of the parking
6 and barge assets under BHIT's existing certificate. These latter conclusions
7 necessitated the amendment of the transfer application in this proceeding to address
8 parking and barge operations in addition to the ferry/tram operation.

9 **Q. DOES THE COMMISSION'S SUB 21 ORDER RESOLVE THE VILLAGE'S**
10 **CONCERNS ABOUT THE SHARPVUE TRANSFER?**

11 A. The Sub 21 Order does not resolve the Village's concerns about this *specific*
12 transfer – which I will elaborate on in this supplemental testimony. But the order
13 goes a long way towards addressing the Village's overall concerns about ensuring
14 that the consolidated utility assets will be protected for the benefit of the public so
15 long as the assets are privately held. Having the Commission's continued oversight
16 of the consolidated utility operations will help ensure a safe, reliable, reasonably
17 priced transportation system which is essential to the Island's long-term success.
18 We are aware there are many important matters of widespread consumer impact
19 that are on the Commission's agenda, and the Village is grateful to the Commission
20 for its time and attention on the issues brought forward in the Sub 21 docket.

21 **Q. PLEASE ELABORATE ON YOUR REMAINING CONCERNS WITH**
22 **RESPECT TO THE SHARPVUE APPLICATION?**

1 A. There are several. First, I think it is significant that SharpVue refuses to accept the
2 Commission's determination in the Sub 21 Order and has filed an appeal of that
3 decision. In fact, the Amended Application makes clear that that the Applicants do
4 not concede that the Commission has jurisdiction over the parking and barge
5 operations and that they are making the amended filing "so that the transaction ...
6 may close." In other words, they are seeking to close on the transaction while they
7 are simultaneously litigating the Commission's authority over critical aspects of the
8 transfer.

9 This approach only serves to amplify concerns that I spoke to in my pre-
10 filed Direct Testimony about the proposed transfer: *i.e.*, that SharpVue, as a private
11 equity firm, is ill-suited to operate in the highly-regulated utility environment and
12 that its decisions will be motivated by profit-maximizing motives rather than public
13 service motives. I appreciate that SharpVue is entitled to exercise its right to
14 appeal. But it is remarkable to me that SharpVue is unwilling to accept the
15 Commission's commonsense order on regulation, and this action only serves to
16 highlight the concerns expressed by many on the Island – concerns that were
17 articulated at the Commission's public hearing in this proceeding – that SharpVue's
18 business plan will be focused on maximizing returns for investors rather than
19 providing a utility service. Thankfully, the Sub 21 Order will offer a backstop
20 against these harms, assuming that the appellate courts do not disturb the Order;
21 but the fact that there are guardrails does not mean that the Commission should
22 approve a transfer which has not been demonstrated to be in the public interest.

1 The sale of these assets to a private equity firm – particularly where the funding is
2 coming from a special-purpose-entity rather than an institutional fund – could set
3 the transportation system on a path which may be difficult to reverse, where the
4 assets are monetized for commercial and private gain as opposed to being held for
5 the using and consuming public.

6 **Q. YOU PREVIOUSLY MENTIONED THE VILLAGE’S DESIRE FOR**
7 **COLLABORATION WHEREVER POSSIBLE. DID BHIL’S CEO,**
8 **MR. PAUL, SIGNAL THAT LIMITED WAS PURSUING A “LITIGATION**
9 **STRATEGY” IN RECENT PUBLIC COMMENTS?**

10 A. Yes, I remotely monitored (via electronic streaming) the recent annual meeting of
11 the Bald Head Association where Mr. Paul stated that the Mitchell Estate “has
12 decided to let the courts figure it out” by filing the appeal, as well as by initiating
13 parallel litigation against the Village over the Village’s right of first refusal
14 (“ROFR”) to purchase the transportation system assets. It is unfortunate that
15 Limited has chosen this route – and that SharpVue has joined the appeal.

16 **Q. CAN YOU BRIEFLY ADDRESS THE PARALLEL LITIGATION THAT**
17 **LIMITED HAS INITIATED AGAINST THE VILLAGE RELATING TO**
18 **THE VILLAGE’S RIGHT-OF-FIRST-REFUSAL?**

19 A. Yes, BHIL and BHIT have initiated litigation seeking a determination, as I
20 understand it, that the Village’s ROFR is invalid because the Utilities Commission
21 never approved the ROFR or, alternatively, because the Village has forfeited its

1 rights under the ROFR.¹ The Village's understanding of the legal status of the
2 ROFR is that it is valid and enforceable, and the Village intends to defend against
3 the assertions and claims made in the litigation.

4 **Q. DOES THE ROFR LITIGATION IMPACT THIS PROCEEDING IN YOUR**
5 **VIEW?**

6 A. I am not a lawyer, and am not offering a legal opinion, but it is the Village's position
7 that BHIL and BHIT cannot transfer the transportation assets to a buyer without
8 first complying with their obligations under the ROFR, which they have not done
9 to date. Again, the Village does not have preconceived notions about "who" should
10 own and operate the transportation system, but, through the ROFR, the Village has
11 a contractual right to step into the buyer's role should the Village decide it would
12 be in the best interests of the public.

13 **Q. DO YOU HAVE OTHER REMAINING CONCERNS WITH THE**
14 **SHARPVUE TRANSACTION?**

15 A. Yes – in addition to the broad concern that the transaction has not been shown to
16 be in the public interest – I have some more specific concerns regarding the
17 proposed transaction. In my pre-filed Direct Testimony, I pointed out that
18 SharpVue, in discovery responses, had refused to commit that it would not seek to
19 recover an acquisition premium by raising parking or barge fees. This concern has
20 only been magnified by the Amended Application, given that SharpVue omitted

¹ See Exhibit B to Village Motion to Hold Proceeding in Abeyance and Request for Expedited Ruling on the Motion, at Prayer for Relief p. 12.

1 any commitment not to seek recovery of acquisition premiums. By appealing the
2 Sub 21 Order and deleting the prior commitment to not seek recovery of an
3 acquisition premium, it is obvious that SharpVue is intending to seek recovery of
4 these premiums from ratepayers.

5 **Q. DO YOU HAVE A RECOMMENDATION FOR THE COMMISSION ON**
6 **THIS ISSUE?**

7 A. The Village's expert witnesses, Dr. Wright, is addressing this issue in more detail,
8 but I agree with his recommendation that the any action of the Commission in this
9 proceeding should be conditioned on a requirement that acquisition premium not
10 be recovered from ratepayers. My understanding is that this position is consistent
11 with the Commission's well-established approach to this issue. Addressing this
12 issue now will avoid what will otherwise be a contentious hearing on this issue in
13 the future and it will also help SharpVue and its investors manage their expectations
14 as regards going forward utility operations.

15 **Q. HAVE YOU REVIEWED THE AMENDED DIRECT TESTIMONY OF LEE**
16 **ROBERTS FILED IN THIS PROCEEDING?**

17 A. Yes.

18 **Q. DOES THAT TESTIMONY HELP ALLEVIATE ANY CONCERNS YOU**
19 **MIGHT HAVE ABOUT THE SHARPVUE TRANSACTION?**

20 A. Unfortunately, it does not. I wish it did. I have a number of specific observations
21 to illustrate what I perceive to be missing from the testimony.

- 22 • As I mentioned, Mr. Roberts states that SharpVue will not seek to recover

1 transaction costs from ratepayers but he has retracted his prior commitment
2 not to seek to recover the acquisition premium from “passengers.” This
3 omission is extremely significant and, in my view, signals that SharpVue
4 intends to seek to extract these premiums from parking, barge and ferry
5 customers. It suggests to me that there will be another contentious
6 proceeding on this topic in the future.

- 7 • SharpVue agrees not to seek a rate change in ferry and tram services for one
8 year. However, this commitment says nothing about parking and barge
9 rates. In addition, Mr. Roberts expressly conditions his promise on the Sub
10 21 Order being overturned, saying that SharpVue “reserves the right” to
11 seek rate changes if the order is affirmed; which suggests SharpVue will ask
12 to increase prices for all services once it loses its appeal.
- 13 • Mr. Roberts does not articulate a single specific step that SharpVue pledges
14 to take to improve system operations and performance. In fact, SharpVue
15 characterizes current operations as “extremely well-run” and states its goal
16 as “continu[ing] that track record of success” and merely “stepping into the
17 shoes of BHIT and BHIL.” The perpetuation of a substandard
18 transportation system should not be the goal of a new owner.
- 19 • Mr. Roberts makes no commitment that SharpVue will not seek to monetize
20 utility assets by selling specific transportation assets on a piecemeal basis.
- 21 • Mr. Roberts makes no commitment that SharpVue will hold and operate the
22 utility assets for any particular period of time. This, of course, is of great

1 concern to the Island, which is dependent on the stability of its
2 transportation system. What we do not want is a situation where the system
3 (or components thereof) is bought and sold repeatedly.

4 In sum, SharpVue has not articulated any tangible public benefit from the
5 transaction that might offset the significant risks associated with the sale of utility
6 assets to a special-purpose fund, managed by a private equity firm with its prime
7 goal being to maximize profit for its investors, based on a business plan that is
8 dependent on the appellate courts overturning the Sub 21 Order.

9 As I stated in my prefiled Direct Testimony, these concerns are enhanced
10 by the fact that SharpVue has made no effort to work with the Village to address
11 its concerns. There has been no communication that I am aware of where SharpVue
12 has solicited the Village's input concerning current operations of the transportation
13 assets, its concerns regarding the proposed transaction, and measures that might be
14 implemented to address these concerns. This remains surprising to me given the
15 obvious need for the parties to work together should the transaction be
16 consummated and the fact that the Village would be one of SharpVue's largest
17 customers.

18 **Q. IN YOUR PRE-FILED DIRECT TESTIMONY, YOU DOCUMENT**
19 **SERIOUS SERVICE ISSUES PLAGUING THE TRANSPORTATION**
20 **SYSTEM. DO THE AMENDED FILINGS OFFER ANY COMFORT TO**
21 **THE VILLAGE ON THIS ISSUE?**

22 **A.** No, they do not. As stated, Mr. Roberts' testimony offers no specific commitments

1 to improve service quality. Moreover, I question whether there would be cash flow
2 to support operational and capital investments necessary to make service
3 improvements.

4 **Q. GIVEN THE APPLICANTS' AMENDED FILINGS AND YOUR**
5 **SUPPLEMENTAL TESTIMONY, PLEASE SUMMARIZE THE**
6 **VILLAGE'S CURRENT POSITION AS REGARDS THE TRANSFER OF**
7 **THE COMMON CARRIER CERTIFICATE TO SHARPVUE?**

8 A. The Village continues to have serious concerns about the proposed transaction and,
9 for that reason, is not able to support the application. This Village's concerns are
10 grounded in: (1) SharpVue's continued challenge to the Commission's assertion of
11 regulatory authority over parking and the barge and the unresolved legal issues
12 concerning these assets due to the pending appeal, (2) SharpVue's failure to
13 articulate any meaningful public benefit from the transaction including rate
14 reductions or any rate commitments at all that are not conditional on the Sub 21
15 Order appeal, (3) the removal of a commitment not to seek recovery of an
16 acquisition premium, (4) the failure to address the need for, and make commitments
17 regarding, system improvements, and (5) unanswered questions concerning
18 SharpVue's capabilities and plans for operating the system. As I observed
19 previously, this position is consistent with the sentiment of Island stakeholders, as
20 illustrated by a November survey sent by the Bald Head Association in November
21 to over 1,500 property owners. Only 23% of the respondents supported the transfer

1 of the certificate in this proceeding, while 56% opposed the transfer and another
2 22% did not have sufficient information to form an opinion.

3 **Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?**

4 **A. Yes.**

1 MR. TRATHEN: I also ask that his
2 summary be copied into the record.

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

5 (Whereupon, the Prefiled Summary of the
6 Direct Testimony of Scott T. Gardner was
7 copied into the record as if given
8 orally from the stand.)
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**Summary of the Direct Testimony of Scott T. Gardner
On Behalf of the Village of Bald Head Island**

In my direct testimony, I identified various concerns about the proposed transfer of the common carrier certificate from Bald Head Island Transportation, Inc. (“BHIT”) to SharpVue Capital, LLC and its affiliates (“SharpVue”).¹

I appreciate that Limited wishes to disentangle itself from the Island, but any “crisis” (for which no evidence has been presented) is of Limited’s own creation: the only reason that the transaction has not already occurred is that Limited has been unable to justify its transaction price—which greatly exceeds the tax valuation of the assets. Concerns over the original transaction price were raised by multiple members of the Local Government Commission in reviewing the financing application submitted by the Bald Head Island Transportation Authority, and Limited was unable, or unwilling, to provide sufficient justification to the agency.

In addition, the Village has concerns about SharpVue’s ability to operate the transportation system, and SharpVue has not made any effort to work with the Village to address these concerns. My primary concern is the abysmal on-time performance of the ferry service, particularly during periods of highest demand, such as weekends in the summer months. When the ferries run late, the baggage system gets backed up on both the Island and the mainland side. This in turn throws off the tram service. These delays and luggage problems wreak havoc on users of the ferry—for visitors trying to start their vacation on the Island; for workers trying to get to their Island jobs on time or to return

¹ My direct testimony was filed before the Commission issued its decision in Docket No. A-41, Sub 21. I filed supplemental testimony after the Commission issued its decision. I will not address in this summary portions of my testimony that were addressed by the Commission’s order.

home; and for those who are on a schedule—for example, they are trying to get off-Island to catch a plane or make a doctor’s appointment.

As evidenced by BHIT’s November 2022 Quarterly Report, a portion of which was copied in my direct testimony, the on-time percentage *on average* was less than 60% for June through September. In July, the on-time percentage was less than 50%, meaning the ferry was *more often late than on time*. Given that there is typically less ridership during the week, these average monthly data illustrate what Islanders have observed: weekends during peak summer months were a complete nightmare. This issue has worsened in recent years. As a user of the system, I have personally observed these issues, but in my role as member of the Village Council, I regularly hear from Islanders about their concerns with the ferry and transportation system. For example, several members of the public expressed similar concerns at the Commission’s public hearing on November 1, 2022.

My concern is that SharpVue has not articulated any appreciation of the gravity of this situation nor any plan for addressing the service deficiencies. To the contrary, SharpVue characterizes BHIT as “extremely well-run,” and states that it intends to “continue the track record of success.” In its discovery responses, SharpVue refused to commit to making improvements to ticketing and baggage handling—stating only that it “intends to continue the ferry and tram operations without significant or immediate change” and that it intended to evaluate operational changes post-acquisition “in due course.”

Further, the Village has concerns about the acquisition of the transportation system by a private equity firm. First, Bald Head Island Transportation, LLC, a newly created entity, has no track record or experience running any business, much less a ferry. Second,

as a private equity firm, SharpVue's obligations are to its investors, not ratepayers. Third, SharpVue has no experience running utility systems. And fourth, although SharpVue has secured "commitments" for funding, it is unclear whether it will have the resources to make the additional investments necessary to operate the system, such as necessary capital improvements.

Members of the public share these concerns. For example, these concerns were voiced at the November 1, 2022 public hearing in this proceeding, as well as in response to a survey conducted by the Bald Head Association.

I believe the Commission could take several steps in this proceeding to advance the public interest, including (1) requiring SharpVue to detail and commit to a plan for improving the ferry system, including departure times, the physical condition of the ferries, and the terminal facilities; (2) conditioning any transfer of the ferry assets on SharpVue demonstrating how it will finance the capital expenditures needed to make such improvements; and (3) ensuring that appropriate ratepayer and user protections are in place to ensure continued access, into the future, to the consolidated transportation system on reasonable terms and conditions.

Finally, I would like to emphasize that the Village's interest in this proceeding is in protecting the Island into the future. That's it. There is no ulterior motive, and certainly, as a governmental entity, the Village is not chasing profits. We seek a safe, reliable, reasonably priced transportation system that is appropriate to serve the needs of the Island and its various stakeholders, not just today, but over time.

This concludes the summary of my Direct Testimony.

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1 MR. TRATHEN: And that summary was
2 distributed yesterday, I believe, so.

3 COMMISSIONER DUFFLEY: Yes, we have the
4 summary.

5 MR. TRATHEN: Okay. The witness is
6 available for cross examination.

7 MR. HIGGINS: I believe that would be
8 me.

9 CROSS EXAMINATION BY MR. HIGGINS:

10 Q. Mr. Gardner, Dan Higgins for the BHI Club.
11 Good afternoon, sir.

12 A. Good afternoon.

13 Q. How long have you lived on Bald Head Island?

14 A. We purchased our home in 1997, and we made it
15 our primary residence in 2017.

16 Q. And how long have you served on the Bald Head
17 Village Council?

18 A. Since August of 2020.

19 Q. You weren't in the room yesterday during
20 Mr. -- the closed session relating to Mr. Paul's
21 testimony, were you?

22 A. I was not.

23 Q. And you weren't in the room -- you haven't
24 been in the room today for any of Mr. Roberts'

1 testimony, have you?

2 A. I have not.

3 Q. I'll represent to you that both of those
4 gentlemen testified in the closed sessions regarding
5 meetings with the Village and its attorneys. I'm not
6 going to ask you about any confidential information
7 they may have provided to you any of the -- during any
8 of those meetings.

9 Did you and any other members of the Village
10 have meetings with Mr. Paul and/or
11 Mr. Roberts during 2022?

12 A. We did.

13 Q. How many meetings were there?

14 A. I recall three.

15 Q. What was the purpose of the meetings?

16 A. To discuss the prospect of the Village
17 partnering with SharpVue on the purchase or lease of
18 various components of the transportation assets.

19 Q. And were those meetings held after the time
20 SharpVue had contracted with -- before or after the
21 time SharpVue had contracted with Limited to acquire
22 all these assets?

23 A. My understanding is that is the case, yes.

24 Q. Which, before or after?

1 A. After the -- well, I presume when the
2 announcement was made in late May that an asset
3 purchase agreement had been assigned and these meetings
4 were held subsequent to that.

5 Q. I was going to say, when were they held; do
6 you recall?

7 A. Off the top of my head, one was in early
8 June, one was in mid-June, and then one was -- late
9 June, and the last one was in July -- mid-July.

10 Q. To your knowledge, has the Village ever been
11 provided any of the -- any investor presentation
12 documents that SharpVue may have provided to --

13 A. Not to my knowledge, no.

14 Q. Let me answer my question, please.

15 A. I'm sorry.

16 Q. To your knowledge, has the Village ever been
17 provided with any of the investor presentation
18 documents that SharpVue may have provided to
19 prospective investors?

20 A. No.

21 Q. Do you have any knowledge what -- or does the
22 Village have any knowledge as to what SharpVue was
23 telling prospective investors?

