

**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)	INITIAL COMMENTS OF
Passenger Ferry Public Utilities		THE PUBLIC STAFF

NOW COMES THE PUBLIC STAFF – North Carolina Utilities Commission (Public Staff), by and through its Executive Director, Christopher J. Ayers, and pursuant to the Commission’s *Order Requiring Filing of Rates and Allowing Comments* issued October 4, 2023 (Initiating Order), respectfully submits its initial comments.

I. Procedural History

The Initiating Order noted that the Commission currently regulates the following eight passenger ferries (collectively, the Ferries) pursuant to N.C. Gen. Stat. § 62-3(23)(a)(4):

1. Bald Head Island Transportation, Inc., Docket No. A-41 (Bald Head Island Ferry);
2. Barrier Island, Inc. dba Island Ferry Adventures, Docket No. A-40 (Island Ferry Adventures);
3. Cape Lookout Cabins & Camps Ferry Service dba Cape Lookout Cabins & Camps, Docket No. A-66 (Cape Lookout Ferry);

4. Crystal Blue Holding Co., LLC dba Morehead City Ferry Service, Docket No. A-76 (Morehead City Ferry);
5. Davis Shore Ferry Service, LLC, Docket No. A-65 (Davis Shore Ferry);
6. Island Express Ferry Service, LLC, Docket No. A-75 (Island Express);
7. Morris Marina, Kabin Kamps & Ferry Service, Inc., Docket No. A-26 (Morris Marina Ferry); and
8. Portsmouth Island Boat Tours, Docket No. A-30 (Portsmouth Ferry).

The Initiating Order provided, among other things, that each of the Ferries are made parties to this docket without the need to file petitions to intervene and shall file their current tariffs of rates and charges and timetables with the Commission in this docket. The Initiating Order also provided that any person having an interest in this docket may file a petition to intervene stating such interest on or before Wednesday, November 15, 2023, and that parties may file initial and reply comments.

On October 25, 2023, Bald Head Island Ferry filed its current tariffs of rates and charges and timetables with the Commission.

On November 3, 2023, the Village of Bald Head Island moved to intervene in this docket, which the Commission granted on November 8, 2023.

On November 3, 2023, the Public Staff filed its Motion for an Extension of Time seeking an extension to allow the Ferries additional time to file their current

tariffs of rates and charges and timetables with the Commission in this docket, and to extend the other deadlines in the Initiating Order.

On November 6, 2023, Island Ferry Adventures filed its current tariffs of rates and charges and timetables with the Commission.

On November 8, 2023, the Commission issued its *Order Granting Motion for Extension of Time*, ordering the Ferries that have not already done so to file their current tariffs of rates and charges and timetables with the Commission by Tuesday, January 16, 2024, and extending the deadlines for the filing of initial comments on the Commission's ratemaking treatment of passenger ferry rates and charges to Thursday, February 15, 2024, and reply comments to Thursday, February 29, 2024.

As of January 30, 2024, no additional Ferries filed current tariffs of rates and charges and timetables with the Commission. Thereafter, the Public Staff Transportation Division (formerly known as the Transportation Rates Division) called each of the operators of the Ferries that had not yet filed, reminding them of their obligation to file current tariffs of rates and charges and timetables as soon as possible.

Thereafter, the following Ferries filed their current tariffs with the Commission: Morehead City Ferry and Island Express on January 31, 2024; Cape Lookout Ferry on February 1, 2024; Portsmouth Ferry on February 5, 2024; and Morris Marina Ferry on February 7, 2024.

On February 12, 2024, the Public Staff filed its Second Motion for an Extension of Time in which it represented that it had reached out to the remaining Ferries regarding the filing of their current tariffs of rates and charges and timetables with the Commission, and requested that the Commission extend the February 15, 2024 deadline for initial comments to allow time to review and incorporate the recent filings in the comments.

On February 14, 2024, the Commission granted the Second Motion for an Extension and established deadlines of March 1, 2024, for initial comments and, March 15, 2024, for reply comments.

As of the date of this filing, Davis Shore Ferry has not yet filed its current tariffs of rates and charges and timetables with the Commission.

The Public Staff provides the following comments on the topics identified by the Initiating Order for the Commission's consideration.

