

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.,
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

**AMENDED APPLICATION
FOR TRANSFER OF COMMON
CARRIER CERTIFICATE**

Applicants Bald Head Island Transportation, Inc., (“BHIT”), Bald Head Island Limited LLC (“BHIL”), and Bald Head Island Ferry Transportation, LLC (“BHI Ferry Transportation” and collectively with BHIT and BHIL, the “Applicants”), a wholly owned subsidiary of Pelican Legacy Holdings, LLC, and managed by SharpVue Capital, LLC, (“SharpVue Capital” and collectively with BHI Ferry Transportation, Pelican Legacy Holdings, LLC, “SharpVue”), through their respective counsel and pursuant to N.C. Gen. Stat. § 62-111 and Commission Rules R2-8.1, hereby amend their application to the North Carolina Utilities Commission (“Commission”) (1) to transfer to BHI Ferry Transportation BHIT’s Common Carrier Certificate to operate the passenger ferry transportation services to and from Bald Head Island, the tram services on the island, and, in addition, the parking facilities and barge operations (to the extent the Commission has jurisdiction and authority to regulate them as may be determined on appeal) described herein (collectively, the “Transportation Assets”) and (2) for approval for BHI Ferry Transportation or SharpVue to pledge assets and borrow/issue debt pursuant to N.C. Gen. Stat. §§ 62-160 and 62-161

secured by Transportation Assets as may be necessary to finance the transaction described herein.

This amendment is made solely for the purpose of complying with the Commission's December 30, 2022 Order in Docket No. A-41, Sub 21, (the "Parking and Barge Order") in which the Commission concluded that certain parking and barge operations are subject to the Commission's jurisdiction and regulatory authority and are operating under BHIT's Common Carrier Certificate and cannot be transferred without Commission approval. The parties hereto may appeal the Parking and Barge Order and reserve all rights to do so as allowed by law. BHIL joins in this application solely for purposes of complying with the Parking and Barge Order so that the transaction described herein may close and the operations described herein may continue without interruption, but it does not concede that the Commission has any jurisdiction or authority over the Parking and Barge Operations or that the Commission's approval of the sale of those assets as requested herein is necessary as a matter of law, as may be ultimately determined on appeal.

1. The names and mailing addresses of the Applicants are:

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P.O. Box 3069
Bald Head Island, NC 28461-7000

Bald Head Island Limited LLC
Attn: Charles A. Paul, III
P.O. Box 3069
Bald Head Island, NC 28461-7000

Bald Head Island Ferry Transportation, LLC
Attn: Lee Harriss Roberts
3700 Glenwood Avenue, Suite 530
Raleigh, NC 27612

2. The names, mailing addresses and telephone numbers of the attorneys involved in this Application, to whom all notices should be sent are:

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Pelican Legacy Holdings, LLC and SharpVue Capital, LLC

All counsel agree to accept service by electronic means to the emails listed herein.

DESCRIPTION OF THE APPLICANTS AND INVOLVED ENTITIES

3. BHIT is a regulated utility operating under the jurisdiction of the Commission and engaged in the business of transporting passengers by ferry between The Village of Bald Head Island and Southport, North Carolina (the "Ferry Operations"), as well as transporting passengers between the on-island ferry terminal and on-island locations via a tram service (the "Tram Operations"). BHIT has been providing these services since 1993 pursuant to a Common Carrier Certificate issued by the Commission in Docket No. A-41, Sub 0 (the "Certificate").

4. BHIL owns parking facilities located at 1301 Ferry Road used by passengers using the Ferry Operations, as well as a tugboat and barge currently operated by BHIL to transport materials, goods, and supplies to and from the Island. The Commission recently determined the parking and barge are regulated assets operating under the authority granted by the Certificate. The assets used by the Ferry Operations, Tram Operations, the Parking Facilities, and the Barge Operations are collectively referred to hereinafter as the “Transportation Assets.”