24 A. Not to my knowledge. I certainly don't.

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1 Q. During any of these meetings, did SharpVue
2 disclose its plans? I'm not asking you -- don't tell
3 me anything they may have disclosed. I'm just asking,
4 during any of these meetings, did anyone disclose
5 SharpVue's plans for the assets if they were able to
6 acquire them?

7 COMMISSIONER DUFFLEY: And, gentlemen,
8 can you please speak more into the microphones?
9 Both of you, please.

10 THE WITNESS: I don't know how to answer
11 that other than to say, the only conversations we
12 had were about what components of the
13 transportation system might the Village be able to
14 purchase, and what components of the transportation
15 might the Village be able to lease.

16 Q. Was anything discussed at any of these
17 meetings that was financially viable for the Village?

18 A. No.

19 MR. HIGGINS: I don't have any other
20 questions. Thank you, sir.

21 COMMISSIONER DUFFLEY: Public Staff?

22 MR. CREECH: I didn't reserve any time
23 and actually, Mr. Higgins asked the question that I
24 was going to ask, so no questions.

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1 COMMISSIONER DUFFLEY: Did you have any
2 questions?

3 MS. HEDRICK: No questions from
4 Transportation or Limited.

5 COMMISSIONER DUFFLEY: Okay. Commission
6 questions?

7 Oh, Mr. Ferrell.

8 MR. FERRELL: No questions from
9 SharpVue.

10 COMMISSIONER DUFFLEY: Commission
11 questions? Commissioner Clodfelter.

12 EXAMINATION BY COMMISSIONER CLODFELTER:

13 Q. Mr. Gardner, the meetings that you did have,
14 the three, at whose initiatives were those meetings set
15 up?

16 A. I think it was a joint willingness to try to
17 see if we can come up with some partnership
18 opportunities.

19 Q. Well, somebody said, "Let's meet."
20 Who said that?

21 A. I can't recall whether it was us or whether
22 it was them, frankly.

23 Q. What I'm really getting at is, were
24 you -- was the Village trying to find out about the

1 transaction, and whether there was a role to play for
2 the Village in the transaction? Or was SharpVue and
3 Bald Head Transportation approaching you to say, "We
4 want to talk to you about the transaction"?

5 A. Again, I'm struggling with how to answer
6 that. I know the initial meeting was introductory,
7 here's who we are. And, you know -- and our interest
8 was, well, is there any role we can play in taking
9 ownership of or partnering with, in some form or
10 fashion, some of these transportation assets? As the
11 Village believed then and still believes, that it has a
12 vested interest in protecting the island for the
13 long-term benefit of the taxpayers, and the property
14 owners of the island. And having a private equity firm
15 in control of those assets was concerning to us. And
16 so we were seeking to find -- if there was a way for us
17 to have -- to have any sort of say in how those assets
18 might be operated for the benefit of the public. We
19 wanted to see if we can play a role in that.

20 Q. Well, whoever initiated the meetings -- I
21 understand you're not sure you recall which it was.
22 Who initiated the idea of the Village playing a role?
23 Was that coming from the Village? Were you asking how
24 can we --

1 A. I think that's exactly how the mayor proposed
2 it. How can we?

3 Q. Okay. It wasn't SharpVue saying, "Hey, we
4 got an idea for you to think about"?

5 A. I don't recall.

6 Q. Here's something we want you to think about
7 that you can do.

8 A. I don't recall that being the case.

9 Q. And -- and -- I understood you told
10 Mr. Higgins that there wasn't really -- after the
11 conclusion of the three meetings, there didn't seem to
12 be a role for the Village to play at that point?

13 A. No.

14 Q. At that point?

15 A. No.

16 Q. How did you come to that conclusion? What
17 caused you to come to that conclusion?

18 A. The last and greatest offer was substantially
19 higher than we could afford.

20 Q. Offer. Who made an offer?

21 A. Well, I wouldn't call it an offer
22 necessarily. But, here's what -- you know, if you pay
23 this for these assets and if you pay this in terms of a
24 ground lease, then we can talk further. And we're

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1 like, that's just way out. If you can't do better than
2 that, then we're done because we can't afford to pay
3 those prices.

4 Q. Was any of that ever put down in writing?
5 Here's a proposal that we might consider.

6 A. They provided us with some documentation of
7 what it would cost to purchase certain assets, and what
8 it would cost in the form of a ground lease. They did
9 provide that information. They took it back after the
10 meeting. I don't have a copy of it but --

11 Q. You don't have a copy of that?

12 A. I do not.

13 Q. It was collected up at the end of the
14 meeting?

15 A. Yes.

16 Q. But it was in writing at some point?

17 A. Yes.

18 Q. Do you recall the terms?

19 A. Vaguely.

20 Q. Well?

21 MR. TRATHEN: Commissioner, if I can
22 interject here.

23 COMMISSIONER CLODFELTER: Are we going
24 to get into something confidential?

1 MR. TRATHEN: Well, so, I've been
2 perplexed by this because we were required to sign
3 an NDA for this meeting, and we've been studiously
4 seeking to adhere to the terms of the NDA. And so
5 it's been a bit puzzling that there's been so much
6 testimony from Mr. Paul and others about the
7 meetings. I think, clearly, the discussion about
8 numbers and offers and so forth would be covered by
9 the NDA. So I'm a little bit perplexed. It does
10 seem like it would fall within the scope of what
11 the other side asked us not to talk about.

12 COMMISSIONER CLODFELTER: Can you say
13 whether the NDA has a somewhat standard exception
14 for when you're required to disclose something
15 pursuant to court proceedings?

16 MR. TRATHEN: I could not opine on
17 what's exactly in there without rereading it.

18 COMMISSIONER CLODFELTER: Does anyone
19 have a copy?

20 COMMISSIONER DUFFLEY: So does SharpVue
21 have an opinion?

22 MR. FERRELL: I guess I would say,
23 again, I don't have a copy of the NDA with me. I
24 don't know that I was involved when it was

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1 executed. So it might be something that we need to
2 read and look at and determine what information
3 could be shared. I mean, I do understand that some
4 documents and representations were made in a
5 settlement meeting that were protected as a part of
6 that NDA. And so, again, I don't recall the terms
7 or the nature of the exceptions of the NDA or
8 anything like that. But we're certainly glad to
9 look at it and report back.

10 MR. STYERS: I will say the NDA was
11 couched as to be inadmissible under the rules of
12 evidence, as settlement negotiation discussions.
13 Again, we're willing to be open and transparent
14 but, you know, the purpose was to try to make sure
15 the parties could be candid without there being
16 disclosure of information provided and I'm not so
17 sure how this necessarily pertains to SharpVue.
18 Maybe I'm wrong. And I'm willing to try to be
19 open, but the purpose of having the discussions
20 candidly and openly was so that there would not be
21 the admissibility of the evidence under rules of
22 evidence in subsequent proceedings.

23 COMMISSIONER CLODFELTER: Mr. Styers,
24 may I ask, was the NDA executed in connection with

1 settlement discussions related to the status of the
2 right of first refusal claim?

3 MR. STYERS: No.

4 COMMISSIONER CLODFELTER: Or any other
5 pending litigation, including Sub 21 Docket in this
6 case -- before this Commission, I mean?

7 MR. STYERS: No.

8 COMMISSIONER CLODFELTER: Was there any
9 proceeding threatened at the time by either party?

10 MR. STYERS: This proceeding was
11 contemplated.

12 COMMISSIONER CLODFELTER: And was the
13 Village aware of that?

14 MR. STYERS: Yes.

15 COMMISSIONER CLODFELTER: Let's leave it
16 alone for the present.

17 COMMISSIONER DUFFLEY: Other questions?

18 Commissioner McKissick.

19 EXAMINATION BY COMMISSIONER MCKISSICK:

20 Q. I understand what appears to be the pretty
21 broad scope of this NDA. But, as I recall, in the
22 Sub 21 proceeding, there was testimony provided
23 relating to the Village passing a bond referendum
24 proposal. I don't remember the amount of authority

1 that was sought, but it was approved.

2 Can you remind me of what that figure was,
3 Mr. Gardner?

4 A. \$54 million.

5 Q. \$54 million. And I gather that -- without
6 getting into any substance relating to your
7 negotiations -- there were -- was there an offer made
8 by the Village to buy certain assets that would have
9 fallen within the authority of that bond issue?

10 A. No.

11 Q. No?

12 A. No.

13 Q. And was there offers made related to the
14 lease of certain transportation facilities that would
15 have been within the ability of the Village to pay for
16 it outside of -- with your regular ad valorem taxes
17 outside of the bond issue?

18 A. I may need to retract my initial answer. I
19 was thinking you meant in total. So there probably
20 would've been a way we could have afforded part of the
21 system, if we chose to go that route. But in
22 combination, when we were looking at acquiring what we
23 felt we needed to have to ensure that the system was
24 operated in the public interest going forward, that

1 number was substantially higher than we could afford.

2 Q. Than the \$54 million --

3 A. Yes.

4 Q. -- bond authority approved by the residents
5 on the island? The voting residents. Okay. Thank
6 you.

7 A. Or we may have been able to afford it, but we
8 would have had no revenues over expenses to make
9 improvements or to fix anything. We would have had to
10 borrow additional funds to make the improvements we
11 felt we needed to make, both from an operational and a
12 capital standpoint moving forward.

13 Q. So it would --

14 A. That deal's just so much cash to pay off debt
15 service obligation and loan payments so that there was
16 nothing left to make the improvements we needed to
17 make.

18 Q. No. It would have been enough to acquire
19 certain assets, but not to maintain them and provide an
20 operating capital?

21 A. Correct.

22 Q. Is that your testimony?

23 A. Correct.

24 Q. And would there not have been enough ability

1 within the amount of ad valorem taxes you receive to
2 retire the bond issue and to have made certain
3 improvements on an ongoing basis?

4 A. Could not have gotten all of that done at the
5 amount being discussed, correct.

6 Q. Thank you.

7 A. We would have had to raise taxes above what
8 the current ad valorem to make something like that go.
9 When we felt that there was enough revenues in the
10 system to do what we could have done with the
11 reasonably priced offer that we didn't get.

12 Q. And when the bond issue was put to the
13 public, I take it you did cash-flow analysis as well as
14 provide informational details to the public about the
15 extent to which proceeds in that bond issue would've
16 been used to have acquired the system?

17 A. That is correct.

18 Q. And to have operated it or not to have
19 operated it?

20 A. And to have operated it.

21 Q. And to operate it.

22 A. And I would remind you, Commissioner, that
23 the bond proposal was very similar to the
24 transportation authority's bond proposal. We were

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1 willing to pay up to \$47 million for the assets, and
2 then there would be some CapEx money held out, bond
3 issuance payments, and some other expenses that are
4 normal in the course of executing municipal bonds.

5 COMMISSIONER McKISSICK: Thank you. I
6 think that provides some clarity.

7 MR. STYERS: I also want to be sure I'm
8 completely candid, totally, with my response to
9 Mr. Clodfelter. I'm trying to remember what I
10 said. The other active litigation that was going
11 on at this time was the complaint against Bald Head
12 Limited in Sub 21.

13 COMMISSIONER CLODFELTER: The
14 discussions that Mr. Gardner has testified about
15 occurred subsequent to the commencement of that
16 action?

17 MR. STYERS: That's correct.

18 COMMISSIONER DUFFLEY: Okay.
19 Commissioner -- no?

20 EXAMINATION BY COMMISSIONER DUFFLEY:

21 Q. Okay. I have some easier questions for you.
22 If you can turn to your direct testimony on page 12.

23 A. Yes.

24 MR. HIGGINS: Original or amended?

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1 COMMISSIONER DUFFLEY: Well, he had
2 direct and supplemental, so direct.

3 THE WITNESS: Page 12?

4 COMMISSIONER DUFFLEY: Yes.

5 Q. So you received a question, "What are the
6 reasons for this poor performance," and we're talking
7 about the on-time percentage rates. And you responded,
8 that, "The thought among many islanders is that Limited
9 has not made necessary investment in ferry maintenance
10 and equipment over the last several years." And then
11 you say, "Certainly, it's a common phenomenon that
12 sellers are less interested in making necessary capital
13 expenditures, as money is not likely to be recovered
14 before the sale." So are you basically saying that,
15 because they want to sell, they're not making the
16 proper capital expenditures?

17 A. That's what -- yes.

18 Q. And do you think that the performance of the
19 ferry will continue to erode until the estate can sell
20 the assets?

21 A. Until the estate can sell the assets, yeah.
22 So my answer to that would be, there have been
23 maintenance issues on the ferries that resulted in
24 being down. I mean, there was one point last summer, I

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1 believe -- I think I have the timing right -- where we
2 were down to one ferry out of four. And, if that one
3 goes down, then we're stuck. So it's the type of --
4 and the age, we're concerned about the age of the
5 vessels, and we're concerned about the need to replace
6 them, and perhaps look at other ways to maintain them
7 to ensure a more reliable set of boats.

8 Q. But the estate is not providing that capital?

9 A. They haven't. Well, they did replace an
10 engine in one of the catamarans. So I can't say they
11 haven't done anything because they did replace an
12 engine.

13 Q. And so, I guess, I'd like to know exactly
14 what the Village wants, because I think we're all in
15 agreement that the estate wants to sell the assets,
16 correct?

17 A. Yes.

18 Q. And you stated that the Village cannot come
19 up with the money or the capital to purchase, correct?

20 A. It depends upon what the price is.

21 Q. Okay. And that the -- currently right now,
22 the Bald Head Island Authority -- Transportation
23 Authority, cannot buy the assets?

24 A. They have not been able to justify the

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1 \$47 million value that was being asked to purchase the
2 assets.

3 Q. So do you see any other buyers -- potential
4 buyers besides SharpVue?

5 A. It depends upon what the price is. At the
6 current going price -- I don't know. I certainly don't
7 know anybody in the public sector that can afford to do
8 it. Neither the LG- -- neither the Transportation
9 Authority or the Village could justify that type of
10 bond issue in front of the Local Government Commission.
11 So maybe there's somebody in the private sector that
12 can, if they can satisfy you guys.

13 Q. So -- but, I'd like to know what your
14 concern -- your main concern about opposing the
15 SharpVue transfer.

16 Is it -- what is the main concern that the
17 Village wants to protect against?

18 A. So all we're looking for is a reliable, safe,
19 reasonably-priced transportation system, and that the
20 investors who are investing in that, get a reasonable
21 rate of return. It doesn't matter who it might be. If
22 you, the Utilities Commission, are satisfied that we're
23 getting a safe, reliable, reasonably-priced
24 transportation system, and that the investors are

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1 getting a fair rate of return, which is what you guys
2 do and have done well for so many years, then we'd be
3 happy. We would accept that.

4 Q. And are there conditions that could be agreed
5 to, to allow the Village to become comfortable with the
6 transfer?

7 A. You know, conditions are handled by
8 attorneys. I'm not an attorney. There are some things
9 and concepts I can throw out there it. I mean, one
10 issue is that there's -- in the supplemental testimony
11 of Mr. Paul and Mr. Roberts, they remove the language
12 that said they would not seek an acquisition premium.
13 Acquisition premium's a big deal to us. We think it
14 has a -- it says a lot about the value of the system
15 and how much the users and the ratepayers are going to
16 have to end up paying for that. When, in a monopoly
17 public utility -- regulated public utility setting, it
18 normally has not been allowed and we don't think should
19 be allowed. We've seen very little indication of a
20 plan to improve system operations. We've seen very
21 little in the information in the testimony that's been
22 provided that talks about plans for capital
23 improvements. I mean, we've got a marina -- we've got
24 a dock on the island side. Every time there's a King

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1 tide, it floods for an hour, or two, or three. So we
2 lose ferry runs. Now, you know, if we're lucky, those
3 ferry runs happen during a non-peak time of the day
4 during a non-peak day of the week, but on a day when we
5 got lots of visitors coming over and lots of luggage
6 coming over, and, then you can't run ferries to that
7 dock for an hour, or two, or three. Then, you know.
8 And it's been that way -- I mean, this has been known
9 for quite some time and could've, should have been
10 elevated, we believe. When they built the B dock, it
11 was elevated. So this has been known for a while.
12 Things like that are what we're talking about.

13 Q. And to follow up on that, with respect to
14 the, you know, necessary capital funds, you mentioned
15 that if the price was right that the Village might be
16 interested in buying, but how would the Village fund
17 those additional capital expenditures for events that
18 you just mentioned?

19 A. Certainly. Well, initially there was -- we
20 had -- in our bond proposal, there was \$4 million set
21 aside for capital improvements. So we could -- we'd
22 have had at least 4 million to start with. And then we
23 could -- going down the road, you know, I would say one
24 of the first things we would want to do from a capital

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1 standpoint is either build protection on the marina
2 side from wind and rain -- from rain and sun, because,
3 you know, luggage is off-loaded and out in the parking
4 lot. You know, when it's raining, it's raining and
5 people having to stand -- on busy days, people standing
6 in the sun, which is, you know, some of us are used to
7 that, but there's some elderly people and kids and
8 stuff that would look for some protection. So we think
9 some additional coverage could be done relatively
10 inexpensively. And, you know, with \$4 million to start
11 with. And then there is, in the Transportation
12 Authority's projections, going forward -- which is what
13 we mirrored in our proposal -- there was money that
14 would be generated every year for those capital
15 expenditures and we would mirror that same plan going
16 forward until such time that we would adjust it.

17 Q. And have you let SharpVue know as a benefit
18 that the Village sees is to put in capital expenditures
19 to allow for more coverage -- did you say on the Island
20 side -- for rain and sun?

21 A. Have we spoken specifically to SharpVue about
22 that? I do not know. I know we have had discussions
23 with that -- with representatives from Limited, and I
24 know we have -- certainly have had discussions among

1 many islanders, but to your point, to the parties at
2 play here, I'd be very surprised if they're not aware
3 of that.

4 Q. Okay. And are there other -- other action
5 items that you see besides maybe more coverage on the
6 Island side to protect against rain, and to protect
7 against sun, and then improving the on-time performance
8 of the ferries, as well as, I guess, there was some
9 cushions? I guess, improving the look of the ferries?

10 A. Yes. Yeah. They're some leather seats or
11 vinyl seats that are torn. Those types of things need
12 to be repaired. I will give Limited credit that -- and
13 Transportation credit that, when the issue was raised
14 about the condition of the have the trucks and trams
15 and the covers for those, some changes were made and we
16 appreciate that.

17 Q. Okay. And are there any other improvements
18 that the Village would like to see?

19 A. If you give me a minute. I -- right off the
20 top of my head I can't think of any, but I've got a
21 list. I just don't have it with me.

22 Q. Okay. Let me see if I have any more
23 questions for you.

24 COMMISSIONER DUFFLEY: Okay. Questions

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1 on Commission questions?

