

**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 FIRST 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 July 14, 2022, Bald Head Island Transportation, Inc. (BHIT), and Bald Head Island Ferry Transportation, LLC (BHIFT, and collectively with BHIT, the Applicants), a wholly owned subsidiary of Pelican Legacy Holdings, LLC (Pelican Legacy), managed by SharpVue Capital, LLC (SharpVue), filed an application pursuant to N.C. Gen. Stat. § 62-111 (Application). Among other things, the Applicants seek approval to transfer BHIT's Common Carrier Certificate to BHIFT, so BHIFT may operate the passenger ferry transportation services to and from Bald Head Island and the tram services on the island.

On July 21, 2022, the Village of Bald Head Island (VBHI) filed a petition seeking to intervene in this docket, which was subsequently granted by the Commission.

On August 24, 2022, the Commission issued an Order Scheduling Hearing, Establishing Procedural Deadlines, and Requiring Public Notice (Scheduling Order), which among other things provided discovery guidelines.

On September 14, 2022, VBHI filed a Motion to Compel Responses of SharpVue Capital, LLC to Second Data Requests (First Motion to Compel).

On September 19, 2022, SharpVue filed a Response to Village of Bald Head Island's Motion to Compel Responses to Second Data Requests (Response to First Motion).

On September 21, 2022, VBHI filed a Reply in Support of its First Motion to Compel (Reply).

On November 22, 2022, VBHI filed an Amended Reply in Support of its First Motion to Compel (Amended Reply).

On November 30, 2022, SharpVue filed an Amended Response to VBHI's First Motion to Compel (Amended Response).

On December 21, 2022, the Commission issued an Order Holding Proceeding in Abeyance, which among other things stated that the expert witness hearing was continued and would be rescheduled by further order of the Commission.

On January 20, 2023, the Commission issued an Order Rescheduling Hearing and Establishing Additional Procedures.

On January 24, 2023, BHIT, BHIFT, and Bald Head Limited LLC (BHIL, together with BHIT and BHIFT, the Amended Applicants) filed an amended application pursuant to N.C.G.S. § 62-111 (Amended Application). In addition to seeking approval to transfer BHIT's Common Carrier Certificate to BHIFT for operation of the passenger ferry transportation services to and from Bald Head Island and the tram services on the island as noted in the initial Application, the Amended Application seeks approval to transfer "the parking facilities and barge operations (to the extent the Commission has jurisdiction and authority to regulate them as may be determined on appeal)."

### **VBHI's First Motion to Compel**

VBHI initially sought to compel SharpVue to provide full responses to its Data Requests (DR) 2-3, 2-4, 2-11, 2-16, 2-17, 2-18, 2-19, 2-21, 2-22, 2-23, 2-24, 2-25, 2-27, and 2-28. SharpVue stated its intent to work cooperatively and provided supplemental responses to DRs 2-3, 2-4, 2-11, 2-16, 2-17, 2-18, 2-19, 2-21, 2-22, 2-23, 2-24, 2-25, 2-27, and 2-28. The Commission appreciates and takes note that the parties resolved several of the disputes that were initially the subject of VBHI's First Motion to Compel. SharpVue also agreed to provide additional information as it became available. SharpVue maintains its objection to DRs 2-21, 2-24, 2-25, and 2-27, as irrelevant and/or not likely to lead to admissible evidence. In reply, based on SharpVue's supplemental responses, VBHI withdrew its First Motion to Compel as to DRs 2-3, 2-4, 2-17, 2-18, 2-24, and 2-28, only. As such, it appears VBHI is satisfied with SharpVue's supplemental responses as to DRs 2-22 and 2-23 as well. In its Amended Reply, VBHI revised its First Motion to Compel to seek information responsive to DR 2-24.

The Presiding Commissioner addresses VBHI's First Motion to Compel as follows:

#### ***Data Requests 2-11 and 2-19***

These data requests are identified as follows:

11. Identify the source of funds for the capital improvements specified in response to data request 8 and state whether such funds are currently committed or otherwise secured. If not committed or otherwise secured, state SharpVue's plans for obtaining the necessary funds.
19. Identify all facts in support of the allegations of paragraph 27 of the Application.

VBHI argues that DRs 2-11 and 2-19 pertain to SharpVue's claim that it has the financial resources to support the operations and needed capital improvements. SharpVue directs the Village to Exhibit F of its Application, which VBHI argues is not sufficiently responsive to these data requests.

