

David P. Ferrell  
Member

February 14, 2023

Ms. Shonta Dunstan, Chief Clerk  
North Carolina Utilities Commission  
430 North Salisbury Street  
Raleigh, NC 27603-5918

**Re: In the Matter of Joint Application of Bald Head Island Transportation, Inc., 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  
NCUC Docket No.: A-41, Sub 22**

Dear Ms. Dunstan:

Attached for filing on behalf of SharpVue Capital, LLC in the above-referenced proceeding is SharpVue Capital LLC's Response to Village of Bald Head Island's Fifth Motion to Compel.

Thank you for your attention to this matter and please let us know if you have any questions.

Sincerely,

/s/ David P. Ferrell

David P. Ferrell

Enclosure

cc: Parties of Record

Charleston

Charlotte

Columbia

Greensboro

Greenville

Hilton Head

Myrtle Beach

**Raleigh**

**STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH**

**Docket No. A-41, Sub 22**

In the Matter of		
Joint Application of Bald Head Island	)	
Transportation, Inc., and Bald Head	)	<b>SHARPVUE CAPITAL, LLC'S</b>
Island Ferry Transportation, LLC, for	)	<b>RESPONSE TO VILLAGE OF</b>
Approval of Transfer of Common Carrier	)	<b>BALD HEAD ISLAND'S</b>
Certificate to Bald Head Island Ferry	)	<b>FIFTH MOTION TO</b>
Transportation, LLC, and Permission to	)	<b>COMPEL</b>
Pledge Assets	)	

Feb 14 2023

SharpVue Capital, LLC and all its affiliate entities, including Bald Head Island Ferry Transportation, LLC (referred to collectively as “SharpVue”), by and through its undersigned counsel, hereby respond in opposition to the Village of Bald Head Island (“the Village”)’s Fifth Motion to Compel (“the Motion”).

SharpVue’s Response in Opposition to the Village of Bald Head Island’s Second Motion to Compel dated November 28, 2022 and filed on November 29, 2022 is incorporated herein by reference; and SharpVue’s Responses in Opposition to the Village’s Third and Fourth Motion to Compel are incorporated herein by reference. Further, SharpVue’s responses and supplemental responses are incorporated herein by reference, see Exhibit A attached hereto.

SharpVue would have preferred the opportunity to hear questions and concerns with responses and supplement responses where appropriate prior to the filing of a motion to compel. Given the short time line in the Scheduling Order, the Village had a short time line to file its motion; and SharpVue only had a few hours between the Village’s email asking specific questions about the responses and the Village’s filing of their motion per the Scheduling Order. Counsel for SharpVue was traveling that afternoon and did not see nor have the opportunity to respond to the

Village's email prior to the filing of the motion. In any event, SharpVue has supplemented the responses at issue on February 10 and again on February 14; and based on the supplementations, and previously raised objections regarding confidential business trade secret information that are currently under consideration by the Commission in prior motions, SharpVue respectfully requests this motion be denied.

**I. SharpVue's response regarding "Acquisition Premium" is proper (Data Request 5-12).**

The Village mischaracterizes SharpVue's responses to the acquisition premium question. First, as the Commission has noted, the Amended Application does not include reference to an acquisition premium and therefore this data request is moot. Second, SharpVue has not performed a calculation of the difference of purchase price and historic or net book value of the acquired assets.

SharpVue's position is that the purchase price represents the fair market value of the asset, consistent with appraisals and standard business valuation practice, that there is no good will included in the purchase price, and that therefore there is no "acquisition premium" as that term is generally used in the transaction context. The Village includes a definition of acquisition premium in its request. How the Village may choose to define the term acquisition premium for its purposes is not relevant to the issues to be decided by the Commission nor reasonably calculated to lead to the discovery of admissible evidence. As explained by the Public Staff in its Response to the Village's Motion to Hold Proceeding in Abeyance,

[A]s the Commission has already ordered existing rates to remain in effect pending a future rate case, the Public Staff does not believe it is necessary to establish rate base in this proceeding.

Finally, any further response beyond what SharpVue has provided would require legal conclusions beyond the scope of permissible discovery, and therefore no further response is required. Therefore, SharpVue requests that the Village's motion on this data request be denied.

## **II. SharpVue properly responded to Data Requests 5-2 and 5-6**

Although Data Request 5-2 requested documents previously identified in prior data requests, and SharpVue originally answered as such, SharpVue supplemented the responses to again provide the bates numbers to relevant documents. The motion regarding Data Request 5-2 should be denied.

SharpVue has answered and supplemented Data Request 5-6. No written agreements have been executed yet. SharpVue has provided the most current information relevant to this data request and will supplement the request once written agreements are entered. As SharpVue has nothing else to produce at this time, the motion regarding Data Request 5-6 should be denied.