II. Background

A. Ferries

The eight Commission-regulated Ferries vary in size and coverage. The largest operation is the Bald Head Island Ferry, which is comprised of large passenger-only ferries serving a residential and resort area in a municipality, along with related parking and barge operations. The other ferry services range from mid-sized ferries capable of carrying vehicles as well as passengers, catamaran pontoon-style boats carrying dozens of passengers, to smaller motorboats

carrying only a few passengers. Five of the eight ferry services have destinations within Cape Lookout National Seashore and, as a result, have entered into agreements with the National Parks Service (NPS) that govern non-rate aspects of these ferries' services. The agreements require the ferry services to meet varying levels of NPS audit and reporting requirements as further described herein.

An overview of each of the Ferries follows:

1. **Bald Head Island Ferry** transports passengers and their personal effects via four large passenger-only ferries to and from the Deep Point ferry terminal in Southport, North Carolina, and the ferry terminal on Bald Head Island (the Island), and by tram to and from their destinations on the Island. Ancillary parking and barge operations, consisting of a tugboat and roll-on/roll-off barge transporting commercial service vehicles, are offered by Bald Head Island Ferry's parent company.¹ Bald Head Island Ferry received its Common Carrier Certificate from the Commission on January 6, 1995. In its December 17, 2010 *Order Granting Partial Rate Increase and Requiring Notice* in Docket No. A-41, Sub 7 (December 17, 2010 Order), the Commission accepted a stipulation between Bald Head Island Ferry and the Public Staff, and granted Bald Head Island Ferry "the opportunity to earn an overall rate of return of 8.33% on a rate base of \$3,943,335." December 17, 2010 Order, 5. The Bald Head Island Ferry has

¹ The issue of whether the ancillary parking and barge operations fall within the Commission's jurisdiction is the subject of an appeal of the Commission's December 30, 2022 Order Ruling on Complaint and Request for Determination of Public Utility Status in Docket No. A-41, Sub 21.

a substantial rate base serving hundreds of thousands of customers each year along with those customers' possessions to and from the residential and resort areas of the municipality of the Village of Bald Head Island. The current rates and schedules, filed by the ferry in Docket No. A-100, Sub 1, align with the approved rates and schedules (Supplement No. 12) as filed in Docket No. A-41, Sub 20.

2. Island Ferry Adventures provides round trip passenger transport ferry service via smaller motorboat from Beaufort to Carrott Island, Bird Shoal, and Sand Dollar Island. It previously operated under the name of Outer Banks Ferry Service. This ferry appears to have been certificated in or around 1993.² Its most recent rate case was in 2007, in Docket No. A-40, Sub 1, in which the Commission granted the utility's requested rate increase to produce additional annual revenue, while noting that the utility's annual costs have increased by more than the requested annual revenue increase, effectively allowing the utility a return or margin on operating expenses. *Recommended Order Granting Rate Increase*, May 23, 2007.³ The current rates filed by this ferry in Docket No. A-100, Sub 1, are less

² It subsequently acquired the Common Carrier Certificate of Beach Bum, Inc., Docket No. A-52, by Commission Order in Docket Nos. A-52, Sub 7, and A-74, Sub 0, on June 6, 2013.

³ In its Order Granting Request to Cancel Portion of Authority, issued September 4, 2014, in Docket No. A-40, Sub 2, the Commission ordered Cape Lookout Ferry to "file with the North Carolina Utilities Commission, Public Staff, Transportation Rates Division, a tariff schedule of minimum rates and charges and timetable for the authority contained in Exhibit A attached to this order." Order, 1-2. The reference to filing "minimum rates" is unclear.

than the rates approved by the Commission in Docket No. A-40, Sub 1, and documented in Public Staff Transportation Division records.

3. Cape Lookout Ferry was granted a Common Carrier Certificate by the Commission by Order issued October 2, 2008, in Docket No. A-66, Sub 0. It is one of the five Commission-regulated ferries that operates within Cape Lookout National Seashore. Cape Lookout Ferry utilizes two large ferry vessels that accommodate vehicles and provide round trip service from Davis (which is outside the boundary of the park) to the NPS' largely off-the-grid Great Island Cabins at South Core Banks. As part of its ferry and non-ferry operations, Cape Lookout Ferry entered into a "Commercial Use Authorization" (CUA) with the NPS, pursuant to which, among other things, Cape Lookout Ferry is required to make periodic reports to the NPS on its operations. The current rates filed by this ferry in Docket No. A-100, Sub 1, are more than what is listed on the ferry's most recent approved tariff.⁴

4. Morehead City Ferry provides round trip passenger transport and nature sightseeing ferry service via smaller motorboat from Morehead City to Sugarloaf Island, Carrot Island, Bird Shoals Island, and Sand Dollar Island. The ferry service includes a narrated ride as it passes the Morehead City State Port, Fort Macon, and Shackleford Banks.⁵ Morehead City Ferry

⁴ See response to Commission Question No. 1 in Section III below for a description of the historic approval process. ⁵ See www.moreheadcityferry.com.

