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October 10, 2022

Via Electronic Filing

Shonta Dunston, Chief Clerk
North Carolina Utilities Commission
4325 Mail Service Center
Raleigh, NC 27699-4300

Re: Docket No. A-41, Sub 21
Witness Summaries

Dear Ms. Dunston:

Attached for filing on behalf of the Village of Bald Head Island in the above-referenced proceeding are summaries of the pre-filed direct and rebuttal testimony of the following witnesses:

- Kevin O'Donnell
- Dr. Julius Wright
- Scott Gardner

Please note that we are separately filing a Confidential Version of the O'Donnell summaries as they contain information that has been designed as such by one or more parties to this proceeding. We ask that the Confidential Versions be treated as confidential and proprietary by the Commission pursuant to its customary practices and procedures for such information.

Should any questions arise in connection with this matter, please do not hesitate to contact this office.

Very truly yours,

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cc: All parties

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Oct 10 2022

**Summary of the Direct Testimony of Kevin O'Donnell
On Behalf of the Village of Bald Head Island**

My direct testimony summarizes my review of financial information relating to the ferry, parking, and barge departments operated under the control of Bald Head Island Limited, LLC, and provides an assessment of the extent to which the currently unregulated services (parking and barge) are providing contribution to the regulated services (ferry).

I found that the ferry is consistently showing significant annual financial losses,

[BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

Although I do not know why the ferry division has not filed a rate case, in my direct testimony, I offered two theories. First, [BEGIN AEO CONFIDENTIAL], [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. [END AEO CONFIDENTIAL] Second, I also know that the issue of whether the parking should be regulated was a topic of debate in the last rate case (2010), and Limited may have wanted to avoid addressing this issue before the sale was announced because regulating the parking could possibly limit its value. In my direct testimony, I discussed how my review of SharpVue's valuation of the transportation assets supported my theory that Limited has avoided a rate case to maximize the value of the parking assets.

Although the information provided by Respondents was, in some cases, not fully transparent, I believe the information the Village received is sufficient to support my overall findings in my direct testimony. After receiving more information through discovery, I supplemented my analysis in my rebuttal testimony.

This concludes the summary of my direct testimony.

**Summary of the Rebuttal Testimony of Kevin O'Donnell
On Behalf of the Village of Bald Head Island**

In my Rebuttal Testimony I respond to several points raised in the testimony submitted by Shirley Mayfield.

First, I note generally that Ms. Mayfield does not dispute the basic financial analysis set forth in my Direct Testimony showing that [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [END CONFIDENTIAL] Ms. Mayfield also does not dispute the logical inference set out in my Direct Testimony – specifically, that Limited may have avoided filing a rate case for fear that it might result in regulation of the entirety of its transportation operations.

Second, I respond to Ms. Mayfield's claim that, should the Commission grant the Village's Complaint, the additional regulated assets would be valued for rate-making purposes based on market value, rather than book value. When a utility files a rate case, per Commission Rule R-17, the utility must file information about the original cost of the assets. Rule R-17 prevents consumers from double paying for the same utility asset. Placing assets in rate base at market value would, essentially, turn the keys to regulation of utility rates over to arbitrage specialists that would buy and sell assets on an endless basis and force consumers to pay higher and higher rates for assets for which they have already paid.

Here, Limited has already received the value of the parking and barge operations from consumers several times over via extremely healthy returns on those assets, and it would be unfair to make those consumers pay for those assets again.

Ms. Mayfield contends that the land used for parking has become increasingly valuable over time and thus should be included in the rate base at this higher market value. I disagree. First, the property has always been used to support utility operation and owned by an affiliate of the utility. Thus, this situation is not analogous to the acquisition of non-utility property from an unrelated seller. Second, the valuation Ms. Mayfield refers to was based on cash flow generated by parking—not on a pure evaluation of the land itself.

