

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. A-41, SUB 23

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of Bald Head Island
Transportation, Inc. for Approval of
Revisions to Regular Passenger Ferry
Schedules to “45-Minute Departures”

REPLY OF BALD HEAD ISLAND
ACADEMY LLC AND BALD HEAD
ISLAND ACADEMY FOUNDATION
INC. TO BHIT’S RESPONSE
TO PETITIONS TO INTERVENE

NOW COME the Bald Head Island Academy LLC (“BHI Academy”) and Bald Head Island Academy Foundation Inc. (“BHI Academy Foundation”) (together with the BHI Academy, the “Academy” or “Petitioners”), pursuant to Commission Rule R1-5, and file this reply to Bald Head Island Transportation, Inc.’s response to the petitions to intervene filed in the above-captioned docket by the Bald Head Island Club (“Club”) and the Academy (“Response”). In support of this reply, the Academy shows unto the North Carolina Utilities Commission (the “Commission” or “NCUC”) as follows:

1. First and foremost, the Academy notes that BHIT has neither objected to, nor otherwise opposed, the Academy’s intervention in this docket.¹
2. The Academy strongly opposes BHIT’s offer to discuss with the Commission during the Commission’s March 18, 2024 Staff Conference BHIT’s proposal for what it wishes was a more expedient disposition of this matter. First, consistent with Commission practice and precedent, the purpose of Commission staff conferences is for the efficient disposition of uncontested

¹ See BHIT’s Response, at 6 (“BHIT . . . does not object to the requested interventions.”).

matters. This docket is anything but an uncontested matter. Indeed, approximately **90 consumer statements of position opposing BHIT's Application were filed in this docket within the first 14 business days following BHIT's filing**—this could be a new record for the swiftest and highest volume of serious public concern expressed following a public utility's initial application filed with this Commission. Second, the Academy is aware that other major Island stakeholders are still considering whether to pursue intervention in the instant docket.² Third, a Commission staff conference discussion of the nature proposed by BHIT under these circumstances fails to provide due process for those parties who have established standing to intervene in this docket and those who may not have yet had an opportunity to seek intervention. Fourth, while there is no Commission Rule directly on point, the Academy directs the Commission's attention to Rules R8-71(k)(6)(iii) and (vi), which are relevant to the extent they contemplate a framework for Commission disposition of another matter in a different utility sector by either (a) scheduling an *uncontested* matter for consideration by the Commission at its staff conference; or (b) scheduling a *contested* matter for public hearing after reasonable notice is provided to the applicant and to all complaining parties.

3. Through two (thus far) petitions to intervene and approximately 90 (thus far) consumer statements of position expressing opposition to BHIT's Application,

² Attached hereto and identified as "Attachment A," please find "A Message from the Mayor of the Village of Bald Head Island," distributed via electronic correspondence at 5:19 PM on Friday, March 8, 2024. In this message, Mayor Peter Quinn states in pertinent part that "At its regular Council meeting at 10 a.m. next Friday morning (March 15), the Council will discuss what we have learned and where things stand [regarding Docket No. A-41, Sub 23], and it will decide next steps going forward."

interested persons have clearly demonstrated this matter is *contested*. Therefore, the most appropriate next procedural step is to issue a scheduling order providing a time frame for interested persons to seek intervention, for intervenors to conduct discovery, for a public hearing to be held on Bald Head Island (ideally between Memorial Day and Labor Day, so that Commissioners, Commission staff, and the Public Staff can experience the ferry system firsthand during peak season under then-current conditions and make their own observations, as well as draw their own conclusions, regarding matters germane to BHIT's Application and BHIT's stated rationale in support of its requested ferry schedule changes).³ The Club has already offered its facilities for the purpose of hosting such a hearing.⁴ Should a private facility willing to provide public access for purposes of a public hearing be deemed unsuitable by the Commission, the Academy respectfully suggests the Commission utilize the Multipurpose Room at the Bald Head Island Department of Public Safety Building, located at 273 Edward Teach Extension, Bald Head Island, NC 28461. The Multipurpose Room at the Public Safety Building is the same location where Village Council meetings are held.