⁵ See www.moreheadcityferry.com.

was issued its Common Carrier Certificate on March 30, 2015, in Docket No. A-66, Sub 0, which was subsequently reissued to correct an error on April 1, 2015. The current rates and schedule, filed by the ferry in Docket No. A-100, Sub 1, indicate that routes have been eliminated and rates are more than what is listed on the ferry's most recent approved tariff.

5. Davis Shore Ferry provides passenger and vehicle ferry service from Davis to the Great Island Cabins run by the NPS on the South Core Banks within Cape Lookout National Seashore national park. The NPS issued Davis Shore Ferry a CUA for its operations within the national park; however, it is the Public Staff's understanding that the CUA has not yet been renewed for 2024. At the time of the Commission's March 14, 2008 *Order Granting Common Carrier Authority* in Docket No. A-65, Sub 0 (March 14, 2008 Order), Davis Shore Ferry's operations included two ferries that could carry six standard size vehicles and 77 passengers combined.⁶ As in other dockets, the Commission's March 14, 2008 Order required that Davis Shore Ferry file its tariff of rates and charges and timetable with the Public Staff's Transportation Division within 30 days of the March 14, 2008 Order. As previously noted, Davis Shore Ferry has not filed its current tariff in Docket No. A-100, Sub 1. The Public Staff has learned from its recent communication with Davis Shore Ferry that it is considering ceasing

⁶ Applicant's letter of qualifications and vessels filed March 11, 2008, in Docket No. A-65, Sub 0.

operations, as discussed on its website,⁷ or selling its operations, but has not yet determined which route it intends to take.

6. **Island Express** operates a ferry service utilizing mid-sized, pontoon-like catamaran boats along three routes: two routes from the Town of Beaufort Ferry Gateway to Shackleford Banks and Cape Lookout, respectively; and a third route from Harkers Island to Shackleford Banks (or Shackleford Banks and Cape Lookout). As it serves destinations within Cape Lookout National Seashore, Island Express has entered into a “Concession Contract” with NPS, which was filed in Docket No. A-75, Sub 0 as part of the utility’s request for a Declaratory Ruling from the Commission to forego rate regulation in light of the NPS contract. In denying the utility’s request, the Commission affirmed its rate regulation of Island Express as a public utility, finding in its March 31, 2014 *Order Granting Common Carrier Authority* in Docket No. A-75, Sub 0, that:

With regard to the Applicant’s Motion Requesting a Declaratory Ruling, the Commission finds that it is not appropriate to allow the motion on the facts before it. There are a handful of past instances in which the Commission has refrained from subjecting an entity to its regulatory jurisdiction because the entity’s offer of service was not sufficient of the public to clothe the entity’s operation with the public interest. However, in the regulatory circumstances of this case, the Applicant’s service will be offered, to the extent of the Applicant’s capacity, to all of the public who wish to be transported to Cape Lookout National

⁷ See <https://davisferry.com/>.

Seashore from Beaufort and Harkers Island. Thus, notwithstanding the concession contract with NPS, the Applicant remains a public utility clothed with a public interest because its service will be offered to sufficient of the public for compensation as contemplated by G.S. 62-3(23)(a)(4). Accordingly, the Applicant's motion should be denied, and the Applicant is subject to regulation by the Commission because it is offering a service to the public within the meaning of G.S. 62-3(23)(a)(4)." See *State ex rel. Utilities Comm'n v. Simpson*, 295 N.C. 519, 246 S.E.2d 753 (1978).

Order Granting Common Carrier Authority, 2.