## **III. SharpVue properly produced certain business trade secret information to the Public Staff pursuant to N.C. Gen. Stat. §62-34(c).**

Certain SharpVue's responses raise objections that have been raised in prior data requests, regarding production made to the Public Staff pursuant to a business trade secret / N.C. Gen. Stat. §62-34(c) objection (Data Requests 5-1, 5-2, 5-4, 5-8, 5-9, 5-15). SharpVue preserved its relevance objection and its objections to providing certain confidential business trade secret information, but in order to continue to be transparent with the Public Staff, certain confidential business trade secret information was provided to the Public Staff as "confidential – not to be disclosed" pursuant to N.C. Gen. Stat. §62-34(c), and redacted from the versions of the responses provided to the Village, given that the Village holds itself out as a competitor of SharpVue's for purchase the

assets at issue herein. *See* Exhibits to the Village's Motion. It is SharpVue's intention for this information to be used by the Public Staff and/or the Commission to review and determine the pending certificate transfer application, but it should not be provided to the Village or other intervenors due to the confidential, sensitive business trade secret nature of the information in the midst of the transaction itself.

Although Data Requests 5-1, 5-2, 5-4, 5-8, 5-9, 5-15 request information and documents previously identified and marked as confidential in prior data requests, and SharpVue originally answered as such, SharpVue supplemented the responses to again provide the bates numbers to relevant documents and/or provide additional information.

For the substance of the requests, the information/data requests at issue fall into the same main categories as the information/data requests at issue in the second motion motion to compel: (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 of Lee Roberts and Doug Vaughn.

N.C. Gen. Stat. §62-34(c)

The same policy rationale and legal authority discussed in SharpVue's response to the Village's second motion to compel apply to the information/requests at issue in this motion, support SharpVue's position herein, and are incorporated herein by reference. SharpVue should be allowed to be as transparent as possible to the Public Staff to facilitate its statutory duty and role in this transfer proceeding, without being required to disclose confidential business trade secret information to the Village, a competitor that seeks to block the transfer of assets it still hopes to purchase for itself. *See* N.C. Gen. Stat. §62-34(c); *Wachovia Cap. Partners, LLC v. Frank Harvey Inv. Fam. Ltd. P'ship*, No. 05 CVS 20568, 2007 WL 2570838, at \*11 (N.C. Super. Mar. 5,

2007) (unpublished opinion). The Village's position ignores N.C. Gen. Stat. §62-34(c) enacted in 2021 and effective May 17, 2021 – enacted after the *Duke Energy* case cited by the Village. The legislature determined that there needed to be a process whereby a party can (and will) share business trade secret information confidentially with the Public Staff, without being required to share it with the public and other parties. Otherwise, why enact this statute – why would this statute be needed? The Village would have the Commission ignore this clearly worded statute and the clear intent behind it. Further, the legislature could have required in N.C. Gen. Stat. §62-34(c) that confidential business trade secret information provided to the Public Staff also be provided to intervenors, but it did not do so. Instead, the statute establishes a process for the Commission to determine if the information is business trade secret information<sup>1</sup>. That is essentially the position we are in – and SharpVue has offered to have the Commission review the information in camera. SharpVue has properly followed N.C. Gen. Stat. §62-34(c) – again to be as transparent as possible to the Public Staff without prejudicing its pending transaction by having to disclose confidential business trade secret information to the Village, a competitor

#### Confidentiality Agreement

For the reasons discussed in SharpVue's response to the Village's second motion to compel, the parties' confidentiality agreement does not require production of confidential trade secret information and does not provide adequate protection of the confidential business trade secret information at issue in this motion. As SharpVue stated previously – this is not personal to the Village's attorneys. It is undisputed that the Village is still attempting to buy the assets at issue in this proceeding. There is a heightened concern from SharpVue that the Village, if it possesses

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<sup>1</sup> N.C. Gen. Stat. §62-34(c) provides that "any dispute about whether information has been properly designated as confidential shall be determined by the Commission upon motion and response of interested parties."

the information at issue in this and other similar motions, will try to use that information to derail SharpVue's purchase of the assets at issue here, just as it did when the BHI Transportation Authority attempted to do the same. This raises an additional level of sensitivity and concern over production of the requested business trade secret information to a competing buyer of the same assets. This seems to be the exactly scenario N.C. Gen. Stat. §62-34(c) was intended to address. We certainly understand the Village's position that the parties have a confidentiality agreement that allows documents to be provided "attorney's eyes only." And we hope the Village understands the applicant SharpVue's position that an extra level of sensitivity and concern exists over the disclosure of this confidential business trade secret information.