4. The Academy reiterates its request that a public hearing be scheduled *on Bald Head Island*. Counsel for BHIT references a past public hearing related to

³ The Academy notes that N.C.G.S. § 62-144(a) provides in pertinent part that “[a]ll common carriers under the supervision of the Commission shall furnish free transportation to the members of the Commission, and, upon written authority of the Commission, such carriers shall also furnish free transportation to such persons as the Commission may designate in its employ[.]”

⁴ See Position Statement of Bald Head Island Club, at 4, filed in this docket on March 5, 2024 (stating in pertinent part that “Since BHIT and SharpVue neglected to solicit user input, we request the NCUC Public Staff hold a public hearing on the island to receive feedback on the proposed schedule and user ideas for how to improve the request. The Club offers to host such a forum.”).

BHIT held in Bolivia, North Carolina. Respectfully, holding a public hearing regarding the Bald Head Island ferry system in Bolivia, North Carolina is problematic for a number of reasons: first, the travel required precludes the participation by some elderly and infirm homeowners residing on Bald Head Island; second, the time required precludes workers, Academy teachers, Academy volunteer teachers, and other Academy support staff who could otherwise attend a hearing held on Bald Head Island but cannot afford to take the hours needed to travel to and from the Island due to work and Academy (i.e., school) obligations; third, as of October 13, 2023, there were 380 registered voters residing on Bald Head Island—they should not have to travel to Bolivia, NC to participate in a public hearing related to the ferry system they have to utilize to access their homes; and perhaps most importantly, holding the hearing on Bald Head Island will facilitate much greater public participation due to its proximity to the interested persons who stand to be most affected by the proposed changes.

5. In addition, the Academy reiterates its request that a separate expert witness evidentiary hearing be scheduled (either in Raleigh or on Bald Head Island). The schedule changes proposed by BHIT are such that they should be supported by testimony from a logistics engineer, a systems engineer, an industrial engineer, and/or a transportation engineer. With all due respect, if the only evidence supporting the proposed reduction in ferry service is that of a Chief Executive Officer with an obvious profit motive, that alone should be reason enough for the Commission to further investigate BHIT's Application rather

than allow BHIT's requested fast-track consideration and disposition. Significantly more time, assessments by independent experts, Bald Head Island stakeholder input, and cost-benefit analyses are needed to vet BHIT's proposed ferry schedule changes, as well as to identify and objectively evaluate viable alternatives to what Petitioners contend is an obviously flawed and illogical proposal. If anything, the Commission should be significantly slowing the timeline for considering BHIT's Application.

6. The Academy further respectfully requests that any and all hearings or "discussions" with the Commission taking place regarding this docket be properly and publicly noticed with at least 10 days' notice provided to all parties and all interested persons.
7. A public utility's response to a petition to intervene is not the appropriate time or procedural mechanism to argue the merits of a matter pending before the Commission. Nevertheless, because BHIT's Response relates to the merits of its Application, the Academy feels compelled to respond to certain arguments contained in BHIT's Response, particularly because the Academy does not know at this juncture what, if any, process it will be provided to respond to the narrative advanced by BHIT's counsel.
8. While the Academy acknowledges that on-time performance ("OTP") is an occasional problem for the ferry system presently owned and operated by Bald Head Island Transportation, Inc. ("BHIT"), particularly during the peak season between Memorial Day and Labor Day, BHIT's Response repeatedly conflates and mislabels the problem (i.e., OTP) with BHIT's proposed solution (i.e., the

so-called “45-minute departures,” which would actually mean departures every 90 minutes rather than the current 60-minute departure schedule).