2 Oh, wait. Chair Mitchell has a
3 question.

4 EXAMINATION BY CHAIR MITCHELL:

5 Q. Good afternoon. Just a few questions for
6 you, but mostly we want to follow up on
7 Commissioner Duffley's questions. Like
8 Commissioner Duffley, I'm trying to understand through
9 all of the back and forth and the testimonies and the
10 various evidence that's being offered, really what it
11 is that the Village wants. In your testimony, you
12 indicate that the Commission's previous Order doesn't
13 address the Village's concerns, and I'm having a hard
14 time now understanding -- until your discussion with
15 Commissioner Duffley -- understanding with specificity
16 what the Village wants here. I understand that the
17 Village hopes for a utility that will provide reliable
18 service at reasonable rates, and certainly that is the
19 job and obligation of this Commission to ensure that
20 that occurs, but I can't understand what the Village
21 wants still. Again, your conversation with
22 Commissioner Duffley has elucidated a bit, for me, but,
23 my question for you is this, we heard from Mr. Roberts
24 just a few minutes ago that his company -- and I assume

1 in conjunction with Limited and Transportation --
2 attempted to have discussion with the Village on
3 multiple occasions. What would be the -- why didn't
4 you all -- why didn't the Village take very specific
5 concerns like you've articulated to -- or requests like
6 you've articulated to Commissioner Duffley to the
7 Village -- I mean, to SharpVue? Why not give SharpVue
8 a chance to respond and react to those requests?

9 Why not take a more cooperative approach, at
10 least for a minute, just to see how the trajectory of
11 this proposed transaction would go?

12 A. So the meetings we had with SharpVue were
13 about partnering on purchase or lease of assets. There
14 was no discussion about making operational improvements
15 once you own it. We just never got into that. And
16 perhaps we should have but we didn't. The purpose of
17 those meetings was to see if there was a way that the
18 Village would acquire assets and/or lease assets in a
19 manner that made sense to the Village and made it
20 affordable for the ratepayers and the taxpayers to move
21 forward. So we never got in the operational side of
22 things or the CapEx side of things.

23 Q. So thank you for that clarification. I
24 assume you mean on those three specific meetings that

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1 are the subject of the NDA that there's been some
2 discussion of today?

3 A. Correct.

4 Q. But what about subsequent to either the
5 initiation of the complaint proceeding, or the
6 initiation of this proceeding, why not have some sort
7 of cooperative or at least dialogue that attempted to
8 bring everyone together, and try to problem solve to
9 reach an outcome that could be mutually agreeable?

10 A. Perhaps I'm wrong here. Perhaps I'm wrong
11 because of my experience with the company I used to
12 work for. When we were seeking to get something, we
13 would sit down with our key customers and talk with
14 them about -- what do they want? What do they need?
15 What can we do to make this work? We have never been
16 approached by SharpVue or Limited about how can we get
17 you to support our deal.

18 Q. I hear your testimony today and your
19 testimony seems to be in direct contradiction to what I
20 heard from Mr. Roberts today. So I'll ask Mr. Roberts
21 when he comes back up on rebuttal to help me understand
22 why you've testified as you have today. But, to me, I
23 just -- the testimony you provided in response to
24 Commissioner Duffley's questions seems fairly

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1 pragmatic. Seems fairly straightforward fixes that
2 could be instituted. I'm just curious as to why we're
3 here and why we're now -- I don't know, a year into a
4 heavily litigated proceeding -- and what we're hearing
5 from you is that, you've never relayed these
6 straightforward, pragmatic concerns to the utility or
7 to the prospective purchaser and given either one a
8 chance to respond?

9 A. Commissioner, in two Bald Head Association
10 surveys in a public hearing that was held in Bolivia,
11 all of the issues and improvements that I mentioned,
12 plus a lot more, were brought up in those sessions.
13 And it would seem to me, if I were in SharpVue's shoes,
14 I would working to present information that would
15 demonstrate the ability to fix those things, if I was
16 seeking community support and approval for the
17 proposal.

18 Q. Okay. Well, I'll ask the same series of
19 questions to Transportation and to Mr. Roberts when
20 they come back up. You've testified some this
21 afternoon about the Village's participation in the bid
22 process at -- or in -- in attempting to get approval
23 from the Local Government Commission for an opportunity
24 to issue bonds. And my question for you is this, and I

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1 understand sort of the outcome of that -- I understand
2 from your testimony and from the testimony presented in
3 this case, the outcome of that proceeding -- but, from
4 an operational standpoint, what was the Village's plan
5 for operating utility were it to have been successful
6 with its request before the Local Government
7 Commission?

8 A. Our plan was to do the same thing the
9 Transportation Authority was going to do, which would
10 be-- once again, when it appeared they might not get
11 approval, we had no intention to file a proposal until
12 it appeared that the Transportation Authority may not
13 be successful at getting Local Government Commissioner
14 approval. So we just investigated, hired bond
15 accountants, hired financial advisors to say, you know,
16 if we were to step in the shoes of the Transportation
17 Authority and offer to purchase up to the same amount,
18 you know, can we do that? And they said, "Yes, you
19 can." And that's when we submitted the proposal, but
20 we weren't going to get approval by the Local
21 Government Commission either because, until somebody
22 proved to them that it was worth \$47 million, nobody
23 was going to get their approval. And we certainly
24 couldn't justify it. And we've been restricted in the

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1 amount of information we can get. And it's been so
2 hard all through this process for the Village to
3 represent the public when we've had to sign NDAs, we've
4 had to sign confidentiality agreements. I'm probably
5 the person in this room that knows the least about this
6 deal. And I view myself, as a representative of the
7 Village Council, as the entity that's trying its best
8 to look out for the taxpayers, and ratepayers, and the
9 users of the system. So I wish I had better answers
10 for you, but it's just been hard to totally understand
11 the deal, or any potential deals when you're operating
12 like that.

13 Q. I hear you and I understand your testimony.
14 My question, though, is what was the Village's plan for
15 operating the utility.

16 How are you all going to -- what personnel
17 were you going to use? What management structure?

18 A. The same thing that the Transportation
19 Authority that was going to do, which was hire
20 Mr. Paul, and Shirley Mayfield, and Bion Stewart for a
21 period of time through a transition period, and then we
22 could either keep them on or we could seek to go a
23 different direction, which I understand was the same
24 thing the Transportation Authority was --

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1 Q. So both the Transportation Authority and the
2 Village proposed maintaining the current management
3 structure, employees, et cetera, which is what SharpVue
4 is also proposing in the context of this transaction?

5 A. Yes.

6 Q. Do I understand that to be the case?

7 A. Yes.

8 Q. So from an operational standpoint, regardless
9 of which prospective purchaser were to actually
10 consummate the deal and buy the system from Limited and
11 Transportation, all three of the purchasers have the
12 same plan, in terms of operating the utility?

13 A. As I understand, that's correct. I would say
14 the only difference is who's setting the policy.

15 Q. What do you mean by that?

16 A. Who's setting the policy for system
17 improvements, who's setting the policy for capital
18 expenditures, and what are the consumers saying about
19 what improvements need to be made, what expectations do
20 they have, and so forth. I think that would be the
21 only difference. We would contend that the Village
22 would be in a better position to do that than the
23 Transportation Authority or the current operators.

24 Q. The --

1 A. That said, Commissioner, we would be fine
2 with a third-party owner operating the system, as long
3 as you folks continue to provide oversight over the
4 combined assets, and to help ensure that there is a
5 proper balance in revenues and expenses to ensure that
6 fair rate of return is paid, but the proper care is
7 being taken care of to ensure a safe, reliable, and
8 affordable system.

9 Q. Is it your contention -- I think you
10 indicated earlier that you've been in your present
11 position of leadership within the Village since 2017;
12 is that correct? Or you've been on the island since
13 '17?

14 A. That's been our primary residence since 2017,
15 been on the council since '22 -- since 2020.

16 Q. How long have you been a ferry rider?

17 A. Since 1997.

18 Q. '97. So a long time. And over your years of
19 experience with the ferry -- with the Bald Head Island
20 ferry system, how would you describe the level of
21 service that you received.

22 A. It used to be extraordinary, but there's been
23 a slippage of late.

24 Q. And can you get a little bit more specific

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1 for me? When was there a slippage?

2 A. Well, I would refer, in my testimony, to page
3 11. There's some -- this is data from --

4 COMMISSIONER DUFFLEY: Which testimony,
5 supplemental or direct?

6 THE WITNESS: This is my direct
7 testimony. On page 11, there's a graph that
8 provides some on-time performance figures. And,
9 you know, we had always felt that, you know, a
10 90-95 percent on-time performance was expected.
11 And we had that by and large until we started
12 seeing a slippage into the 70's first time in 2015.
13 And then more in the 2016, '17. And then we saw
14 our first below 70 in 2017. And then another one
15 in '18 and then it just -- you see a lot more red
16 at the bottom of the chart. That's what we mean
17 by -- that's the difference between extraordinary
18 service and at least we got over there. So we have
19 a number of citizens -- and if you read any of the
20 comments made in the Association survey results or
21 in the public hearing in Bolivia, there are people
22 that have to catch airplanes, there are people that
23 have doctor's appointments. And when you have to
24 leave the island two or three hours ahead of normal

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1 to get to your doctor's appointment because you're
2 afraid you're going to get bumped because the
3 ferry's going to be late -- we didn't have to used
4 to do that. We used to always depend on the ferry
5 being on time. But things have changed, and
6 there's a number of people on the Island that would
7 like to see if we can get back to the way it was.
8 And that's what we're trying to do here, is to see
9 if we can find ways to improve the system to get
10 things back to the way things were. And let me
11 add, that right now there's only 1,300 homes on the
12 island. There's lots available for another 700 or
13 some that have not been built on. And, so, if
14 we're having 700- to 750,000 passengers a year now
15 with performance of this level and then we add
16 another 700 homes, what's the plan? We've heard no
17 plan about what's going to happen to deal with that
18 additional growth with regards to the
19 transportation system.

20 Q. Well, I do believe Mr. Roberts has
21 testified -- his testimony indicates that, were this
22 transaction to be approved and then ultimately
23 consummated, that SharpVue's entities intend to spend
24 time working with customers of the system to better

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1 understand the system and resolve problems. So I do --
2 again, I'm going to explore all these issues with
3 Mr. Roberts and Mr. Paul when they're back up here on
4 rebuttal, but it does seem to me that some degree of
5 cooperation would go a long way.

6 A. We would welcome the opportunity to sit down
7 and talk about operational improvements and capital
8 improvements.

9 Q. Well, sometimes pragmatic conversation and
10 cooperation goes a lot farther than litigation. All
11 right. I want to ask you this, you pointed out, sort
12 of, the service quality concerns that the Village has
13 and the timeline for them.

14 Did you ever raise those issues to the
15 Commission?

16 A. Not the Village, specifically.

17 Q. Okay. Did -- and why not?

18 A. Well, we just didn't.

19 Q. Okay. Do you -- do you have any, you know --
20 I understand the testimony of SharpVue, Mr. Paul -- I'm
21 sorry, Mr. Roberts, and then also the testimony of
22 Mr. Paul to be that there's an alignment of interests
23 with respect to the operation of this -- the operation
24 of this system and the care of this system. Everybody,

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1 sort of, has a different interest, but an interest that
2 the system be well run, be maintained, and, you know,
3 comply with law and regulation in its operation. So do
4 you -- do you have any reason -- help me understand why
5 the Village takes the position that, were SharpVue to
6 own this system it would -- it would take an approach
7 or it would move in a direction that would be different
8 or distinct from the direction that Limited has taken
9 in owning and operating this asset?

10 A. Well, to me, the fact that it's a private
11 equity firm whose intent is to maximize -- the question
12 becomes, is their number one priority maximizing
13 returns to the investors or is it maximizing service
14 levels and satisfaction levels to customers they serve?

15 Q. What do you make of the testimony given under
16 oath in this proceeding that Limited -- or the estate
17 of George Mitchell is no longer in a position to own
18 and operate this system?

19 A. We understand that. We accept that. And we
20 thought that -- we thought the Transportation Authority
21 was going to work until the sales price was asked.

22 Q. So who -- so the way I understand the
23 position of Limited is that the utility has made the
24 decision to sell this asset -- or these assets.

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1 To whom should the utilities sell these
2 assets in the mind of the Village? Who's the perfect
3 purchaser?

4 A. I don't know that there is a perfect
5 purchaser. I think any number of entities could be the
6 proper owner and operator of the system, as long as
7 they're held accountable for service levels and for
8 fair rates in the course of accomplishing those goals.

9 CHAIR MITCHELL: Okay. Thank you.

10 EXAMINATION BY COMMISSIONER DUFFLEY:

11 Q. One follow-up question.

12 Have you read the Public Staff's regulatory
13 conditions as well as SharpVue's regulatory conditions?

14 A. I have.

15 Q. And do you not -- what is insufficient with
16 those regulatory conditions?

17 A. Once again, there is some legal aspects of
18 those I don't feel comfortable addressing, necessarily.
19 You know, the fact that the Public Staff is seeking no
20 acquisition premium where SharpVue disagrees with that.
21 There's some other differences that I can't recall off
22 the top of my head. But, you know, there's some -- I
23 think the Public Staff has moved a long way in the
24 right direction. There may be a couple more things

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1 that maybe I need to take a further look at. I just
2 got them the other day and I've been reading through a
3 lot of stuff and I just can't recall.

4 COMMISSIONER DUFFLEY: Okay. Thank you.

5 Are there any other Commissioner questions?

6 Commissioner McKissick.

7 EXAMINATION BY COMMISSIONER MCKISSICK:

8 Q. You've mentioned this acquisition premium, I
9 think, twice now.

10 Why is the Village opposed to the acquisition
11 premium or perhaps even using the actual acquisition
12 price as going into rate base?

13 A. We view the level of -- from a regulatory
14 accounting standpoint, as I understand it and have been
15 informed by our advisers, that the acquisition premium
16 should be based on original cost, and not market value
17 or -- and so we view that as a substantial amount of
18 money that's going to the Mitchell family estate or to
19 the investors that, we believe, should be put back into
20 the system. Those are revenues being paid by the
21 ratepayers that, much of which -- once the fair rate of
22 return is paid to the investors -- needs to go back
23 into the system to make the system better for the
24 long-term.

1 Q. Is it your contention, or the Village's
2 contention, that the parking facilities and the barge
3 were regulated utilities in the past?

4 A. They should have been but they were not.

5 Q. They were not?

6 A. They were not.

7 Q. So is it your contention that the actual
8 acquisition -- since they were not, the actual
9 acquisition price is not of appropriate measure to use
10 in looking to what might go into rate base?

11 MR. TRATHEN: Commissioner, if I could
12 just interject?

13 COMMISSIONER McKISSICK: Sure.

14 MR. TRATHEN: We do have regulatory
15 experts that are set to testify on those issues.
16 Mr. Gardner is a lay witness. I'll let him answer
17 your questions. I just want to make sure that you
18 know that we do have regulatory experts that could
19 address those.

20 COMMISSIONER McKISSICK: Thank you. I
21 assumed you probably would, but since he raised the
22 issue, I figured he opened the door.

23 MR. TRATHEN: Certainly.

24 THE WITNESS: Well -- and, I guess, I

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1 did. But I would defer to our other experts and
2 address that issue.

3 COMMISSIONER McKISSICK: All right.
4 Thank you. I don't have any other questions at
5 this time.

6 COMMISSIONER DUFFLEY: Okay. Questions
7 on Commission questions?

8 Have y'all worked out -- Mr. Higgins?

9 MR. HIGGINS: I don't have any further
10 questions.

11 COMMISSIONER DUFFLEY: Mr. Ferrell?

12 MS. HEDRICK: We have a couple.

13 EXAMINATION BY MS. HEDRICK:

14 Q. Mr. Gardner, we have not met before, but my
15 name's Elizabeth Hedrick, nice to meet you. I just
16 want to make it clear because there was a lot of
17 discussion in your -- with the Commissioners about your
18 discussions with SharpVue and Transportation and
19 Limited.

20 It's correct, isn't it, that the Village has
21 no deal with Limited or Transportation to buy these
22 assets, correct?

23 A. Correct. No deal.

24 Q. So any ownership by the Village that's been

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1 discussed, that's purely hypothetical at this point?

2 A. Correct.

3 Q. All right. And you mentioned in your
4 testimony that, if the Village were able to acquire the
5 assets, its plan would be to have Mr. Paul,
6 Ms. Mayfield, and Mr. Stewart continue in their roles
7 for a certain amount of time, right?

8 A. Correct.

9 Q. But neither Mr. Paul, nor Ms. Mayfield, nor
10 Mr. Stewart has ever given you any indication that they
11 would continue to work for the Village, correct?

12 A. That's correct.

13 Q. In the Sub 21 Order, have you read that?

14 A. Yes, that's been allowed.

15 Q. One of the things that the Commission quoted
16 in that Order was the testimony of Mr. Briggs where he
17 said, "We have a good deal there" -- and I'll represent
18 to you, that he was referring to the parking and barge
19 rates -- and he said, "We have a good deal there.
20 There's no question it's reasonable."

21 Do you remember that testimony?

22 A. I do remember that.

23 Q. Would you agree with Mr. Briggs, that the
24 rates for the parking and barge are currently

1 reasonable?

2 A. I would say they probably are, yes.

3 MS. HEDRICK: I have nothing further at
4 this time.

5 COMMISSIONER DUFFLEY: Mr. Ferrell?

6 EXAMINATION BY MR. FERRELL:

7 Q. Just a few. Did you attend the two-hour open
8 session public meeting that Mr. Paul and Mr. Lee -- I
9 mean Mr. Roberts attended on the Island to answer
10 questions?

11 A. Yes. The July meeting at the association
12 building?

13 Q. Yes. The mayor was there, but you were there
14 as well?

15 A. Yes.

16 Q. So Mr. Paul and Mr. Roberts came to hear
17 ques- -- to answer questions and concerns from yourself
18 and others on the Island --

19 A. Yes.

20 Q. -- in that approximately two-hour meeting?

21 A. Yes.

22 Q. Okay. And, I believe, your testimony earlier
23 was that you didn't raise these potential changes to
24 cover and different things at that meeting, correct?

1 A. Yeah. My recollection is the meeting -- the
2 intent of the meeting was to allow SharpVue and Limited
3 to explain to the public about what was going on, and
4 to get the Transportation Authority and the Village's
5 perspective on that. We did not view that session as
6 an opportunity to ask for operational improvements or
7 any of the other things. It was more -- we felt this
8 was more of SharpVue and Limited's opportunity to
9 present to the community what they were doing.

10 Q. Now, were you involved in the conversation
11 that happened a few months later about having
12 Mr. Roberts come back out to the Island to answer
13 additional questions from those on the Island?