5. In 2022, BHIT transported over 380,000 passengers on its ferries. About 40 percent of passengers traveled on the general fare tickets which allows them to utilize on-island tram service.

6. A copy of BHIT’s financial statements listing all of BHIT’s assets, liabilities, revenues and expenses are attached to this Application as Exhibit A-1. A copy of BHIL’s financial statements that include all of the Transportation Assets owned by BHIL are attached to this Application as Exhibit A-2 (barge) and Exhibit A-3 (parking).

7. BHI Ferry Transportation is a wholly owned subsidiary of Pelican Legacy Holdings, LLC, both North Carolina limited liability companies which are managed by SharpVue Capital, also a North Carolina limited liability company. SharpVue Capital is an experienced manager of real estate infrastructure assets and associated operations. A current organization chart of SharpVue is attached as Exhibit B.

SUMMARY OF THE PROPOSED TRANSACTION

8. BHIT is a subsidiary of Bald Head Island Limited LLC (“BHIL”) which is wholly owned by Mitchell Island Investments, Inc., which is part of and managed by the

Estate of George P. Mitchell (the “Estate”) since Mr. Mitchell’s death in 2013. Almost all of the assets that were originally part of the estate have been liquidated and the proceeds distributed to the Cynthia and George Mitchell Foundation and other heirs, pursuant to the terms of Mr. Mitchell’s will. The executor and trustees of the estate have been diligently working to settle and close the Estate. The sale of the remaining operating assets of BHIL to SharpVue is one of the final steps being undertaken for the Estate to be closed and is occurring in this context.

9. Mr. Mitchell formed BHIL which purchased Bald Head Island in 1983. BHIL oversaw real estate development and sales on the island as well as resort and island operations while advancing the Mitchell stewardship of the island and its resources.

10. BHIL formed BHIT to operate the island’s ferry and tram transportation services, which it has done for nearly 40 years.

11. BHIT ferry passengers may purchase round-trip ferry tickets from either the Deep Point Marine Terminal on the mainland or the island’s passenger terminal. The terminals are owned by BHIL, and BHIT operates them under a lease from BHIL (the “Terminal Lease”), the terms of which were included in the cost of service in BHIT’s last general rate case. BHIT owns four passenger ferry vessels (the “Ferries”) that are used in the Ferry Operations. The Ferries operate according to a specified schedule approved by the Commission.

12. A general passenger ferry ticket (in contrast to the employee or contractor ferry ticket) also entitles a passenger to transportation between the island ferry terminal and on-island locations via tram service. The Tram Operations utilize 23 tram units (the “Trams”) owned by BHIT. Each Tram is comprised of a truck, and an attached passenger

trailer. Tram passengers ride in the passenger trailer, and their baggage is transported in the bed of the truck.

13. A contractor ticket only entitles passengers ferry transportation between the Deep Point terminal and the island. (And contractors are also allowed to ride a shuttle to and from the Contractor Service Village.).

14. As shown in the attached Exhibit C-1, BHIT's gross operating revenues for the months of March through May 2022, the last three months preceding this application for which this information is available, total \$1,767,824. As shown in the attached Exhibits C-2 and C-3, BHIL's gross operating revenues for the same period total \$398,360 for the Barge Operations and total \$934,048 for the Parking Operations. As shown in attached Exhibit D-1, the Ferries traveled 24,572 miles and the Trams traveled 38,224 miles in the same time period. As shown the attached Exhibit D-2, the Barge traveled 2,390 miles in the same time period.

15. Under the terms of the Asset Purchase Agreement ("APA"), filed confidentially and labelled Exhibit E, SharpVue Capital and its affiliates plan to acquire all of the assets of BHIT and a significant portion of the remaining assets of BHIL for a total purchase price of \$67.2 million. These assets include both the assets associated with ferry operations, tram operations, parking facilities, and barge, as well as other assets.