9. BHIT fails to apply basic logic. Just because residents and/or stakeholders on Bald Head Island (“Island”) are aware of the ferry’s occasional OTP *problem* does not necessarily mean those same residents and/or stakeholders would also be aware of BHIT’s newly proposed *solution* to the OTP problem—the so-called “45-minute departures” proposed in BHIT’s Application—let alone what a 45-minute interval between departures would mean for ferry users; namely, that ferries will depart Deep Point Marina and Bald Head Island once every 90 minutes rather than once every 60 minutes. Moreover, stakeholders can agree that a problem (say, OTP) exists without agreeing on the most appropriate solution to address said problem—or whether the benefits of addressing said problem outweigh the costs.
10. To contend “BHIT did not expect that there would be those who would have been surprised by its application in this docket”⁵ is painfully out of touch and self-serving, at best; and a display of disingenuous gaslighting, at worst. Indeed, numerous individuals, groups, businesses, BHI Academy, and other Island stakeholders have expressed surprise at BHIT’s requested reduction in ferry service, disappointment in BHIT’s failure to “call it what it is” (i.e., a reduction in ferry service), and dismay at BHIT’s failure to adequately engage stakeholders *before* filing any proposed schedule changes with the Commission:

⁵ Response of BHIT to Petitions to Intervene, at 1.

- a. “Petitioners take issue with the extremely limited stakeholder outreach conducted by BHIT in advance of the filing of its Application. Indeed, ***Petitioners were not made aware of BHIT’s plans to seek these changes to the ferry schedule until after BHIT had filed the Application.*** Moreover, Petitioners learned from an email distribution list managed by the Village of Bald Head Island that the Application had been filed.”⁶
- b. “I listened to the audio of your presentation twice to the Village Council retreat attendees and did not hear that ferry service would be decreased from hourly to once every hour and a half, only that there would be a 45-minute turnaround to alleviate the perceived problems. . . . ***One has to open the docket referenced in the Village Announcement to find out the full details of a reduction in ferry trips[.]***”⁷
- c. “We have received many questions and concerns related to the proposed ferry schedule changes. ***We were not consulted by BHIT prior to the submission of the proposed ferry schedule changes.***”⁸
- d. “BHIT did not spend proper time to consult with or get feedback from ferry users prior to submission of the proposed schedule.”⁹
- e. “It is very disconcerting that both BHIT and SharpVue failed to appropriately seek user input while developing the proposed schedule change. The Club took these entities at their word when deciding not to oppose the ferry transfer, as one of the facts relied upon by the Club was the stated willingness of BHIT and SharpVue to seek user input and feedback. ***Yet, in the first action by BHIT since filing for the request to sell the ferry to SharpVue, employees, business, homeowners, and visitors were not consulted in the development of the proposed schedule.***”¹⁰
- f. “The filing states ‘Specifically, Mr. Chad Paul made presentations to the Annual Meeting of the Bald Head Island Association (HOA) on January 27, 2024.’ ***This is a gross exaggeration.*** . . . In his 12 minutes, Mr. Paul mentioned the schedule changes at the end of his presentation after spending time on many other topics. ***The new schedule was his***

⁶ Academy’s Petition to Intervene at Para. 13 (emphasis added).

⁷ Supplemental Consumer Statement of Position of Dr. Louis Vaickus, MD, FACP, at 5, filed in this docket on March 6, 2024 (emphasis added).

⁸ Statement of Position of Bald Head Island Club, filed in this docket on March 5, 2024 (emphasis added).