The utility filed its current tariff with the Commission as part of the A-75, Sub 0 proceeding. As such, while it would seem that the Commission in effect approved the tariff as part of its Order, the Commission's Order also required, as it has in the other Ferry dockets, that the utility file its tariff with the Public Staff Transportation Division. Thereafter, the Transportation Division agreed to the tariff and shared it with the Commission Staff. The current rates filed by Island Express in Docket No. A-100, Sub 1, are more than what is listed on the ferry's most recent approved tariff.

7. Morris Marina Ferry, like Cape Lookout Ferry and Davis Shore Ferry, offers ferry service that can transport vehicles and passengers from Atlantic to North Core Banks Island within Cape Lookout National Seashore. Morris Marina Ferry was issued and executed a NPS CUA for its operations within the national park. Morris Marina Ferry filed its Common Carrier Application on June 2, 1980, and is one of the longest running ferries currently operating and regulated by the Commission. In Docket No. A-26,

Sub 4, the Commission approved a 6.34% return on rate base in its *Recommended Order Approving Rate Increase* issued June 9, 1999, which became effective on June 25, 1999. As part of its communication in this Docket No. A-100, Sub 1, with Morris Marina Ferry, Cape Lookout Ferry, and the NPS, the Public Staff has learned that Morris Marina Ferry sold its boat and operations to Cape Lookout Ferry in 2022. Since then, Cape Lookout Ferry has continued to service the route under the name of Morris Marina Ferry, and secured NPS approval for an updated CUA. However, neither Morris Marina Ferry nor Cape Lookout Ferry alerted the Public Staff or secured Commission approval prior to the sale or transferring operations of the route. Upon the Public Staff informing the new operator of the requirement that transfers be approved by the Commission, the Public Staff understands that the operator has retained counsel and is drafting an application for review and approval of the purchase and transfer. The current rates filed by this ferry in Docket No. A-100, Sub 1, are more than what is listed on the ferry's most recent approved tariff.

8. Portsmouth Ferry, like Island Ferry Adventures and Morehead City Ferry services, is a passenger transport and nature sightseeing ferry using smaller motorboats that serves the formerly inhabited coastal community of Portsmouth Village. The NPS operates Portsmouth Village as part of Cape Lookout National Seashore. As such, and like Cape Lookout Ferry and Morris Marina Ferry, Portsmouth Ferry has a CUA with NPS for operations within the national park. In 1989,

Portsmouth Ferry filed for and subsequently received its common carrier certificate in Docket No. A-30, Sub 0. The utility requested Commission approval to change fares and rates in Docket No. A-30, Sub 2, which was approved on May 11, 2005. The current rates filed by the ferry in Docket No. A-100, Sub 1, list an administrative fee that is not listed on the ferry's most recent approved tariff.

**B. National Parks Service
Commercial Use Authorizations and Concessions Contracts**

Cape Lookout Ferry, Morris Marina Ferry, Portsmouth Ferry, Davis Shore Ferry, and Island Express currently serve destinations within Cape Lookout National Seashore.⁸ Based on communications with the NPS, it is the Public Staff's understanding that the NPS reviews the financial viability of proposed business propositions to be offered within its parks. When more substantial operations are envisioned (whether from gift shops, equipment or ATV rentals, Commission-regulated ferry services, or other operations), the analysis is performed by a multi-disciplinary team of experts in their fields. If the NPS team concludes that the proposed business is viable, NPS issues a request for proposals and then enters into commercial agreements with private operators to undertake the business operations. The operator pays a percentage of profits to NPS and is subject to auditing and reporting. Since these five ferries depart from outside the national

⁸ See the listing of ferries on the NPS website at: <https://www.nps.gov/caloplanyourvisit/ferry.htm>. Davis Shore Ferry is not listed on the NPS website. As indicated in Section II A – Ferries herein, it is the Public Staff's understanding that Davis Shore Ferry's CUA has not yet been renewed for 2024.

park, NPS defers the determination of rates and other regulatory issues to the Commission.

While the NPS's commercial agreements generally take the form of Commercial Use Authorizations and Concession(s) Contracts, smaller profitable operations, generally companies generating under \$1 million of gross revenues from Commission-regulated and non-Commission-regulated services, are subject to a one-year CUA contract.⁹ The CUA requires an operator to pay a "market price fee" to the NPS, which compensates NPS for its monitoring of operations and allows NPS to participate in revenue (between 3% - 5%) earned from in-park or park-based operations. The CUA also requires operators to submit certain information each year in a mandatory annual report and – depending upon the national park – monthly reports.¹⁰ Companies generating in excess of \$1 million in gross revenues are generally subject to ten-year Concession(s) Contracts with NPS, which are awarded in a public, open-bid process.¹¹ Such contracts also impose more in-depth auditing and reporting requirements on operators. Island Express is the only ferry with a Concession Contract. Cape Lookout, Morris Marina Ferry, Portsmouth Ferry, and Davis Shore Ferry have CUAs.¹²

⁹ See <https://www.nps.gov/subjects/cua/index.htm> and <https://www.nps.gov/california/learn/management/cua.htm>.

