STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. A-41, SUB 22

In the Matter of Joint Application of Bald Head Island Transportation, Inc., and Bald Head Island Ferry Transportation, LLC, for Approval of Transfer of Common Carrier Certificate to Bald Head Island Ferry Transportation, LLC, and Permission to Pledge Assets	)	NOTICE OF APPEAL AND EXCEPTIONS OF VILLAGE OF BALD HEAD ISLAND

COMES NOW the Village of Bald Head Island ("Village"), pursuant to N.C. Gen. Stat. § 62-90, N.C. Gen. Stat. § 7A-29(a), and Rule 18 of the North Carolina Rules of Appellate Procedure, and gives Notice of Appeal to the North Carolina Court of Appeals from the Order Approving Application with Conditions (the "Order") issued August 22, 2023, by the North Carolina Utilities Commission ("Commission") in the above-captioned proceeding.[1] Pursuant to N.C. Gen. Stat. § 62-90(a), the Village sets forth below the exceptions and grounds on which it considers the Order to be unlawful, unjust, unreasonable, and/or unwarranted.

EXCEPTION NO. 1

The Order's Evidence and Conclusions for Findings of Fact 50-52 are unjust, unreasonable, or unwarranted; affected by errors of law; unsupported by competent, material, and substantial evidence in view of the entire record as submitted; and arbitrary and capricious. The Order erroneously applies the transfer standard applicable to transfers under Section 62-111(e) to the transaction at issue. On its face, Section 62-111(e) applies

[1] The time for filing this Notice of Appeal and Exceptions was extended to October 20, 2023, by order of the Commission issued September 19, 2023 in this proceeding.

only to the transfer of motor carrier franchises and not to the transfer of common carrier certificates authorizing the transportation of persons and household goods by boats or other waterborne vessels. *See State ex rel. Utils. Comm'n v. Vill. of Pinehurst*, 99 N.C. App. 224, 228, 393 S.E.2d 111, 114 (1990), *aff'd per curiam*, 331 N.C. 278, 415 S.E.2d 199 (1992) (citing *Utils. Comm. v. Express Lines*, 33 N.C. App. 99, 234 S.E.2d 628 (1977)). This error was prejudicial to the Village because the standard applicable to motor carriers is intended to be less stringent than that under Section 62-111(a) because motor carriers are subject to competition, whereas the ferry system at issue in this proceeding is operated on a monopoly basis. *See generally* G.S. § 62-111(e) (the Commission "shall approve" proposed motor carrier transfers so long as (1) the transfer "will not adversely affect the service to the public," (2) the transfer "will not unlawfully affect the service to the public by other public utilities," (3) the proposed transferee "is fit, willing and able to perform such service" and (4) service "has been continuously offered to the public up to the time of filing said application.").

EXCEPTION NO. 2

In addition to its erroneous application of the transfer standard set out in Section 62-111(e), the Order also errs in concluding that the transfer would meet the transfer standard applicable to transfers under Section 62-111(a). This conclusion, including without limitation the Order's Evidence and Conclusions for Findings of Fact 31-40, and the corresponding Findings of Fact, is unjust, unreasonable, or unwarranted; affected by errors of law; unsupported by competent, material, and substantial evidence in view of the entire record as submitted; and arbitrary and capricious.

First, the Commission's citation to the correct transfer standard under Section 62-111(a) as an alternative standard does not cure the fundamental error set forth in Exception No. 1. The plain language of the Order reveals that the Commission misinterpreted the standard applicable to the transfer of water carrier certificates and that its reference to the correct standard was intended merely to buttress the Commission's prior conclusion that the transfer satisfied Section 62-111(e). In this manner, the original error infected, in a prejudicial manner, the Commission's application of Section 62-111(a).

