

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. A-100, SUB 1

In the Matter of		INITIAL COMMENTS OF
Study of Rates and Charges of Passenger)	THE VILLAGE OF BALD
Ferry Public Utilities)	HEAD ISLAND

The Village of Bald Head Island (the “Village”), by and through its undersigned counsel, submits these initial comments in response to the *Order Requiring Filing of Rates and Allowing Comments* (the “Order”)¹ and the two orders granting motions for extension of time² issued by the North Carolina Utilities Commission (the “Commission”) in the above-captioned docket.

In the Order, the Commission requested comments addressing the Commission’s ratemaking treatment of passenger ferry rates and charges.³ Without limiting the scope of potential comments, the Commission specifically sought comments regarding:

- “whether the Commission’s current ratemaking treatment of passenger ferry rates and charges complies with state law”;
- “whether lesser regulation of rates and charges is appropriate for passenger ferries, particularly those offering competitive leisure service”;
- “factors to be considered in determining whether proposed rates and charges are just and reasonable”; and

¹ Order Requiring Filing of Rates and Allowing Comments, *In re Study of Rates and Charges of Passenger Ferry Public Utilities*, Docket No. A-100, Sub 1 (Oct. 4, 2023).

² Order Granting Motion for Extension of Time, *In re Study of Rates and Charges of Passenger Ferry Public Utilities*, Docket No. A-100, Sub 1 (Nov. 8, 2023); Order Granting Second Motion for Extension of Time, *In re Study of Rates and Charges of Passenger Ferry Public Utilities*, Docket No. A-100, Sub 1 (Feb. 14, 2024).

³ Order at 3.

- “whether changes should be made to the Commission’s rules or procedures.”⁴

The Village does not, at present, take a position on what level of regulation is appropriate for waterborne common carriers that operate in the competitive leisure service space—*i.e.*, tour boats.⁵ However, the Village believes that the Commission’s application of traditional ratemaking regulation, as applied previously in Docket A-41, Sub 7, is appropriate to the critical ferry service provided by Bald Head Island Transportation, Inc. (“BHIT”) and Bald Head Island Limited (“BHIL”) and consistent with the existing statutory scheme. The Commission’s continued oversight of the Bald Head Island utility transportation service is of critical to importance to the public, including workers needing to get to their jobs, homeowners traveling back and forth to the Island, contractors providing services to residents and businesses, and others relying on the monopoly service.

I. The Bald Head Island Transportation System

As the Commission has previously noted, Bald Head Island (“BHI” or the “Island”), is “unique”⁶ and is served by a unified transportation system consisting of a passenger ferry, barge, on-island tram system, and mainland parking operation (“BHI Transportation System”).⁷

⁴ *Id.*

⁵ The Village reserves the right to address this issue or others in reply comments.

⁶ Order Approving Application with Conditions, *In re Joint Application of Bald Head Island Transportation, Inc., Bald Head Island Limited LLC, 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*, Docket No. A-41, Sub 22 at 12 (Aug. 22, 2023) (the “Sub 22 Order”).

⁷ See Order Ruling on Complaint and Request for Determination of Public Utility Status, *Village of Bald Head Island v. Bald Head Island Transportation, Inc.*, Docket No. A-41, Sub 21 at 6 (Dec. 30, 2022) (the “Sub 21 Order”).

Because BHI is a bridgeless island, with no airport, the BHI Transportation System operates as a *de facto* monopoly subject to the Commission's oversight and regulatory authority. As the Commission explained in its *Order Ruling on Complaint and Request for Determination of Public Utility Status* in Docket No. A-41, Sub 21: "... *the only means of public access to and from the Island is via the Ferry and Barge Operations*. The Ferry is used to transport persons, their baggage, and small personal items to the Island. The Barge is used to transport everything else to the Island.⁸

This critical link provides the sole means of public access to the Island for hundreds of thousands of persons every year.⁹ According to BHIT, annual round-trip ridership on the ferry in 2023 was over 782,000 persons.¹⁰ Based on the number of users alone, the BHI ferry is one of the largest utilities in the state. (For reference, Dominion Energy North Carolina has fewer than 150,000 customers in North Carolina.)¹¹ Workers and employers,¹² residents, vacationers, and property owners are all reliant on access to the utility transportation system.

⁸ *Id.* at 6 (emphasis added).

⁹ *See id.*

¹⁰ *See* Application for Revisions to Ferry Schedules, Docket No. A-41, Sub 23 at 4 (Feb. 19, 2024).

