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March 15, 2024

Ms. A. Shonta Dunston
Chief Clerk
NC Utilities Commission
430 N. Salisbury Street
Room 5063
Raleigh, NC 27603

Re: In the Matter of
Study of Rates and Charges of Passenger Ferry Public Utilities
NCUC Docket A-100 Sub 1
Bald Head Island Transportation, Inc.'s Reply Comments

Dear Ms. Dunston:

Attached hereto for filing in the above referenced docket are Bald Head Island Transportation, Inc.'s ("BHIT") Reply Comments.

If you should have any questions pertaining to this filing, please do not hesitate to contact me.

Thanking you in advance for your assistance in this matter.

Sincerely,

/s/ M. Gray Styers, Jr.

M. Gray Styers, Jr.

pbb

Enclosure

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Ms. Shonta A. Dunston
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Copy to: Christopher Ayers – NC Public Staff
James Bernier – NC Public Staff
Zeke Creech – NC Public Staff
Lucy Edmondson – NC Public Staff
Jessica Heironimus – NC Public Staff
Erica Jones – NC Public Staff
Parties and Counsel of Record

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. A-100, SUB 1

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Study of Rates and Charges of Passenger Ferry Public Utilities)))))	BALD HEAD ISLAND TRANSPORTATION, INC.'S REPLY COMMENTS
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BALD HEAD ISLAND TRANSPORTATION, INC. ("BHIT"), by and through its undersigned counsel, provides these Comments in the above-referenced docket in reply to the Initial Comments of the Public Staff and the Village of Bald Head Island.

I. Absence of statutory framework for the regulation of ferries

A striking observation about all of the Initial Comments filed in this docket is the absence of any statutory framework for the regulation of passenger ferries. There is no reference to "boats" or "ferries" outside the Definitions found in N.C.G.S. § 62-3, and specifically the definition of "Common Carrier" cited in the Public Staff Comments, footnote 13. The initial comments discuss—by way of comparison or contrast—the statutory frameworks for electric service, bus service, household goods movers, telecommunications, etc., but there are no statutes specifically applicable to passenger ferries.

The Public Staff's Comments quotes from N.C.G.S. § 62-259 in an attempt to provide a "context for transportation utilities" (Public Staff Comments p. 18), but that statute is only applicable to "motor carriers," which are "common carrier[s] by motor vehicle[s]" (N.C.G.S. § 62-3(17)), which are those "used upon the highways within the

State” (N.C.G.S. § 62-3(18))—not passenger ferries. Passenger ferries are not motor carriers, and therefore there is no statutory “context” for their regulation.

The General Assembly’s silence on *how* passenger ferries are to be regulated and the absence of any statutes specifically governing their regulation creates a vacuum within which the Commission may exercise considerable latitude in determining how and to what extent passenger ferries, can, should, and need to be regulated.¹

The only legislation by the General Assembly regarding passenger ferries in recent years was Session Law 2017-120, codified as Article 29 of Chapter 160A. That law provides a framework for the creation of a Ferry Transportation Authority to own and operate passenger ferries such as the Bald Head Island ferry. *See* Session Law 2017-120, Section 6.(a). That 2017 Session law expressly exempts such ferry operations from regulation by the Commission, *see* N.C.G.S. § 62-3(23)m, and, in fact, authorizes the transfer of all assets and franchise rights to operate such a ferry transportation system without further action by the Commission. *See* Session Law 2017-120, Section 6.(a).

II. Comparisons to customers of other regulated utilities are inapplicable.

The reference in the Village’s Initial Comments, at page 3, to “over 782,000 persons” and characterization of BHIT as “one of the largest utilities in the state” are misleading, but the true facts also highlight the difference between BHIT’s services from

¹ A limitation on this latitude is the boundary of the Commission’s legal jurisdiction to regulate those ancillary services that are not “public utilities” and therefore fall completely outside the scope of North Carolina General Statutes Chapter 62 – the issue currently before the North Carolina Court of Appeals in the appeal from Docket No. A-41, Sub 21.

those of other regulated utilities.² While BHIT does carry that number of passengers on 391,000 round-trips over the course of the year, the fact is that **it serves an island with a population of 268 residents**,³ according to the 2020 US Census data, which is attached hereto as Appendix 1. (emphasis added) That data also highlights the very unusual demographics of the island residents. See

https://data.census.gov/profile/Bald_Head_Island_village,_North_Carolina?g=160XX00US3703150#populations-and-people .