More fundamentally, the Commission's conclusion that the transfer would also meet the standard applicable to transfers under Section 62-111(a) misapplies the three-part standard applicable to such transfers by (1) recognizing benefits which are not supported by competent evidence; (2) failing to acknowledge the considerable, substantial, and significant risks to ratepayers triggered by the proposed transaction which outweigh the purported benefits; and (3) failing to protect ratepayers from the known risks to the maximum extent possible. The effect of these errors is to perpetuate and endorse a negotiated business arrangement which contains significant risks to ratepayers and the public, which risks which have not been sufficiently recognized or mitigated by the Order.

Specifically, the Order errs in failing to fully protect against the risks to ratepayers and the public from, among other things: the potential recovery of acquisition premiums through barge and parking rates or through lease rates to the utility; over-valuation of the parking and barge assets; the manner in which the utility will be financed and operated; SharpVue's[2] intent to bifurcate ownership of the parking and barge assets; and pledge of

[2] For convenience, "SharpVue" refers generally to SharpVue Capital, LLC and its affiliates as described in the Amended Application for Transfer of Common Carrier Certificate filed in this proceeding on January 24, 2023.

utility property to secure unregulated property and operations; and risks associated with the Applicants' ongoing challenge to the Commission's *Order Ruling on Complaint and Request for Determination of Public Utility Status* on December 30, 2022, in Docket No. A-41, Sub 21 (the "Sub 21 Order"), in which the Commission asserted jurisdiction over the parking facilities and barge subject to the proposed transfer.

For these reasons, the Commission's alternative conclusion that the transfer would also meet the standard applicable to transfers under Section 62-111(a) constitutes reversible error under Section 62-94(b).

EXCEPTION NO. 3

The Order erroneously approves Regulatory Conditions which, among other things, permit the transferee, after consummation of the transaction, to increase rates for parking and barge services on an annual basis based on inflation. This portion of the Order, including the Evidence and Conclusions for Findings of Fact 30, 36, 44, and 50-52, and the corresponding Findings of Fact, is unjust, unreasonable, or unwarranted; affected by errors of law; unsupported by competent, material, and substantial evidence in view of the entire record as submitted; and arbitrary and capricious.

This portion of the decision constitutes prohibited ratemaking outside the context of an authorized ratemaking proceeding. *See State ex. rel. Utils. Comm'n v. Nantahala Power & Light Co.,* 326 N.C. 190, 195, 388 S.E.2d 118, 121 (1990) (the Commission may revise the rates of a public utility only though (1) a general rate case pursuant to G.S. § 62-133; (2) a proceeding pursuant to a specific, limited statute, such as G.S. § 62-133.2; (3) a complaint proceeding pursuant to G.S. § 62-136(a); or (4) a rulemaking proceeding). It also effectively constitutes "single-issue" ratemaking contrary to Commission ratemaking

principles. *See In re Application of Duke Energy Carolinas, LLC for Approval of Rate Rider to Allow Prompt Recovery of Costs Related to Purchases of Capacity Due to Drought Conditions*, Order Denying Request to Implement Rate Rider and Scheduling Hearing to Consider Request for Creation of Regulatory Asset Account, Docket No. E-7, Sub 849, at 18 (June 2, 2008) (rejecting "extraordinary single-issue ratemaking treatment" because "the Commission has long followed the fundamental ratemaking principle that the totality of a utility's revenues and costs, not just particular items in isolation, must be examined in order to determine the need for a rate increase.").

The Order arises from a proceeding to determine whether approval should be granted to the transfer of the common carrier certificate. The Commission did not initiate a general rate case in response to the filing of the transfer application nor did applicants invoke the Commission's ratemaking authority in their application; no complaint was made pursuant to G.S. § 62-136(a); no limited ratemaking statute was invoked; and this was not a rulemaking proceeding. It is error for the Commission to adjust rates outside a statutorily authorized proceeding, and it is error for the Commission to purport to set rates for regulated services based on consideration of a single factor rather than the totality of considerations impacting rates.