14 A. I don't remember that.

15 Q. Okay. So you weren't involved in those
16 conversations?

17 A. No. I don't think so. I don't recall if I
18 was.

19 Q. Are you aware that Mr. Roberts has committed
20 during the first year to analyze the operation of all
21 the facilities and determine what may need to be
22 addressed going forward?

23 A. I have seen that in his testimony, yes.

24 Q. Okay. And that is a time where he can

1 address things like the cover over the luggage handling
2 area, et cetera?

3 A. He could, yes.

4 Q. Okay. You referenced some additional growth
5 that you think may occur on the Island, correct?

6 A. Correct.

7 Q. And that whoever purchases these assets and
8 runs these assets needs to be able to address that,
9 correct?

10 A. Correct.

11 Q. And, I believe, your testimony was also that
12 you were planning to have Chad, Shirley, and Bion hired
13 to help the Village deal with those issues, correct?

14 A. Through a transition period, yes.

15 Q. Which had no end date in your mind?

16 A. Well, again, bearing the Transportation
17 Authority deal. We were leaning in favor of three
18 years.

19 Q. Okay. I believe you testified that what the
20 Village wants here is a reliable safe, reasonably
21 priced system, correct?

22 A. Correct.

23 Q. And if this Commission were to grant this
24 transfer and put some conditions in place to ensure

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1 that there's a reliable, safe, reasonably priced
2 system, would the Village withdraw their claim that the
3 ROFR is valid?

4 A. If we could be satisfied that the -- that the
5 stipulations or the conditions met our concerns --

6 MR. TRATHEN: I'm going to object here.
7 We're getting into a matter which is in litigation,
8 and it seems to me that he's asking for some sort
9 of legal conclusion with respect to this impact on
10 this litigation. So I don't think that's an
11 appropriate question. If you want to ask about
12 this proceeding he's certainly prepared to do that.

13 MR. FERRELL: I'm not asking for his
14 legal opinion about a reportedly valid ROFR
15 that -- we're not asking his legal position. We're
16 asking that, if this Commission grants a transfer
17 with conditions that give him what he says he
18 wants, would he withdraw this claim that this ROFR
19 is valid and, again, as the testimony has been
20 given is something that's hanging out there.
21 That's a fact question. That's not a legal
22 question.

23 MR. TRATHEN: This is a matter -- I'm
24 sorry.

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1 COMMISSIONER DUFFLEY: So I'm going
2 sustain that objection. It's an open litigation.
3 He's up on the stand without legal counsel. So I'm
4 going to sustain that objection.

5 MR. FERRELL: No more questions.

6 MR. CREECH: Presiding Commissioner, I
7 have two quick questions if I can, please.

8 EXAMINATION BY MR. CREECH:

9 Q. First, you were talking about acquisition
10 premium -- we'll hear from other folks, but you said
11 that you would you think it could be a substantial
12 amount of money that you think should otherwise go back
13 into the system and, when you say go back into the
14 system, you mean the things that you were talking about
15 before like maintenance, on-time performance,
16 coverings, and appearances; is that correct?

17 A. Certainly.

18 Q. And then the second question relates to --
19 and we were talking about affordability and what the
20 Village could afford, et cetera, not going into details
21 about that, but did you have conversations with the
22 Local Government Commission at that time about
23 additional conversations, and what was their response
24 or representative's response?

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1 A. We never -- we submitted our proposal
2 formally. We were never asked to come and defend our
3 proposal before the Local Government Commissioner.

4 Q. And that's the second proposal not the first?

5 A. Right. The Transportation Authority's was
6 the first. The Village's was the second proposal.

7 Q. And I suppose what I'm speaking of now, is
8 any subsequent discussions with the -- have you had
9 subsequent discussions relating to your ability to
10 afford --

11 A. No. We have not. The -- as I recall, the
12 state auditor, or the state treasurer, or both have
13 declared that, until they get answers to the questions
14 about the valuation of the system, then they're not
15 going to hear either one. So -- and we don't. Yeah.
16 So we just hadn't had a chance to -- we can't. We
17 don't have the information to value the system.

18 MR. CREECH: Thank you. No more
19 questions.

20 MR. TRATHEN: Is it me? Yes. Just a
21 few.

22 EXAMINATION BY MR. TRATHEN:

23 Q. Mr. Gardner, you were asked about -- a number
24 of questions, with regards to these meetings the

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1 negotiation meetings which is under the NDA. I'm not
2 asking you confidential aspects of that meeting but,
3 could you describe -- I think you were asked sort of
4 what did SharpVue present at this meeting.

5 Could you summarize, sort of, Mr. Roberts'
6 role in this meeting versus Mr. Paul's role?

7 A. Well, Mr. Roberts clearly was there
8 representing SharpVue, but, you know, he hardly said
9 much. Mr. Paul conducted most all of the
10 conversations, answered most of the questions, and
11 talked about what we could and could not do together.

12 Q. Do you remember Mr. Roberts offering anything
13 specific?

14 A. I can't recall anything specific.

15 Q. Okay. And, I believe, I heard you say that
16 the Village is open to any conversations about any of
17 these issues, correct?

18 A. Correct.

19 Q. Now, you were asked some questions about kind
20 of your general concerns and what the Village's goal in
21 this proceeding is and I believe I understood you to,
22 you know, articulate a vision for a stable -- running
23 of a stable system in perpetuity for the benefit of the
24 community.

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1 Is that your answer to that question?

2 A. Absolutely.

3 Q. Okay. And so, with respect to the specifics
4 of this application that's before the Commission, and
5 setting aside what you'd like to see happen, could you
6 talk about some of the concerns that you have
7 with -- well, let me just point you to your testimony.
8 Pages 8 through 11 of your supplemental direct
9 testimony where you discuss specific concerns which
10 you've got with respect to this transaction; do you see
11 that?

12 A. Yes.

13 Q. And could you discuss some of those concerns,
14 and, you know, tell me whether they remain concerns of
15 the Village?

16 A. Certainly. The first is that they're seeking
17 approval of this transfer when they have challenged the
18 Commission's Sub 21 Order. In our view, they failed to
19 articulate any meaningful public benefit from the
20 transaction, either rate reductions or rate
21 commitments, that are not conditional to the Sub 21
22 Order. They have removed the commitment to not seek
23 recovery of acquisition premium. They have -- we
24 talked about the commitments on system improvements and

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1 capital improvements. And, you know, it's -- they have
2 said they intend to be in this deal for the long haul,
3 yet they were willing to talk to the Village right out
4 of the shoot about taking over some assets. So if not
5 the Village, who else? I don't know what that means.
6 And they said they're, you know, committed to keep the
7 assets, yet they were willing to sell parts to us. And
8 if not us, who else? So those are the concerns that we
9 have. And I have yet to hear language that satisfies
10 those concerns, for me, personally. Now, I can't speak
11 for the rest of the council members on that. Although,
12 they may feel differently about some of those things,
13 this is my testimony as a Village councilperson.

14 Q. And, as a council member, I assume that
15 you're on the front lines with respect to hearing about
16 these sorts of concerns from the community?

17 A. Yes.

18 Q. Can you speak to that?

19 MR. STYERS: I think it's beyond the
20 Commissioner's questions.

21 COMMISSIONER DUFFLEY: I do not. I
22 asked about the concerns.

23 MR. STYERS: Okay. Fair enough.

24 Withdraw.

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1 THE WITNESS: Yeah. Certainly. I mean,
2 it's constant and --

3 Q. I'm sorry. I was -- just to be clear -- my
4 question was the concerns with regards to this
5 transaction not necessarily the operations of the
6 system but the transaction?

7 A. Certainly, yes. They have -- for some of the
8 same reasons I mentioned -- actually, the reasons I
9 mentioned are built upon the input I've gotten from
10 citizens on the Island. You know, do we want a private
11 equity firm, you know, whose job is to maximize
12 profits, you know, running our transportation system?
13 Are they going to be looking out for the -- are they
14 going to, you know, just provide adequate service or
15 less in an effort to maximize profits to the consumers?

16 COMMISSIONER DUFFLEY: Mr. Gardner, can
17 I please interrupt?

18 EXAMINATION BY COMMISSIONER DUFFLEY:

19 Q. But who else? Who else? That kind of gets
20 back to my initial question is, the estate wants to
21 sell their assets, and who has all of the expertise?
22 Who else would the other potential buyer be? Because
23 the Village has not been able to buy it, and Bald Head
24 Island Transportation Authority has not been able to

1 buy it.

2 Are there other buyers out there that you are
3 personally aware of?

4 A. I am not.

5 Q. Okay.

6 A. I was just answering Mr. Trathen's questions
7 about what am I hearing.

8 Q. Okay.

9 A. And I'm just relaying what I'm hearing, what
10 people are saying about having private equity firm run,
11 you know.

12 Q. Right. I get it. But at the same time,
13 every utility company -- that's how I view my job is I
14 have to balance the interest. Like Duke Energy, right?

15 A. Certainly.

16 Q. They have investors and so it's a balance
17 between investors and the ratepayers. So, I guess, I'd
18 like to hear more of a concern -- like, what is an
19 additional concern that isn't a concern of every
20 private utility company. How is a private equity
21 company stepping in the shoes and becoming that utility
22 company -- I'm not hearing -- I'm hearing, well, they
23 have a fiduciary duty to their investors but so does
24 Duke Energy.

1 A. Certainly. I would agree with that, and
2 because of Utility Commission's oversight.

3 Q. Right.

4 A. Right. And your Sub 21 Order went a long way
5 to assuage some of those concerns.

6 COMMISSIONER DUFFLEY: Okay. Okay.

7 Yes. And Chair Mitchell would like to
8 follow up, please.

9 EXAMINATION BY CHAIR MITCHELL:

10 Q. I guess -- and I'm just trying to understand
11 here, then, following along Commissioner Duffley's
12 questions, if whoever takes -- the purchaser of this
13 system is ultimately a public utility. Public utility
14 will be subject to our oversight. We are -- it is our
15 job which we all try our best to do to ensure that the
16 utility is providing adequate service at reasonable
17 rates. What is it -- so where is the concern? Is the
18 Village's concern ultimately about the parking spaces
19 or parking rates? What is the issue for the Village
20 there that you feel that a private equity firm is going
21 to do something that's inconsistent with the public
22 interest?

23 A. I feel confident -- this is me speaking for
24 myself -- that with Utilities Commission oversight

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1 providing oversight over the private equity firm that
2 we should be okay, as long as the conditions or
3 stipulations, you know, are reasonable and, again, I
4 don't -- I'm not an expert on those. You know, there's
5 some I can -- feel I'm aware of, but there's others I'm
6 not and I don't understand them because there's some
7 legal language in there that I'm not that -- I'm not a
8 lawyer. So I do believe that SharpVue ownership could
9 happen with the proper stipulations and with Commission
10 oversight. But if they -- but they're appealing your
11 Sub 21 Order -- if that Order goes away, what happens
12 then? And --

13 Q. Right. And what would your view be if they
14 dismissed their appeal?

15 A. If they dismissed their appeal?

16 Q. And were subject --

17 A. That would assuage some additional fears on
18 our part, certainly.

19 COMMISSIONER DUFFLEY: Okay. Thank you.
20 Thank you for indulging me, Mr. Trathen. I'll let
21 you continue on.

22 MR. TRATHEN: I'm done.

23 COMMISSIONER DUFFLEY: Okay. So thank
24 you, Mr. Gardner. You may step down.

1 And we will take our afternoon break,
2 and we will go off the record and come back on the
3 record at 4:11 -- or let's say had 4:15.

4 (Recess was taken from 4:02 p.m. to
5 4:17 p.m.)

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

8 Whereupon,

9 JULIE PERRY,
10 having first been duly sworn, was examined
11 and testified as follows:

12 DIRECT EXAMINATION BY MR. SCHAUER:

13 Q. Good afternoon, Ms. Perry. My name is
14 Craig Schauer, and I'm counsel for the Village. I
15 would call you to the stand, but you beat me to it.

16 Can you please state your name and official
17 address for the record?

18 A. Yes, and I'm going to read it because I'd
19 probably say the Dobbs Building, if I didn't. My name
20 is Julie G. Perry. I'm a utility consultant with
21 Peedin & Perry Consulting. My business address is 3440
22 Bizzell Grove Church Road, Princeton, North Carolina.

23 Q. All right. And do you understand that
24 Kevin O'Donnell caused to be filed in this proceeding

1 direct testimony consisting of 16 pages and 6 exhibits?

2 A. Yes.

3 Q. And are you adopting the direct testimony of
4 Kevin O'Donnell and its exhibits as your own testimony?

5 A. Yes.

6 Q. Do you have any corrections to the testimony?

7 A. I do, actually.

8 Q. All right. And what are the corrections to
9 the testimony?

10 A. Okay. So in the testimony, there on page 10
11 in Kevin's testimony he cites some numbers that come
12 from an exhibit that Peedin and Perry actually
13 calculated. Let me just show this. I really want to
14 just explain it because it was sort of a big
15 difference, but I'll explain why it was a big
16 difference, so the Commission is clear on that.

17 So on the exhibit, we were calculating the
18 returns for the parking, barge, and ferry assets. And
19 we did it on a stand-alone basis, and we did it just as
20 a calculation for Kevin to put in his testimony.
21 Turned out they wanted to make it into an exhibit, and
22 so we started adding lines to make it look like the
23 surveillance reports that the Commission's used to
24 seeing, you know, that all the other utilities do. And

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1 so in doing that, some of the formulas did not pick up
2 the lines below because we had added in some lines. So
3 what I'll just share is that, the parking did not
4 change at all on this exhibit. It's KWO-3. The barge
5 and the ferry and the total overall returns changed.
6 And I think parking, ferry -- with -- see this
7 imputation that everyone's talking about, the \$500,000,
8 didn't change. But what you will see is that it's
9 about 26.5 percent overall excess earnings now --
10 overall earnings now. It was, I think, in the 40s. If
11 you added in Bald Head Island with the regulated rates,
12 it would be around 31 percent. You can do the math.
13 But I made a -- there was a circular in my formula. I
14 apologize. And we were trying to fix this for filing.
15 And so that's the errors that we're correcting on the
16 exhibit.

17 Q. All right. And so you were talking about,
18 just to be clear, Exhibit KWO-3 and changes you made to
19 that exhibit, which is attached to Kevin O'Donnell's
20 testimony?

21 A. Yes.

22 Q. And in light of the changes to KWO-3, were
23 there any changes to the actual testimony filed by
24 Kevin O'Donnell? Any corrections?

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1 A. Any to the testimony?

2 Q. Yes.

3 A. Well, we had to change the numbers in the
4 testimony.

5 Q. All right. And were those changes on page
6 10?

7 A. Yes. So we changed -- the total rate base
8 changed from 8.9 to \$9.2 million, but we actually, sort
9 of, have that in the record elsewhere.

10 Q. Okay. And just to be clear, that change in
11 total rate base is on Table 1 on page 10, correct?

12 A. Correct.

13 Q. All right. And was there another change on
14 page 10 in the --

15 MR. STYERS: I want to make sure I
16 understand. What's the number that you're using
17 for total rate base? You said 9 point --

18 THE WITNESS: It's 9.3. I mean, it's
19 9.253.

20 MR. STYERS: Okay. All right.

21 THE WITNESS: It added up. If you did
22 the math, it would have added up. None of the
23 numbers actually changed for the individual
24 components; it was just with --

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1 MR. STYERS: The former number was very
2 precise. So I just wanted to make sure I
3 understood, so 900- -- 9,530,000 is your number
4 that you're adding -- that you're asking be added
5 at that line 8 of page 10. I just -- I want to
6 make sure it's clear.

7 THE WITNESS: Yeah. Yeah. No. No.
8 Just the sum formulas were off.

9 MR. SCHAUER: And, you know, Mr. Styers,
10 Commissioner Duffley, if it would help, we filed
11 the corrected testimony on Monday. I'd be happy to
12 distribute that to everyone.

13 COMMISSIONER DUFFLEY: If you will
14 distribute that.

15 MR. SCHAUER: Okay. Thank you. Sorry.
16 I was thinking --

17 THE WITNESS: Sorry. That's a little
18 confusing. Okay. But -- and then it's the same.
19 So we changed the return; the overall return went
20 from 42 percent to 26 percent. And this does not
21 include the imputation which everyone's talking
22 about this morning. So just FYI. And then page
23 11, line one, the 42 was changed to 26.5 percent.
24 This is just the straight books.

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1 MR. STYERS: Got it. Thank you.

2 THE WITNESS: Let's see.

3 MR. SCHAUER: And, Ms. Perry, if you can
4 just wait --

5 THE WITNESS: Uh-huh. I am. Yeah.

6 MR. SCHAUER: -- for the Commissioners
7 to get that exhibit.

8 So, Commissioner Duffley, consistent
9 with what Ms. Perry just testified to, what we've
10 handed out and was filed on Monday and it includes
11 an amended page 10 and 11 that reflect the
12 corrected numbers that she just explained.

13 In the filing, we also have an amended
14 or corrected KWO-3 which has the changes to the
15 Excel formulas that are properly reflected in that
16 exhibit.

17 COMMISSIONER DUFFLEY: Thank you.

18 Q. Ms. Perry, was there one additional
19 correction you made to the exhibits to Mr. O'Donnell's
20 testimony as part of your adoption of that testimony?

21 A. Yes. So part of his testimony was my
22 affidavit. And part of the affidavit had exhibits
23 attached to it. One of them was where I, basically,
24 listed out all the mergers that we had been involved

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1 with -- and my partner and I have been involved within
2 the last 25 years in front of this Commission and the
3 docket numbers. And, basically, the fact, that all of
4 them -- the acquisition premium has been denied.

5 And so, in this case, we just thought it was
6 good effort -- the Public Staff's also filed the same,
7 you know, conditions, saying that they think it should
8 also not be allowed, but we just thought we needed to
9 add some additional information into the record, give
10 the history of the cases. The case I left off was
11 actually a Frontier case and it was the G-40, Sub 36.
12 It was when the Frontier was being bought by a private
13 equity firm for the first time. So it was the first
14 time the Public Staff had ever really seen it. And so
15 they were also fighting an acquisition premium,
16 impairment write-downs, negative acquisition premiums
17 in that case. And that's where the rate base language
18 came in. So I don't think we really ever put the rate
19 base language in as a condition before until that one.
20 And it's also in this Ullico Frontier case as well.

21 But, that was the reason why this rate base
22 language came in, and the Public Staff may not have
23 been aware that that's why it came in, because I was
24 mainly working on that case from the accounting side of

1 things.

2 And so I just wanted to kind of make sure --
3 and the case is -- the language is there. The language
4 is also in the next Frontier case, which is the
5 Sub 160. So I'm just trying to kind of set the history
6 of what we've done, why we've done it, why we've
7 approved mergers. Some of the language that I wrote
8 up, I think they put in Kevin's testimony. So, I
9 guess, it's all going to be one now. So that's why I
10 thought we needed to amend that, just to make it all
11 current.