¹⁰ See <https://www.nps.gov/subjects/cua/required-cua-reports.htm>.

¹¹ See <https://www.nps.gov/subjects/concessions/index.htm>.

¹² As previously indicated, however, it is the Public Staff's understanding that the Davis Shore Ferry's CUA has yet to be renewed this year.

III. Responses to Commission Questions

1. **Does the Commission's current ratemaking treatment of passenger ferry rates and charges comply with state law?**

Passenger ferries are public utilities in North Carolina, motor carriers in general, and common carriers in particular.¹³ The Commission's regulation of passenger ferries is governed by N.C.G.S. § 62-3.¹⁴ Under this statute, a person or entity owning or operating equipment or facilities transporting persons by motor vehicle or another form of transportation for the public for compensation is a public utility. See N.C.G.S. § 62-3(23)a.4. Ferries transporting passengers for compensation within North Carolina are therefore public utilities and are not exempted from regulation by the Commission.

It is the policy of the State, in pertinent part, to

"preserve and continue all motor carrier transportation services, . . . to provide fair and impartial regulations of motor carriers, . . . to promote and preserve adequate economical and efficient service to all the communities of the State, . . . to encourage and promote harmony among all carriers, . . . and to prevent discrimination, undue preferences or advantages, or unfair or destructive competitive practices between all carriers."

N.C.G.S. § 62-259.

The Commission has issued rules to implement these statutes and to create regulations governing public passenger transportation for compensation,

¹³ See N.C.G.S. § 62-3(6), which defines "Common Carrier" to include boats that hold themselves out to the general public to engage in transportation of persons for compensation.

¹⁴ As a result, courts have held that the General Assembly imbued the Commission with "the power and authority to supervise and control the rates charged and the services rendered by a public utility." *State ex rel. Utils. Comm'n v. Buck Island, Inc.*, 162 N.C. App. 568, 579, 592 S.E.2d 244, 251 (2004) (citing N.C.G.S. §§ 62-30, 62-31, 62-32, 62-131 (2003)).

specifically, Chapters 1 (Practice and Procedures), 2 (Motor Carriers), and 4 (Filing of Transportation Tariffs). Among the pertinent rules are the following:

- Rule R1-10 provides that the Commission may prescribe forms for the filing of an Application for Certificate of Authority to Transport Passengers in Ferry Operations.¹⁵
- Rule R1-17 governs increases or adjustments to rates.
- Rule R2-16 requires filing with the Commission and publishing of all tariffs showing all rates.
- Rule R2-48 governs annual reports and the uniform systems of accounts.
- Rule R4-1 defines the term "tariff."
- Rule R4-3 addresses filings of tariffs and supplements and posting of notice.
- Rule R4-4 requires notice of changes.

The Commission has granted Common Carrier Certificates to each of the Ferries. After receiving a certificate, each of the Ferries was required by the Commission to file its rates within 30 days of the granting Order. In so doing, the Commission has allowed proposed initial rates to become effective for Ferries subject to review by the Public Staff Transportation Division. Initiating Order, 3. Historically, in most but not all instances, the Public Staff Transportation Division reviewed the submitted rates to ensure that the maximum charges for individual services on the tariff were reasonable. Once the rates have been agreed to by the Public Staff Transportation Division, the Public Staff Transportation Division has created a tariff, prepared a "Clearance Sheet" documenting the tariff,¹⁶ and notified

¹⁵ See www.ncuc.gov/appforms/trans/ferryapp.pdf.

¹⁶ Some Ferries, from the outset of operations, have requested to charge rates lower than tariffed amounts and those lower rates are reflected in a first supplement to the tariff.

Commission Staff by way of memorandum at which point the rates and tariff have been considered approved. These documents, however, were not filed in the ferry's docket. A form Clearance Sheet is attached hereto as Exhibit A.