16. Pursuant to the terms of the APA, BHI Ferry Transportation will acquire the Common Carrier Certificate, and will also acquire all assets used and useful by BHIT and BHIL to carry out their operations, including the Ferries, the Trams, the Parking Facilities, and the and Barge Operations, and the Terminal Lease (the "Transportation

Assets”). BHI Ferry Transportation is simply stepping into the shoes of BHIT and into the shoes of BHIL as it relates to the parking facilities and barge operations.

17. BHI Ferry Transportation intends to continue the operations utilizing the Transportation Assets following closing of the transaction without significant or immediate change. SharpVue has reached agreement with management of the current BHIT and BHIL operations to continue in their current roles and duties, to include (but not limited to): Charles A. “Chad” Paul, III, President of Bald Head Island Transportation, Inc. and Chief Executive Officer and a Manager of Bald Head Island Limited LLC; Shirley Mayfield, Chief Financial Officer of Bald Head Island Limited LLC; and Captain Bion Stewart, the current Chief Operating Officer of BHIT. Further, BHI Ferry Transportation has committed to employ almost all of the current employees to ensure continuity of day-to-day operations. SharpVue is committed to maintaining the safe, reliable, and cost-effective services BHIL and BHIT have provided for years. Moreover, SharpVue is committed and well-positioned to fund ongoing operations as BHIL and BHIT wind down.

18. In addition to the current balance sheets that include the Transportation Assets, SharpVue will establish a reliable financing mechanism that is a combination of debt financing and equity, as shown on the attached financing document filed confidentially as Exhibit F. This diverse financing approach will give BHI Ferry Transportation flexibility in meeting the capital and other needs of the operating the Transportation Assets.

19. SharpVue anticipates that it may borrow funds/issue debt and pledge the Ferry and Tram Assets to secure such debt financing as shown in Exhibit F and asks the Commission for approval to do so pursuant to N.C.G.S §§ 62-160 and 62-161. In the event

SharpVue decides to pledge any of the Transportation Assets, such pledging will not in any manner deplete, reduce, conceal, abstract or dissipate the earnings or assets thereof, or decrease or increase its liabilities or assets. Such debt will only be incurred for a lawful objective within the corporate purposes of the public utility and to the extent it is compatible for the public interest and if necessary or appropriate for or consistent with the proper performance of the operations utilizing the Transportation Assets and will not impair these operations.

20. After closing of the transaction described herein, BHI Ferry Transportation will assume the operations of the Transportation Assets and provide service to the public under the same approved rates, terms, and conditions of service, and no changes to such rates, terms, and conditions of service are proposed in conjunction with this Application or the underlying transaction.

21. BHI Ferry Transportation agrees that for at least one (1) year following closing of the transaction there will be no change to the rates of services utilizing the Transportation Assets or the terms or conditions of such services, as a result of the proposed transaction.

LEGAL STANDARD APPLICABLE TO THIS APPLICATION

22. G.S. § 62-111(a) provides that “no franchise now existing . . . shall be sold . . . except after application to and written approval by the Commission, which approval shall be given if justified by the public convenience and necessity.”

23. In applying this statutory merger approval standard, the Commission has concluded that a proposed business combination is justified by the public convenience and

necessity where: (i) the transaction will have no adverse impact on North Carolina retail ratepayers; (ii) the utility's customers are protected as much as possible from potential costs and risks resulting from the transaction; and (iii) there are sufficient benefits from the proposed transaction to offset the potential costs and risks. *See e.g.* Order Approving Merger Subject to Regulatory Conditions and Code of Conduct (Duke/Piedmont Order), Docket Nos. E-2, Sub 1095, E-7, Sub 1100, and G-9, Sub 682 at p. 68 (Sept. 29, 2016).