⁹ *Id.*

¹⁰ *Id.* (emphasis added).

ninth item and he took about 90 seconds to describe this proposal. Mr. Paul's brief statement, at the end of the multi-topic presentation, represents the sole public comment the Club is aware of on the topic. For a change as significant as the proposed ferry schedule change, the NCUC—and the primary consumers of the regulated utility—should expect significant public notice and consultation with the users of the system. *The number of concerns voiced by users since the filing of the schedule change strongly indicates that the request would have benefitted from user consultation and input.*¹¹

- g. “BHIT claims no opposition to the proposal by stakeholder groups, but as far as we are aware, *only the concept of moving to a 45 minute interval had been discussed with stakeholders prior to filing with the Commission – not the details, where the devil resides.*”¹²
- h. “The ferry system should be asked to develop a Users’ Advisory Council. The Advisory Council would provide both a careful examination of and thoughtful advice regarding proposed operational systems and changes – and might have improved the troubled implementation of the reservation system, the reservation app’s continuing clunky user interface, the newly proposed schedule changes, and similar issues that may arise in the future – *before the changes are filed with the Commission.* A Users’ Advisory Council would improve the user experience for the people who actually use the ferry system and also assure that proposals are properly vetted by the user community – *a process that may keep proposals from becoming a controversy before the Commission.*”¹³
- i. “Paragraph 29 of BHIT’s Application is particularly upsetting. I am sure you can see from the comments you’ve received here, [Paragraph 29 is] a complete lie. Almost all stakeholders have a problem with the proposed changes to the schedule. . . Finally, in paragraphs 30 and 31 BHIT explains who they gave notice to about their application and who they would give notice to once it is approved if it is approved. BHIT should have to give notice of their proposal to ALL business & homeowners, and possibly everyone listed in paragraph 31, before anything is approved. *I was shocked by how (sic) few people knew*

¹¹ *Id.* (emphasis added).

¹² Consumer Statement of Position of Donna Patterson, filed in this docket on February 27, 2024 (emphasis added).

¹³ *Id.* (emphasis added).

about this proposal when I started discussing it with friends and other stakeholders on the island.”¹⁴

- j. “I have read all of the submitted public comments made available through March 2, 2024, and I do NOT support the proposed changes. *There are numerous callouts that adequate notice and feedback from stakeholders was not received, and I echo this sentiment.*”¹⁵
- k. “It’s crazy that one sub-unit of Bald Head Island can make a decision, without doing a feasibility study, or survey of owners, or consultation with economic entities relying on ferry services to support their business.”¹⁶
- l. “[T]he request for this change was not discussed with the property owners well in advance of this petition[.]”¹⁷
- m. “Such a change was not discussed [with] the ferry users and would have a detrimental impact on the island, businesses, and employees.”¹⁸
- n. “The new Ferry Schedule that Chad Paul recently unilaterally sent out as a done deed needs to be reviewed by the Commission and public hearings should be held. . . . The proposal apparently was not even discussed with Island public officials and groups representing the different BHI groups.”¹⁹
- o. “This feels like something being pushed through without involvement of the impacted community.”²⁰
- p. “I am shocked at the lack of work done on the part of [BHIT] to garner feedback from the public.”²¹

¹⁴ Consumer Statement of Position of Courtney Toledo, filed in this docket on February 28, 2024 (emphasis added).

¹⁵ Consumer Statement of Position of Andy Kennemer, filed in this docket on March 4, 2024 (emphasis added).

¹⁶ Consumer Statement of Position of Audrey Dyer, filed in this docket on March 6, 2024.

¹⁷ Consumer Statement of Position of Caroline Clark, filed in this docket on March 6, 2024.

¹⁸ Consumer Statement of Position of Catherine Cheek, filed in this docket on March 6, 2024.

¹⁹ Consumer Statement of Position of John Dyer, filed in this docket on March 5, 2024.

²⁰ Consumer Statement of Position of Rita Miller, filed in this docket on March 7, 2024.

²¹ Consumer Statement of Position of Elizabeth Acquista, filed in this docket on March 7, 2024.