Additionally, the record before the Commission was devoid of any evidentiary foundation for increasing parking and barge rates. Even assuming, *arguendo*, that a complaint proceeding had been initiated, the Commission may revise rates only if it "finds that the existing rates in effect and collected by any public utility are *unjust, unreasonable, insufficient or discriminatory, or in violation of any provision of law* . . . ." G.S. § 62-136 (emphasis added). In the Order, the Commission found that "the rates BHIL is currently

charging for Parking and Barge are reasonable and should be allowed to continue, consistent with the Sub 21 Order." Order, ¶ 35. Accordingly, there is no support nor legal basis for the Commission's conclusion that "[f]uture adjustment of these current rates at the rate of inflation is appropriate." *Id*., ¶ 36. This error is particularly prejudicial, as well as arbitrary and capricious, given the unrebutted evidence in the record that the transportation system in the aggregate is earning returns significantly above those authorized in the most recent ratemaking proceeding. *See* Village Post-Hearing Brief, Docket No. A-41, Sub 22, at Background Section D, pp. 10-13 (containing citations to record evidence).

The decision allowing the transferee to increase parking and barge rates also amounts to an improper reconsideration of a prior Commission Order as to which jurisdiction currently lies with the North Carolina Court of Appeals. In the Sub 21 Order, the Commission asserted regulatory authority over the parking and barge operations. In the Sub 21 Order, the Commission specifically held that the then-existing parking and barge rates would be held in place pending further proceedings. *See* Sub 21 Order, at 28. The Commission held:

> As a result, and as requested, the Commission treats the Complaint only as a request for a declaration of utility status. The Commission does not treat the Complaint as a request to initiate a rate proceeding and does not require either BHIT or BHIL, separately or jointly, to file a general rate case at this time. *See generally State ex rel. Utils. Comm'n v. Carolinas Comm. for Indus. Power Rates*, 257 N.C. 560, 569-70, 126 S.E.2d 325, 332-33 (1962). Without more and absent any requested change, the Commission permits the status quo—and the current rates and services of the Parking and Barge Operations—to continue.

This decision, including that barge and parking rates shall remain unchanged pending a future rate case, is the subject of an appeal which is pending in the North Carolina Court of Appeals in Case No. COA23-424. By virtue of the appeal to the Court of Appeals, the Commission was divested of jurisdiction to modify its order. *See In re Approval & Closing of Bus. Combination of Duke Energy Corp. & Progress Energy, Inc.*, 234 N.C. App. 20, 25, 760 S.E.2d 740, 743 (2014) ("The general rule is that an appeal takes the case out of the jurisdiction of the trial court [or administrative agency]. Thereafter, pending the appeal, the trial judge is *functus officio*." (quoting *Estrada v. Jaques*, 70 N.C. App. 627, 637, 321 S.E.2d 240, 247 (1984))). It is error for the Commission to modify the Sub 21 Order by authorizing a rate increase while the Sub 21 Order is the subject of an appeal in the Court of Appeals.[3]

For these reasons, the Commission's order permitting the transferee, after consummation, to increase parking and barge rates on an annual basis constitutes reversible error under Section 62-94(b).

EXCEPTION NO. 4

The Order's Evidence and Conclusions for Findings of Fact 45-48 and 50-52, and the corresponding Findings of Fact, are unjust, unreasonable, or unwarranted; affected by errors of law; unsupported by competent, material, and substantial evidence in view of the entire record as submitted; and arbitrary and capricious in permitting Bald Head Island Ferry Transportation, LLC ("BHIFT") to distribute 100% of its net income calculated on a

[3] Moreover, the Order's finding that the proposed regulatory condition permitting annual rate increases was "consistent with the Commission's Order in Docket No. A-41, Sub 21" is manifestly incorrect. *See* Order, at Finding of Fact 36.

two-year rolling average basis (Regulatory Condition #8) to its parent, affiliates, members and managers.