Third, I respond to Ms. Mayfield's reference to the 2010 rate case and her assertion that parking assets were not included in the 2010 rate base. I do not believe her statement has any significance in this case. Further, she fails to recognize the reality of the Commission's order. It is clear from the Public Staff's workpapers in that case that the Public Staff developed the revenue imputation from the parking facilities based on an evaluation of the parking operation as if it were a regulated asset. The adjustment to the regulated revenue requirement is a practical recognition that parking revenues should be attributed to the overall regulated ferry operation.

Finally, based on new information provided by Respondents, I updated my prior testimony estimating the rate of return for the combined transportation operations using the net book value from financial records provided in response to our data requests. Under my revised calculations, the combined rate of return is an extremely healthy **[BEGIN CONFIDENTIAL]** [REDACTED]

[REDACTED] **[END CONFIDENTIAL]**

This concludes my summary of my rebuttal testimony.

**Summary of the Direct Testimony of Dr. Julius A. Wright
On Behalf of the Village of Bald Head Island**

My direct testimony discusses the factual and policy basis supporting a conclusion that the parking services supporting the Deep Point ferry operations and the barge transport service between Deep Point and Bald Head Island are each subject to Commission oversight and regulation.

I first provide an overview of the relevant features of Bald Head Island. Bald Head Island is a unique, 12,000 acre island used and enjoyed by many North Carolinians. The Island is approximately three miles from the city of Southport on the Cape Fear River. Visitors and residents on the island use golf carts, bikes, or the island tram service for most transportation needs as private vehicles, other than work vehicles, are not allowed on the Island. Given this prohibition, the Bald Head Island ferry service is the only means of public access to the Island and the barge service is the only means of transporting commercial goods, supplies, and personnel to and from the Island. Although the Island's full-time resident population is small, it has over 1,000 private residences (which is increasing) and the population can swell to over 7,000 persons in peak summer days. In a year, nearly 400,000 persons are transported to the Island via the ferry.

The Parking Facility

My testimony provides a detailed review of the facts showing that the parking operation is an integral, necessary, and irreplaceable ancillary component of the utility passenger ferry service. I discuss the statements of Limited and its consultant, Mercator International, that support this finding, including Mercator's assessment that "the parking operation is tied to the ferry operation, with demand for parking very closely related to

overall ferry traffic.” I also review statements on BHIT’s website illustrating that parking is integral and necessary to the ferry operation.

My testimony further discusses how the parking services are a de facto monopoly, that there is no existing alternative service available to the public, and that there is no practicable prospect of competition for parking given the unique characteristics of the ferry operation and the surrounding community. I note the concern that, if left unchecked by regulation, the parking facility’s monopoly status could, in the future, leave Island visitors subject to unreasonable monopoly practices like high prices and poor service.

I also discuss how the Commission’s treatment of parking in the most recent rate case recognized a link between the parking operation and the ferry operation sufficient to impose price constraints and revenue imputation requirements on parking.

I further review analogous decisions of this Commission supporting the assertion of regulatory authority here.

The Barge Service

I next address the factual and policy support for a determination that the barge service is subject to regulation by the Commission.

This barge service consists of a flat floating barge onto which vehicles are driven and then pushed by a tugboat to the receiving ferry terminal. Parties like contractors, suppliers, and service personnel drive their vehicles onto the barge for transport to and from the Island. This barge service is used to transmit essentially all of the commercial goods and materials sold and used on the Island, including building materials, and household furnishings too large to transport on the passenger ferry.

Based on my review of the facts relating to the barge service, I find ample evidence

to support a conclusion that this barge should be declared a common carrier subject to the Commission's regulatory authority. The regulatory statutes defining a "common carrier" set forth three criteria: the service must hold itself out as providing transportation services (a) to the general public (b) to transport persons or household goods, and (c) for compensation. This barge service meets all three criteria. There is no question the barge provides service to the general public for compensation, and Limited has indicated as much. Limited's own barge logs list household goods as items being transported by the barge service. And not only are vehicles driven onto the barge, but the drivers remain in their vehicles and ride the barge to their destination. The barge service thus meets all three statutory requirements for being declared a regulated common carrier.

