STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. A-41, SUB 22

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Joint Application of Bald Head Island Transportation, Inc., and Bald Head Island Ferry Transportation, LLC, for Approval of Transfer of Common Carrier Certificate to Bald Head Island Ferry Transportation, LLC, and Permission to Pledge Assets	))))))	ORDER ON MOTION TO HOLD PROCEEDING IN ABEYANCE

BY THE COMMISSION: On February 16, 2022, the Village of Bald Head Island (VBHI or Village) filed with the Commission in Docket No. A-41, Sub 21 (Sub 21), a Complaint and Request for Determination of Public Utility Status (Complaint) against Bald Head Island Transportation, Inc. (BHIT), and Bald Head Island Limited, LLC (BHIL). The Complaint requested that the Commission determine whether BHIL's parking operations located adjacent to Deep Point Marina and its tugboat and barge operations were subject to the Commission's jurisdiction and regulatory authority.

On July 14, 2022, BHIT, BHIL, and Bald Head Island Ferry Transportation, LLC (BHIFT, and collectively with BHIT and BHIL, the Applicants), a wholly owned subsidiary of Pelican Legacy Holdings, LLC (Pelican), and managed by SharpVue Capital, LLC (collectively with Pelican, SharpVue), filed with the Commission in Docket No. A-41, Sub 22 (Sub 22), an application pursuant to N.C. Gen. Stat. § 62-111 for approval (1) to transfer to BHIFT BHIT's Common Carrier Certificate, and (2) for BHIFT or SharpVue to pledge assets and borrow/issue debt pursuant to N.C. Gen. Stat. §§ 62-160 and 62-161 as may be necessary to finance the transaction.

On August 24, 2022, the Commission issued an Order Scheduling Hearing, Establishing Procedural Deadlines, and Requiring Public Notice, which among other things set the expert witness hearing for Tuesday, January 17, 2023.

On December 21, 2022, the Commission issued an Order Holding Proceeding in Abeyance, which held this proceeding in abeyance pending a final decision in the Sub 21 docket. On December 30, 2022, the Commission issued an Order Ruling on Complaint and Request for Determination of Public Utility Status (Order Ruling on Complaint) in the Sub 21 docket. On January 20, 2023, the Commission issued an Order Rescheduling Hearing and Establishing Additional Procedures, which among other things rescheduled the expert witness hearing in Sub 22 to begin on Tuesday, March 7, 2023.

On January 24, 2023, the Applicants filed an amended application (Application), as well as amended direct testimony supporting the Application.

On January 30, 2023, BHIT, BHIL, and SharpVue filed notice of appeal of the Commission's December 30, 2022 Order Ruling on Complaint in the Sub 21 docket.

On February 3, 2023, VBHI filed a Motion to Hold Proceeding in Abeyance and Request for Expedited Ruling on the Motion (Motion to Hold Proceeding in Abeyance).

On February 6, 2023, the Commission issued an Order Requiring Responses to Motion to Hold Proceeding in Abeyance. On February 8, 2023, BHIT and BHIL, SharpVue, and the Public Staff, each filed a response or supplemental response to the Motion to Hold Proceeding in Abeyance. On February 9, 2023, VBHI filed a Reply Regarding Motion to Hold Proceeding in Abeyance.

DISCUSSION AND CONCLUSIONS

VBHI argues that a stay is warranted because: (1) to do otherwise unnecessarily risks wasting the Commission's and the parties' resources where the appellate courts could later issue an opinion which impacts the Commission's transfer determination, causing the parties to relitigate the issues pending before the Commission; (2) the Commission could base its approval of the transfer on a misapprehension of its authority over the assets and, if the appellate court grants some relief to Applicants, it may be impossible to unwind the transaction if the transfer has already occurred; (3) uncertainties created by the appeal make it difficult for the Commission to weigh, under its three-part balancing test, whether the proposed utility transfer is justified by the public convenience and necessity; (4) the Commission's ability to impose conditions upon the parties may be later impaired; and (5) Applicants will not suffer any unfair prejudice when abeyance results from Applicants' decision to contest the Commission's jurisdiction.

VBHI also highlights that BHIT and BHIL have initiated "parallel litigation," filing a Complaint on January 19, 2023, in the Superior Court of Brunswick County seeking declaratory and quiet title judgments against VBHI over the Village's right of first refusal (ROFR). VBHI states that this parallel litigation will necessarily delay closing for an additional, and unknown, amount of time.

BHIT and BHIL respond that VBHI seeks to delay the transfer proceeding until the resolution of an appeal and that the resolution of the appeal will have no practical effect on the question at issue in Sub 22: who should own and operate the ferry, parking, and barge assets. BHIT and BHIL argue that SharpVue is merely stepping into their shoes, ownership has no bearing on regulatory jurisdiction, and the issues in Sub 22 are not dependent upon the Court of Appeals decision in Sub 21.

BHIT and BHIL also argue that the Commission is fully empowered and capable of deciding the pending transfer matter consistent with its December 30, 2022 Order Ruling on Complaint. BHIT and BHIL state that "[i]f the approval is ultimately deemed to not have been needed, there will have been no harm in asking for and receiving it." If the Order is affirmed, BHIT and BHIL argue, the Commission will have the authority it determines is appropriate; if reversed, it is no different than when a court determines that an agency's actions were *ultra vires* in nature when made. BHIT and BHIL assert that the regulatory process should not stop while the appeal runs its course. BHIT and BHIL ask

that the Commission maintain its ordinary process for the review of a transfer of a utility certificate as part of a transaction to sell utility assets, and assert that allowing the transaction to fail, when Applicants are ready, willing, and able to proceed, would have an adverse, substantial, and immediate impact on their rights.

SharpVue states that an indefinite delay of a decision in this docket is likely to preclude the proposed sale. SharpVue emphasizes that the issue of ownership should be resolved "while financing is available and current operational circumstances can be maintained," and that delay would send a chilling message to its investors, who will look elsewhere due to "deal fatigue."

The Public Staff takes no position on the motion but asks that the Commission consider any impacts "that proceeding with, or delaying, the transfer proceeding may have on customers." The Public Staff states that it continues to face time and resource constraints, and that staying the proceeding may avoid wasting its resources but might also forestall its investigation and require a less efficient restarting of the investigation.

VBHI replies that BHIT and BHIL claim no cognizable injury and that while SharpVue offers that its investors might suffer from "deal fatigue," it has not claimed that financing would be unavailable if the transfer is delayed and has not disputed that the transfer will otherwise be delayed by the parallel litigation pending in the Brunswick County Superior Court.

After careful consideration of the foregoing and the entire record, the Commission finds good cause to deny the Motion to Hold the Proceeding in Abeyance. The December 30, 2022 Order Ruling on Complaint currently provides jurisdiction to the Commission to make the transfer determination for all the assets at issue. The Commission is not persuaded that delaying the proceeding serves judicial economy. The Commission determines that it is capable of moving forward in due course to decide matters before it in a timely manner. The Commission also notes that the Public Staff, who represent the interests of the using and consuming public, do not take a position on the motion.

IT IS, THEREFORE, ORDERED that the Motion to Hold the Proceeding in Abeyance is denied.

ISSUED BY ORDER OF THE COMMISSION.

This the 13th day of February, 2023.

NORTH CAROLINA UTILITIES COMMISSION

A. Shonta Dunston

A. Shonta Dunston, Chief Clerk