

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

Docket No. A-41, Sub 21

VILLAGE OF BALD HEAD ISLAND,)	
Complainant,)	
)	
v.)	
)	MOTION TO JOIN
BALD HEAD ISLAND)	NECESSARY PARTY
TRANSPORTATION, INC. and BALD)	
HEAD ISLAND LIMITED, LLC,)	
Respondents.)	

Pursuant to Rules R1-5(f) and R1-17(a)(3) of the Rules of the North Carolina Utilities Commission (the “Commission”) and Rules 15, 19(b), and 21 of the North Carolina Rules of Civil Procedure, the Village of Bald Head Island (the “Village”), by and through its undersigned counsel, hereby moves for an order joining SharpVue Capital, LLC, as a necessary party to this proceeding. In support of this motion, the Village shows the following:

1. On February 16, 2022, the Village filed its Complaint and Request for Determination of Public Utility Status (“Complaint”) seeking relief against the Respondents Bald Head Island Transportation, Inc. (“BHIT”) and Bald Head Island Limited, LLC (“Limited”) (collectively, “Respondents”).

2. The Complaint seeks resolution of a dispute concerning the regulatory nature of the Deep Point Parking Facilities and Barge, each as defined in the Complaint. The parking facilities and barge are each owned by Limited—an entity affiliated with the developer of the Island that is currently unregulated by the Commission—but are essential to, and a component of, the regulated public utility ferry service provided by BHIT.

3. The Complaint seeks relief against Respondents for their failure to adhere to the regulatory requirements set forth in Chapter 62 and the Commission's rules and regulations applicable to operation of the parking facilities and barge as well as declaratory relief regarding the regulatory nature of the parking and barge assets and the status of such as public utility property.

4. On May 31, 2022, SharpVue Capital, LLC ("SharpVue") announced that it had entered into an agreement with Limited to purchase, in addition to the ferry assets currently subject to the regulatory authority, the parking facilities and barge. Attached hereto as **Exhibit A** is a press release issued by SharpVue and Limited announcing the transaction. As of this date, notwithstanding the pendency of this proceeding, neither SharpVue nor Limited has formally apprised the Commission of the pendency of the sale of the assets at issue in this proceeding nor have they filed for approval of the transfer of the assets as would be required if the Village's Complaint is granted.¹

5. SharpVue is registered with the North Carolina Secretary of State's office as a North Carolina limited liability company, with its principal place of business at 3700 Glenwood Ave, Suite 530, Raleigh, NC 27612. On information and belief, SharpVue is a private equity firm that operates real estate and private credit and equity funds on behalf of institutional investors and qualified individuals. SharpVue's regulatory counsel is noted on the Certificate of Service to this filing and is being served with a copy of this motion.

¹ It bears noting that Village possesses contractual rights with respect to the Transportation System (including the assets at issue in this proceeding) under a Right of First Refusal Agreement ("ROFR") between the Village, Transportation, and Limited dated August 21, 1999 and recorded at Book 1329, Page 932 of the Brunswick County Registry. See Letter of Peter Quinn, Mayor, Village of Bald Head Island, to Bald Head Island Transportation, Inc. and Bald Head Island Limited, LLC dated Jan. 13, 2022, N.C.U.C. Docket No. A-41 (Company File). The Village expressly reserves and does not waive its rights under the ROFR.

6. On June 17, 2022, the Commission issued its Order Scheduling Hearing and Establishing Hearing Procedures. The hearing in this matter is scheduled for October 10, 2022.

7. North Carolina Rule of Civil Procedure 19(b) provides that “when a complete determination of [a] claim cannot be made without the presence of other parties, the court shall order such other parties summoned to appear in the action.” An absent party is deemed a necessary party when the court cannot “determine the claim before it without prejudicing the rights of the [absent party].” *Ludwig v. Hart*, 40 N.C. App. 188, 190, 252 S.E.2d 270, 272 (1979). “The term ‘necessary parties’ embraces all persons who have or claim material interests in the subject matter of a controversy, which interests will be directly affected by an adjudication of the controversy.” *Dunn v. Cook*, 204 N.C. App. 332, 336, 693 S.E.2d 752, 755 (2010). Necessary parties *must* be joined in an action. *Long v. City of Charlotte*, 306 N.C. 187, 212–13, 293 S.E.2d 101, 117 (1982).