WHEREFORE, for the reasons stated herein and in SharpVue's Responses to the Village's Second, Third and Fourth Motion to Compel, SharpVue respectfully requests the Commission deny the Village's Fifth Motion to Compel. Alternatively, if the Commission is not inclined at initial consideration to deny the Motion, SharpVue respectfully requests an in-person hearing on the Motion and/or a protective order regarding this and similar data requests/motions from the Village to (1) continue to allow SharpVue to provide confidential business trade secret information to the Public Staff pursuant to N.C. Gen. Stat. §62-34(c) without having to provide it to the intervenors; and (2) to allow this confidential business trade secret information to be presented confidentially 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.

This the 14<sup>th</sup> day of February, 2023.

NEXSEN PRUET PLLC

By: /s/ David P. Ferrell  
David P. Ferrell  
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*Attorneys for SharpVue Capital, LLC*



**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing SHARPVUE CAPITAL, LLC'S  
RESPONSE TO VILLAGE OF BALD HEAD ISLAND'S FIFTH MOTION TO COMPEL has  
been served this day upon all parties of record in this proceeding, or their legal counsel, by  
electronic mail.

This the 14<sup>th</sup> day of February, 2023.

By: /s/ David P. Ferrell

**STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH**

**Docket No. A-41, Sub 22**

In the Matter of Joint Application of Bald Head Island Transportation, Inc., 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	) ) ) ) ) ) )	<b>SHARPVUE CAPITAL, LLC'S  <u>SECOND SUPPLEMENTAL</u>  <u>RESPONSES TO VILLAGE</u>  <u>OF BALD HEAD ISLAND'S</u>  <u>FIFTH DATA REQUESTS</u></b>
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SharpVue Capital, LLC ("SharpVue"), by and through its undersigned counsel, hereby provides this second supplemental response to the Village of Bald Head Island's Fifth Data Request to SharpVue Capital, LLC in the above-captioned docket.

**GENERAL OBJECTIONS**

SharpVue objects to the Data Requests to the extent they seek information, documents, materials, support, and/or things protected from disclosure by the attorney-client privilege, confidential business trade secret information, the work-product doctrine, consulting expert privilege, and/or the common-interest privilege, and/or seek information beyond the regulated assets at issue herein. Inadvertent disclosure of any such information, documents materials, support, and/or things shall not operate as a waiver of any applicable privilege or immunity. SharpVue's production of documents or information does not waive any SharpVue's right to object to this request as not reasonably calculated to lead to the discovery of admissible evidence in this docket.

SharpVue provides these answers consistent with the Commission's December 30, 2022 Order in A-41, Sub 21 ("Sub 21 Order"). It is noted that the Sub 21 Order is on appeal to the Court of Appeals, and the result of the appeal could impact or change which SharpVue affiliate company owns the various assets that are subject to the APA (see original application and prior responses to data requests for this alternative ownership structure).

Certain SharpVue information provided herein are produced on the condition that they are held as confidential pursuant to the parties' confidentiality agreement. SharpVue reserves the right to object to the admissibility of any of these responses, in whole or in part, at any further proceeding of this matter, on any grounds, including but not limited to timeliness, materiality, relevance, and privilege.

### **RESPONSE TO DATA REQUESTS**

1. Please produce any and all documents identified, referred to, or relied upon in preparing your response to the Village's Fifth Set of Data Requests.

**RESPONSE:** Any documents have been previously produced, except for those objected to due to the information requested being a confidential business trade secret.

**SUPPLEMENTAL RESPONSE:** The documents that may responsive, like operating agreements, etc. have been previously provided to the Village in prior data requests. No documents that had not been previously requested were responsive to the request. The information and documents withheld as confidential business trade secrets have been previously requested in prior data requests; we're just maintaining the same objection/confidentiality protection that we have previously raised. No new documents have been implicated by the requests. Also, see **SHARPVUE 1399 - 1405. These documents are provided Confidential – Attorney's Eyes Only.**

**SUPPLEMENTAL RESPONSE:** See SHARPVUE Nos. 1012-1013 for the articles of organization and SHARPVUE Nos. 0831-0882 for the operating agreement for Pelican Legacy Holdings, LLC. These documents were previously produced, and the operating agreement was provided as “Confidential.”

See SHARPVUE 1108 to 1129 previously produced.

See SHARPVUE NOS. 1295-1300 previously produced. The Shared Services Agreement will be finalized and executed before closing occurs. This current but not final draft of the agreement is provided to the Public Staff as confidential and to the intervenors as “Confidential – Attorney’s Eyes Only.”