Another reason for supporting the regulation of the barge service is because this is exactly the sort of service that requires regulation. The barge is used to support and augment the regulated passenger ferry service, and it is a monopoly service.

Conclusion

I conclude by highlighting that the questions presented in this proceeding are of great importance to the many residents, visitors, and workers on Bald Head Island, particularly at this time because Limited has entered into an agreement to sell all of the Deep Point Ferry assets. Limited has also stated publicly that the various assets could be sold to different parties, meaning that the passenger ferry could be sold to one party while the barge ferry and parking facilities could be sold to other parties.

Limited has suggested that the issues raised in this proceeding should not be resolved now but rather should wait for some future date. I disagree, and believe this suggestion is illogical and unfair given the current circumstances. It would be unfair to a

purchaser to proceed in a purchase without knowing whether they are buying a competitive or regulated company. Further, once these assets are no longer in possession of Limited, it is not clear how or for what future reason the Commission might unwind history and at a later time claim regulatory control over these now-sold assets.

This concludes the summary of my Direct Testimony.

**Summary of the Rebuttal Testimony of Dr. Julius A. Wright
On Behalf of the Village of Bald Head Island**

In my Rebuttal Testimony I respond to various issues raised in the Direct Testimonies of Chad Paul, Shirley Mayfield, James Fulton, and James Leonard. I also respond to the initial comments filed in this docket by the Public Staff.

In response to Mr. Paul, I point out that his testimony confirms there is no alternative parking available to ferry riders. I also rebut Mr. Paul's claim that the Deep Point terminal is accessible to anyone, including customers using a theoretical competitive parking facility, by pointing out that Limited owns all of the property surrounding terminal, including all access roads, and could restrict access to a competitors' customers.

As for Mr. Fulton's Direct Testimony, I respond to his argument that Limited's barge service does not meet the common carrier provisions under the Maximum Rate Tariff by explaining that the authority he cites only pertains to motor carriers, which would not include boats. Mr. Fulton also fails to address several points I made in my Direct Testimony, including the common carrier regulatory provisions pertaining to water transportation; that the barge also transports persons; that the barge is a monopoly service; or that this Commission has granted common carrier certificates to other functionally identical water transportation companies offering vehicle transportation services.

Finally, Mr. Fulton claims that the barge is used differently from other car ferry operations. But ferries often transport vehicles, including trucks, along with non-vehicle related passengers. These include ferries regulated by this Commission, ferries operated by the North Carolina Department of Transportation, and ferry systems across the country.

In response to Ms. Mayfield's concerns about the complexity of regulating the

parking facilities, I explain that this Commission and the Public Staff have the experience and resources to deal with these issues. As for Ms. Mayfield's concerns about the valuation of the parking facilities, I respond by explaining that (1) this issue is properly addressed *after* the Commission's decision on the regulatory status of the assets, and (2) the Commission's historic approach, supported by public policy considerations, is to value affiliated assets based on the lower of acquisition or original costs.

I next respond to several points in Mr. Leonard's Direct testimony. First, he states that the parking should not be regulated because it is not a "similar business" to the regulated passenger ferry operations. "Similarity" has no bearing on whether a service should be regulated. In fact, there are many facets of regulated utilities that are not similar, such as electric industry billing departments and operating a generation station, but are still necessary for the provision of the overall regulated electric service and both are regulated.

Second, I note that Mr. Leonard corroborates my opinion that parking is essential to the ferry: he states that the Commission should "ensure that parking is available." Although Mr. Leonard is against regulation, I do not know how the Commission could otherwise ensure parking availability, and Mr. Leonard does not offer any examples.

Finally, Mr. Leonard's Direct Testimony provides a survey and list of other passenger ferry services around the country. Upon closer examination, however, the ferry services in Mr. Leonard's survey are different from the Bald Head Island ferry service in that (1) unlike Deep Point's one parking option, all of his surveyed ferry services have multiple parking options, (2) unlike Bald Head Island, which is only accessible by the ferry, almost all of the ferry service destinations Mr. Leonard surveyed have multiple ways to reach them, such as via alternative ferry services, plane, or even by car; and (3) several of

the ferry systems Mr. Leonard surveys do have parking that is regulated.