11. BHIT once again references “the increased pace of construction and growth on the island,”²² while continuing to ignore and seemingly be oblivious to the irony that the Application proposes a *reduction* in ferry service.
12. Once again, BHIT fails to meaningfully consider, or even acknowledge, any alternative solutions to improving OTP aside from what it seems to consider to be the one and only foregone conclusion: reducing ferry service through BHIT’s proposed ferry schedule changes. Indeed, BHIT’s Response addresses numerous contentions contained in the Academy’s and the Club’s respective petitions to intervene and statements of position filed in this docket. It fails, however, to respond to contentions that the proposed schedule changes are unsupported by capacity studies, independent analyses, or any underlying data to support such studies or analyses. Curiously, BHIT’s Response did not provide copies of any such studies or analyses, nor did it reference any that have been undertaken to support its Application. The Academy suspects this is because such studies and analyses do not exist. Assuming its petition to intervene is granted, the Academy looks forward to confirming this suspicion through discovery.
13. BHIT contends that it “welcomes feedback and open discussion and will consider proposed modifications that can safely, operationally, and cost-effectively implemented to minimize inconveniences.”²³ If this is true, the Academy encourages BHIT to withdraw its Application and *then*

²² BHIT’s Response to Petitions to Intervene, at 2.

²³ *Id.* at 7.

conduct a proper stakeholder outreach process and independent expert evaluation on alternatives to a reduction in ferry service, with the goal of reaching a consensus position regarding any proposed changes to the ferry schedule. Then—and only then—should BHIT file a new application with the Commission. At this point, the only sensible path forward is for BHIT to go back to the drawing board and start this process over from scratch.

14. Should BHIT choose not to voluntarily withdraw its Application, Petitioners respectfully suggest this matter be held in abeyance unless and until such time as the transaction transferring ownership of BHIT and the related ferry system assets closes. In a joint Motion to Expedite filed on February 29, 2024, BHIT and its fellow appellees admit that “additional capital investment is needed” in the ferry system but that because the Mitchell Estate is trying to wind down its affairs, “needed investments in operations and assets are not possible.”²⁴ In other words, BHIT is unlikely to consider capital expenditures even if capital expenditures could prove to be a better alternative solution than the O&M expense reductions (and corresponding reductions in service) proposed by BHIT’s Application. Petitioners contend this is reason enough to pause or at least significantly slow down consideration of BHIT’s proposal filed in this docket.

²⁴ Appellees’ Motion to Expedite and For Peremptory Setting, at Para. 11, No. COA24-127 (Feb. 29, 2024) (a copy of said Motion is attached hereto and identified as “Attachment B”).

WHEREFORE, Petitioners respectfully request that the Commission:

- I. Grant Petitioners' pending Petition to Intervene;
- II. Alternatively, should the Academy's Petition to Intervene be denied, accept this filing as a supplemental statement of position;
- III. Schedule a public hearing on Bald Head Island during peak season between Memorial Day and Labor Day;
- IV. Schedule a separate expert witness evidentiary hearing in Raleigh or on Bald Head Island;
- V. Reject BHIT's proposal to dispose of this docket on a procedural fast track, particularly BHIT's suggestion to discuss this matter with the Commission during the Commission's March 18, 2024 Staff Conference; and
- VI. Provide such other and further relief as the Commission deems just and proper.

Respectfully submitted, this the 11th day of March, 2024.

BAILEY & DIXON, LLP

/s/ Christina D. Cress
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Counsel for Petitioners

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she caused the foregoing *Reply of Bald Head Island Academy and Bald Head Island Academy Foundation, Inc. to BHIT's Response to Petitions to Intervene* to be served upon all parties of record to this proceeding via electronic mail by consent.

This the 11th day of March, 2024.

/s/ Christina D. Cress
Christina D. Cress

OFFICIAL COPY

Mar 11 2024



Christina Cress <christinadcross@gmail.com>

OFFICIAL COPY

Mar 11 2024

A Message from the Mayor - March 8, 2024

Village of Bald Head Island <public.information@villagebhi.org>
Reply-To: Village of Bald Head Island <public.information@villagebhi.org>
To: christinadcross@gmail.com

Fri, Mar 8, 2024 at 5:19 PM

[View this email in your browser](#)



Dear Island Neighbors,

I am writing for two reasons: first, to thank those who voted on the two GO Bond referenda to renourish both the west and east end of South Beach, along with the replacement of geo-textile soft-tube groins; and second, to advise you of the Village's review and analysis of BHIT's request to modify the ferry schedule.