SHARPVUE 1053-1059, which were previously provided to the Public Staff as confidential – business trade secret, with the understanding that the information is being provided as confidential and will not be distributed beyond the Public Staff and NCUC, for the management agreement. SHARPVUE 1015-1052, which were previously provided to the Public Staff as confidential – business trade secret, with the understanding that the information is being provided as confidential and will not be distributed beyond the Public Staff and NCUC. SHARPVUE 1130-1294, which were previously provided to the Public Staff as confidential – business trade secret, with the understanding that the information is being provided as confidential and will not be distributed beyond the Public Staff and NCUC.

2. Refer to page 1 of the Amended Application for Transfer of Common Carrier Certificate (“Amended Application”). The Amended Application states that BHI Ferry Transportation, LLC (“BHIFT”) is managed by SharpVue Capital, LLC (“SharpVue Capital”). Please (a) describe the scope and extent of this management authority, (b) the duties that SharpVue Capital will perform in the exercise of its managerial authority, (c) the scope of SharpVue Capital’s authority under the managerial arrangement, (d) the terms under which it will be compensated for managerial services, and (e) identify and produce all documents specifying or otherwise relating to this management authority. If you contend that this information has been previously produced, please specify by data response number and bates number prior production.

**RESPONSE:**

a) The scope and extent of management authority will be similar to other privately held businesses, and largely consistent with current ownership.

**SUPPLEMENTAL RESPONSE:** Day-to-day management authority will be vested with the existing management team, which collectively has decades of experience with these assets and operations. Chad Paul and Shirley Mayfield have worked together overseeing the operations and financial activity of the business for more than a decade, and Capt. Bion Stewart has remarkable maritime operational experience. SharpVue will work closely with existing management, who will continue to oversee BHIFT, and participate in making major operating and capital decisions. Given strong existing relationships between SharpVue and existing management, we anticipate that major decisions will be made collaboratively. Users are unlikely to notice any change as a result of the change in ownership. SharpVue's primary role is as an investor and not day-to-day management.

**SUPPLEMENTAL RESPONSE:** See SHARPVUE Nos. 1012-1013 for the articles of organization and SHARPVUE Nos. 0831-0882 for the operating agreement for Pelican Legacy Holdings, LLC. These documents were previously produced, and the operating agreement was provided as "Confidential."

See SHARPVUE 1108 to 1129 previously produced.

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b) The duties that SharpVue Capital will perform will be substantially similar to those of current ownership.

**SUPPLEMENTAL RESPONSE:** SharpVue will work closely with existing management, who will continue to oversee BHIFT, and participate in making major operating and capital decisions. Given strong existing relationships between SharpVue and existing management, we anticipate that major decisions will be made collaboratively. Users are unlikely to notice any change as a result of the change in ownership. SharpVue's primary role is as an investor and not day-to-day management.

**SUPPLEMENTAL RESPONSE:** See SHARPVUE Nos. 1012-1013 for the articles of organization and SHARPVUE Nos. 0831-0882 for the operating agreement for Pelican Legacy Holdings, LLC. These documents were previously produced, and the operating agreement was provided as "Confidential."

See SHARPVUE 1108 to 1129 previously produced.

See SHARPVUE NOS. 1295-1300 previously produced. The Shared Services Agreement will be finalized and executed before closing occurs. This current but not final draft of the agreement is provided to the Public Staff as confidential and to the intervenors as "Confidential – Attorney's Eyes Only."

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c) Please refer to response 2(a).

d) Objection as the information requested is a confidential business trade secret.

**SUPPLEMENTAL RESPONSE:** See SHARPVUE Nos. 1012-1013 for the articles of organization and SHARPVUE Nos. 0831-0882 for the operating agreement for Pelican Legacy Holdings, LLC. These

documents were previously produced, and the operating agreement was provided as “Confidential.”

See SHARPVUE 1108 to 1129 previously produced.

See SHARPVUE NOS. 1295-1300 previously produced. The Shared Services Agreement will be finalized and executed before closing occurs. This current but not final draft of the agreement is provided to the Public Staff as confidential and to the intervenors as “Confidential – Attorney’s Eyes Only.”

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e) Objection as the information requested is a confidential business trade secret.

**SUPPLEMENTAL RESPONSE:** See SHARPVUE Nos. 1012-1013 for the articles of organization and SHARPVUE Nos. 0831-0882 for the operating agreement for Pelican Legacy Holdings, LLC. These documents were previously produced, and the operating agreement was provided as “Confidential.”

See SHARPVUE 1108 to 1129 previously produced.