8. Rule 21 of the North Carolina Rules of Civil Procedure provides that “on such terms as are just, parties may be dropped or added by order of the court on motion of any party . . . at any stage of the action.”

9. Consistent with these principles, Section 1-260 of the Declaratory Ruling Act requires that “all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceedings.”

10. SharpVue is a necessary party with regards to the claims for declaratory relief in the Complaint because, due to its contract to purchase the parking facilities and barge, it is “vitally interested” in the subject of the controversy, and “a valid judgment

cannot be rendered in the action completely and finally determining this controversy” without SharpVue’s presence as a party. *Long*, 306 N.C. at 212–13, 293 S.E.2d at 117.

11. A contractual right is a “property interest.” *State ex rel. Utilities Comm’n v. Buck Island, Inc.*, 162 N.C. App. 568, 580, 592 S.E.2d 244, 252 (2004) (holding that “[c]ontract rights are a form of property” (quoting *United States Trust Co. v. New Jersey*, 431 U.S. 1, 19 n.16 (1977))). Indeed, North Carolina courts have repeatedly held that a contractual right creates a vested right that is subject to protection against unconstitutional impairment. *See, e.g., N.C. Assn. of Educators, Inc. v. State of North Carolina*, 368 N.C. 777, 786 S.E.2d 255 (2016) (repeal of career status teachers’ benefits by General Assembly resulted in unconstitutional impairment of teachers’ rights due to contractual nature of the rights); *Faulkenbury v. Teachers’ and State Employees’ Retirement System of North Carolina*, 345 N.C. 683, 483 S.E.2d 422 (1997) (accord; disability benefits under state employees’ retirement system); *Oglesby v. Adams*, 268 N.C. 272, 150 S.E.2d 383 (1966) (accord; contractual rights under oyster bed lease).

12. Based on the foregoing, SharpVue’s contractual rights constitute a “property interest” cognizable under the law in the assets at issue in this proceeding. It is evident that the Commission’s determination could impact and “directly effect” that property interest. If the Commission determines that the parking facilities are subject to the Commission’s supervision, SharpVue’s property interest in those assets will be impacted because the ruling will alter the legal status of the assets: the assets would be encumbered by utility regulations and requirements—including, among other things, the requirement to seek the approval of the Commission before acquiring an ownership interest. *See* N.C. Gen. Stat. § 62-32(a) (“[T]he Commission shall have general supervision over the . . . service

rendered by all public utilities in this State.”). SharpVue would no longer be acquiring assets that are free and clear of the Commission’s supervision. The assets would become exposed to potential ratemaking restrictions, which would impact the valuation of that property, the revenues that might be derived from the property, and the potential for resale of the assets. Importantly, the assets would be exposed to potential use restrictions, which could prevent SharpVue from redeveloping the parking lot for non-utility purposes (e.g., as commercial property) or selling it (absent Commission approval).

13. Likewise, to the extent that the barge is subject to the regulatory authority of the Commission, that decision would impact the valuation of the assets, the revenues that might be derived for providing a regulated barge service, and the market for subsequent disposition of the assets.

14. Further, SharpVue possesses information that has direct relevance to the proceeding at hand, which the Village has a right to pursue through normal channels of discovery recognized by the Commission (or, if SharpVue is not added as a party, through third-party discovery).

15. The Commission has routinely joined necessary parties in appropriate circumstances. *See, e.g.*, Order Joining Party and Requiring Answer, N.C.U.C. Docket No. W-1160, Sub 13 (March 9, 2012) (order joining party to contract to dispute concerning entitlement to wastewater capacity); Order Joining Necessary Party and Requiring Additional Verified Information, N.C.U.C. Docket No. G-40, Sub 136 (July 11, 2017) (order joining new owner of sewerage customer to proceeding seeking permission to discontinue utility service); Order Joining Additional Party, N.C.U.C. Docket No. W-965, Sub 3 (April 15, 2004) (order joining private equity firm that was ultimate parent of

purchasing entity as necessary party to transfer proceeding). Certainly if SharpVue moves forward to acquire the parking facilities and barge during the pendency of this proceeding it would have an indisputable interest in the issues at stake such that the Commission could not afford full relief in its absence.