Contrary to Regulatory Condition #8 as approved by the Commission, the Public Staff's recommendation, supported by testimony, was to limit distributions of net income to 80%. *See* Joint Testimony of Sonja R. Johnson, Krishna K. Rajeev, and John R. Hinton Public Staff – North Carolina Utilities Commission, Docket No. A-41, Sub 22 (Dec. 14, 2022) and Exhibit 1 at Regulatory Condition #7 ("BHIFT shall not pay to SharpVue, SharpVue Affiliates, Holdings, or their Members or Managers any distribution exceeding 80% of BHIFT's net income calculated on a two-year-rolling average basis.") and Amended and Supplemental Joint Testimony of Sonja R. Johnson, Krishna K. Rajeev, and John R. Hinton Public Staff – North Carolina Utilities Commission, Docket No. A-41, Sub 22 (Feb. 20, 2022), at 19 and Exhibit 1 at Regulatory Condition # 6 ("BHIFT shall not pay to SharpVue, SharpVue Affiliates, Holdings, or their Members or Managers any distribution exceeding 80% of BHIFT's net income calculated on a two-year-rolling average basis.").

No party offered testimony in support of Regulatory Condition #8 as approved by the Commission. To the contrary, the Village submitted arguments in its Post-Hearing Brief opposing the revised condition and explaining how the revised condition would be adverse to the public interest. The Order provides no independent analysis explaining how the revised regulatory condition protects ratepayers and is preferable to the proposal of the Public Staff supported by testimony in the record. Nor does the Order explain why a 100% distribution would be appropriate.

The error substantially prejudices ratepayers. As explained by the Village in its Post-Hearing Brief, the effect of Regulatory Condition #8 is to permit SharpVue to "siphon off" all of the earnings from parking and barge for the benefit of itself (through management fees) and distributions to investors without preserving capital for the betterment of the utility assets, including maintenance, upgrades, and replacement costs—precisely one of the risks of the proposed transaction identified by the Village in its expert testimony.[4]

For these reasons, this portion of the Order is arbitrary and capricious, unsupported by competent, material, and substantial evidence in view of the entire record as submitted, and affected by other errors of law, and therefore constitutes reversible error under Section 62-94(b).

EXCEPTION NO. 5

The Order's Evidence and Conclusions for Findings of Fact 45-48, and the corresponding Findings of Fact, are unjust, unreasonable, or unwarranted; affected by errors of law; unsupported by competent, material, and substantial evidence in view of the entire record as submitted; and arbitrary and capricious by failing to address and protect ratepayers from acquisition premium with respect to the parking facilities and barge. As a result, the Order approving the transfer places ratepayers at significant risk, and the transfer should not have been allowed.

[4] As explained in the Village's Post-Hearing Brief, this impact also is exacerbated by the manner in which SharpVue is proposing to organize its corporate affairs and hold ownership of its regulated assets where operational revenues will be received by the utility but the assets representing most of the system value will be held in a separate, "unregulated" subsidiary.

During the proceedings, SharpVue stated its intent to recover acquisition premium and the Village presented evidence demonstrating that SharpVue's business plan depends on being able to overearn excessive revenues on the parking facilities and barge through an acquisition premium. The Village presented further evidence that the valuations, on which Applicants negotiated the purchase price, were inflated by the overearning.

Allowing SharpVue to recover acquisition premium would violate the Commission's longstanding prohibition on the recovery of acquisition premium absent "special circumstances." Order, Docket No. W-1000, Sub 5, at 27 (Jan. 6, 2000).[5] Indeed, the exact circumstance animating the adoption of this prohibition—that permitting the inclusion of acquisition premium would create an incentive for purchasers to pay a high price confident that the overpayment would be recovered from ratepayers—is precisely the concern here. Applicants did not, and cannot, show that special circumstances justifying acquisition premium exist here because (1) that purchase price, which has been overinflated, is not prudent; and (2) Applicants have not shown that "the existing customers of the acquiring utility and the customers of the acquired utility would be better off (or at