See SHARPVUE NOS. 1295-1300 previously produced. The Shared Services Agreement will be finalized and executed before closing occurs. This current but not final draft of the agreement is provided to the Public Staff as confidential and to the intervenors as “Confidential – Attorney’s Eyes Only.”

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provided to the Public Staff as confidential – business trade secret, with the understanding that the information is being provided as confidential and will not be distributed beyond the Public Staff and NCUC.

SHARPVUE 1130-1294, which were previously provided to the Public Staff as confidential – business trade secret, with the understanding that the information is being provided as confidential and will not be distributed beyond the Public Staff and NCUC.

3. Refer to Exhibit B to the Amended Application, which depicts regulated ferry/tram, tug/barge, and parking businesses under the BHIFT entity.
  - a. Please confirm that post-consummation, BHIFT will operate the ferry/tram, tug/barge, and parking businesses.
  - b. Specify BHIFT's ownership, if any, of the assets comprising the regulated ferry/tram, tug/barge, and parking businesses post-consummation.
  - c. Specify the SharpVue entity (or entities) that will have decision making authority with respect to rates and service conditions for each of the regulated ferry/tram, tug/barge, and parking businesses.
  - d. In response to question 2 of the Village's Third Data Requests to SharpVue, SharpVue specified the ownership of the specified transportation assets post-consummation. Please confirm whether this response remains accurate. If it does not, please specify the current ownership plans for each of the assets specified in Village DR 3-2.

**RESPONSE:**

- a) **Confirmed.**
- b) **BHIFT will own 100% of these assets.**
- c) **Rates for these operations are presently regulated by the NCUC. As with current ownership, service conditions will continue to be overseen by the in-place management team. BHIFT will be managed by Pelican Legacy Holdings, LLC.**
- d) **The current ownership plans for each of the assets specified in Village DR 3-2 would be:**
  - a. **the Deep Point parking facilities (tangible assets, if any) – Bald Head Island Ferry Transportation, LLC, which is 100% owned and controlled by Pelican Legacy Holdings, LLC. The Deep Point parking facilities (real estate) – Pelican Real Property, LLC, which is 100% owned and controlled by Pelican Legacy Holdings, LLC.**



- b. the Deep Point ferry terminal - Pelican Real Property, LLC, which is 100% owned and controlled by Pelican Legacy Holdings, LLC.
  - c. the island ferry terminal - Pelican Real Property, LLC, which is 100% owned and controlled by Pelican Legacy Holdings, LLC.
  - d. any Deep Point real estate other than the Deep Point parking facilities – Pelican Real Property, LLC, which is 100% owned and controlled by Pelican Legacy Holdings, LLC.
  - e. the tram assets - Bald Head Island Ferry Transportation, LLC, which is 100% owned and controlled by Pelican Legacy Holdings, LLC.
  - f. the ferry boats - Bald Head Island Ferry Transportation, LLC, which is 100% owned and controlled by Pelican Legacy Holdings, LLC.
4. Please specify the person or persons who will have the ultimate decision making for each of BHIFT and Pelican Legacy Holdings, LLC and identify all documents establishing such authority.

**RESPONSE: [BEGIN AEO CONFIDENTIAL] [END AEO CONFIDENTIAL]** Certain corporate documents have been previously provided, and some were objected to and withheld due to the information requested being a confidential business trade secret. This response to Data Request 5-4 is provided Confidential – Attorney’s Eyes Only.

**SUPPLEMENTAL RESPONSE:** See SHARPVUE Nos. 1012-1013 for the articles of organization and SHARPVUE Nos. 0831-0882 for the operating agreement for Pelican Legacy Holdings, LLC. These documents were previously produced, and the operating agreement was provided as “Confidential.”

See SHARPVUE 1108 to 1129 previously produced.

See SHARPVUE NOS. 1295-1300 previously produced. The Shared Services Agreement will be finalized and executed before closing occurs. This current but not final draft of the agreement is provided to the Public Staff as confidential and to the intervenors as “Confidential – Attorney’s Eyes Only.”

SHARPVUE 1053-1059, which were previously provided to the Public Staff as confidential – business trade secret, with the understanding that the information is being provided as confidential and will not be distributed beyond the Public Staff and NCUC, for the management agreement.

5. Please identify the “Terminal Lease” referred to in paragraph 16 of the Amended Application, the entity that will be acquiring this lease, and state whether any amendments are contemplated to this lease.

**RESPONSE: BHIFT will be the lessee for the Terminal Lease, which is currently part of the utility rate base. Pelican Real Property will be the lessor of the Terminal Lease. This application does not contemplate any amendments to the lease. To the extent paragraph 16 of the Amended Application is not clear on this point, this response hereby supplements paragraph 16 of the Amended Application.**

6. Refer to paragraph 17 of the Amended Application, which has been revised to state that SharpVue has “reached agreement” with the management of current BHIT and BHIL operations. Provide a full and complete summary of the terms and conditions of this agreement and provide a copy of the document(s) evidencing this agreement.