According to the census data, all the island residents are over the age of 50, and the vast majority are over the age of 65. If the public witnesses who spoke at the hearing in Docket A-40, Sub 22 are indicative, they have moved to the island from other locations, often after retirement. *See, e.g.* testimony of Rocky Rausch (sold house in Cape Cod and moved to BHI; Tr. V. 1, p. 79); of Elizabeth Stephens (6 yrs. ago; *Id.* at 23); of Rex Condrey (8 yrs. ago; *Id.* at 93); of Scott Mears (8 yrs. ago; retired; *Id.* at 65); of Kurt Haglund (2 years ago; *Id.* at 34); of John Fisher (after retiring from UPS; *Id.* at 16-17). At the time residents chose to move there, they knew that they were choosing to live on an island to and from which transportation would be provided by ferry, their own private boat, or water taxi. Upon information and belief, none, or almost none, moved to the island *because* of their employment or in order to find jobs. (A group size and profile very different from the 150,000 customers of Dominion Energy receiving electric utility service in northeastern North Carolina.)

² Total revenue for the ferry and tram operations to all customers totaled less than \$7 million in 2023.

³ Therefore, less than 300 people vote in Village of Bald Head Island municipal elections.

There are currently 1050 total housing units on the island according to the census data. (BHIT believes the total number of residential units is approximately 1425.) The difference between year-round residential population and the number of housing units is attributable to the fact that most of the houses are either second homes and/or vacation rental properties. Those owning second homes on the island have chosen to purchase on Bald Head Island rather than at other oceanfront communities. Many of the ferry passengers are vacationers (which is why ridership and baggage volumes spike in the summer months) who choose to visit Bald Head Island rather than other vacation destinations, knowing (or perhaps attracted by the fact that) their vacation would be on an island.

In addition, many ferry riders are “day-trippers” – those who enjoy spending the day on the island and visiting locations such as the Old Baldy lighthouse or participating in the activities of the Bald Head Island Conservancy.

And, of course, many of BHIT’s ridership are employees and contractors who live on the mainland and work on the island to provide services for the island full-time residents, second-home owners, vacationers, and visitors. The Bald Head Island Club is the largest employer. New construction and renovations of vacation homes continues and is accelerating. These employee and contractor passengers who live in Southport, in Brunswick County, and beyond are also significant constituents of BHIT’s ferry service.

BHIT values and appreciates all of its customers, strives to provide the highest level of customer satisfaction, and, like any regulated utility, is committed to safe, reliable, and affordable ferry passenger service. The demographic facts in these Reply Comments are highlighted not to diminish the importance of the ferry service BHIT provides but (1) to

negate the comparison of BHIT's ferry to the electric utility service provided Dominion Energy North Carolina as implied by the Village's Initial Comments at page 3, (2) to support the position that passenger ferries can and should be regulated differently from other utilities in the state such as electric service, (3) to suggest that the passenger ferry service provided by BHIT might not be as different from the "leisure service" ferries (and thus justifying a different regulatory treatment) as the Public Staff proposes in its Initial Comments at pages 19-20, and (4) to contend that the time, energy, and resources that the Public Staff and the Commission expend on matters related to the Bald Head Island ferry may not be commensurate with the actual scope and gravity of the contested issues and the need for stringent regulation.

BHIT appreciates the Commission's consideration of these Reply Comments.

Respectfully submitted this 15th day of March, 2024.

FOX ROTHSCHILD LLP

/s/ M. Gray Styers, Jr.