12 Q. Right. And just to be clear for the record,
13 the correction to Exhibit A, which is an exhibit to
14 your affidavit?

15 A. Yes.

16 Q. And your affidavit is an exhibit to
17 Mr. O'Donnell's testimony?

18 A. Yes.

19 Q. The correction is that you added a reference
20 to the G-40, Sub 36 Docket concerning the Frontier
21 acquisition, correct?

22 A. Yes, sir.

23 Q. Okay. Thank you. With these corrections
24 being made, if I asked you the question -- if I asked

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1 you questions in these prefiled submissions today,
2 would your answers be the same?

3 A. Yes.

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

6 A. Yes, I did.

7 Q. All right. And is that a true and accurate
8 summary to the best of your information and belief?

9 A. Yes.

10 MR. SCHAUER: Commissioner Duffley, I
11 would ask that Mr. O'Donnell's Direct Testimony, as
12 adopted by Ms. Perry as her own, be copied into the
13 record as if given orally from the stand, and the
14 corresponding exhibits be marked for identification
15 as set out in her prefiled submission subject to
16 the two corrections that we've discussed on the
17 record.

18 COMMISSIONER DUFFLEY: So the Direct
19 Prefiled Testimony of Kevin O'Donnell adopted by
20 Julie Perry will be received into evidence, and
21 treated as if given orally from the stand, along
22 with the exhibits and the modifications as
23 testified to here today.

24 And the summary will be received into

1 evidence at this time as well.

2 (Exhibits KWO-1 through KWO-6 were
3 admitted into evidence.)

4 (Whereupon, the Prefiled Direct
5 Testimony of Kevin O'Donnell Adopted by
6 Julie Perry and Prefiled Summary of
7 Direct Testimony of Kevin O'Donnell was
8 copied into the record as if given
9 orally from the stand.)

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BEFORE THE NORTH CAROLINA UTILITIES COMMISSION**DOCKET NO. A-41, SUB 22****Direct Testimony of Kevin W. O'Donnell, CFA****On Behalf of the Village of Bald Head Island****February 20, 2022**

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

2 A. My name is Kevin W. O'Donnell. I am President of Nova Energy Consultants, Inc.
3 My business address is 1350 SE Maynard Rd., Suite 101, Cary, North Carolina
4 27511.

5
6 **Q. ON WHOSE BEHALF ARE YOU PRESENTING TESTIMONY IN THIS**
7 **PROCEEDING?**

8 A. I am testifying on behalf of the Village of Bald Head Island (the "Village").
9

10 **Q. PLEASE SUMMARIZE YOUR EDUCATIONAL BACKGROUND AND**
11 **RELEVANT EMPLOYMENT EXPERIENCE.**

12 A. I have a Bachelor of Science in Civil Engineering from North Carolina State
13 University and a Master of Business Administration from Florida State University.
14 I earned the designation of Chartered Financial Analyst ("CFA") in 1988. I have
15 worked in utility regulation since September 1984, when I joined the Public Staff

1 of the North Carolina Utilities Commission. I left the Public Staff in 1991 and have
2 worked continuously in utility consulting since that time, first with Booth &
3 Associates, Inc. (until 1994), then as Director of Retail Rates for the North Carolina
4 Electric Membership Corporation (1994-1995), and since then in my own
5 consulting firm.

6 I have been accepted as an expert witness on rate of return, cost of capital,
7 capital structure, cost of service, rate design, and other regulatory issues in general
8 rate cases, fuel cost proceedings, and other proceedings before the North Carolina
9 Utilities Commission, the South Carolina Public Service Commission, the
10 Wisconsin Public Service Commission, the Virginia State Commerce Commission,
11 the Minnesota Public Service Commission, the New Jersey Commission of Public
12 Utilities, the Colorado Public Utilities Commission, the District of Columbia Public
13 Service Commission, and the Florida Public Service Commission. In 1996, I
14 testified before the U.S. House of Representatives Committee on Commerce and
15 Subcommittee on Energy and Power, concerning competition within the electric
16 utility industry. Additional details regarding my education and work experience are
17 set forth in Exhibit KWO-1.

18
19 **Q. ARE YOU THE SAME KEVIN O'DONNELL WHO PROVIDED DIRECT**
20 **AND REBUTTAL TESTIMONY ON BEHALF OF THE VILLAGE OF**
21 **BALD HEAD ISLAND IN DOCKET A-41, SUB 21?**

1 A. Yes. I provided testimony in Docket No. A-41, Sub 21 docket, in which the Village
2 was seeking a determination of the regulatory status of the parking and barge
3 operations owned by Bald Head Island Limited, LLC (“BHIL”).
4

5 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

6 A. The purpose of my testimony is to present my opinion on certain matters that are
7 relevant to the Commission’s review of the proposed transaction. First, I address
8 BHIL’s argument from the Sub 21 proceeding (which is pertinent to this
9 proceeding) that the parking and barge assets should be valued for rate base
10 purposes at market value, rather than at book value. Second, I review financial
11 information relating to the ferry, parking, and barge departments operated under the
12 control of BHIL, and provide an estimate of rate base and the associated rate of
13 return earned by BHIL. Third, I address the Commission’s treatment of acquisition
14 premiums.
15

16 **Q. WHY ARE THESE ISSUES RELEVANT TO THE TRANSFER**
17 **PROCEEDING?**

18 A. The future treatment of rate base should be an important factor in the Commission’s
19 evaluation of the proposed transaction.

20 First, the future rate-making treatment of the parking and barge assets will
21 impact the costs that can be passed on to ratepayers in the future. As I explain

1 below, if SharpVue is allowed to place the parking and barge assets into rate base
2 at fair market value—rather than book value—then ratepayers will have to *pay*
3 *again* for assets for which they have already paid. Ratepayers should not be forced
4 to pay a twice for a utility asset. As stated in the affidavit submitted by Julie Perry
5 (Exhibit KWO-2), it appears that the Commission has historically prevented
6 utilities from recovering acquisition premiums (i.e., the price paid above book
7 value) from ratepayers.

8 Second, the calculation of rate base determines the returns on utility assets
9 and, in turn, dictates the revenues that the utility is permitted to collect. As shown
10 below, my estimate of rate base suggests that BHIL is currently earning excessive
11 returns. Such returns could warrant a future reduction in the revenues earned from
12 those assets, which could impact the cash flow that a future owner can use to meet
13 debt obligations and make future investments in the system.

14
15 **Q. WHAT RECORDS DID YOU REVIEW IN CONNECTION WITH YOUR**
16 **ANALYSIS?**

17 A. I reviewed the quarterly financial reports filed with the Commission in Docket No.
18 A-41, Sub 7A relating to operation of the ferry, and various financial reports
19 relating to all three operating departments provided in connection with this
20 proceeding, including the tax asset details sheets for the ferry, barge, and parking
21 operations. I reviewed the testimony submitted by Shirley A. Mayfield on behalf of

1 BHIL and Bald Head Island Transportation, Inc. in the Sub 21 proceeding. I also
2 reviewed parts of the Amended Application and testimony in this proceeding.
3

4 **Q. WHAT IS YOUR RESPONSE TO BHIL'S CONTENTION IN THE SUB 21**
5 **PROCEEDING THAT ASSETS SHOULD BE PLACED IN RATE BASE**
6 **BASED ON "FAIR MARKET VALUE"?**

7 A. Ms. Mayfield testified in Sub 21 that the parking and barge assets, should they be
8 placed into rate base, should be valued at fair market value. *See* Direct Testimony
9 and Exhibits of Shirley A. Mayfield, Docket No. A-41, Sub 21 (Sept. 8, 2022), at
10 4-5, 11-12. I believe she is mistaken on this point.

11 When a utility files a rate case, it must comply with the filing requirements
12 of Commission Rule R-17 which, in part, requires the filing of details surrounding
13 the original cost of an assets.¹ Specifically, Commission Rule R1-17 states as
14 follows as a filing requirement for original cost:

15 A statement or exhibit showing the original cost of all property of
16 the applicant used or useful in the public service to which such
17 proposed increased rates relate. If the original cost of any such
18 property cannot be accurately determined, such facts should be
19 stated and the best estimate of the original cost given. In case such
20 property consists of plants or facilities which have been devoted to
21 the public use by some other person, municipality, or utility, and
22 subsequently purchased by the applicant, the purchase price of such
23 plants or facilities must be shown, and also the original cost and

¹ I am aware of the General Assembly's enactment of G.S. § 62-133.1A, which provides a mechanism by which government-owned water and wastewater systems can be acquired and the assets placed into rate base at "fair value." However, this statute is the exception, not the rule, and is intended to address a specific public policy concern involving the acquisition by a private entity of an existing publicly owned water or wastewater system.

1 accrued depreciation at the time of purchase must be shown, if
2 known. (underline added)
3

4 There is a strong financial reason for the above-stated Commission rule. It is
5 intended to prevent consumers from double paying for the same utility asset.
6 Placing assets in rate base at market value would, essentially, turn the keys to
7 regulation of utility rates to arbitrage specialists that would buy and sell assets on
8 an endless basis and force consumers to pay higher and higher rates for assets for
9 which they have already paid.
10

11 **Q. CAN YOU PROVIDE AN EXAMPLE THAT ILLUSTRATES THIS**
12 **CONCERN?**

13 A. Yes. Suppose Duke owned a generating plant that was constructed for \$100 million
14 30 years ago. Today, however, the plant is fully depreciated but Duke puts the plant
15 on the market and it is sold to a merchant plant operator, which operates the plant
16 for a year and then sells it back to Duke for \$50 million. Under Ms. Mayfield's
17 contention, Duke would then be allowed to put the plant in rate base for \$50 million,
18 even though consumers have already paid for the plant once. In this example,
19 consumers would pay for the plant twice, thereby driving their rates upward and
20 effectively allowing the utility to arbitrage the utility ratemaking process to obtain
21 excessive profits. To avoid situations like this, the Commission has typically only
22 allowed the original cost of the plant investment less depreciation or the net book
23 value for purchases of regulated or non-regulated assets.

1 Ms. Mayfield's proposal in this case would be, indeed, a highly dangerous
2 precedent in that it will have lasting implications for many years to come for a
3 variety of different utilities.

4
5 **Q. MS. MAYFIELD STATES IN HER PRIOR TESTIMONY IN THE SUB 21**
6 **DOCKET THAT THE LAND USED FOR PARKING HAS BECOME**
7 **INCREASINGLY VALUABLE OVER TIME AND SHOULD,**
8 **THEREFORE, BE INCLUDED IN RATE BASE AT MARKET VALUE AS**
9 **OPPOSED TO BOOK VALUE. DO YOU AGREE WITH HER**
10 **CONTENTION?**

11 A. No. First off, it is important to acknowledge that the property at issue has been used
12 since inception in support of the utility operation and owned by an affiliate of the
13 utility. This is not analogous to the acquisition of non-utility property from an
14 unrelated seller. Here the property in question has always been used and useful in
15 support of the regulated operations. Moreover, the valuation of the parking
16 operation referred to by Ms. Mayfield was based on the cash flow generated from
17 the parking operation and assumptions concerning the future recovery of the cash
18 flow – it was not a pure valuation of the land itself.

19
20 **Q. HAVE THE PARKING AND BARGE ASSETS OF LIMITED BEEN PAID**
21 **FOR IN THE PAST BY CONSUMERS?**

22 A. Yes, they have. While the parking and barge operations have not been regulated to

1 date, the fees set by the entities have allowed Limited to already receive the value
2 of those assets many times over via extremely healthy returns on those assets (as
3 shown later in my testimony). It is little wonder, therefore, that the market value
4 of the parking and barge operations is so much greater than that of net book value.
5

6 **Q. IS YOUR CONCERN IN THE EXAMPLE ABOVE ABOUT RATEPAYERS**
7 **PAYING TWICE FOR THE SAME ASSET RELEVANT HERE?**

8 A. Yes, particularly for parking. The same people who are buying ferry tickets (i.e.,
9 ratepayers) are paying for parking. Despite the fact that the parking assets have
10 only recently been deemed to be a formal component of the regulated operation,
11 utility ratepayers have been paying for this asset for years as a practical matter.
12

13 **Q. WOULD IT BE YOUR RECOMMENDATION TO THE VILLAGE TO**
14 **OPPOSE ANY RECOMMENDATION THAT MARKET VALUE OF THE**
15 **ASSETS BE USED FOR DETERMINING RATE BASE?**

16 A. Absolutely. BHIL should not be permitted to “game” the regulatory process by
17 seeking to recover “fair market value” for what are, effectively, captive ratepayers
18 that have been utilizing the assets as part of the regulated ferry operations. If the
19 Commission permits this sort of regulatory gamesmanship here, it will invite every
20 other utility to organize its property holdings in a similar fashion in hopes that they
21 too will be able to arbitrage recovery of an inflated valuation of utility property
22 from ratepayers.

1
2 **Q. WHAT WAS YOUR CALCULATION OF RATE BASE AND THE RATE**
3 **OF RETURN OF THE OVERALL TRANSPORTATION OPERATIONS?**

4 A. Based on the information provided in discovery, I was able to calculate the
5 following return on Limited's estimated rate base for 2021. Below are my
6 calculations in Table 1. These are the same calculations as those that I presented in
7 my rebuttal testimony in Docket No. A-41, Sub 21.

8 **Table 1: Consolidated Operations Rate of Return**
Dec. 31, 2021

	Total Parking, Barge, & BHIT
Income Before Interest and Income Taxes	\$3,092,106
Interest Expense on Rate Base	<u>\$307,684</u>
Taxable Income	\$2,784,422
Composite Income Tax Rate	<u>22.975%</u>
Computed Income Taxes	<u>\$639,721</u>
Net Operating Income for Return	<u>\$2,452,385</u>
 Total Rate Base	 <u>\$8,978,096</u>
 Return on Investment	 <u>42.24%</u>

9 The details for these calculations can be seen in Exhibit KWO-3, attached hereto.²

10 As can be seen in the above values, the estimated overall rate of return is

² The rate base calculation was based on the financial information available in the 2021 audited financial statements for BHIL's barge and parking departments, BHIT's 2021 fourth quarter financial report filed with the Commission, and BHIL's discovery responses. I have provided copies of these three financial statements as Exhibit KWO-4 and the discovery response as Exhibit KWO-5.

1 42.24%. This table shows that Limited is already earning a tremendous profit –
2 significantly above that which would typically be permitted in a rate proceeding –
3 from its investment in the transportation assets serving Bald Head Island.
4

5 **Q. WOULD YOU PLEASE EXPLAIN HOW THE RETURN ON**
6 **INVESTMENT SHOWN ON EXHIBIT KWO-3 WAS DETERMINED?**

7 A. The calculation of the return on investment shown on Exhibit KWO-3 was prepared
8 by the Village's Consultants, Peedin and Perry Consulting, LLC. I have reviewed
9 and agree with their calculations of the return on investment.
10

11 **Q. IS THE METHODOLOGY REFLECTED IN EXHIBIT KWO-3**
12 **CONSISTENT WITH THE METHODOLOGY NORMALLY EMPLOYED**
13 **BY THE PUBLIC STAFF IN CALCULATING RATE OF RETURN IN**
14 **RATE CASES?**

15 A. Yes, it is consistent with the quarterly surveillance earnings reports filed with the
16 Commission for the large gas and electric utilities in the State and is similar to the
17 methodology used by the Public Staff to calculate the earnings for Bald Head Island
18 since its last rate case. The primary difference is that Exhibit KWO-3 uses an end
19 of period rate base amount as of December 31, 2021, as is done in rate case filings
20 instead of using a 13-month average as is typically done in the Public
21 Staff's/Commission's surveillance report earnings calculations.
22

1 **Q. WHAT INPUTS DID YOU USE FROM THE PRIOR RATE CASE IN**
2 **CALCULATING THE RETURN ON INVESTMENT FOR THE PARKING**
3 **AND BARGE OPERATIONS?**

4 A. The return on investment calculations assume the same capital structure and the
5 debt cost rate that was approved in the prior rate case as the basis for determining
6 the return on investment for the parking and barge operations.

7 As noted in Exhibit KWO-3, the Net Operating Income for Return was
8 calculated consistent with the ratemaking methodology typically used in rate cases
9 and is compared to the total rate base that is typically calculated in general rate
10 cases to determine the Return on Investment. In addition, the calculations also
11 utilize the current income tax rates in effect today instead of the tax rates in effect
12 at the time of the last rate case.

13

14 **Q. WHERE DID YOU ASCERTAIN THE INFORMATION USED TO**
15 **CALCULATE THE RETURN ON INVESTMENT ON EXHIBIT KWO-3?**

16 A. All information used to calculate the return on investment was provided from the
17 Data Request Responses provided by Limited.

18

19 **Q. WERE YOU ABLE TO FIND ALL THE INFORMATION NEEDED IN THE**
20 **CALCULATIONS?**

21 A. No. Limited stated that it could not provide balance sheet data for the parking and
22 barge operations, therefore rate base line items such as cash working capital and

1 tax accruals were determined using a formula approach that is widely accepted by
2 the Commission in most water utility proceedings.

3 In addition, accumulated deferred income taxes (ADIT) was not reflected
4 in the determination of rate base for parking and barge operations since the balance
5 sheet data was not provided.

6
7 **Q. WOULD YOU EXPECT THAT THIS ADDITIONAL DATA, IF IT WERE**
8 **AVAILABLE, TO MATERIALLY IMPACT YOUR FINDINGS?**

9 A. No, I would not.

10
11 **Q. PLEASE EXPLAIN THE HOW THE PLANT DATA WAS PROVIDED**
12 **RELATED TO DEPRECIATION METHODOLOGIES FOR TAX BASIS**
13 **VERSUS BOOK BASIS OF PARKING, BARGE AND BHIT ASSETS.**

14 A. Limited provided plant data for the parking, barge, and BHIT in the data request
15 responses. The data reflect both straight-line and Double Declining Method (DDB)
16 depreciation methods. The difference between the straight line and the DDB
17 method appears to be immaterial to the overall calculation since the DDB method
18 is applied to smaller account balance items. However, the depreciable life of the
19 assets appears to be consistent with the service lives that would be typically
20 recommended by the Public Staff.

21 In addition, the straight-line method is applied to the larger account balance
22 items, and the depreciable life of the assets to which the straight-line methodology

1 is applied is consistent with the service lives which would also be typically
2 recommended by the Public Staff.