**RESPONSE: This agreement is neither final nor documented; but SharpVue has asked the current management of BHIT and BHIL to stay in their current roles and they have agreed. This response to Data Request 5-6 is provided Confidential – Attorney’s Eyes Only.**

**SUPPLEMENTAL RESPONSE: [BEGIN AEO CONFIDENTIAL] [END AEO CONFIDENTIAL] This supplemental response to Data Request 5-6 is provided Confidential – Attorney’s Eyes Only.**

7. Please specify the SharpVue entity referred to in each of paragraphs 28, 29, 32, 33, and 37 of the Amended Application.

**RESPONSE:**

**28) Pelican Legacy Holdings, LLC**

**29) Bald Head Island Ferry Transportation, LLC, which is 100% owned and controlled by Pelican Legacy Holdings, LLC**

**32) Pelican Legacy Holdings, LLC**

**33) Bald Head Island Ferry Transportation, LLC, which is 100% owned and controlled by Pelican Legacy Holdings, LLC**

**37) Pelican Legacy Holdings, LLC**

8. Refer to paragraph 19 of the Amended Application. Identify the SharpVue entity (entities) that is (are) seeking authority to pledge assets and for each such

entity, specify the assets to be pledged and the terms (including, minimally, the amount of the loan, the payback schedule for the loan, the term of the loan, and the interest rate of the loan) of the proposed transition to be secured by the pledge. Identify all documents relating to the proposed pledge of assets.

**RESPONSE:** Pelican Legacy Holdings, LLC is seeking authority to pledge assets related to both regulated and unregulated operations, including those regulated assets held by its 100% owned subsidiaries. Objection regarding the terms of such pledge as the information requested is a confidential business trade secret.

**SUPPLEMENTAL RESPONSE:** Information was previously provided to the Public Staff as confidential business trade secret and will not to be distributed beyond the Public Staff and NCUC: the term of the loan is expected to be [REDACTED] years; the interest rate is expected to be [REDACTED] the loan is expected to be [REDACTED]. After [REDACTED] years, amortization is expected to be calculated based on a [REDACTED] amortization period. SharpVue maintains its objection.

9. What are the expected financial terms for the third-party debt SharpVue will use to finance transaction (e.g., term of loan, interest rate, payment schedule, etc.)? Identify all documents setting forth or summarizing this expected terms.

**RESPONSE:** Objection regarding the financial terms and related documents as the information requested is a confidential business trade secret.

**SUPPLEMENTAL RESPONSE:** Information was previously provided to the Public Staff as confidential business trade secret and will not to be distributed beyond the Public Staff and NCUC: the term of the loan is expected to be [REDACTED] years; the interest rate is expected to be [REDACTED] the loan is expected to be [REDACTED]. After [REDACTED] years, amortization is expected to be calculated based on a [REDACTED] amortization period. SharpVue maintains its objection.

10. Has the Asset Purchase Agreement between the parties been amended since the Commission's December 30, 2022 ruling in Docket No. A-41, Sub 21? If so, please identify the amendments and provide the amended terms. Please supplement this response should the agreement be amended after your initial response to this request.

**RESPONSE:** No, the APA has not been amended since the Commission's December 30, 2022 ruling in Docket No. A-41, Sub 21.

**SUPPLEMENTAL RESPONSE:** The APA was amended on February 10, 2023. The Second Amendment (previously provided and filed with the

NCUC on Dec 22, 2023) and the Third Amendment are attached hereto, SHARPVUE 1399 - 1405. These documents are provided Confidential – Attorney’s Eyes Only.

11. Refer to paragraph 37 of the Amended Application:
- a. Please provide operating and capital budgets for the next five years that reflect how SharpVue plans to repair, retrofit, upgrade, and/or replace the transportation assets (including ferry/tram, barge/tug, and parking) (“Transportation Assets”).
  - b. Please identify known capital needs relating to the Transportation Assets, including projected costs associated with such needs.
  - c. With regards to SharpVue’s commitment to evaluate and implement improved baggage handling operations, please specify the actions which SharpVue is committing to.
  - d. With regards to SharpVue’s commitment to evaluate ferry replacement, please specify the actions SharpVue is committing to.

