

**STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH**

DOCKET NO. A-41, SUB 22

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Joint Application of Bald Head Island	)	
Transportation, Inc., and Bald Head Island	)	ORDER ON FIFTH MOTION TO
Ferry Transportation, LLC, for Approval of	)	COMPEL OF THE VILLAGE OF
Transfer of Common Carrier Certificate to	)	BALD HEAD ISLAND
Bald Head Island Ferry Transportation, LLC,	)	
and Permission to Pledge Assets	)	

BY THE PRESIDING COMMISSIONER: On January 24, 2023, Bald Head Island Transportation, Inc. (BHIT), Bald Head Island Limited, LLC (BHIL), and Bald Head Island Ferry Transportation, LLC (BHIFT, and collectively with BHIT and BHIL, the Applicants), a wholly owned subsidiary of Pelican Legacy Holdings, LLC (Pelican), managed by SharpVue Capital, LLC (collectively with Pelican, SharpVue), filed an amended application pursuant to N.C. Gen. Stat. § 62-111 (Amended Application), along with several exhibits and the amended testimony of witnesses Charles A. Paul, III, Shirley Mayfield, and Lee H. Roberts.

On February 10, 2023, the Village of Bald Head Island (VBHI) filed a Fifth Motion to Compel Responses of SharpVue Capital, LLC (Fifth Motion to Compel).

On February 14, 2023, SharpVue filed a response to VBHI's Fifth Motion to Compel (Response to Fifth Motion).

On February 15, 2023, VBHI filed a Reply in support of its Fifth Motion to Compel (Reply).

On February 20, 2023, SharpVue filed a supplemental response to VBHI's Fifth Motion to Compel (Supplemental Response).

**DISCUSSION AND CONCLUSIONS**

VBHI explains that it issued its fifth set of data requests following the Commission's December 30, 2022 Order Ruling on Complaint and Request for Determination of Public Utility Status, filed in Docket No. A-41, Sub 21. VBHI states that it received SharpVue's responses on February 7, 2023. VBHI argues that SharpVue's answers to many of VBHI's data requests (DRs) are "thin and non-responsive" and that SharpVue continues to abuse the trade secret label, improperly withholding documents on that basis.

### **Data Request No. 5-12**

VBHI argues that SharpVue's amended testimony demonstrates that SharpVue is no longer committed to not recovering any acquisition premium from consumers. VBHI states that in DR 5-12 it asked SharpVue to explain why it had changed its position, and to specify the amount of acquisition premium that SharpVue will now seek to recover from transportation system users — providing a specific definition for SharpVue to utilize when responding. VBHI states that SharpVue did not object to the request, but refused to respond, improperly redefined the term to avoid responding, and stated that “the term ‘does not apply to this transaction.’” VBHI requests the Commission compel a full response to DR 5-12.

SharpVue responds that its response to DR 5-12 is proper as (1) the Amended Application does not include reference to an acquisition premium and therefore this data request is moot; and (2) SharpVue has not performed a calculation of the difference of purchase price and historic or net book value of the acquired assets. SharpVue argues that the purchase price represents the fair market value of the asset, there is no “good will” included in the purchase price, and that therefore there is no “acquisition premium” as that term is generally used. SharpVue also argues that any further response would require legal conclusions beyond the scope of discovery.

VBHI replies that SharpVue misses the point and that DR 5-12 requests an explanation for why SharpVue is no longer committing to that it will not seek to recover an acquisition premium from its customers. VBHI argues that SharpVue's omission of this commitment, when its initial application promised that it would not seek to recover any acquisition premium from customers, is highly relevant. VBHI further argues that whether SharpVue intends to recover from customers the difference between the purchase price and historic or net book value of the ferry system is relevant to the Commission's assessing, under N.C.G.S. § 62-111(a), any “adverse impact on North Carolina retail ratepayers” and whether the “utility's customers are protected as much as possible from potential costs and risks resulting from the transaction.”

Due to the fact that SharpVue has stated that it has not calculated an acquisition premium and has removed any reference to an acquisition premium from its Amended Application the Presiding Commissioner finds good cause to deny VBHI's motion to compel as to this DR. However, to the extent SharpVue intends to recover from customers the difference between the purchase price and historic or net book value of the ferry system SharpVue shall state such and explain fully why it amended its testimony to omit reference to an acquisition premium. This response shall be served within three days of the date of this Order.

### **Data Requests Nos. 5-2 and 5-6**

VBHI also argues that SharpVue fails to fully respond to other DRs. VBHI states that in DR 5-2 it asked SharpVue to “describe the scope and extent of [SharpVue's] management authority.” VBHI states that SharpVue responded, without further

explanation, that “[t]he scope and extent of management authority will be similar to other privately held businesses, and largely consistent with current ownership” — which it contends is so vague as to be meaningless.