M. Gray Styers, Jr.

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Counsel for

Bald Head Island Transportation, Inc.

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this day served the foregoing Reply Comments of Bald Head Island Transportation, Inc. on parties and counsel of record as listed in the Commission's Service List and NC Public Staff by electronic mail and / or by depositing a copy of same in the U. S. Mail, with appropriate First Class postage affixed.

This 15th day of March, 2024.

/s/ M. Gray Styers, Jr.

M. Gray Styers, Jr.

3/15/24, 8:20 AM

Bald Head Island village, North Carolina - Census Bureau Profile

A-100 SUB 1

Place

Bald Head Island village, North Carolina

Bald Head Island village, North Carolina is a city, town, place equivalent, and township located in North Carolina.

// United States / North Carolina / Bald Head Island village, North Carolina

☐ Display Sources**Populations and People**

Total Population

268

P1 | 2020 Decennial Census

Education

Bachelor's Degree or Higher

94.9%

S1501 | 2022 American Community Survey 5-Year Estimates

Housing

Total Housing Units

1,050

H1 | 2020 Decennial Census

Families and Living Arrangements

Total Households

76

DP02 | 2022 American Community Survey 5-Year Estimates

Income and Poverty

Median Household Income

\$158,750

S1901 | 2022 American Community Survey 5-Year Estimates

Employment

Employment Rate

18.8%

DP03 | 2022 American Community Survey 5-Year Estimates

Health

Without Health Care Coverage

0.0%

S2701 | 2022 American Community Survey 5-Year Estimates

Race and Ethnicity

Hispanic or Latino (of any race)

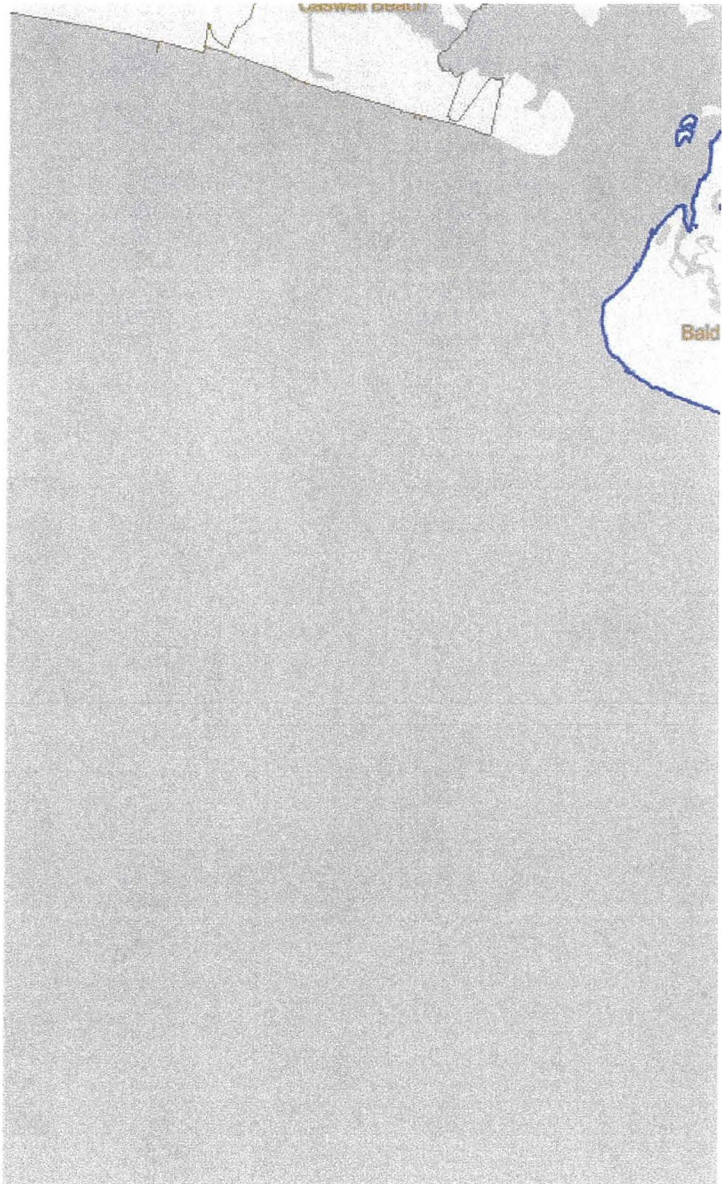
9

P9 | 2020 Decennial Census

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Bald Head Island village, North Carolina Reference Map