**RESPONSE:**

- a) **Operating and capital budgets will be assessed post-transaction in a manner substantially similar to past projections by current ownership.**
  - b) **Capital needs will be assessed post-transaction in a manner substantially similar to past projections by current ownership.**
  - c) **SharpVue will act to support current baggage handling operations and evaluate opportunities for improvement over the first year of ownership.**
  - d) **The needs of the ferry fleet will be assessed post-transaction in a manner substantially similar to past projections by current ownership.**
12. Please refer to paragraph 38 of the Amended Application and page 7, lines 21-22 through page 8, line 1 of the Amended Direct Testimony of Lee H. Roberts. Please: (a) explain why SharpVue is no longer committing that it will not seek to recover acquisition premiums related to this transaction from users of the regulated transportation services, and (b) specify the amount of acquisition premium that SharpVue will now seek to recover from transportation system users. For purposes of this response, “acquisition premium” refers to the difference between purchase price and historic or net book value of the acquired assets.

**RESPONSE:**

- a) For the purposes of the reference in the Amended Application and this response, SharpVue refers to the “acquisition premium” as the difference between the price paid for a target company in a merger or acquisition and the target’s assessed market value.<sup>1</sup> The term “acquisition premium” does not apply to this transaction.
- b) As described in the response to 12(a), an “acquisition premium” does not apply to this transaction.

**SUPPLEMENTAL RESPONSE:** How the Intervenor may choose to define the term acquisition premium for its purposes is not relevant to the issues to be decided by the Commission nor reasonably calculated to lead to the discovery of admissible evidence. As explained by the Public Staff in its Response to the Village’s Motion to Hold Proceeding in Abeyance,

[A]s the Commission has already ordered existing rates to remain in effect pending a future rate case, the Public Staff does not believe it is necessary to establish rate base in this proceeding.

Without waiving this objection, the Applicants’ position is that the purchase price represents the fair market value of the asset, consistent with appraisals and standard business valuation practice, that there is no good will included in the purchase price, and that therefore there is no “acquisition premium” as that term is generally used in the transaction context. Therefore, SharpVue has performed no calculation of the difference of purchase price and historic or net book value of the acquired assets. If the Intervenor wishes to perform such calculation for whatever relevance it believes such a calculation may have, with such relevance being specifically denied, it has the information to do so.

Finally, any further response would require legal conclusions beyond the scope of permissible discovery, and therefore no further response is required.

- 13. With regards to “acquisition premium” as defined in the prior request:
  - a. Explain how SharpVue plans to treat goodwill associated with the transfer for financial accounting purposes. Please provide journal entries that illustrate how the transfer will be recorded by SharpVue.
  - b. Provide a calculation of the how the estimated acquisition premium will be allocated among the regulated and unregulated assets comprising the

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<sup>1</sup> <https://corporatefinanceinstitute.com/resources/equities/acquisition-premium/>

purchased assets, specifically including the ferry/tram, parking, and barge/tug assets.

- c. Provide a detailed calculation of the estimated acquisition premium for the Transportation Assets (separate for each business) as of December 31, 2021. Identify all documents relating to this calculation and provide copies of same (including any spreadsheets in excel format with operating functions intact).

**RESPONSE:**

a) **There is no goodwill contemplated with this transaction.**

b) **See 12(a), 12(b), and 13(a).**

c) **See 12(a), 12(b), and 13(a).**

14. Please refer to the Rebuttal Testimony of Kevin O'Donnell in Docket No. A-41, Sub 21, at Rebuttal Exhibit KWO-1. Please admit that the following from Rebuttal Exhibit KWO-1 is an accurate summary of rate base for the respective operations as of December 31, 2021. To the extent that you are unwilling or unable to make this admission, please explain in detail any disagreement with this analysis and provide SharpVue's calculation or analyses (in excel format with operating functions intact) of the rate base for the transportation assets. Identify all documents relating to this calculation or analysis.

	<b>Parking Facilities</b>	<b>Barge Facilities</b>	<b>BHI Ferry Transportation</b>
Plant in Service	\$10,225,330	\$2,765,525	\$6,737,006
Less: Accumulated Depreciation	(\$6,447,301)	(\$1,406,191)	(\$3,597,515)
Net Plant in Service	\$3,778,029	\$1,359,334	\$3,139,491
Cash Working Capital (formula approach)	\$184,012	\$87,967	\$794,304
Tax Accruals (formula approach)	(\$3,066)	(\$1,866)	(\$70,188)
Accumulated Deferred Taxes	\$0	\$0	(\$14,350)
Total Rate Base	\$3,958,975	\$1,445,434	\$3,849,258

**RESPONSE: Objection, the request refers to speculative information not in the record in the Sub 22 proceeding and not from any witness proffered by the Village in the Sub 22 proceeding. Notwithstanding the objection, SharpVue does not admit, and reserves the right to respond to any testimony submitted in the Sub 22 proceeding regarding this topic.**

15. What is SharpVue's current valuation of the Transportation Assets? Has your valuation of the transportation assets changed since the Commission's ruling on the regulatory status of the parking and barge operations in Docket No. A-41,

Sub 21? Please explain why your valuation has or has not changed. Please provide any analyses or models (in excel format with operating functions) supporting your current valuation of the transportation assets and identify all documents supporting this valuation.