[5] *See also, e.g.*, Duke Power Company and PanEnergy Corp -Docket Nos. E-7, Sub 596 (1997); Dominion Resources, Inc., and Consolidated Natural Gas Company, Docket No. E-22, Sub 380 (1999); Carolina Power & Light Company and North Carolina Natural Gas Corporation, Docket Nos. E-2, Sub 740 and G-21, Sub 377 (1999); Carolina Power and Light Company and Florida Progress Corporation, Docket No. E-2, Sub 760 (2000); Piedmont Natural Gas Company & NUI North Carolina Gas Service -Docket Nos. G-9, Sub 466/G-3, Sub 251 (2002); Piedmont and North Carolina Natural Gas Corporation and Eastern NCNG Merger - G-9, Sub 470, G-21 Sub 439, and E-2, Sub 825 (2003); Duke Energy Corporation - Cinergy in Docket No. E-7 Sub 795 (2005); Duke and Progress Energy, Inc. Merger in Docket Nos. E-2, Sub 998 and E-7, Sub 986 (2012); Duke Energy Corporation (Duke) and Piedmont Merger in Docket Nos. E-2, Sub 1095, E-7, Sub 1100, and G-9, Sub 682 (2016); Public Service Dominion Energy, Inc. (Dominion Energy) and SCANA Corporation (SCANA) - Docket Nos. E-22, Sub 551 and G-5, Sub 585 (2018); Ullico Infrastructure Hearthstone Holdco, LLC Acquisition of GEP Bison Holdings Inc., Including Frontier Natural Gas Company - Docket No G-40, Sub 160 (2021); Frontier Natural Gas Company and FR Bison Holdings, Inc., for Approval of Acquisition of Stock of Gas Natural, Inc. - Docket No G-40, Sub 136 (2017)).

least no worse off) with the proposed transfer, including rate base treatment of any acquisition adjustment, than would otherwise be the case." *Id.*

Regarding the second factor, the Commission has noted that it should consider "the extent to which the selling utility is financially or operationally 'troubled;' the extent to which the purchase will facilitate system improvements; the size of the acquisition adjustment; the impact of including the acquisition adjustment in rate base on the rates paid by customers of the acquired and acquiring utilities; the desirability of transferring small systems to professional operators; and a wide range of other factors, none of which have been deemed universally dispositive." *Id.* There is no evidence that any of these factors is at issue here. To the contrary, the evidence showed that the transportation system is profitable, financially self-sustaining, and operational; that SharpVue had no specific expertise in operating a ferry system; and that the acquisition premium would be significant and have an effect on rates.

Applicants' only evidence that acquisition premium would be justified is that the purchase price is prudent because it is supported by appraisals. But those appraisals were inflated because they were based on pre-regulation appraisals of the parking facilities and barge. In other words, they were premised on the incorrect assumption that SharpVue will be able to continue overearning.

The Commission's Order did not address these concerns, instead finding that there was "no need to address the question of acquisition premium" at this time. By failing to address acquisition premium, and failing to explain why delaying resolution of the acquisition premium issue was appropriate, the Commission left ratepayers exposed to the possibility that SharpVue will seek to recover an acquisition premium later on. The damage

will have been done; SharpVue will already have purchased the ferry system at an inflated price. That risk outweighs any purported benefit Applicants claim that the transfer will offer, and the Commission should have addressed acquisition premium, or denied the transfer application altogether.

For these reasons, is arbitrary and capricious, unsupported by competent, material, and substantial evidence in view of the entire record as submitted, and affected by other errors of law, and therefore constitutes reversible error under Section 62-94(b)

EXCEPTION NO. 6

The Order's Evidence and Conclusions for Finding of Fact 49, and the corresponding Finding of Fact, are unjust, unreasonable, or unwarranted; affected by errors of law; unsupported by competent, material, and substantial evidence in view of the entire record as submitted; and arbitrary and capricious by approving the pledge of regulated utility assets to finance the acquisition by SharpVue of both regulated and unregulated assets.