Source: U.S. Census Bureau

Populations and People

Age and Sex

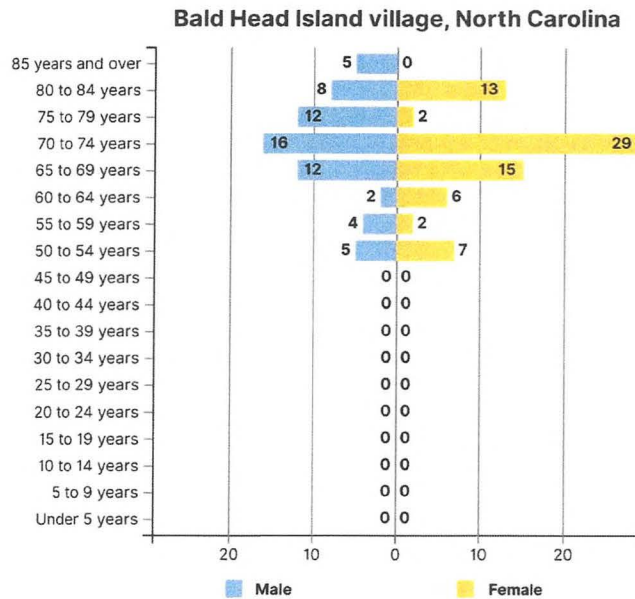
72.6 ± 1.1
Median Age in Bald Head Island village, North Carolina

39.2 ± 0.2
Median Age in North Carolina

S0101 | 2022 American Community Survey 5-Year Estimates

Population Pyramid: Population by Age and Sex
in Bald Head Island village, North Carolina

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S0101 | 2022 ACS 5-Year Estimates Subject Tables

Ancestry

2.9% ± 2.4%

Italian Ancestry in Bald Head Island village, North Carolina

3.1% ± 0.1%

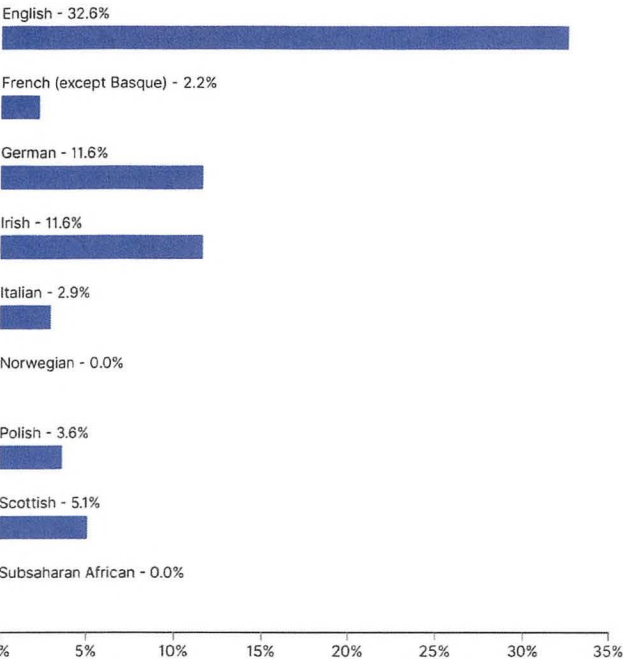
Italian Ancestry in North Carolina

DP02 | 2022 American Community Survey 5-Year Estimates

Ancestry

in Bald Head Island village, North Carolina

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DP02 | 2022 American Community Survey 5-Year Estimates