The island once again expressed its support for and commitment to our beaches. They are very much at the heart of the people who own, rent, and visit here, and they are an important economic driver. Unofficially (until the Board of Elections completes its canvas), for the \$13.5 million dollar (west end) beach improvement bond, the vote was 74.62% in favor and 25.38% against. The \$4.5 million dollar (east end) beach improvement bond vote was 67.18% in favor and 32.82% against. These resounding victories resonate our community's understanding of complex erosion issues and the need to get out in front of them, for the best of everyone on our wonderful island.

The Village has been analyzing the proffered change in passenger (but not contractor) ferry service from a 60-minute round trip to a 90-minute round trip schedule. As part of that effort, the Village has conferred with various stakeholders, including the Bald Head Association, the Clubs, the collective real estate agencies, and the merchants and businesses. It has carefully reviewed the submissions by the Clubs and the Bald Head Academy, along with numerous letters and comments submitted by island businesses and property owners. The Village has reached out to BHIT to schedule a meeting of interested parties to better understand the ramifications of the schedule change proposal and to discuss possible ways to improve the overall service, including not just on-time performance, but also timely and effective movement of people and baggage. We

believe there may be areas where we all can reasonably agree to be flexible, and our goal is to continually support efforts to improve the Transportation System.

At its regular Council meeting at 10 a.m. next Friday morning (March 15), the Council will discuss what we have learned and where things stand, and it will decide next steps going forward. In the meantime, we encourage everyone to let their voice be heard by the North Carolina Utilities Commission ([link](#) - Docket No. A-41, Sub 23). We are monitoring the publicly filed comments and they are an important part of our deliberations. If you prefer to reach out to the Village or me directly, please feel free to do so ([email](#)).

Thank for your input and help on this important issue.

Yours truly in service,

Peter Quinn
Mayor

Previous messages are archived [HERE](#).

If you received this initial email through a friend and would like to be included on all updates, please email Carin Faulkner, Public Information Officer:

public.information@villagebhi.org



Our mailing address is:

PO Box 3009
Bald Head Island, NC 28461

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No. COA24-127

NORTH CAROLINA COURT OF APPEALS

STATE OF NORTH CAROLINA ex
rel. UTILITIES COMMISSION;
BALD HEAD ISLAND
TRANSPORTATION, INC.,
Applicant; BALD HEAD ISLAND
LIMITED, LLC, Applicant; BALD
HEAD ISLAND FERRY
TRANSPORTATION, LLC, Applicant,

Appellees,

v.

VILLAGE OF BALD HEAD ISLAND,

Intervenor-Appellant.

From The North Carolina Utilities
Commission

No. A-41, Sub 22

MOTION TO EXPEDITE AND FOR PEREMPTORY SETTING

TO THE HONORABLE NORTH CAROLINA COURT OF APPEALS:

Appellees hereby request that this appeal be expedited by limiting the briefing extensions allowed under Appellate Rules 27(c)(2) and 37; that it be calendared with a peremptory setting under Appellate Rule 29(b) and 37; and that a decision on the merits be expedited under Appellate Rule 2 and 37. In support of this motion, Appellees state:

1. In this case, the Village of Bald Head Island has appealed a unanimous approval by the North Carolina Utilities Commission of a sale of the Bald Head Island transportation system—the ferry, tram, parking, and barge—to SharpVue Capital, LLC. The pendency of the appeal is preventing the transaction from closing, causing harm to the public.¹

2. Mr. George P. Mitchell formed and owned Appellee Bald Head Island Limited, LLC (“Limited”) and its affiliates, which purchased Bald Head Island in 1983. Limited oversaw real-estate development and sales on the island, resort and island operations, and infrastructure development on the island and mainland in Southport, NC. (R p 6, ¶ 8) Limited’s subsidiary, Bald Head Island Transportation, Inc. (“Transportation”) owns and operates the ferry and tram.