**RESPONSE:** 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, as detailed in the APA. As detailed in earlier responses in this data request, the APA has not been amended since the entry of the Order in Sub 21. The current ruling under Docket No. A-41, Sub 21 does not provide sufficient detail to determine potential implications to future cash flows. As a result, we are unable to speculate about any potential valuation adjustment. Regarding a request for financial models, objection as the information is a confidential business trade secret.

**SUPPLEMENTAL RESPONSE:** SharpVue has not run any analyses or models regarding valuation since the Commission's ruling on the regulatory status of the parking and barge operations in Docket No. A-41, Sub 21, so it has no responsive documents. Subject to SharpVue's prior objection regarding business trade secret information, SharpVue will subsequently disclose if such an analysis or model is run.

### **The Parking Facilities**

16. Please describe your plans for operating the parking facilities.

**RESPONSE:** The parking facilities will be operated in a manner substantially similar to that of current ownership.

17. Please describe any plans or discussions about future changes to the existing parking assets, including improvements (e.g., expanded parking, building a parking deck, using shuttles, etc.) as well as the disposition of parking assets. Please provide any analyses of how these changes will affect parking customers.

**RESPONSE:** The parking facilities will be operated in a manner substantially similar to that of current ownership. As no material changes to parking operations are anticipated, we do not anticipate material changes for parking customers.

18. To the extent SharpVue plans to increase ferry ridership, please provide any analyses or studies on the expected impact that increased ferry ridership will have on the availability of parking spaces. Please describe any investments or improvements that SharpVue intends to make to provide additional parking spaces for the additional ferry passengers.



**RESPONSE:** SharpVue believes ferry ridership will increase in-line with historical averages. It is possible that this will increase parking utilization. We anticipate that, consistent with current operations, the parking area will only approach maximum capacity during holiday weekends and other periods of historically high parking usage. We anticipate continuing maintenance of existing facilities, consistent with BHIL's current management practices.

19. Please describe SharpVue's experience owning or operating parking facilities.

**RESPONSE:** The majority of SharpVue's real estate investments have parking lots which SharpVue owns and maintains. SharpVue will partner with existing management and employees to oversee day to day parking operations. The current management team has many years of direct experience operating parking facilities.

20. Please describe your plans to finance and fund the parking operations, to the extent those plans differ from general plan to fund ferry and tram operations.

**RESPONSE:** The acquisition of the parking and the ferry and tram operations are contemplated in the same transaction. The investment is being made at the transaction level.

21. Does you have any plans to introduce electronic ticketing or reservations for the parking facilities? If so, please describe your plans.

**RESPONSE:** We will coordinate with current management and employees to study electronic ticketing and reservation systems for parking operations.

22. Are the investors in the parking facilities the same as the investors in the ferry? If they differ, please explain how.

**RESPONSE:** Yes.

### **The Barge**

23. Please describe your plans for operating the barge.

**RESPONSE:** The barge facilities will be operated in a manner substantially similar to that of current ownership.

24. Please describe SharpVue's experience owning or operating barges, if any.

**RESPONSE:** SharpVue will partner with existing management and employees to oversee day to day barge operations. The current management team has many years of direct experience operating barges.



25. Please describe your plans to finance and fund the barge, to the extent those plans differ from general plan to fund ferry and tram operations.

**RESPONSE: The acquisition of the barge and the ferry and tram operations are contemplated in the same transaction. The investment is being made at the transaction level.**

26. Are the investors in the barge the same as the investors in the ferry? If they differ, please explain how.

**RESPONSE: Yes.**

27. Does you have any plans to introduce electronic ticketing or reservations for the barge? If so, please describe your plans.

**RESPONSE: We will coordinate with current management and employees to study electronic ticketing and reservation systems for barge operations.**

This the 14<sup>th</sup> day of February, 2023.

NEXSEN PRUET PLLC

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing SHARPVUE CAPITAL, LLC'S SECOND SUPPLEMENTAL RESPONSES TO THE VILLAGE OF BALD HEAD ISLAND'S FIFTH DATA REQUESTS has been served this day upon all parties of record in this proceeding, or their legal counsel, by electronic mail.

This the 14<sup>th</sup> day of February, 2023.

By: /s/ David P. Ferrell

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Feb 14 2023