3
4 **Q. DO YOU AGREE WITH JULIE PERRY'S CALCULATION OF THE**
5 **MAGNITUDE OF THE ACQUISITION PREMIUM AS PRESENTED IN**
6 **HER AFFIDAVIT?**

7 A. I have reviewed the affidavit prepared by Julie Perry and attached as Exhibit KWO-
8 2 to my testimony. I agree that, based on SharpVue's purchase price allocation
9 amounts³ and the rate base amounts stated above, SharpVue is paying a [BEGIN
10 AEO CONFIDENTIAL] [REDACTED] [END AEO CONFIDENTIAL]
11 acquisition premium for the transportation assets.

12
13 **Q. WHY IS THE ACQUISITION PREMIUM RELEVANT TO A TRANSFER**
14 **PROCEEDING?**

15 A. It is my understanding that the Commission typically examines the following
16 factors in connection with transfer cases: (a) whether the transfer is in the public
17 interest, (b) whether ratepayers are protected as much as possible from potential
18 costs and risks resulting from the transfer, and (c) whether the transfer will have
19 adverse impact on rates and service. Here, however, ratepayers would be harmed
20 by the transfer if SharpVue was allowed the opportunity to seek recovery of an

³ SharpVue provided the allocation of its purchase price in its supplemental response to the Village's Second Set of Data Requests, at DR 2-21, which is attached as Exhibit KWO-6.

1 approximate [BEGIN AEO CONFIDENTIAL] [REDACTED] [END AEO
2 CONFIDENTIAL] acquisition premium from ratepayers because rates would
3 have to be increased to cover the premium SharpVue paid for the assets.

4 Allowing SharpVue to recovery an acquisition premium would have any
5 adverse impact on rates by driving them higher. Indeed, allowing a new owner to
6 recover such a premium—simply because the assets changed hands—is not in the
7 public’s interest. Julie Perry points out in her affidavit that, in the past 25 years,
8 transfer orders that have always included language and regulatory conditions
9 disallowing the recovery of any acquisition premium.

10

11 **Q. DO YOU HAVE ANY RECOMMENDATIONS TO THE COMMISSION**
12 **REGARDING YOUR FINDINGS?**

13 A. Yes. I am not offering an opinion on the ultimate question before the Commission
14 in this proceeding—i.e., whether to approve the transfer. However, I do believe the
15 Commission should consider the future rate-making treatment of the parking and
16 barge assets as part of its review of the proposed transaction.

17 To the extent that the Commission does approve the transfer, I would
18 recommend that the Commission condition such approval on SharpVue agreeing
19 that, in future rate cases, (1) the parking and barge assets will be valued at book
20 value for purposes of calculating rate base, (2) SharpVue cannot seek to recoup any
21 acquisition premium from ratepayers and that ratepayers will be protected to the
22 greatest extent possible from any other costs or risks of the transfer. If the

1 Commission were to approve the transfer, then the Commission should also
2 calculate and state what the rate base is for each of the parking, barge, and ferry
3 assets as of December 31, 2021.

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

5 A. Yes.

**Summary of Direct Testimony of Julie Perry,
adopting pre-filed Direct Testimony of Kevin O'Donnell
On Behalf of the Village of Bald Head Island**

The purpose of my testimony is to present my opinion on certain matters that are relevant to the Commission's review of the transfer proceeding.

First, I address BHIL's argument that the parking and barge assets should be valued for rate base purposes at market value, rather than at net book value. If SharpVue is allowed to place the parking and barge assets into rate base at fair market value—rather than net book value—then ratepayers will be harmed if customers have to *pay* a higher premium for assets that are already currently being used to provide utility service. In this regard, I disagree with the prior testimony of Shirley Mayfield in the Sub 21 proceeding, in which she stated that the parking and barge assets, should they be placed into rate base, should be valued at fair market value. This statement is contrary to utility regulation in North Carolina.

Second, based on the information provided in discovery, I was able to calculate returns on Limited's estimated rate base for 2021 for the consolidated transportation operation as well as each component department. Based on my review, the estimated overall rate of return is 26.50%. Thus, Limited is currently earning extremely high returns on the transportation operations—significantly above that which would typically be permitted in a general rate case proceeding from its investment in the transportation assets serving Bald Head Island.

Next, I address the Commission's treatment of acquisition premiums. Based on SharpVue's purchase price allocation amounts and the rate base amounts stated above, SharpVue is paying a very high acquisition premium for these transportation assets. If

SharpVue was allowed to recover this acquisition premium, I am concerned that ratepayers would be harmed in a future rate case proceeding. Customer rates could be increased for the impact of the acquisition premium SharpVue paid for the assets. Allowing a new owner to recover such a premium - simply because the assets changed hands - is not in the public interest. In the past 25 years, merger and transfer orders include language and regulatory conditions disallowing the recovery of any acquisition premium in order to protect ratepayers from the risk of harm. Although there may be a few exceptions in the water utility industry, this Commission has consistently disallowed the recovery of acquisition premiums from ratepayers in all other regulated industries.

Finally, I believe the Commission should consider the future rate-making treatment of the parking, barge, and ferry assets as part of its review of the proposed transfer so that customers are not harmed. In the event that the Commission moves forward to approve SharpVue's acquisition, I would recommend that the Commission condition such approval on SharpVue agreeing that, in future rate cases, (1) the parking, barge, and ferry assets will be valued at net book value as of December 31, 2021, for purposes of calculating rate base, and (2) SharpVue cannot seek to recover the acquisition premium related to the transfer as a whole from ratepayers and that ratepayers will be protected to the greatest extent possible from any other potential costs or risks associated with the transfer.

For these reasons, it is my recommendation to deny any acquisition premium related to this transfer proceeding and utilize the net book values as of December 31, 2021, for determining rate base for parking, barge and ferry assets.

This completes the summary of my direct testimony.

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1 MR. SCHAUER: Thank you. And with that,
2 the witness is available for cross
3 examination.

4 MR. STYERS: Thank you.

5 CROSS EXAMINATION BY MR. STYERS:

6 Q. Good afternoon, Ms. Perry.

7 A. Hi.

8 Q. Would you agree that the Bald Head Island
9 Ferry is unique?

10 A. The Bald Head Island Ferry is a utility.

11 Q. As a utility, is unique? As a utility, is
12 unique?

13 A. I think all utilities have their own -- I
14 mean, I'm not sure -- they have a unique -- they're
15 set on the water. I mean, if we have transportation.
16 We have buses. We have -- you know, there's a lot.
17 I'm not sure I would use that.

18 Q. Okay. Let me see if the Commission has used
19 it.

20 MR. STYERS: May I approach? I'm not
21 going to label this exhibit, but I don't want to
22 ask the que- --

23 COMMISSIONER DUFFLEY: You may.

24 Q. I have handed you a copy of the Commission's

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1 Order in A-41, Sub 21 issued December 30, 2021. I've
2 tabbed several pages on that, and where I tabbed and
3 highlighted on page 8 of that Order, the Commission
4 used the word "unique" on page 8; did it not?

5 A. On page 5 it used it.

6 Q. Excuse me. It's Finding 8 on page 5. Thank
7 you. And then on page 15?

8 A. Six. I'm getting there.

9 Q. Okay. The next tab over.

10 A. I've never used it -- as called unique, so
11 maybe I should have answered it that way but, okay.

12 Q. So the Commission used the term "unique"
13 twice on page 15; did they not? Is that correct?

14 A. I'm getting there. Yep. They did.

15 Q. And then on page 27, the next tab. They used
16 the word "unique"?

17 A. Yeah. But it's unique in that the ferry is
18 almost dependent on parking, and parking is dependent
19 on the ferries, but, yes.

20 Q. And then on page 29 towards the bottom, at
21 the conclusion, they use the term "unique"?

22 A. One second, sorry.

23 Q. Did they not?

24 A. They do. I just think you need to read it in

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1 context. I'm not sure -- I mean, that's fine. But, I
2 mean, there's different reasons why they're actually
3 writing that, but go ahead. Sure.

4 Q. And then -- and Commissioner Duffley's
5 two-page descent, first page, is the word "unique" is
6 used twice; is it not? In fact, "Based upon unique
7 circumstances."

8 So the Commission has used the word unique in
9 it's Order to describe various aspects of the Bald Head
10 Island Ferry; have they not?

11 A. Well, sure. It's because it's a uti- --
12 she's basically calling it a utility because the
13 parent's a utility in this is what she's saying in this
14 paragraph, so --

15 Q. Okay. So you've worked for the Public Staff
16 for -- I won't know the number of years, but we'll just
17 say many years; is that correct, Ms. Perry?

18 A. Just say 32. It's fine.

19 Q. Thirty-two years.

20 A. Show my age.

21 Q. And you, in fact, during your career, worked
22 on some of the dockets for the Bald Head Island Ferry
23 Transportation, didn't you?

24 A. I did. I was not allowed to work on the rate

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1 case because my -- I was married at the time, and my
2 in-laws owned property. And I can actually
3 Scott Gardner; I've been going to Bald Head since 1993,
4 I think. And my -- you know, so yeah, so we -- but
5 since I got divorced -- thank goodness -- sorry. We
6 were -- I was promoted to manager, and I became the
7 manager of natural gas. They rearranged our division,
8 and I became the manager of natural gas and
9 transportation. So since that point in time, yes. I
10 was taking a very active role in the Bald Head Island.
11 And I did present some items on their behalf.

12 Q. So you are familiar with Bald Head Island's
13 operations?

14 A. I am very familiar with Bald Head Island,
15 more so than most, probably.

16 Q. So you know that, basically, parking service
17 has been provided by Bald Head Island Limited for over
18 30 years?

19 A. Oh, yeah. Indigo plantation and all that and
20 parking was built -- the ferry was -- and the marina,
21 and I remember walking through all those tall weeds
22 trying to get back to the -- run back to the ferry to
23 catch the boat. Yes. It's been there since inception.

24 Q. Okay. And you also know that the barge

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1 operations has been operating, in fact, for almost 40
2 years; has it not? To your knowledge.

3 A. My in-laws built houses on the island. So we
4 were very intimately aware of the barge and all that.
5 So, I mean, and you know, the Mitchells have owned this
6 whole thing since day one, and they've done a wonderful
7 job, you know, bringing those operations to the Island
8 and the transportation system. So --

9 Q. Prior to the Commission's Order in A-41,
10 Sub 22 over the barge and parking operations, the
11 Commission never asserted regulatory jurisdiction over
12 the parking and barge; is that fair to say?

13 A. The Commission did, in fact, somewhat. When
14 you go to the 2010 rate case, they did. There is three
15 or four -- maybe even one that's not even been
16 mentioned, actually, when they imputed those \$523,000
17 revenues in parking, when they switched from an
18 operating lease for the Bald Head Island terminal
19 that's owned by Limited, and they moved it into the
20 rate base of Bald Head Island Transportation. They
21 also turned the Deep Point lease into a -- from a lease
22 to a cost-based lease, meaning they used original cost
23 to get that lease. And they actually -- it was -- and
24 that was an increase for Limited. And just -- and

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1 then, when Indigo plantation was transferred to a
2 nonregulated entity which is the marina where the Bald
3 Head Island Ferry used to come into, they captured the
4 gain, fair market value minus the original cost. And
5 that was refunded to ratepayers over a period of, like,
6 five years. So I think, the Commission was never asked
7 until two years ago, but, in fact, from all their words
8 that they have in these unique orders, they're saying
9 that it has, in fact, been an integral part of
10 transportation services since day one. And since no
11 one actually came to the Commission and said, "Hey, are
12 we a utility, or not? Are we regulated? Are we not?"
13 I don't think that Or- -- I love their Order, but I
14 don't -- and I think it just -- it just shows how much
15 has act- -- what's been going on since day one, and how
16 much of a utility service the three of those operations
17 are carrying for the island.

18 Q. Let me see if I can rephrase my question,
19 because I thought it was a fairly straightforward
20 question.

21 Has this Commission ever regula- -- have ever
22 set the rates for parking and barge services provided
23 by Bald Head Limited prior to the Order in A-41,
24 Sub 21?

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1 A. Well, they have been -- they -- yes. Because
2 in the 2010 rate case, they were allowed to go in and
3 say, "Okay. You can raise parking rates based on the
4 CPI -- and I'm not going to quote it, but you guys can
5 pull the Order if you want to -- on the inflation and
6 we're not going to raise rates. So, in effect, they
7 were taking over those parking increases through that
8 case, and as far as that goes. In the parking
9 imputation -- which we can all talk about where that is
10 and where it isn't and where it is -- was the original
11 cost rate base. It was the cost of return, the taxes,
12 and it was spread out, and it was compared to what
13 parking was earning. It was the excess earnings that
14 we imputed. It wasn't parking's earnings. It was just
15 the over-earning. So all of that's in the rates of all
16 the assets. So -- and at rate case, a lot of things
17 were deemed regulated. So I'm just -- not trying to
18 digress. I'm sorry if I am. But there are a lot of
19 pieces -- moving pieces there.

20 Q. Let me try a third time.

21 A. Okay. Go.

22 Q. Has this Commission ever approved rates for
23 the barge?

24 A. Have they ever --

1 Q. For Bald Head Island Limited.

2 A. Not that I'm aware of.

3 Q. Okay. So has this Commission ever approved
4 specific rates charged by parking?

5 A. Have they ever approved specific rates
6 charged by parking? No. But they have had a hand in
7 being able to -- so what the Order is --

8 Q. It's -- I just -- It's just a they have or
9 they haven't? I just need to know whether --

10 A. Well -- well, let me back that up and say,
11 "No, but" -- let me finish. Okay. Limited was deemed
12 a utility in this Order, and I think
13 Commissioner Duffley in her descent -- ascent -- I
14 can't figure out how we say that -- but, you know,
15 she -- they stated that, you know, it was deeming
16 Limited is a utility. Okay? So it was setting its own
17 rates. It hadn't had a rate case. So, hence,
18 Frontier's never had a rate case, but they've got
19 rates. And they've got charge -- rates that they're
20 charging. So, no, they haven't come in and had a
21 formal rate case. But neither has Frontier Natural
22 Gas, honestly. But, with Limited being a --
23 technically a utility now, and with SharpVue stepping
24 into their shoes, I consider them being a utility now.

1 And that's kind of where we're coming from with all
2 this stuff we're getting ready to talk about.

3 Q. I understood it's your position.

4 A. Okay. Sorry.

5 Q. Did you, or anyone else in the Public Staff,
6 ever file a recommendation with the Commission to set
7 specific rates for parking or barge in that rate case
8 A-41, Sub 7? Did the Public Staff file a
9 recommendation to set specific rates for parking and
10 barge in Docket A-41, Sub 7?

11 A. We wanted to roll the whole thing in. But
12 there was fights. I mean, that was a settlement and,
13 the Commission acknowledged it was a settlement. We
14 acknowledged it was a settlement. But, I mean, the de
15 facto part of this whole thing is we would have taken
16 parking and rolled it in, okay, into the rate case, if
17 we had it our way at that point in time, based on the
18 notes and what my boss drilled into me before he
19 retired so --

20 Q. I guess I'm a little confused, because I
21 thought you said earlier that you did not work on the
22 A-41, Sub 7.

23 A. I didn't. But believe me, for those six --
24 those years before he left and retired, I was given

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1 a -- he sat down and said, "Here's a drawer. We're
2 going through the whole Bald Head Island rate case."

3 Q. So did -- was there ever -- did you, or
4 anyone else in the Public Staff, ever file a
5 recommendation with the Commission to regulate and set
6 specific rates for the parking or barge in the A-41,
7 Sub 7?

8 A. Well, I had it -- and I didn't make a copy.
9 But, if you could pull Jim Hoard's testimony and I'm
10 just going to cite it, and you can correct me later.
11 But Jim Hoard's testimony in the rate case basically
12 stated that, "We are going to impute these revenues
13 into other revenues, rather than rolling it in because
14 it's better for ratepayers if we do it this way."
15 Okay? So please check me on that, but I promise you
16 it's there. So there's a footnote that says that in
17 his testimony. So, I think, what that is somewhat
18 saying is he would have done it, or tried it, or fought
19 it, or, you know, whatever. Had -- and it is worded in
20 his testimony that way.

21 Q. And if his testimony states that way when he
22 said, "It's better for ratepayers," it's because if you
23 had rolled in parking or barge and fully brought in the
24 rate base, and depreciation, and tax -- property taxes,

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1 rates would've actually ended up higher; would they
2 have not?

3 A. No. What he's saying -- no, actually.
4 Sorry.

5 Q. Yeah. You -- I mean, I'm just -- he said it
6 was better for ratepayers.

7 A. I'm going to explain. I'm going to explain
8 why it was better for ratepayers. Okay? So when you
9 have rate base company, which is what this is, okay?
10 You have a declining rate base, right? I mean, they've
11 fixed the -- they built the brand new parking lot.
12 They did all the upgrades to it. And, okay, what's
13 going to happen? A lot of it is land. It doesn't
14 depreciate, right? We've talked about that. But, as
15 you go down, as the years go by, things decrease. So
16 what he did was he levelized the revenue requirement.
17 So it wasn't -- you weren't going to get the highest
18 revenue requirement in year one. And you weren't going
19 to get the lowest in, say, 20 years later. Most of the
20 plant was depreciated over 15 years for that parking.
21 Some seven, some whatever. And so we levelized the
22 revenue requirement and then compared it. I think it
23 was beneficial for both sides, and that's why they
24 settled on the number. They levelized the revenue

1 requirement. They compared it to what was actually in
2 rates in the test year, and that's where the 523,000
3 came in. So I don't -- I think what he meant was, his
4 approach not necessarily was better than just rolling
5 it in because -- for everyone -- it's going to decline,
6 and it would be -- it might not be as good of rate.

7 Q. Over the long-term, but given what -- let me
8 ask this, do you have any documents that the Public
9 Staff performed a traditional rate base rate of return
10 rate-making calculation for parking and barge
11 operations at the time of the 2010 rate case?

12 A. I don't have it for barge, no.

13 Q. Okay.

14 A. But for parking, Jim Hoard did settlement.
15 We got this into discovery by the way from -- during
16 the rate case -- during this in 21 -- in the Sub 21
17 case. But, you know, they go through and do this --
18 and you guys, if you ever look at it, you'll see the
19 input schedules where you have the capital structure,
20 the return, and all of that type of stuff. And, oh,
21 good. You want to see? But it's lovely. This is the
22 original cost rate base. It's all the capital cost
23 that go in, the depreciation, the O&M, the property
24 taxes, the taxes, you know -- and then he sol- -- and

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1 you can go in. He solved for a levelized rate, but you
2 could not solve for that levelized rate and you could
3 figure out what it would be.

4 Q. Was there a calculation?

5 A. Yes.

6 MR. STYERS: May I approach?

7 THE WITNESS: Sure. Yeah. I might need
8 glasses. I do. That was the data request in the
9 Sub 21, and if you look at the front -- so
10 that's -- yeah, that's the number that he came up
11 with on a levelized basis.