SharpVue responds that DRs 2-11 and 2-19 seek details of future projects or expenses that are not available until the specific future project or expense manifests. SharpVue also states that the source of funds would depend on each specific project or expense, timing of any project or expense, cost of any project or expense, and other factors to be determined at the time of a particular project undertaken or expense experienced.

The Presiding Commissioner concludes that based upon its agreement to do so and pursuant to N.C.G.S. § 1A-1, R. 26(e), SharpVue has the continuing duty to, and shall, provide full and complete supplemental responses to these data requests as any new information becomes available. Additionally, to the extent it can now do so, SharpVue shall provide greater detail. If it cannot do so, it shall state such. These responses shall be served within five days of the date of this Order.

#### ***Data Request 2-16***

This data request is identified as follows:

16. State the acquisition premium associated with the ferry assets and provide a spreadsheet (in native form) showing the calculation of the premium, including any workpapers associated with or supporting the calculation.

VBHI states that DR 2-16 pertains to SharpVue's reference to the acquisition premium that it will pay for the ferry system and that, while the Application states that "[BHIFT] is not seeking to recover any transaction costs or acquisition premiums," it is silent as to whether SharpVue, the parent, intends to do so.

SharpVue responds that its Application states that SharpVue is not seeking to recover any transaction costs or acquisition premiums related to this transaction from passengers and will not request any rate change as a result of the transaction. SharpVue also states that it never said it had calculated an "acquisition premium" or that it was paying BHIT an acquisition premium — it just made a general statement that it would not attempt to collect the costs of this transaction or acquisition premiums from passengers.

The Presiding Commissioner notes that the Amended Application does not include reference to an acquisition premium and concludes that this discovery request is now moot. However, if SharpVue indeed has calculated an acquisition premium, it shall provide such calculation to VBHI pursuant to the parties negotiated Confidentiality Agreement and if the response contains sensitive information it shall mark such information as Attorney Eyes Only (AEO). If any response is required, it shall be served within five days of the date of this Order. The Presiding Commissioner is aware that a Fifth Motion to Compel has been filed and the Commission has not heard from every party in response to that motion and may revisit this issue.

### ***Data Request 2-21***

This data request is identified as follows:

21. Specify how SharpVue allocates the purchase price among the assets to be purchased in the Transaction and how it proposes to allocate the purchase price among the acquired assets at closing. If SharpVue contends that it has not allocated the purchase price among the assets, explain how SharpVue has valued the individual components of the transaction and provide all documents relating to the valuation of these components.

VBHI argues that DR 2-21 seeks additional detail as to how the purchase price of the assets of the utility, BHIT, and the assets of BHIL, is allocated. VBHI states that SharpVue did not object to the request, thereby waiving any objection, but instead responded generally that “\$56M is allocated to ferry, tram, parking, and barge” and that SharpVue will complete a more detailed analysis “at the time of closing.” VBHI states that the manner in which SharpVue arrived at the purchase price is highly relevant to the value of the assets in issue, the protection of ratepayers from adverse impacts of the transaction, and, ultimately, whether the transaction should be approved.

SharpVue responds that the first part of DR 2-21 seeks information that is not yet available, and the second part seeks irrelevant, confidential, and developmental and commercial information that VBHI is not entitled to receive. SharpVue further states that: (1) this proceeding is not a rate case and does seek to raise the rates for the ferry and tram; (2) as such, how SharpVue may have analyzed offers, negotiations, or the final agreed upon purchase price has no impact to the ferry and tram ratepayers, nor on the transaction; and (3) VBHI is not entitled to this internal proprietary work product. SharpVue requests that the Motion as to Data Request 2-21 be denied and the Commission’s order be treated as a protective order regarding this confidential research, development, or commercial information. SharpVue also states that if the Commission is not inclined to deny the Motion regarding DR 2-21, it requests an in-person hearing.

The Presiding Commissioner has not been persuaded of injury in providing this information and therefore grants the motion to compel a response to DR 2-21, especially if provided for Attorneys Eyes Only. If, in order to do so, it is necessary to disclose confidential material or material that SharpVue believes contains trade secrets or other proprietary or particularly sensitive material, the discovery materials shall be deemed and treated as “Confidential” or “Attorneys’ Eyes Only” (AEO) in accordance with the designating party’s designation under the terms of the parties’ negotiated Confidentiality Agreement. This response shall be served within five days of the date of this Order.