With respect to the comments of the Public Staff, my Rebuttal Testimony addresses a couple points. First, I agree with the Public Staff that “availability of parking is critical for most Bald Head Island ferry passengers” and that this Commission should ensure that adequate parking is available at reasonable rates. But I disagree with the Public Staff’s conclusion that Commission regulation is unnecessary. Again, I have no idea how the Commission can ensure that parking is adequate and reasonably priced short of regulation.

I also address the Public Staff’s comments regarding the yellow pages. Although the yellow pages were an affiliate, they were still owned by the regulated telephone holding company, which afforded the Commission regulatory authority over their conduct, including their revenues. Here, if the parking and/or barge service are sold to someone other than the owner of the ferry, there will not be any connection between the regulated ferry and the unregulated parking facilities.

As for the barge service, the Public Staff argues that the barge service is not a common carrier because it does not fall under the scope of the regulated services prescribed under the Maximum Rate Tariff No. 1. But this Commission, with the Public Staff’s approval, has granted a Common Carrier certification to several ferry services carrying both passengers and vehicles, including trucks of all different sizes. It seems inconsistent to conclude that the similar Bald Head Island barge is not a common carrier.

One last point I make in my Rebuttal Testimony is that all parties on the docket seem to accept that the tram service is subject to regulation. If it is appropriate to regulate the tram service—an ancillary service that could be competitive, but does not currently have a competitor—then the parking and barge services should be regulated as well.

This concludes the summary of my Rebuttal Testimony.

**Summary of the Direct Testimony of Scott Gardner
On Behalf of the Village of Bald Head Island**

In my direct testimony I discuss my perspective as a resident of Bald Head Island and a Village Council member.

Bald Head Island is one of the State's natural treasures. The Island is unique due to its natural beauty, its relaxed, vehicle-less atmosphere, and its commitment to environmental stewardship. Because of these features, the Island hosts thousands of visitors each year and serves as a vital economic engine for the southeast coast of North Carolina.

Bald Head is only accessible to the public by the ferry. Thus, the transportation system owned and operated by Limited and BHIT is the lifeblood of the Island. Because no vehicles are allowed for transportation on the island, all passengers—myself included—must leave their cars at the terminal. Thus, the parking facilities are integral to the ferry's operations. Similarly, the barge is the exclusive means of transporting supplies and household goods to the island. I have used the barge myself to transport appliances, furniture, and construction material to the Island.

As I mentioned, the Island's economy is fueled by tourism, and each tourist must park in the parking facilities before boarding the ferry. If parking rates were to become cost-prohibitive to tourists, the Island's economy would be harmed significantly. Likewise, the Island's many workers, most of whom live in Southport, Wilmington, and elsewhere in Brunswick and New Hanover Counties, rely on affordable and accessible parking and ferry services to be able to go to work each day.

The ferry, parking, and barge system also has a critical role in public safety. During major events like a hurricane, the Village relies on Limited to evacuate people and to get emergency personnel and critical supplies to the Island.

Although the Commission has regulated the passenger ferry since the 1990s, the parking facilities and the barge have never been regulated—except to the extent that the Commission made decisions impacting parking in the 2010 rate case. Members of the public have, for decades, expressed concerns that the parking and barge should be regulated, just like the ferry. When Limited announced its intention to sell the transportation system, the regulation of the parking facilities and barge became paramount. Although the current owner of the transportation system, as the Island’s developer, has been motivated to appease the public’s concerns about the parking and barge in the past based on its own economic development interests, the future owner might not be so motivated. Absent regulation, the next owner of the transportation system will be free to operate the parking and barge however they want, including by raising rates, and citizens will have no recourse. Given these concerns, the Village initiated this proceeding to ensure that the next owner of the ferry, parking, and barge will operate the entire system in the public interest.