3. George P. Mitchell died on 26 July 2013. Almost all the assets that were originally part of the Mitchell Estate have been liquidated and the proceeds distributed to the Cynthia and George P. Mitchell Foundation and other heirs, pursuant to the terms of Mr. Mitchell’s will. (R pp 5-6, ¶ 7)

¹ There is also pending litigation in Brunswick County Superior Court regarding a purported right of first refusal that also may need to be resolved prior to the closing of part of the assets in the transaction. Cross-motions for summary judgment are scheduled for the week of 11 March; that case is on a trial calendar starting in early April.

4. The executors and trustees of the Mitchell Estate have been diligently working to settle and close the Estate.

5. The executors and trustees first tried to sell and transfer the assets to a multi-jurisdictional public authority. With the unanimous support of the Village, Brunswick County, the City of Southport and other affected constituencies, the Ferry Transportation Authority Act became law on 18 July 2017. Thereafter, in August 2017, the Village, the City of Southport and Brunswick County unanimously adopted resolutions to support, form, and participate on a Ferry Transportation Authority.

6. However, on 15 December 2020, the Village noticed its opposition to the Local Government Commission consideration of the Transportation Authority's \$56.144 million revenue bond issue to fund the purchase of the Transportation Assets. On 22 March 2021, the Village publicly announced its intent to pursue acquisition of the assets and operations to be purchased by the Transportation Authority, to include the Ferry Operations and Tram Operations, and compete with the Transportation Authority, rather than supporting it. In September 2021, the Mitchell Estate representatives informed the Transportation Authority, the Village and the public that it would pursue third-party sale and disposition alternatives.

7. On 17 May 2022, Limited, Transportation and SharpVue Capital, LLC ("SharpVue") executed an Asset Purchase Agreement ("APA") for

purchase of the same assets and operations that the Transportation Authority had intended to purchase (as well as additional assets unrelated to the Transportation System). The sale of the Transportation and Limited assets to SharpVue is one of the final steps before the Mitchell Estate can be closed. (R pp 5-6, ¶ 7)

8. On 14 July 2022, Bald Head Island Transportation, Inc. and SharpVue filed an application with the North Carolina Utilities Commission for approval of the sale as required by N.C. Gen. Stat. § 62-111.

9. On 23 August 2023, the NCUC issued a unanimous decision approving the sale of Transportation and assets of Limited that fall under the regulatory jurisdiction of the NCUC to SharpVue, expressly finding that the transfer to and operation of the regulated utility by SharpVue is in the public interest.

10. Yet, the transaction cannot move forward until the Village's appeal from that decision is resolved.

11. In the interim, the public and our State are suffering harm. The ferry system is the principal way that visitors travel to and from the island. As with any transportation system with growing demand, additional capital investment is needed. But since the Bald Head Island companies are currently owned by the Mitchell Estate, which is trying to wind down its affairs, needed

investments in operations and assets are not possible. (Transcript Vol. 2, at 107-08 (testimony of Chad Paul))

12. Meanwhile, the volume of passengers continues to grow and is currently at its highest level ever. In 2023 alone, the ferry transported over 785,000 passengers to and from Bald Head Island in connection with 8,000 round-trip ferry voyages.

13. As Village of Bald Head Island Mayor pro tem Scott Gardner testified before the Utilities Commission:

I cannot overemphasize the critical importance of the transportation system to everything that happens on the Island: the success of the Island depends on a properly functioning, efficient, and affordable means of public access.