24. The Commission has further explained that in making these assessments, it is appropriate to examine matters such as whether service quality will be maintained or improved, the extent to which costs can be lowered and rates maintained or reduced, and whether effective regulation of the merging utility will be maintained. *Id.*

**THE PROPOSED TRANSACTION IS
JUSTIFIED BY THE PUBLIC CONVENIENCE AND NECESSITY**

25. As explained below and in the amended pre-filed Direct Testimony of Charles A. Paul, III, Shirley A. Mayfield, and Lee H. Roberts filed concurrently herewith and incorporated herein by reference, the proposed transaction set forth in the APA is justified by the public convenience and necessity, is in the public interest, will not adversely affect the transferred services, and will not unlawfully affect the services of other public utilities. Furthermore, ferry, tram, parking, and barge services have been and will be continuously offered to the public through and including the date of the closing of the transaction by BHIT and BHIL, and BHI Ferry Transportation is willing and able to continue to perform these services thereafter. Some of the grounds supporting these conclusions are discussed in the immediately following paragraphs.

26. Because the Estate is winding down operations of BHIL and BHIT, a transfer of the Transportation Assets is necessary to ensuring continuity of reliable services and ongoing stability for the Island's residents, employees, and visitors.

27. BHI Ferry Transportation is well situated to continue the services uninterrupted and without immediate or significant changes in spite of the impending dissolution of BHIT and BHIL.

28. SharpVue has the financial resources to support and enhance the services utilizing the Transportation Assets, including accommodating anticipated growth in ridership.

29. SharpVue has the expertise and experience to own and manage the Transportation Assets by, among other things, reaching agreement with current BHIT and BHIL management and hiring current employees working with the Transportation Assets to ensure consistency of operations.

30. There is no proposal to change the rates, terms or conditions of service, as a result of the proposed transaction. SharpVue is committed to continuing to provide safe, affordable, and reliable transportation services to and from and on the island.

31. SharpVue will establish a reliable financing mechanism that is a combination of debt financing and equity, as shown on the attached financing document filed confidentially as Exhibit F. This diverse financing approach will give SharpVue flexibility in meeting the capital and other needs of the ferry and tram system.

32. SharpVue has raised capital specifically for this opportunity from a group of primarily local investors (See Exhibit F) with the understanding that this collection of

assets could be held for the long term. This investment will not be held in a limited life fund, but in an LLC with a perpetual life.

33. SharpVue understands, acknowledges, and accepts the regulatory responsibilities applicable to the Transportation Assets required by the North Carolina General Statutes and the rules and regulations of the Commission.

34. Regarding the management and operation of the Transportation Assets, SharpVue will retain BHIT and BHIL's management and most of the employees that have experience in ensuring that all applicable rules, regulations, and Commission orders are complied with.

35. Additionally, SharpVue has experience with infrastructure projects which will be valuable in assuming operations.

36. SharpVue will maintain a strong local community presence and constructive relationships with the island and mainland stakeholders, and intends to be a committed partner to the continued success, prosperity, and conservation mission of Bald Head Island.

37. SharpVue has the financial capital and resources to support ongoing operations, contingencies, and needed capital improvements. It is committed to continuing the evaluation and implementation of electronic ticketing and reservations system as recommended by management in the twelve months after closing on this purchase, with the intent to implement such a system as soon as practicable. SharpVue is committed to continuing the evaluation and implementation of how to improve baggage handling operations, and when and how to replace the next ferry in the fleet that may be approaching obsolescence.

38. BHI Ferry Transportation is not seeking to recover any transaction costs related to this transaction from passengers and will not request any rate change as a result of the transaction.

39. As a consequence of these facts (and others discussed in the direct testimony of the BHIT, BHIL, and SharpVue witnesses), the proposed transaction is in the public interest because the acquisition will (1) ensure that the Ferry Operations and Tram Operations continue without immediate or significant change despite the pending dissolution of BHIT; (2) provide financial stability to accommodate long-term viability of the transportation services; and (3) provide other tangible and intangible benefits to those needing Bald Head Island transportation services. Furthermore, the proposed transaction will be seamless to BHIT's customers and will not adversely affect BHIT's customers in any way, as they will continue to receive the same high-quality service to which they are accustomed despite the impending dissolution of BHIT. In addition, the transaction itself will in no way affect the rates charged for the ferry and tram service.