### ***Data Requests 2-24, 2-25, and 2-27***

These data requests are identified as follows:

24. Identify the individual investors in Pelican Legacy Holdings, LLC and SVC Pelican Partners, LLC, including name, address and committed funding amount.
25. Identify the “co-investors” in Pelican Legacy Holdings, LLC, including name and address.
27. State the ownership (by percentage of each owner) of each of BHI Ferry Transportation, LLC, Pelican Legacy Holdings, LLC, SVC Pelican Partners, LLC, and SharpVue Capital, LLC.

VBHI states that DRs 2-25 and 2-27 seek information about the owners and investors in Pelican, the company that has been formed to purchase the ferry system, as well as in BHIFT, SVC Pelican Partners, LLC (Pelican Partners), and SharpVue. VBHI states that SharpVue objects on the basis of relevancy and points to Exhibit F, which is nonresponsive. VBHI argues that SharpVue’s assertions — e.g., referencing the “group of primarily local investors” as relevant to its experience providing utility services and its alleging that it has raised funds from “local investors” and this “group of primarily local investors” — put the identity of these investors at issue in this proceeding. VBHI also argues that the applicant’s ownership structure and capitalization is directly relevant to SharpVue’s managerial qualifications, the resources that are available to support the utility, and its overall qualifications to own and operate a public utility.

SharpVue states that it has supplemented its responses to these data requests to the extent they are relevant to this proceeding — providing the investors’ city and state of residence but not their names or addresses. SharpVue also states that the local nature of the investors is not where SharpVue will get the experience to operate the ferry and tram but rather will come from the SharpVue team and current management team and employees that are being retained — “SharpVue’s qualifications to serve as the owner of this utility does not turn on the specific identity of an investor.” SharpVue further states that if the Commission is not inclined to deny the Motion regarding DRs 2-25 and 2-27, it requests an in-person hearing.

As to DR 2-24, specifically, VBHI explains that after it filed its original Motion to Compel, SharpVue supplemented its discovery responses to provide information about the number and location of the individual investors in Pelican Legacy Holdings, LLC, and SVC Pelican Partners, LLC, but declined to provide their identities. VBHI states that, at that time, it was satisfied but reserved “the right to pursue additional discovery concerning these matters should it become necessary.” See Reply at 6. VBHI further explains that the Commission held a hearing in Docket No. A-41, Sub 21, during which SharpVue’s managing partner, Lee Roberts, gave testimony. VBHI states that when asked about SharpVue’s interest in purchasing the ferry assets, Mr. Roberts emphasized that SharpVue is “a local firm,” and that SharpVue’s investors “are almost entirely North Carolina based.” VBHI states that Roberts further contended that its investors “all

understand what Bald Head is” and that there are “a significant number of homeowners invested with [SharpVue] in this transaction.” VBHI states that because SharpVue’s managing partner raised this matter as evidence that SharpVue is “committed to the state . . . but also to the ecosystem in and around the Island . . .” and “more so than remote managers,” SharpVue has also made their identities and commitment to the Island relevant to this proceeding.

In its Amended Response, SharpVue further states that VBHI’s request for specific identities of investors, including minority investors who do not manage or control the investment or operations of Pelican or BHIFT, is unchanged since the filing of its Reply and that SharpVue should be allowed to be as transparent as possible to the Public Staff to facilitate their statutory duty and role in this transfer proceeding without being required to disclose confidential business trade secret information to VBHI, a competitor. SharpVue further contends that the parties’ confidentiality agreement does not provide adequate protection of the confidential business trade secret information at issue. SharpVue renewed its request that if the Commission is not inclined to deny the Motion regarding DRs 2-24, 2-25, and 2-27, it requests an in-person hearing.

Due to the fact that this issue is further argued in subsequent pending Motions to Compel, the Presiding Commissioner shall decide the Motion to Compel on these three DRs when issuing an order on the remaining Motions to Compel.

IT IS, THEREFORE, ORDERED as follows:

1. That SharpVue shall provide full and complete supplemental responses to Data Requests 2-11 and 2-19 under the conditions outlined above within five days of the date of this Order;
2. That SharpVue shall provide a full and complete response to Data Request 2-16 under the conditions outlined above within five days of the date of this Order;
3. That SharpVue shall provide a full and complete response to Data Request 2-21 under the conditions outlined above within five days of the date of this Order;

ISSUED BY ORDER OF THE COMMISSION.

This the 10th day of February, 2023.

NORTH CAROLINA UTILITIES COMMISSION

A handwritten signature in black ink, appearing to read "A. Shonta Dunston". The signature is fluid and cursive, with the first name "A." and last name "Dunston" clearly distinguishable.

A. Shonta Dunston, Chief Clerk