16. The circumstances surrounding ownership, use, authority and intention with respect to the various facilities and entities associated with transportation of the public to and from Bald Head Island are dynamic and in a significant state of flux. At a minimum, SharpVue would have been aware of the pendency of this proceeding when it entered into a purchase agreement to acquire the transportation assets, so it would have known that various legal issues about the regulatory status of a portion of the assets in issue were being actively contested before the Commission. In a somewhat analogous situation, the Commission involuntarily ordered the joinder of a private equity firm, Blackrock, Inc., as a necessary party to proceeding seeking approval of the transfer of a utility franchise to an entity that would be controlled by Blackrock. Order Joining Additional Party, N.C.U.C. Docket No. W-965, Sub 3, at 6 (July 11, 2017). In its order, the Commission noted its interest in “know[ing] who is in control of the operations of each utility.” *Id.*

17. “There is no more liberal canon in the rules than that leave to amend ‘shall be freely given when justice so requires.’” *Vaughan v. Mashburn*, 371 N.C. 428, 434, 817 S.E.2d 370, 374 (2018) (quoting Wilson, Civil Procedure § 15-3, at 15-5). North Carolina courts have identified only five bases for denying a motion to amend: undue delay, undue prejudice, bad faith, futility of amendment, and repeated failure to cure defects by previous amendments. *Rutherford Elec. Membership Corp. v. 130 of Chatham, LLC*, 236 N.C. App. 86, 93, 763 S.E.2d 296, 301 (2014).

18. There are no grounds for denying the Village's motion to add a necessary party. The Village promptly moved to join SharpVue after discovering that SharpVue has publicly stated its intent to proceed with the sale of the parking lot and the barge despite this pending proceeding. *See Jennifer Allen, With Sale, Bald Head Island Ferry to Remain Privately Owned*, CostalReview.org (June 22, 2022) (SharpVue stating that the assets would be "broken up" into nonregulated and regulated portions and that "*closing on everything but the ferry and trams should take place in the next 60 to 90 days*" (emphasis added)).² Accordingly, based on SharpVue's own public statements there is the likelihood that SharpVue and Limited might seek to move forward on the transfer of the assets notwithstanding the pendency of this proceeding.

19. Limited and BHIT will not be unduly prejudiced by joinder of SharpVue. Limited and BHIT have only very recently commenced discovery and there is more than three months until the hearing in this matter. Moreover, to the extent that the addition of SharpVue causes any procedural delays, the delays would not be "undue" because SharpVue is an indispensable party to this proceeding. *Cf.* Order Ruling on Pending Motions, N.C.U.C. Docket No. W-354, Sub 236, at 13 (April 1, 2002) (Commission declining to grant motion to dismiss for failure to join necessary party due to failure of movant to raise issue prior to the rendering of "substantive decisions on most of the important issues").

20. The joinder request is not futile. As explained above, SharpVue has publicly stated that it intends to exercise its contractual right to acquire the parking lot and the barge

² Available at <https://coastalreview.org/2022/06/bald-head-island-ferry-to-remain-privately-owned/>.

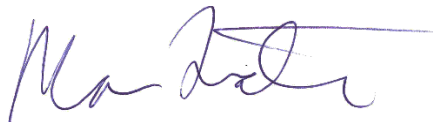
from Limited. This property interest would be impacted by a ruling that the parking lot and the barge are subject to the Commission's supervision, as such a ruling will alter the legal status of the assets it is acquiring.

21. Counsel for the Village has conferred with counsel for BHIT and Limited about this motion and is authorized to represent that BHIT and Limited do not consent to, and intend to oppose, this motion. Counsel for SharpVue has also communicated that Sharpvue would oppose this motion.

WHEREFORE, the Village respectfully moves to join SharpVue Capital, LLC as a necessary party respondent to this proceeding.

This 8th day of July, 2022.