¹¹ *See* Application for Approval of Demand-Side Management and Energy Efficiency Cost Recovery Rider, *In re Application of Virginia Electric and Power Company, d/b/a Dominion Energy North Carolina, for Authority to Adjust its Electric Rates and Charges Pursuant to N.C.G.S. § 62-133.9 and Commission Rule R8-69*, Docket No. E-22, Sub 676 at 2 (Aug. 15, 2023).

¹² This includes: (1) Village employees who manage public safety, water, waste water, solid waste management and road systems; (2) contractors and tradesmen who build and repair homes and businesses, including plumbing, electrical, HVAC, housekeeping, and other building and repair services; (3) employees of the restaurants, the grocery store, the hardware store, and retail shops among others providing vital commerce to the Island; (4) employees of the Bald Head Island Club and Shoals Club restaurant and recreational services; (5) employees of the non-profit organizations on the Island, including the Bald Head Island Conservancy, the Old Baldy Foundation, and the Bald Head Association; and (6) employees of the Bald Head Island Club and, importantly, the Club's golf course maintenance operations which serve an important stormwater and wastewater effluent management role, including during major rain events.

II. Traditional Ratemaking Regulation is Appropriate for the BHI Transportation System

The General Assembly has established the Commission for the purpose of supervising utilities and ancillary services that are necessary to the public utility function in order “to protect the public from poor service and exorbitant charges which are normal consequences of a monopoly.” *State ex rel. Utils. Comm’n v. Buck Island, Inc.*, 162 N.C. App. 568, 584, 592 S.E.2d 244, 254 (2004); *see also O & M Indus. v. Smith Eng’g Co.*, 360 N.C. 263, 268, 624 S.E.2d 345, 348 (2006) (“The Court may also consider the policy objectives prompting passage of the statute and should avoid a construction which defeats or impairs the purpose of the statute.”).

The BHI Transportation System is a public utility, operating pursuant to a common carrier certificate¹³ issued by the Commission.¹⁴ As such, it is subject to regulation as a public utility, including rate regulation as prescribed by N.C.G.S. §§ 62-133 and -134 and Commission Rule R1-17. The Commission has previously applied this authority, without apparent controversy, in Docket A-41, Sub 7.¹⁵

In some limited instances, the General Assembly has authorized “relaxed” forms of ratemaking oversight where—unlike the BHI Transportation System’s *de facto*

¹³ Unlike with respect to vehicular common carriers, there is no federal preemption of state regulation of waterborne common carriers. Although the Federal Aviation Administration Authorization Act of 1994 preempts state and local trucking regulations, the preemption provision does not apply to waterborne common carriers, including passenger ferries or the BHI Transportation System’s barge. *See* 49 U.S.C. §§ 14501(c)(1), (c)(2)(B).

¹⁴ *See, e.g.,* Order Granting Partial Rate Increase and Requiring Notice, *In re Application of Bald Head Island Transportation, Inc. for a General Increase in its Rates and Charges Applicable to Ferry Service Between Southport, North Carolina and Bald Head Island, North Carolina*, Docket No. A-41, Sub 7 at 4 (Dec. 17, 2010) (the “Sub 7 Order”) (“BHIT is duly organized as a public utility operating under the laws of the State of North Carolina and is subject to the jurisdiction of the North Carolina Utilities Commission pursuant to G.S. 62-3(23)a.3.”); Sub 21 Order at 7, 8 (concluding that the parking and barge operations are each “subject to the Commission’s jurisdiction and regulatory authority as an ancillary service to the Ferry Operations.”)

¹⁵ *See generally* Sub 7 Order.

monopoly—competitive markets act as a safeguard against unreasonable or oppressive rates. For example, with regard to telecommunications ratemaking, N.C.G.S. § 62-134(h) allows the Commission to “permit pricing flexibility, detariffing of services, or both,” but only after the Commission first determines that the service is competitive. Similarly, Section 62-134(g) exempts bus companies and their rates, fares, or tariffs from the general provisions of Section 62-134 regarding changes in rates. There is no similar statutory authority permitting a lesser form of regulation applicable to the BHI Transportation System.

In light of the foregoing, lesser ratemaking regulation for the BHI Transportation System is not appropriate. Instead, it should be regulated for what it is: a *de facto* monopoly utilized by three quarters of a million of ratepayers every year which provides the only public access to a thriving Island community.

This 1st day of March, 2024.

By: /s/ Christopher B. Dodd
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Initial Comments of the Village of Bald Head Island* has been served this day upon all parties of record in this proceeding, or their legal counsel, by electronic mail or by delivery to the United States Post Office, first-class postage pre-paid.

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This the 1st day of March, 2024.

By: /s/ Christopher B. Dodd