Utilities are, generally speaking, precluded from putting the utility at risk by leveraging utility assets in support of unregulated affiliates or operations. *See* G.S. § 62-161(b); *In re Application by YES AF Utils. EXP, LLC, for Approval of a Fin. & Pledging of Assets*, Order Denying Request to Pledge Assets, Docket No. W-1302, Sub 4, 2020 WL 7426751 (Dec. 15, 2020). Here, the record is lacking in evidence to support the pledge of regulated utility assets consistent with the requirements of applicable legal standards and Commission precedent, and the Order lacks sufficient protections to ensure that ratepayers are protected from the pledge of regulated assets in support of unregulated obligations or operations.

First, the record is insufficient to support Commission approval of the Applicants' request for permission to pledge assets. Although Applicants stated the amount of debt proposed, SharpVue did not specify the assets it proposed to encumber to secure financing or the obligation that the pledge would support. Without such information, the Commission could not have determined the potential impact on ratepayers and ensure that utility operations were protected.

Further, the unrebutted evidence indicates that (1) SharpVue's purchase agreement with seller involves the acquisition of both regulated and unregulated assets for a single purchase price, (2) SharpVue intends to use debt financing to partially fund the acquisition, and (3) SharpVue intends to use debt financing to support both its regulated and unrelated operations.[6] Furthermore, if Applicants' appeal of the Sub 21 Order is successful, the parking and barge operations will no longer be subject to Commission regulation; the end result could be that the regulated ferry is used as collateral to secure debt related to the then-unregulated parking operation and barge, thus placing the regulated assets at risk.

For these reasons, this portion of the Order is arbitrary and capricious, unsupported by competent, material, and substantial evidence in view of the entire record as submitted, and affected by other errors of law, and therefore constitutes reversible error under Section 62-94(b).

EXCEPTION NO. 7

The Order's Evidence and Conclusions for Finding of Fact 37, and the corresponding Finding of Fact, are unjust, unreasonable, or unwarranted; affected by errors

[6] *See, e.g.*, Testimony of Dr. Julius A. Wright, Confidential Exhibit JAW-11, at 10 (Tr. Vol. 6, Exhibits).

of law; unsupported by competent, material, and substantial evidence in view of the entire record as submitted; and arbitrary and capricious in tacitly permitting utility property to be owned by a non-utility.

The Commission found that it was "reasonable" for BHIFT to "acquire rights to possess and utilize the real estate and infrastructure assets which are used and useful in providing Parking and Barge Operations via long-term leases." As a result, the Commission allowed Applicants to bifurcate ownership and operation of the parking facilities and barge, for the first time. The Commission reached this conclusion without any showing of ratepayer benefit from separating ownership. For example, there was no evidentiary showing of the economic terms of how access to this essential property would be afforded to ratepayers or how ratepayers would be protected from paying acquisition premium in connection with this transaction.

Further, the Commission did not address the Village's evidence demonstrating the harm that could result from this arrangement. For example, the proposed structure may weaken the Commission's authority over the regulated assets under Section 62-3(23)c because the entity owning the real property will be a "sister" entity rather than a parent. Further, under this structure, SharpVue would be incentivized to value the lease based on its arbitrary allocation of the purchase price—a process that is subject to manipulation, and which the Commission did not address.

Finally, the Commission's tacit approval of the ownership of critical utility assets by a non-utility conflicts with the determinations in the Sub 21 Order. As set forth above, the Commission lacks authority to modify the Sub 21 Order while jurisdiction of that order is with the appellate courts.

Although the Commission's Order requires Applicants to submit its leases before closing, review of the leases does not provide sufficient protection to ratepayers. By not resolving this issue prior to transfer, the Commission failed to ensure that ratepayers were adequately protected.

For these reasons, this portion of the Order is arbitrary and capricious, unsupported by competent, material, and substantial evidence in view of the entire record as submitted, and affected by other errors of law, and therefore constitutes reversible error under Section 62-94(b).

EXCEPTION NO. 8

The Evidence and Conclusions for Findings of Fact 7 and 8, and the corresponding Findings of Fact, coupled with the Order's conclusion that the Applicants have met the statutory standard for assignment of Transportation's common carrier certificate are unjust, unreasonable, or unwarranted; affected by errors of law; unsupported by competent, material, and substantial evidence in view of the entire record as submitted; and arbitrary and capricious. The Commission cannot approve a proposed utility transfer when documents governing key aspects of the transfer—including the structure, management, finances, and control of the acquiring entities—have been withheld by the applicant from the evidentiary record.