12 MR. STYERS: May I ask a few questions
13 from here, Madam Chair?

14 COMMISSIONER DUFFLEY: You may.

15 Q. I'm familiar with this document.

16 A. Okay.

17 Q. Was there a rate base rate -- rate of return
18 calculation as what the rates would be if the -- for
19 parking, if the full price of the Deep Point terminal
20 had been rolled into rate base, and if there had been
21 the full depreciation in parking? Was there rates ever
22 calculated of what that scenario would have been?

23 A. So I think what he's saying here, the annual
24 revenue requirement would have been a 1.666 in this

1 year and then it changes based on the different
2 additions and depreciation. But this annual revenue
3 requirement, this is where he's trying to find an
4 annual payment, I think. Kind of get a levelized
5 treatment of it. So he's got a 1.6 million right
6 there, as far as that goes. So he was saying that 1.6
7 million would be year one. We used 1.4 instead to
8 levelize over, like, a 20-year period.

9 Q. At a 1.666202 revenue requirement given the
10 units of parking at the time, do you know what would
11 have result- -- what parking rate that would have
12 resulted in?

13 A. I'm not your rate design girl. I'm just your
14 regulatory girl.

15 Q. I'm just asking was there ever a rate
16 calculation as to, given the units of parking, what the
17 rates would've been with that revenue requirement?

18 A. That's not -- no. This was just a revenue
19 imputation calculation.

20 Q. That was -- so what you just showed me and
21 what we looked at is the imputation calculation?

22 A. It is. But it was the exce- -- it's the
23 excess over the -- what they would have determined to
24 be the return -- the revenues that would be calculated

1 on parking if it was regulated. And so they,
2 basically, just took the excess of what they were
3 actually earning in 20 -- in 2009 -- I got to get my
4 years straight here, and imputed that into the rate
5 case. So, in effect, we were trying -- he was
6 attempting to roll in the rate base but it was doing a
7 levelized -- because he didn't know how long it would
8 be until you came back in because nobody -- no
9 offense -- wanted to have another Bald Head Island rate
10 case after that. No offense. That's just a Public
11 Staff joke.

12 COMMISSIONER DUFFLEY: Ms. Perry, can I
13 interrupt for a minute? For clarity of the
14 record --

15 THE WITNESS: Yes?

16 COMMISSIONER DUFFLEY: -- what document
17 are you referring to?

18 THE WITNESS: This was a data request
19 response that we got in the Sub 21 case. Craig
20 might have to help me, but I had it up on my
21 computer. It was a -- just a data request
22 response, and it's settlement computation of
23 parking revenues contribution.

24 COMMISSIONER DUFFLEY: Okay. Thank you.

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1 THE WITNESS: And we can make it
2 available if you need it.

3 COMMISSIONER DUFFLEY: Okay.

4 MR. SCHAUER: Commissioner Duffley, it
5 might make sense to enter it as an exhibit, and,
6 although, she only has a copy, we could create
7 copies and circulate them or, obviously, have them
8 filed consistent with the Commission's practices.

9 COMMISSIONER DUFFLEY: Okay.

10 MR. SCHAUER: I apologize.

11 COMMISSIONER DUFFLEY: Let's mark it as
12 an exhibit.

13 (Confidential Bald Head Perry Cross
14 Exhibit 1 was marked for identification.)

15 MR. SCHAUER: I didn't know she had
16 exhibits on her.

17 COMMISSIONER DUFFLEY: At the end, we can
18 clean it up at the end.

19 THE WITNESS: I have to have exhibits on
20 me.

21 Q. As a result of that settlement --

22 A. Yes, sir.

23 Q. -- there were no specific rates set by this
24 Commission for the parking rate charges or the barge

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1 rate charges that came out of the A -- Sub 7 -- A-41,
2 Sub 7 Docket, was there?

3 A. Except the reduction to ferry rates for this,
4 and then there was a -- the CPI index inflation they
5 put on the parking. That's important because I think
6 they noted that in their Order, in the Sub 21 Order,
7 that that was a piece of it. That they were linking
8 them.

9 Q. I will try again. The answer then is, no,
10 they were no rates?

11 A. No. I think there were rate impacts because
12 inflation impact is a rate impact.

13 Q. I did not ask if there were rate impacts. I
14 asked if there were rates established?

15 A. No, just rate increases.

16 Q. For parking and barge operations?

17 A. Barge was not mentioned. But parking, there
18 were CPI increases, which everyone's talked about
19 today.

20 Q. Okay. Would you agree that, as a general
21 ratemaking proposition, utility rates include a
22 reasonable return on utility's rate base?

23 A. Say that one more time.

24 Q. As a general ratemaking proposition, utility

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1 rates include a reasonable rate of return on a
2 utility's rate base; do they not?

3 A. Yeah. Rate base times return, plus expenses,
4 plus taxes gives you your revenue requirement, yes.

5 Q. As a general ratemaking proposition, utility
6 rates are set at a level to allow the recovery of the
7 cost of service, including utility's expenses; you
8 would agree with that?

9 A. Yes. Reasonable, use, and useful for the
10 providing utility service, yes.

11 Q. Okay. And the cost of utility service
12 includes depreciation expense; does it not?

13 A. Sure.

14 Q. Okay. And costs of service includes property
15 taxes; does it not?

16 A. Sure.

17 Q. Okay. Thank you.

18 A. Unless you don't have them. We have some
19 little water utilities that don't have any of those.

20 MR. STYERS: I was hoping to avoid going
21 through these exhibits, but I don't -- since we've
22 already started down this path, I think I've got to
23 distribute some more exhibits and get them in the
24 record. So if you will indulge me?

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1 COMMISSIONER DUFFLEY: Okay, Mr. Styers.
2 While he's distributing documents, how do you want
3 to label the exhibit? We'll at least have it
4 identified.

5 MR. SCHAUER: So I would suggest it
6 would be --

7 COMMISSIONER DUFFLEY: Perry Direct.

8 MR. SCHAUER: Yeah. Well, Village, but
9 it's -- I apologize. It's her cross examination,
10 but she's our witness. So I don't know if it's
11 appropriate to call Village Perry Direct Cross
12 Exhibit 1. But, maybe that might be -- and I think
13 that convention works, in terms of identifying it.
14 So maybe Village Perry Direct Cross Exhibit 1. I
15 guess that's how the convention would work here.

16 COMMISSIONER DUFFLEY: Well, but that
17 would suggest that it's Mr. Styers' Exhibit.

18 MR. SCHAUER: I know, but it came out on
19 cross examination of Ms. Perry. So I'm not sure.

20 COMMISSIONER DUFFLEY: So Village Perry
21 Cross -- Village Direct. Village Perry Cross.

22 So we're going to settle with Bald Head
23 Perry Cross Exhibit Number 1.

24 (This exhibit has been previously

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1 identified as Confidential Bald Head
2 Perry Cross Exhibit 1.)

3 MR. SCHAUER: Thank you.

4 MR. STYERS: I don't care, quite
5 frankly.

6 COMMISSIONER DUFFLEY: Okay. And,
7 Mr. Shauer, when will the Commissioners obtain
8 that? Tomorrow morning?

9 MR. SCHAUER: Yes. We will have
10 copies -- printed copies available tomorrow
11 morning.

12 COMMISSIONER DUFFLEY: If you'll mark
13 them as well, so they're marked --

14 MR. SCHAUER: Yes.

15 COMMISSIONER DUFFLEY: -- premarked.
16 Thank you.

17 MR. CREECH: Presiding Commissioner
18 Duffley, can I ask clarifying -- can you
19 identify -- could we identify what that document
20 actually is, again?

21 COMMISSIONER DUFFLEY: Can you give me
22 the headline?

23 THE WITNESS: Sure. Yes. Settlement
24 Computation of Parking Revenue Contribution.

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1 MR. CREECH: Is that a data response,
2 though?

3 THE WITNESS: That's a data response in
4 the Sub 21.

5 MR. FERRELL: Is there a Bates number on
6 it?

7 MR. STYERS: Nope.

8 MR. SCHAUER: So it was -- it's not a
9 data response. It was produced. So, I think,
10 yeah, it was produced in response to a data
11 response.

12 THE WITNESS: Okay. Sorry.

13 MR. STYERS: I was hoping not to have to
14 go through these documents. I'm not that
15 organized. If you will bear with me just a moment.

16 I'll see if I can get these labeled
17 correctly in a way that makes some sense. So the
18 document labeled -- it's Commission Order in Docket
19 A-41, Sub 7 -- if we can label that --

20 COMMISSIONER DUFFLEY: Hold on. Let me
21 find it.

22 MR. STYERS: Okay. Yeah.

23 COMMISSIONER DUFFLEY: Go ahead.

24 MR. STYERS: The Docket A-41, Sub 7

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1 Order, if we can label that, BHI Exhibit JGP Cross
2 Ex. 2, or whatever convention the Commission would
3 prefer. But my thought was JGP Cross Ex. 2 because
4 there's not --

5 (Off-the-record discussion regarding the
6 naming of the exhibits.)

7 COMMISSIONER DUFFLEY: We'll do BHI
8 Perry Cross Exhibit 2.

9 MR. STYERS: Perry Cross Exhibit 2.

10 MR. SCHAUER: BHIT.

11 COMMISSIONER DUFFLEY: BHIT.

12 (BHIT Perry Cross Exhibit 2, was marked
13 for identification.)

14 MR. STYERS: BHIT would be my
15 preference, actually.

16 And then the -- there's one page labeled
17 Hoard Exhibit 2 Schedule 1 at the top right-hand
18 corner. I will put that in context in my
19 questions. So I would like for the Hoard -- the
20 document labeled at the top right-hand corner,
21 "Hoard Exhibit 2 Schedule 1," if that could be
22 labeled BHIT Perry Cross Exhibit 3.

23 COMMISSIONER DUFFLEY: So identified.

24 (BHIT Perry Cross Exhibit 3, was marked

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1 for identification.)

2 MR. STYERS: And the document in the top
3 right-hand corner, it says, "Mayfield Exhibit 1
4 Schedule 2," we can label that BHIT Perry Cross
5 Examination Exhibit 4.

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

8 (BHIT Perry Cross Exhibit 4, was marked
9 for identification.)

10 MR. STYERS: Thank you. Did you get
11 copies of those exhibits?

12 THE WITNESS: I don't have any.

13 MR. STYERS: I didn't think so.

14 Thank you. And I apologize for the
15 delay in getting those distributed.

16 Q. So go back into first principles, Ms. Perry.
17 The Bald Head Island Transportation had a rate case in
18 2010 identified as Docket A-41, Sub 7; did it not?

19 A. It did.

20 Q. Okay. And the document labeled Perry
21 Cross -- BHIT Perry Cross Examination Exhibit 2, is the
22 Order that the Commission issued in that docket?

23 A. Okay. Yes.

24 Q. And that Order accepted a stipulation between

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1 the parties of that docket; did it not?

2 A. It did, yes.

3 Q. Okay. And on page 5 of the Order, finding 7
4 and 8, it set forth the total annual revenues,
5 expenses, debt equity ratio. And then finding 8 said,
6 "Exhibit A and B of the stipulation summarized the
7 gross revenues, operating revenue, deductions, rate
8 base, and rate of return agreed upon by the stipulating
9 parties."

10 A. I'm sorry. Can you tell the where you're
11 reading from? I apologize.

12 Q. Page 5 of the Order. Finding 8 --

13 A. Okay. Thank you. Sorry.

14 Q. -- refers to stipulation -- Exhibits A and B
15 of the stipulation?

16 A. Sure. I have the settlement exhibit; is that
17 what you mean?

18 Q. So Exhibit A of the stipulation.

19 (Off-the-record discussion.)

20 MR. STYERS: May I approach the court
21 reporter just to make sure I've got everything
22 labeled properly? I'm sorry.

23 COMMISSIONER DUFFLEY: Yes, you may.

24 And we're having trouble finding this Exhibit A to

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1 the stipulation.

2 THE WITNESS: Me too.

3 (Multiple off-the-record discussions.)

4 MR. STYERS: There's a --

5 COMMISSIONER DUFFLEY: Mr. Styers, I do
6 not have that exhibit.

7 MR. STYERS: Okay. So there's one --
8 there's -- on the left -- top left-hand corner it
9 says, "Bald Head Island Transportation, Inc. Docket
10 Number A-41, Sub 7, Statement of Net Operating
11 Income for Return, Rate Base and Overall Return,"
12 in the upper left-hand corner and two numbers
13 highlighted.

14 Was that distributed?

15 THE WITNESS: That was. But that's
16 Hoard Exhibit 2, right?

17 COMMISSIONER DUFFLEY: Number 3.

18 MR. STYERS: It's different than Hoard
19 Exhibit 2.

20 THE WITNESS: Okay. Then, no.

21 COMMISSIONER CLODFELTER: That's Perry
22 Exhibit 2; is it not?

23 MR. STYERS: I mean, yeah, Perry.

24 THE WITNESS: Yeah. It's Cross

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1 Exhibit 3.

2 MR. STYERS: It was intended to be Perry
3 Exhibit 3.

4 COMMISSIONER DUFFLEY: We have that as
5 Perry 3, and it has Hoard Exhibit 2, correct?

6 MR. STYERS: Okay. And then there
7 should be one more document, which -- that over on
8 the left-hand side it says, "Statement of Operating
9 Net Income for Return, Rate Base and Overall
10 Return."

11 COMMISSIONER CLODFELTER: There is.
12 It's just not marked.

13 (Multiple off-the-record discussions.)

14 MR. STYERS: It's -- so that would be
15 Perry Exhibit 5?

16 COMMISSIONER CLODFELTER: Mr. Styers, I
17 believe 3 and what you're now proposing to be 5 are
18 the same document. It's just it has two exhibit
19 stickers put on the copies. And one of the exhibit
20 stickers obscures the Hoard Exhibit 2 sticker. If
21 you look at them, they are the same document.

22 MR. STYERS: Thank you,
23 Commissioner Clodfelter.

24 (Multiple off-the-record discussions.)

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1 MR. STYERS: Okay. Let's just -- let's
2 just refer to the -- what -- that's been labeled
3 Hoard Exhibit 2 at the top right-hand corner.

4 COMMISSIONER DUFFLEY: Right. So
5 Commissioner Brown-Bland said that Number 3 has
6 footnotes where the other distributed exhibit does
7 not have footnotes, correct? Are we correct on
8 that?

9 MR. STYERS: Yes.

10 COMMISSIONER DUFFLEY: Okay. So you're
11 working with Exhibit 3 right now?

12 MR. STYERS: Exhibit 3 is the one
13 without footnotes, correct?

14 COMMISSIONER BROWN-BLAND: No.

15 COMMISSIONER DUFFLEY: No. It's with
16 footnotes.

17 MR. STYERS: Okay. I would ask that the
18 one without footnotes be Exhibit 5.

19 COMMISSIONER DUFFLEY: Okay. It'll be
20 so marked as BHIT Perry Cross Exhibit Number 5.

21 (BHIT Perry Cross Exhibit Number 5, was
22 marked for identification.)

23 (Off-record discussion.)

24 MR. STYERS: All right. So I'm going to

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1 hand --if I may approach. I'm going to hand the
2 witness --

3 COMMISSIONER DUFFLEY: You may.

4 MR. STYERS: -- the document named
5 revised agreement stipulation.

6 Q. Does that look like the stipulation in that
7 docket, Ms. Perry?

8 A. Subject to check. Subject to check on the
9 docket system. It looks like it is.

10 Q. Okay. And there's an Exhibit A to that
11 stipulation.

12 A. If you'll let me look at the number I can
13 give you a little bit better -- yeah. Okay. Yep.

14 Q. Is Exhibit A from the stipulation the same
15 that's been marked as Perry Cross Examination Exhibit 5
16 without the footnotes at the bottom?

17 A. Without the footnotes at the bottom -- yeah,
18 okay.

19 Q. Is that Exhibit A from the stipulation?

20 A. Yes. It looks that way.

21 Q. And that exhibit from -- A of the stipulation
22 is what was incorporated into the rate base Order as
23 the return on rate base and overall return approved in
24 the Order A-41, Sub 7?

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1 A. Well, all rates, yeah. All costs of service,
2 basically, in general. The cost of service approved,
3 yes.

4 Q. The cost of service approved.

5 A. Yes.

6 Q. And that included a plant in service line
7 which has been highlighted.

8 A. Uh-huh.

9 Q. 6,656,972 -- subject to check?

10 A. Yep. And that includes -- that's the ferry
11 transportation and then that's added in that Bald Head
12 Island terminal. That \$600,000-something is the Bald
13 Head Island terminal in there.

14 Q. And then the original cost rate base is the
15 3,943,335 in the bottom right-hand number?

16 A. 3,943,335, yes.

17 Q. That's the original cost rate base --

18 A. That's the rate base that came out of the --

19 Q. Stipulation. Now those numbers actually came
20 from the late filed exhibit of Jim Hoard in that
21 docket. They are the same numbers, which
22 Mr. Clodfelter already identified, which has been
23 labeled Perry Exhibit 3.

24 A. Uh-huh. Yes.

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1 Q. And Mr. Hoard's exhibit noted that, again,
2 plant in service was 6,656,972, correct?

3 A. Correct.

4 Q. Okay. And Mr. Hoards's late filed exhibit
5 noted the original cost rate base of 3,943,335 and
6 that's the --

7 A. That's in the Order, yes.

8 Q. And that's Perry Cross Exhibit 3?

9 A. Yes.

10 Q. Okay. Now --

11 A. For the rate base part, yep.

12 Q. So the plant in service number on both Perry
13 Exhibit 3 and Perry Exhibit 5 starts over on the left.
14 If you look at the left hand column, either of those
15 exhibits, it says, "Per company plant in service
16 6,020,592."

17 Do you see that number as the plant in
18 service per company?

19 A. I do.

20 Q. Okay. Now let me refer to -- you to
21 Perry Exhibit 4.

22 A. Yeah. Okay. That's the company filing.

23 Q. And you've anticipated my question. This was
24 the filing with the rate case application by Bald Head

1 Island Transportation, correct?

2 A. Uh-huh. Yes, sir.

3 Q. Okay. And as part of what's here, Mayfield
4 Exhibit 1 Schedule 2, now labeled BHIT Perry Cross
5 Exhibit 4, the next -- the next page of that exhibit is
6 schedule 2.1, which is all the plant in service that
7 went into the 6,020,562 -- subject to check; you would
8 agree with that?

9 A. If I could read that number, I would say,
10 yes, but -- subject to check that's fine. I can barely
11 read it. Yes.

12 Q. And that Mayfield Exhibit Schedule 2.1 lists
13 a number of categories of assets, correct? And, again,
14 I'm looking at the second page.