40. The parties hope to close the transaction described herein as soon as possible. A short timeline that would prevent needless delay that has the potential to disrupt the transactions would be appreciated by the parties to the extent it can be accommodated by the Commission.

EXHIBITS

41. The following exhibits are being filed with this Application:

Exhibit A-1 – Financial Statements of BHIT;

Exhibit A-2 – Financial Statements of BHIL for the Barge Operations;

Exhibit A-3 – Financial Statements of BHIL for the Parking Operations;

Exhibit B – SharpVue’s current corporate organization chart;

Exhibit C-1 – Statement of BHIT’s gross operating revenues for the period of March 2022 through May 2022;

Exhibit C-2 – Statement of BHIL’s gross operating revenues for the Barge Operations for the period of March 2022 through May 2022;

Exhibit C-3 – Statement of BHIL’s gross operating revenues for the Parking Operations for the period of March 2022 through May 2022;

Exhibit D-1 – Statement of BHIT’s total number of ferry miles traveled for the period of March 2022 through May 2022;

Exhibit D-2 – Statement of BHIL’s total number of barge miles traveled for the period of March 2022 through May 2022;

Exhibit E – Asset Purchase Agreement (Confidential);

Exhibit F – BHI Ferry Transportation’s Debt and Equity Financing Statement (Confidential).

WHEREFORE, for the foregoing reasons, the Applicants respectfully request that the Commission:

1. Approve the transfer of the Certificate of Common Carrier to Bald Head Island Ferry Transportation, LLC, including the operations of the ferries, tram, parking facilities, and tugboat/barge.
2. Grant permission to Bald Head Island Ferry Transportation, LLC, to issue debt and pledge assets as necessary.
3. Grant such other approvals and/or issue such terms of an Order in this docket as may be necessary to effectuate the transaction described in this Application.

Respectfully submitted this 24th day of January, 2023,

FOX ROTHSCHILD LLP

/s/ M. Gray Styers, Jr.

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COUNTY OF BRUNSWICK

VERIFICATION

STATE OF NORTH CAROLINA

I, Charles A. Paul, III, CEO of Bald Head Island Transportation, Inc., and a Manager of Bald Head Island Limited LLC verify that I have read the foregoing Application and know the contents thereof as they pertain to Bald Head Island Transportation, Inc., and Bald Head Island Limited LLC and that the same are true of my own knowledge.



Charles A. Paul, III

SWORN TO AND SUBSCRIBED

Before me this 24th day of JANUARY, 2023.

Notary Public

KAREN BELFER

Printed

My commission expires: 8/23/2026

COUNTY OF WAKE

STATE OF NORTH CAROLINA

VERIFICATION

I, Lee H. Roberts, Managing Partner for SharpVue Capital, LLC, verify that I have read the foregoing Application and know the contents thereof as they pertain to Bald Head Island Ferry Transportation, LLC and SharpVue Capital, LLC, and that the same are true of my own knowledge.

Lee Roberts

SWORN TO AND SUBSCRIBED

Before me this ____ day of _____, 2023.

Notary Public

Printed

My commission expires: _____

OFFICIAL COPY

Jan 24 2023

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this day served on behalf of the Applicants the foregoing Amended Application of Bald Head Island Transportation, Inc., Bald Head Island Limited, LLC, and Bald Head Island Ferry Transportation LLC for Transfer of Common Carrier Certificate, upon all parties of record by electronic mail and/or mail as follows:

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This the 24th day of January, 2023.

/s/ M. Gray Styers, Jr.

M. Gray Styers, Jr.