Language Spoken at Home

2.9% ± 3.0%
Language Other Than English Spoken at Home in Bald Head Island village, North Carolina

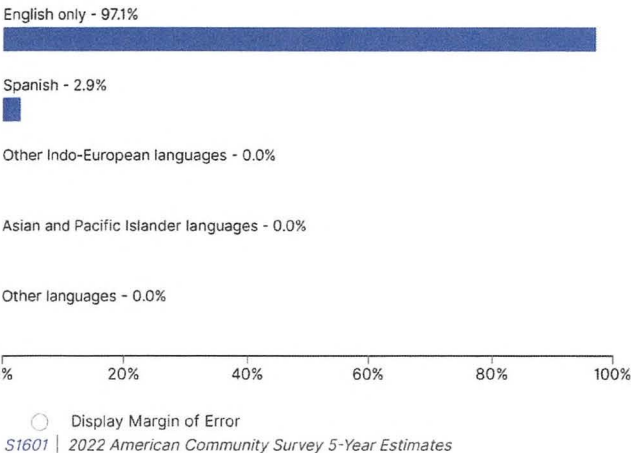
12.7% ± 0.2%
Language Other Than English Spoken at Home in North Carolina

S1601 | 2022 American Community Survey 5-Year Estimates

Types of Language Spoken at Home

in Bald Head Island village, North Carolina

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S1601 | 2022 American Community Survey 5-Year Estimates

Native and Foreign Born**1.4%** $\pm 2.2\%$

Foreign Born population in Bald Head Island village, North Carolina

8.6% $\pm 0.2\%$

Foreign Born population in North Carolina

DP02 | 2022 American Community Survey 5-Year Estimates

Foreign Born Population

in Bald Head Island village, North Carolina

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Naturalized U.S. citizen - 0.0%

Not a U.S. citizen - 100.0%

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DP02 | 2022 American Community Survey 5-Year Estimates

Older Population**81.2%** $\pm 10.7\%$

65 Years and Older in Bald Head Island village, North Carolina

17.4% $\pm 0.1\%$

65 Years and Older in North Carolina

DP05 | 2022 American Community Survey 5-Year Estimates

Older Population by Age

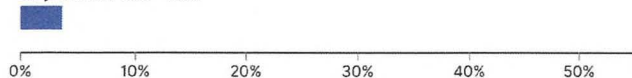
in Bald Head Island village, North Carolina

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65 to 74 years - 52.2%

75 to 84 years - 25.4%

85 years and over - 3.6%

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DP05 | 2022 American Community Survey 5-Year Estimates

Residential Mobility**1.4%** $\pm 2.1\%$

Moved From a Different State in the Last Year in Bald Head Island village, North Carolina

3.2% $\pm 0.1\%$

Moved From a Different State in the Last Year in North Carolina

S0701 | 2022 American Community Survey 5-Year Estimates

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Bald Head Island village, North Carolina - Census Bureau Profile

A-100 SUB 1

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Residential Mobility in the Last Year

in Bald Head Island village, North Carolina

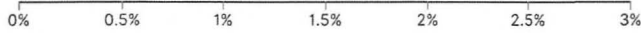
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Moved within the same county - 0.0%

Moved from different county, same state - 2.9%

Moved from a different state - 1.4%

Moved from abroad - 0.0%

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S0701 | 2022 American Community Survey 5-Year Estimates

Veterans**19.6% ± 9.3%**

Veterans in Bald Head Island village, North Carolina

7.5% ± 0.2%

Veterans in North Carolina

S2101 | 2022 American Community Survey 5-Year Estimates

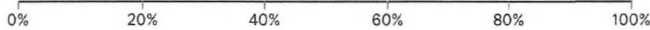
Veterans by Sex

in Bald Head Island village, North Carolina

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Male - 96.3%

Female - 3.7%

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S2101 | 2022 American Community Survey 5-Year Estimates