By:



Marcus W. Trathen
Craig D. Schauer
BROOKS, PIERCE, McLENDON,
HUMPHREY & LEONARD, L.L.P.
Post Office Box 1800
Raleigh, North Carolina 27602
Telephone: (919) 839-0300
Facsimile: (919) 839-0304
mtrathen@brookspierce.com
cschauer@brookspierce.com

Jo Anne Sanford
SANFORD LAW OFFICE, PLLC
Post Office Box 28085
Raleigh, North Carolina 27611-8085
Telephone: (919) 210-4900
sanford@sanfordlawoffice.com

Attorneys for Village of Bald Head Island

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing MOTION TO JOIN NECESSARY PARTY has been served this day upon all parties of record in this proceeding, or their legal counsel, by electronic mail or by delivery to the United States Post Office, first-class postage pre-paid.

M. Gray Styers, Jr.
Brad Risinger
Fox Rothschild LLP
434 Fayetteville Street, Suite 2800
Raleigh, North Carolina 27601
GStyers@foxrothschild.com
BRisinger@foxrothschild.com

Attorneys for BHIT and Limited

David P. Ferrell
Nexsen Pruet PLLC
4141 Parklake Avenue, Suite 200
Raleigh, North Carolina 27612
dferrell@nexsenpruet.com

Attorney for SharpVue

Daniel C. Higgins
Burns Day & Presnell, P.A.
P.O. Box 10867
Raleigh, NC 27605
dhiggins@bdppa.com

Attorney for BHI Club

Chris Ayers
Lucy Edmondson
Elizabeth Culpepper
Zeke Creech
North Carolina Utilities Commission
Dobbs Building
430 North Salisbury Street
5th Floor, Room 5063
Raleigh, NC 27603-5918
chris.ayers@psncuc.nc.gov
lucy.edmondson@psncuc.nc.gov
elizabeth.culpepper@psncuc.nc.gov
zeke.creech@psncuc.nc.gov

*North Carolina Utilities Commission
Public Staff*

Jo Anne Sanford
SANFORD LAW OFFICE, PLLC
Post Office Box 28085
Raleigh, North Carolina 27611-8085
sanford@sanfordlawoffice.com

Attorney for Village

This the 8th day of July, 2022.

By: /s/ Craig D. Schauer

EXHIBIT A

PRESS RELEASE

FOR IMMEDIATE RELEASE

CONTACT: Chad Paul
Bald Head Island Limited, LLC
910-457-7358
cpaul@bhisland.com

CONTACT: Lee Roberts
SharpVue Capital, LLC
919-890-0517
lee.roberts@sharpvuecap.com

**Bald Head Island Limited, LLC and SharpVue Capital, LLC
Announce Signing of Asset Sale/Purchase Agreement**

Bald Head Island, NC (May 31, 2022) - Bald Head Island Limited, LLC ("Limited") has executed a definitive agreement to sell substantially all of the remaining Mitchell Family operations and associated real estate assets relating to the Island to SharpVue Capital, LLC ("SharpVue"). The \$67.7 million transaction includes \$56 million for the regulated Ferry & Tram System, and the non-regulated Tug & Freight Barge operation, and Deep Point Parking facility in Southport. The acquisition of the regulated Ferry & Tram System is tied to approval of ownership transfers by the North Carolina Utilities Commission.

"The George P. Mitchell family established and grew these infrastructure operations and assets to aid the Island's development and this agreement transitions them to a reputable and experienced owner and operator with deep ties to North Carolina," said Chad Paul, CEO of Limited. "Our team is committed to ensuring a smooth and seamless transition, for the benefit of islanders, employees, and the greater community," said Paul.

"We recognize the responsibility of operating critical infrastructure in a safe, reliable, and cost-effective manner," said Lee Roberts, managing partner of SharpVue. Roberts emphasized, "We plan to continue the legacy of stewardship and high-quality service the Mitchells have established, and we're pleased that the excellent employees and long-standing management team will remain in place to ensure seamless continuity of day-to-day operations."

About Bald Head Island

Bald Head Island is a ferry-accessed community located two miles off the coast of Southport, NC. Transportation on the island is restricted to trams, golf carts, bicycles, and pedestrian traffic. Of the island's 12,000 acres, 10,000 acres will remain undeveloped. To learn more about the island, visit baldheadisland.com.

About SharpVue Capital, LLC

SharpVue Capital is based in Raleigh, N.C., and operates private [real estate](#) and [private credit and equity](#) funds on behalf of institutional investors and qualified individuals. For more information, visit sharpvuecapital.com.