My testimony describes that the Village is asking for a determination by the Commission that the parking and barge are, like the ferry, utility assets that should be operated under the Commission’s supervision for the benefit of the using and consuming public. Without parking and without the barge there is no meaningful public access to the Island, and without access there is no Bald Head Island as we know it.

Finally, my testimony emphasizes how important these matters are to the people

who care about Bald Head Island. And this group includes not just the citizens who have permanent residences on this island. It includes the tens of thousands of visitors every year, the employees who work on the island, the business and property owners on the island, and even the surrounding communities that benefit from a vibrant island economy.

This concludes the summary of my Direct Testimony.

**Summary of the Rebuttal Testimony of Scott Gardner
On Behalf of the Village of Bald Head Island**

In my rebuttal testimony, I respond to specific portions of Respondents' and Intervenors' testimony.

Regarding Mr. Paul's and Ms. Mayfield's testimony, they seem to argue it would be unfair to now regulate the parking facilities and barge. As I explain in my rebuttal testimony, I disagree; it would be unfair to allow Limited to dismantle the integrated transportation system now that it is no longer interested in the Island's development.

I briefly address Mr. Fulton's testimony that the barge does not provide the sort of "end-to-end" moving service typically subject to the Commission's regulation. In my view, this distinction is immaterial. The barge transports household and other essential goods, and persons driving service vehicles or towing trailers.

I also briefly address Mr. Leonard's description of the parking operation, noting that Mr. Leonard concedes that the parking and ferry operations are "commercially complementary" and that the Commission should to "ensure that parking is available."

I note in my rebuttal testimony that I was surprised that Limited's testimony did not discuss parking alternatives in any detail, or seriously consider the public interest. In the face of the overwhelming public interest in ensuring the continued availability of a comprehensive transportation system providing access by the public to the Island, Limited's witnesses seem to take the position that the Village should "hope" or "trust" that things will turn out OK if the assets are not subject to the authority of a governmental regulatory body. The Village does not believe this is a reasonable position in light of the developer's exit from the Island.

I also discuss the testimony filed by Mr. Briggs on behalf of the Bald Head Association. Mr. Briggs attached a survey of BHA members, who indicated by a strong majority—71.5%—that they support the Commission’s oversight. Survey respondents also expressed concerns about a private entity having unregulated control of these assets; the ferry system being a monopoly; and the declining quality of service.

I also reviewed the comments filed by two Island residents, Mr. Blau and Mr. Carey. The basic conclusion of their analysis is that, given the proposed valuation of the assets in question, if the SharpVue transaction proceeds without resolution of the regulatory question, there will be a strong economic incentive to monetize the assets on a piecemeal basis, with ratepayers ultimately paying the price. These comments are consistent with the concerns expressed to me by many Island stakeholders.

I briefly address the testimony of Mr. Sawyer on behalf of the Bald Head Island Club, whose testimony illustrates the effect of transportation costs on the Island’s businesses. Mr. Sawyer also noted the importance of regulation on service quality.

Finally, I address the Public Staff’s comments. The Public Staff generally seem to agree that the Commission should ensure parking is available at a reasonable rate. As for the barge, I would emphasize that, from my standpoint, it is indisputable that the barge is used to carry both persons (i.e., vehicle drivers) and household goods to the Island, and I urge the Commission to consider that the barge is indispensable to the Island, it is a monopoly service, and there is no feasible alternative to the barge that does not involve utilizing assets owned by Limited.

Finally, I observe that witnesses have presented many different ways for the Commission to oversee the transportation system. From my perspective, the critical

request is that the Commission definitively declare now, before the transportation assets are conveyed, that parking, barge and the ferry are all part of a unified system that is subject to the Commission's oversight and authority; that the parking and barge assets cannot be conveyed without the Commission's permission; and that the revenues from the parking and barge operations must be allocated to the ferry utility operation and/or that the parking and barge operations are subject to the Commission's direct supervision and control.

This concludes the summary of my Rebuttal Testimony.