It is inherent under Section 62-111(a)[7] that the Commission cannot approve the transfer of control of a utility if there is no evidentiary basis for determining precisely to

[7] "No franchise . . . shall be sold, assigned, pledged or transferred, nor shall control thereof be changed through stock transfer or otherwise, or any rights thereunder leased, nor shall any merger or combination affecting any public utility be made through acquisition of control by stock purchase or otherwise, except after application to and written approval by the Commission, which approval shall be given if justified by the public convenience and necessity." (emphasis added).

who control would be transferred and how that control will be exerted. The Commission must be sufficiently informed of not only the identity and nature of the ultimate owner and controlling entity, but also of the proposed internal corporate structure and any mechanisms by which other entities—including affiliated entities—may exert oversight, management, control, or financial leverage over regulated utility operations and/or assets.[8]

Here, however, the Commission did not receive into evidence the underlying corporate governance documents supporting findings as to corporate organization and control, as Applicants stated that the agreements were not "finalized."[9] Instead, the Commission held open the record to receive the final documents into evidence.[10] Applicants have failed to provide such documents—either finalized or in draft form. Accordingly, there is no evidentiary basis upon which the Commission can make findings as to who will control the various SharpVue entities. This information is a critical aspect of the Commission's inquiry into whether or not the proposed transaction is justified by public convenience and necessity. Without them, and without being able to review them,

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[8] The Commission has long viewed Section 62-111(a) as requiring investigation into—and oversight of—internal corporate structure and management arrangements beyond simply the entity with ultimate ownership and control. *See, e.g., In Re ATX Licensing, Inc.*, Docket No. P-972, Sub 2, 2002 WL 1943589 (May 28, 2002) (approving application under § 62-111(a) for "corporate restructuring" even though "no new party obtained a controlling interest . . . as a result of the reorganization. In addition, there are no planned changes in the board of directors or management of any of these three entities. Further, ATX will continue to operate under the same name and Certificate and provide services under the same rates, terms and conditions."); *In Re KMC Telecom v, Inc.*, Docket No. P-989, Sub 1, 2002 WL 1902121 (Mar. 20, 2002) (approving application under § 62-111(a) for "internal corporate restructuring" even though the reorganization would "not affect the ultimate ownership and control . . . ."); *In Re CTC Long Distance Servs., Inc.*, Docket No. P-295, Sub 12, 2001 WL 1142781 (Aug. 15, 2001) (same); *In Re Xo Commc'ns Servs., Inc.*, No. P-1325, 2006 WL 1342802 (Jan. 18, 2006) (same); *In Re Elantic Telecom, Inc.*, Docket No. P-1136, Sub 4, 2006 WL 1519249 (Mar. 7, 2006) (same); *In Re Working Assets Funding Serv., Inc.*, Docket No. P-299, Sub 4, 2001 WL 522110 (Apr. 19, 2001) (same).

[9] Tr. Vol. 5, p. 13 (Presiding Commissioner: "So we'll receive these documents into the record at the appropriate time once they're finalized.").

[10] *Id.* ("[W]e'll leave the record open for the submission of those documents.").

the Commission cannot make the requisite findings and the Application cannot be granted.

CONCLUSION

For the reasons set forth above, the Order is arbitrary and capricious, is affected by errors of law, is unsupported by competent, material, and substantial evidence in light of the entire record, and is beyond the Commission's statutory power and authority. The Order should therefore be reversed as to the Exceptions set forth herein.

Respectfully submitted, this 20th day of October, 2023.

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Certificate of Service

I hereby certify that a copy of the foregoing *Notice of Appeal and Exceptions* has been served this day upon counsel of record by electronic mail and by delivery to the United States Post Office, first-class postage pre-paid to:

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This the 20th day of October, 2023.

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