VBHI also states that in DR 5-6 it requested a “fully and complete summary of the terms and conditions of [the] agreement [SharpVue stated that it reached with current management] and provide a copy of the document(s) evidencing this agreement.” VBHI states that SharpVue responded that there was no such document and failed to address the first part of VBHI’s request, that it summarize the terms and conditions of the agreement.

SharpVue responds that it has supplemented its response to DR 5-2. SharpVue also states that it has supplemented its response to DR 5-6, stating that no written agreements have yet been executed yet and it will supplement the request once written agreements are entered.

VBHI replies that SharpVue’s supplemental responses are insufficient as to DRs 5-2 and 5-6. VBHI states that SharpVue has failed to answer what management services it is providing to BHIFT or the terms of its services or produced a copy of the governing agreement between SharpVue and BHIFT, if any. VBHI states this directly relates to SharpVue’s assertion in the Amended Application as to its management role. VBHI also states that SharpVue continues to fail to fully explain the agreement it has reached and must be ordered to either amend the Amended Application to reflect that an agreement has not been reached or provide VBHI with the full details of that agreement.

The Presiding Commissioner is persuaded by SharpVue’s arguments that SharpVue has supplemented its responses and, at this time, finds good cause to deny VBHI’s motion as to these DRs.

**Data Request Nos. 5-1, 5-2, 5-4, 5-8, 5-9, and 5-15**

VBHI also states that SharpVue has failed to respond to its request for:

DR 5-1: Documents identified, referred to, or relied upon in preparing its responses to the Village’s Fifth Set of Data Requests.

DR 5-2: The terms under which BHIFT will be compensated for managerial services, and all documents specifying or otherwise relating to BHIFT’s management authority.

DR 5-4: Documents establishing the authority of **[BEGIN AEO CONFIDENTIAL] [END AEO CONFIDENTIAL]** as having ultimate decision making authority for BHIFT and Pelican Legacy Holdings, LLC.

DR 5-8: The terms of Pelican Legacy Holdings, LLC's pledge of assets, including the amount of the loan, the payback schedule for the loan, the term of the loan, and the interest rate of the loan.

DR 5-9: The expected financial terms for the third-party debt SharpVue will use to finance the transaction, and related documents.

DR 5-15: Financial models to support SharpVue's current valuation of the Transportation Assets.

VBHI argues that SharpVue continues to broadly label information as "trade secret," without any attempt to show that the information is actually a trade secret under N.C. Gen. Stat. § 66-152(3) or that it is not subject to protection under the terms of the parties' confidentiality agreement — which it states would more than adequately address any of SharpVue's unsupported concerns.

SharpVue responds that it has produced business trade secret information to the Public Staff but has properly withheld that information from its competitor for the purchase of the assets. SharpVue states that the data requests at issue fall into the categories of: (1) proprietary information about and of SharpVue's lender; and (2) information about and documents of LLCs owned and/or controlled by the SharpVue management team. SharpVue also incorporates by reference the argument it made in response to the Village's second motion to compel and requests that the Commission continue to allow SharpVue to provide confidential business trade secret information to the Public Staff pursuant to N.C.G.S. § 62-34(c) without having to provide it to the other intervenors; and (2) present this information to the Commission, under seal and for in camera review only, for whatever purpose and with whatever weight the Commission deems appropriate in this proceeding.

VBHI replies that SharpVue's claim that the Village, a municipal government, is a competitor is nonsensical and a red herring. Even so, VBHI states that competitors are routinely required to disclose trade secrets to one another under a "Confidential – Attorneys' Eyes Only" designation. VBHI argues that SharpVue has not cited any case in support of its argument and that the confidentiality agreement appropriately addresses these arguments. VBHI also argues that N.C.G.S. § 62-34(c) does not authorize ex parte proceedings. VBHI also states that SharpVue has, at least, shared some of the disputed information with another intervenor, the Bald Head Association — further undermining its arguments.

In its Supplemental Response SharpVue states that either there is no new documentation or information to provide that has not already been provided, or SharpVue has revised or supplemented its responses to each of these DRs to include, or to include reference to previously provided, "Confidential – Attorneys' Eyes Only" material.

The Presiding Commissioner is persuaded by SharpVue's arguments and representations and, based upon the supplemented responses and materials provided, finds good cause to deny VBHI's motion as to these DRs.

IT IS, THEREFORE, ORDERED as follows:

1. That SharpVue shall provide to VBHI a response to DR 5-12 only to the extent outlined above within three days of the date of this Order;
2. That VBHI's motion is otherwise denied for the reasons stated above; and
3. That any discovery materials deemed as "Confidential – Attorneys' Eyes Only" shall be so treated pending: (a) further Order of the Commission; or (b) the designating party agrees in writing to withdraw the confidentiality designation.

ISSUED BY ORDER OF THE COMMISSION.

This the 23rd day of February, 2023.

NORTH CAROLINA UTILITIES COMMISSION

A handwritten signature in black ink that reads "A. Shonta Dunston". The signature is written in a cursive, flowing style.

A. Shonta Dunston, Chief Clerk