(Transcript Vol. 4, at 98-99)

14. Customers who testified at the local public witness hearing held in Brunswick County (including Claude Pope, the owner and operator of the Island's only full-time grocery store) expressed concern about ferry personnel morale and retention in light of the long duration of the efforts to sell the transportation system. (Transcript Vol. 1, at 58-59) Regarding the source of this issue, witness Pope concluded, "I think a lot of that is uncertainty." (*Id.*)

15. The ongoing "uncertainty" regarding the eventual ownership of the ferry is having a detrimental impact on this transportation system and

logistical operations of “critical importance” to one of the premier resort/vacation destinations in the State of North Carolina.

16. The longer this uncertainty continues, the greater this impact will be. As the vessels and other operational equipment age, and employee retention becomes increasingly difficult due to continued ownership uncertainty, the passage of time increases the operational risk of the transportation system.

17. Over 10 years have passed since Mr. Mitchell’s death. Over seven years have passed since efforts began at the General Assembly to create a public authority to purchase the transportation system. Two years have passed since the APA was executed to sell the system to SharpVue Capital. The clock is ticking, and time is of the essence.

18. The sale cannot close until the issues in this appeal are resolved. The pendency of the appeal itself is creating uncertainty not only for Bald Head Island Limited, LLC employees, but also for passengers relying upon the transportation system to get to and from the island—homeowners, visitors, employees working on the island, and contractors building and repairing homes and providing services to the Island. Until the appeal is decided, that uncertainty continues.

19. For all these reasons, Appellees respectfully request that this appeal be expedited, in three respects: that briefs be filed timely; that

argument be given a peremptory calendar setting; and that this Court's decision be expedited in the public interest.

20. The Appellate Rules give this Court several tools to help an appeal like this be resolved in a timely fashion.

21. First, the Rules require parties to submit their briefs expeditiously, with the Appellant's opening brief due within 30 days of docketing, Appellees' brief due 30 days thereafter, and Appellant's reply brief due within 14 days after that.

22. In an ordinary case, one or more parties may seek an extension of those deadlines under Appellate Rule 27(c)(2), for good cause shown. Here, though, any lengthy delays in the briefing process will perpetuate the harm suffered by the public. Appellees can control how quickly they file their brief but cannot prevent Appellant from seeking extensions for its two briefs. And of course, emergencies do arise sometimes, even in critical cases like this. Appellees simply ask that this Court examine such extension requests closely so that they do not become a vehicle for needless delay.

23. Next, Appellate Rule 29(b) allows the Court "to give an appeal peremptory setting or otherwise to vary the normal calendar order." N.C. R. App. P. 29(b). The Court can also deviate from any of the Appellate Rules "to expedite decision in the public interest." N.C. R. App. P. 2.

24. Neither of these rules includes an express standard that must be satisfied before this Court can grant relief. Instead, it is generally understood that both matters lie well within this Court's discretion. *See, e.g., State v. Campbell*, 369 N.C. 599, 603, 799 S.E.2d 600, 603 (2017).

25. Here, a swift conclusion to this appeal is in every party's best interest.

26. Accordingly, Appellees ask that this appeal be calendared (whether that includes oral argument or not) as promptly as possible.

27. Appellees further request that this Court expedite its ultimate decision on the merits as being "in the public interest," N.C. R. App. 2.

28. Appellees asked Appellant for its position on the relief requested herein two weeks ago, on 15 February 2024. Appellant finally responded yesterday to state that they do not consent to this motion and—to the contrary—intend to request an extension of time in which to file its brief.

WHEREFORE, Appellees respectfully request that this appeal be expedited by limiting the briefing extensions allowed under Appellate Rules 27(c)(2) and 37; that it be calendared with a peremptory setting under Appellate Rule 29(b) and 37; and that a decision on the merits be expedited under Appellate Rule 2 and 37.

This the 29th day of February, 2024.

FOX ROTHSCHILD LLP

Electronically submitted

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N.C. R. App. P. 33(b) Certification: I certify that all of the attorneys listed below have authorized me to list their names on this document as if they had personally signed it.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the date indicated below, a copy of the foregoing document was served by email, as follows:

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This the 29th day of February, 2024.

/s/ Elizabeth Sims Hedrick
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