15 A. Yes. It's a depreciation schedule. Yeah, I
16 mean, we --

17 Q. Categories are vehicles, correct?

18 A. Sure.

19 Q. And there's also a category for machinery and
20 equipment?

21 A. Uh-huh. Yes.

22 Q. Computer software?

23 A. Uh-huh.

24 Q. Boats. And other computer hardware. Those

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1 are all categories of the plant in service that were
2 part of the plant in service calculation that was part
3 of the rate base calculation?

4 A. That's part of the \$3.9 million, yes.

5 Q. Okay. And then that number was then used by
6 Mr. Hoard in is late filed exhibit to, kind of, show
7 the cost of service rate base and overall return that's
8 labeled as Perry Exhibit 3, correct?

9 A. Yeah. He made adjustments.

10 Q. He made adjustments, but it came from that?

11 A. Yes.

12 Q. And then that was then incorporated in the
13 stipulation as Exhibit A, which is labeled Perry
14 Exhibit 5?

15 A. Right.

16 Q. And then that was then the number that was
17 approved by the Commission in its Order by stating that
18 Exhibit A summarizes the gross revenues, operating
19 revenue deductions, rate base, and rate of return and
20 finding 8 on page 5 of the rate case order, correct?

21 A. Right. So on exhibit -- yeah. So Exhibit A
22 which is my Cross 5, right?

23 Q. Correct.

24 A. Okay. Yeah. And that also has that other

1 operating revenue which has the parking in it. So just
2 to mention that it's line two of this Exhibit A, Cross
3 5, it's got the parking impact.

4 Q. So that approved cost rate base in Docket
5 Number A-41, Sub 7, was \$3,943,335, correct?

6 A. Sure. Uh-huh.

7 Q. Okay. And that number did not include any of
8 the assets used by the barge, did it?

9 A. Of the barge, not that I'm aware of, no.

10 Q. That number, which comes from the plant in
11 service depreciation schedules in Mayfield Exhibit 2
12 from the rate case filing -- schedule to the rate case
13 filing that's labeled Perry Cross Exhibit 4, there's no
14 assets included in that list that were used in
15 providing parking services, to your knowledge; is it?

16 A. The assets in that list?

17 Q. Correct.

18 A. No. Because we imputed the revenue into the
19 other operating revenue up top, and, in effect, rolled
20 in the excess earnings of the rate base into this line
21 item. Because you're basically making a revenue
22 requirement on everything in that column.

23 Q. So -- but the answer is "no"?

24 A. Not in rate base. But we, in fact, imputed

1 it into the revenue requirement. Because, I mean, your
2 rate base is a piece of it. You know, rate base times
3 return, plus expenses plus, you know, taxes, you know,
4 other operating included. So, in essence, all of those
5 pieces took on the rates for the ferries in that rate
6 case.

7 Q. In looking at the Exhibit Perry Exhibit 5.
8 Let's focus on that one because that was really the
9 stipulation exhibit.

10 Line 8 is the depreciation line; is that
11 correct?

12 A. Yes.

13 Q. Depreciation is \$315,314, correct? It was
14 the depreciation approved, depreciation --

15 A. Subject to check, because I don't have it in
16 front of me.

17 Q. That's what the stipulation says?

18 A. Yeah. Sure.

19 Q. And that depreciation was on the plant in
20 service number that, you know, was in the rate base,
21 correct?

22 A. Sure. Because the parking depreciation is at
23 the top. Just kidding, but it is.

24 Q. But that depreciation expense did not include

1 the depreciation of any assets used by the barge?

2 A. No, it did not.

3 Q. And that depreciation number wasn't the
4 depreciation on any assets used on parking?

5 A. Not in that number, but there is
6 depreciation. I'm sorry to keep saying this, but on
7 line 2, where that 800-and -- I can't even read without
8 my glasses. I'm sorry -- 872,344, that includes the
9 523 imputation that everybody's been talking about this
10 morning, as well as the gain on sale that Indigo
11 Plantation where they sold the old Marina into a -- or
12 they transferred it to a nonregulated asset and then we
13 recaptured the gain and amortized it. And that's also
14 in there. So that's that other operating revenue. So
15 you don't necessarily -- we attempted to take the
16 easier approach of just imputing the excess earnings
17 versus rolling in the entire parking facility.

18 Q. So my question is more about assets than they
19 are about revenues or expenses?

20 A. But the whole thing creates rates that were
21 determined and what's ferry-operated -- what's being
22 charged by the ferry. And that's what I want you to
23 recognize is that, you know, you can't just calculate a
24 revenue climate on a rate base, there's other things to

1 go in into it.

2 Q. Correct.

3 A. That's, you know.

4 Q. But the assets of the parking and barge were
5 never included in the rate base calculation in that
6 rate case; were they not?

7 A. They are not in that calculation of that rate
8 base number, but the rate base impact is shown on the
9 second line on this sheet right here.

10 Q. The barge and parking assets, never having
11 been assets listed. The depreciation of those
12 assets -- the depreciation expense of those assets have
13 never been part of the rates for the ferry?

14 A. No. They are in here. That sheet. We'll
15 pull back out, but we couldn't name it. The Perry
16 Cross Exhibit has a line in its depreciation, and
17 that's calculating that \$1.4 million which in essence,
18 created the 523 imputation, so there is depreciation in
19 that number. I'm sorry, but there is.

20 Q. But the assets themselves in the expense item
21 of depreciation -- the depreciation expense in the cost
22 of service did not include depreciation on the assets
23 in the depreciation line?

24 A. Okay. The depreciation on line 8 does not

1 include the parking depreciation. It is in line 2.

2 Q. Okay. What with all -- so is there -- it was
3 an imputation of revenue; was it not?

4 A. It was an excess earnings, basically. It's
5 revenue, but it's based on excess earnings of parking.

6 Q. We'll come back to this later, but I want to
7 touch on a few more items and maybe get some more work
8 done before 5:30 this afternoon. On page 6 of his
9 testimony, Mr. O'Donnell quotes --

10 A. Can you let me switch gears real quick?

11 Q. Yeah.

12 A. Because this is just a lot of paper.

13 Q. I'm sorry. Okay. So page 6 of
14 Mr. O'Donnell's testimony, he quotes Section B-3 from
15 Commission 1-17. There's a quote -- he quotes Section
16 1-17?

17 A. Yes, he does. I'm sorry. I'm getting there.

18 Q. But he only quotes Section B-3, and I'd like
19 to refer you to a document that I'd like labeled. At
20 the top is Rule R-17, and we'll label it BHIT Perry
21 Cross Exhibit 6.

22 A. Our Rule 1-17, right?

23 Q. 1-17.

24 COMMISSIONER DUFFLEY: It will be so

1 identified.

2 (BHIT Perry Cross Exhibit 6, was marked
3 for identification.)

4 Q. So Mr. O'Donnell quotes this original cost on
5 page 6?

6 A. Right. Yes.

7 Q. But the very next paragraph, Section B-7 --
8 B-4, excuse me, on the bottom of the first page, you
9 know, is entitled, "Present Fair Value"?

10 A. I think what you're looking at is the filing
11 or the application.

12 Q. Exactly.

13 A. So I do this for other companies, now that
14 I'm a consultant. But we also did it as a Public
15 Staffer. You have to file all pieces of information,
16 right?

17 Q. And this Section B is the list of the
18 information required to be filed for rate case; is it
19 not?

20 A. Rate cases, CPCNs, about anything you want to
21 do, you have to file all this information, yeah.

22 Q. And it's just a list of filing requirements?

23 A. Sure.

24 Q. It does not -- this rule does not dictate how

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1 a rate base is to be valued or calculated, because this
2 is simply a list of requirements, correct?

3 A. This is an application, but on the other
4 one -- let me go back to what he said. You know, it's,
5 basically, asking them to list all original cost rate
6 base -- I mean plant -- sorry -- plant investment in
7 the system. And then they want to know what you
8 purchased it for. They want to know if there are
9 contributions. They want to know -- I mean, you have
10 to know all the details. You have to know the story
11 behind what's going on so you'll know how to handle and
12 treat all the different pieces and particles, but yeah.
13 This Commission is always using original cost that's
14 the --

15 Q. We'll go to the word "always" in a few
16 minutes.

17 A. I can go there too but.

18 Q. Yeah. You would agree that neither of these
19 sections state whether the Commission should value
20 utility property for rate base purposes at any
21 particular value; these are just application filings?

22 A. Oh, I think this Commission has deemed that
23 the original cost basis is the basis that you use. And
24 I know there's going to be exceptions you're going to

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1 pull up with the water and those -- there are a lot of
2 exceptions because we have the Safe Water Drinking Act
3 and, there's a lot of things going on. But for the
4 most part, this Commission water, or gas, or electric,
5 has always used original cost unless there is some very
6 few exceptions out there with it.

7 Q. Okay. My question was, the requirements of
8 R-117, they are simply filing requirements. They --
9 this rule does not dictate, in this rule, the valuation
10 of rate base for rate-making purposes; does it not?

11 A. Well, I think if you go down further in the
12 rule, which I don't have handy, but the whole --

13 Q. The entire rule is before you.

14 A. Oh, that whole rule. Okay.

15 Q. Yes. It's a long rule.

16 A. Hold on a second then.

17 Q. These are the rate base requirements. That's
18 why I wanted to put -- I wanted the entire rule to be
19 in the record. So the rate base filing requirements
20 are Rule 1-17. There is nothing in the rule that
21 dictates the issue of how rate base is to be
22 determined?

23 A. Right. And the Commission has jurisdiction
24 over how it's determined but, usually, they're going to

1 file their rates and their Orders they've filed using
2 the original cost on that, but --

3 Q. I understand that's your position. But my
4 limited question is, that, Mr. O'Donnell cites this
5 rule to state that -- as if the rule were determining
6 original cost, but the rule only lists what's to be
7 included in that application, correct?

8 A. Well, I think he's stating more than just
9 application. It's wanting to know what the -- the
10 original cost rate base -- this doesn't look like the
11 exact same thing. I don't know what's going on here.
12 Hold on. Okay. There. I'm sorry. It's the
13 formatting that was throwing me off. I'm sorry. Yeah.
14 I think -- well, this is our guide. This is the guide
15 for how we would determine rates.

16 Q. This is the guide for what you review to
17 determine --

18 A. Exactly. Exactly.

19 Q. -- an application's been filed?

20 A. It's a great guide.

21 Q. It's just when they're filing applications.

22 A. Yes.

23 Q. Okay. This is just the filing requirements,
24 correct? These are the filing requirements listed in

1 R1-17B, and that's all this is?

2 A. For R1-17. Sure. But it's used throughout
3 all the transfers and mergers that we do today.

4 Q. Okay. Let's -- so let's just assume that a
5 utility, Duke Energy, purchases a transformer.

6 A. How about they purchase another utility?

7 Q. Well, let's say -- no. No. It's not --
8 that's not my hypothetical. Let's assume that Duke
9 Energy purchases a power plant from an independent
10 power producer --

11 A. Sure. We just had this same example.

12 Q. -- instead of building one itself.

13 A. Okay.

14 Q. Okay. And assume the Commission deems that
15 purchase to be prudent. To be used and useful in the
16 provision of utility service. And allows Duke to put
17 that in the rate base -- that's my hypothetical. But
18 prior to that purchase, it had never been in rate base
19 before because it'd been a part of an independent power
20 producer.

21 A. See, I'm not an expert on the power
22 producers. So you probably need to get a different
23 example because -- give me a gas example. Give me a
24 water example because you buy at original cost. You

1 buy it at original cost. If it's a utility providing
2 utility -- if it's providing utility service -- if a
3 power producer, I'm not sure. I don't know. I'm not
4 an electric expert.

5 Q. All right. Let's use a gas example.

6 A. Okay.

7 Q. Let's assume that Piedmont Natural Gas buys a
8 compressor?

9 A. Okay.

10 Q. Or pipe.

11 A. Okay.

12 Q. And puts that into rate base.

13 A. Okay.

14 Q. That comes into rate base at the purchase
15 price of that asset, correct?

16 A. Because it's never been providing a utility
17 service, right.

18 Q. Correct. It has never been dedicated.

19 A. No. Not dedicated. It hasn't been providing
20 a utility service.

21 Q. Okay. Has not been providing utility
22 service. Okay. So if a power plant were to be built
23 by someone else and Duke were to put it into utility
24 service and rates for the first time, it would come in

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1 at purchase price of that power plant as a practical
2 matter; would it not?

3 A. I don't know. I've never done one of those.

4 Q. Okay. Well, that would make sense, wouldn't
5 it? Because it's at that point, the utility can first
6 include revenue generated from that plant --

7 A. See, I don't --

8 Q. -- as part of that it's revenue numbers.

9 A. Honestly, Mr. Styers, I mean, you can keep
10 asking me these questions, but I'm not an expert on the
11 power-producing industry of that part. So you can
12 keep -- I'm not sure how the Public Staff has treated
13 it. My partner probably does, but she's not up here
14 today. So you're going to have to give me a different
15 example.

16 Q. But when a gas utility purchases something
17 for the first time, it comes at original cost because
18 that's the first time it can be depreciated as an
19 expense, any revenues generated from it would be
20 included as revenues in the utility's accounting books
21 and records, correct?

22 A. That would be an original cost, right.

23 Q. And so, at that point, it comes in at
24 original cost, correct? A purchase that had not

1 previously been part of the utility service.

2 A. Sure.

3 Q. Okay.

4 A. When you put in parking, you put in original
5 cost.

6 Q. Now, on page 7, Mr. O'Donnell talks a lot
7 about arbitrage and the risk of arbitrage and as a
8 basis for the Commission rule. I'll let you turn to
9 page 7.

10 Are you there?

11 A. Yes.

12 Q. Okay. He states, that, on page 7 that,
13 "Allowing rate base to be set at purchase price creates
14 an opportunity for arbitrage, which is why rate base
15 should not be set at purchase price." That's his
16 testimony here.

17 A. I'm aware.

18 Q. The hypothetical Mr. O'Donnell posits in this
19 example is when the asset had previously been owned by
20 a regulated utility; is it not?

21 A. Right. Right. And that's different from the
22 one you were just giving me.

23 Q. Correct. Correct. Because, in this example,
24 that asset that had previously been owned by a utility

1 had been fully depreciated -- had been depreciated
2 and --

3 A. But it also had been providing utility
4 service.

5 Q. Excuse me?

6 A. It also had been providing utility service.

7 Q. Correct.

8 A. Okay.

9 Q. And as utility asset, it had been
10 depreciated. Those assets had been depreciated in
11 providing a utility service?

12 A. True. But the key there was it's been
13 providing utility service.

14 Q. Okay. So I think we would both agree that,
15 in the case that Mr. O'Donnell posits -- presents here
16 is that, when the asset has previously been providing
17 utility service as utility property, you know, it's
18 usually the lesser of purchase price or the net
19 original cost. So the net original cost of the
20 acquired facility. That is the general rule, you and I
21 would both agree.

22 A. They're selling it, remember? They're
23 selling it, right? You said that Duke was selling it.

24 Q. No, purchasing it.

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1 A. Whoa. Hold on.

2 Q. I'm sorry. So if you're purchasing a utility
3 that had previously depreciated assets, you would --

4 A. If you owned a generating plant, and the
5 plant's fully depreciated and he sold it -- this is
6 what I'm reading, I mean, so --

7 Q. That's right.

8 A. I'm sorry. You've got to --

9 Q. I'm sorry. You're right. He sold it because
10 it had been previously dedicated to utility services?

11 A. Right.

12 Q. It had been previously a depreciated utility
13 asset.

14 A. Right. And then they sold it.

15 Q. Right. And then they --

16 A. So we would have captured the gain on that.

17 Q. -- bought it.

18 A. We would have captured the gain on that.

19 Q. That's right. Exactly.

20 A. Okay.

21 Q. And ratepayers would have been charged the
22 depreciation rates and then the scenario here is then
23 Duke buys it back?

24 A. Right.

1 Q. And, if you -- in that situation, there's
2 already been depreciation. There's already been
3 property tax value that's already been part of rates
4 and you can't -- you have to use the original cost, not
5 the -- not the fair market value in that situation?

6 A. It's the lower of purchase price or the
7 original cost.

8 Q. Original cost?

9 A. So, in this case, I mean, if there's a
10 gain -- if that really did happen, then there was a
11 gain going on there. But the Commission probably would
12 have been having their eyebrows up, honestly. But, no,
13 ratepayers are not going to pay twice for the same
14 asset. And that's what he's talking about, and he
15 mentions it down further in his testimony. I would
16 basically -- I don't talk like Kevin, because I'm not
17 Kevin, and that's fine. I mean, I would just say that
18 we don't allow the inflated price -- utilities to go
19 out there and sell at cost and inflate their cost and
20 then try to buy things back and ratepayers are just
21 going to suffer. I mean, who's going to suffer here?
22 Not the utilities -- not the shareholders, but the
23 utility is going to suffer.

24 Q. I understand. So that's the hypothetical he

1 presents.

2 A. I get you.

3 Q. You're exactly right. The utility assets
4 have been put into utility service have been
5 depreciated and customer can't pay -- is expected to
6 pay a second time when they've already paid rates the
7 first time.

8 A. Uh-huh.

9 Q. But a different hypothetical, such as what I
10 mentioned earlier when a utility purchases, you know,
11 an unregulated asset like a compressor or a pipe or gas
12 utility -- if that's the one you're more comfortable
13 with -- or a service truck, you know, then the rate
14 base is, you know, at either the purchase price or
15 market value, because it's never been put in utility
16 service before, correct?

17 A. Well, it's the purchase price.

18 Q. It's the purchase price, exactly.

19 A. That is not even -- that is not even in the
20 use of providing service. I mean, that is like a --
21 it's not a utility.

22 Q. Correct.

23 A. It's a truck.

24 Q. Correct. Correct. Exactly.

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1 MR. STYERS: So do we want to break
2 here? I'm at a stopping point. Or do we want to
3 keep going?

4 COMMISSIONER DUFFLEY: Yes. Let's break
5 for the day, and we will return tomorrow morning at
6 9:30.

7 MR. STYERS: And I'm well over half
8 through it -- halfway through, so hopefully it
9 won't be too much longer. Thank you.

10 COMMISSIONER DUFFLEY: Okay. Thank you.

11 I hope everyone has a good evening.
12 We'll see you tomorrow morning. Let's go off the
13 record.

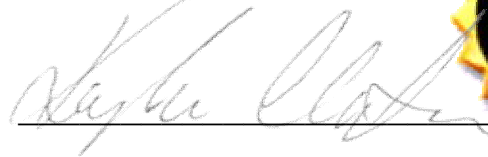
14 (Hearing recessed at 5:31 p.m. and set
15 to reconvene at 9:30 a.m. on Thursday,
16 March 9, 2023.)
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CERTIFICATE OF REPORTER

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 30th of March, 2023.



KAYLENE CLAYTON

Notary Public 202228500270