If the utility thereafter desired to modify its tariff (with the exception of a request for a rate increase or a change to the scope of the ferry's operations), a request could be submitted to the Public Staff Transportation Division. Upon such a filing, the Public Staff Transportation Division would review the filing to determine if the proposed changes produced just and reasonable rates and ensured adequate service. If the Public Staff Transportation Division found the change to meet these criteria, it agreed to the change and would then prepare a Clearance Sheet, which was submitted to Commission Staff but not filed in the ferry's docket. However, if a utility proposed to increase rates or exceed the scope of ferry operations beyond the initial tariff agreed to by the Public Staff Transportation Division, the utility would be expected to file its request in the docket for approval by the Commission.

The Public Staff employed a "reasonableness" approach in reviewing and agreeing to the initial rates under this framework.¹⁷ There are, however, a few instances where the Commission set rates based on costs, which are described in greater detail below, such as Bald Head Island Ferry's 2010 rate case in Docket No. A-41, Sub 7; Morris Marina Ferry's 1999 rate case in Docket No. A-26, Sub 4;

¹⁷ However, as described in the Commission's Initiating Order, under existing procedure, "If the Public Staff disagrees with the proposed rates and cannot settle with the applicant, the Commission will set the rates for hearing, and the operating authority is suspended until rates have been approved." Initiating Order, 2.

and Island Ferry Adventures' (formerly Outer Banks Ferry Service) 2007 rate case in Docket No. A-40, Sub 1. The Commission also issued an *Order Approving Tariff Modifications* for Portsmouth Ferry in Docket No. A-30, Sub 2. For the remaining Ferries, the Public Staff applied the reasonableness standard in a more subjective manner and examined the necessity of the service, level of competitor rates, and overall percentage of proposed increase in determining whether to agree to a change.

While the past ratemaking procedure for passenger ferry rates and charges substantively complied with state law in that it produced just and reasonable rates, procedural deficiencies exist. This past practice essentially delegated authority to the Public Staff Transportation Division to approve initial tariffs and subsequent tariff revisions. While the Public Staff has been unable to identify any statute or Commission rule that explicitly authorizes this practice, the Public Staff is charged by the General Assembly with reviewing, investigating, and making appropriate recommendations to the Commission with respect to the reasonableness of rates charged or proposed to be charged and of the service to be furnished or proposed to be furnished by any public utility pursuant to N.C.G.S. § 62-15(d)1 and 2. Further, N.C.G.S. § 62-15(g) allows the Commission to request the Public Staff to provide assistance to the Commission "as may reasonably be required in order to supervise and control the public utilities of the State as may be necessary to carry out the laws providing for their regulation." However, ultimate authority to approve a rate, tariff, or change in service resides exclusively with the Commission.

Additionally, all public utilities are required to “file with the Commission all schedules of rates, service regulations and forms of service contracts, used or to be used within the jurisdiction of the Commission.” N.C.G.S. § 62-138(a)(1). Prior to the Commission’s Initiating Order in this docket, numerous Ferries failed to maintain current schedules of rates on file with the Commission as required by state law. As noted earlier, Ferries have also ceased operations or sold their operations without seeking approval from the Commission, in violation of Chapter 62, or notifying the Public Staff.

2. Would less regulation of rates and charges be appropriate for passenger ferries, particularly those offering competitive leisure service?

The Public Staff believes that the historical practice of applying a lower level of regulation for competitive leisure service is appropriate. However, the Public Staff also believes that, going forward, all tariffs should be filed with the Commission, the Public Staff would review the tariffs and make recommendations as to whether they should be approved, and then the Commission would determine whether the proposed tariffs are reasonable and should be approved, modified, or denied.

By statute, the General Assembly has emphasized two important objectives serving the public interest in the context of transportation utilities. The first objective is “to preserve and continue . . . transportation services” and “promote and preserve . . . adequate economical and efficient service to all the communities of the State.” N.C.G.S. § 62-259. In other words, the Commission has a duty to safeguard the

transportation that is necessary to our communities. The second objective is ensuring “fair and impartial regulations of motor carriers.” *Id.* While some level of regulation of leisure ferry service may promote fairness and prevent undue discrimination, nonetheless, to the extent that leisure ferry service is not a form of essential transportation for a community, then lesser regulation is appropriate. Further, to the extent that there is some degree of competition among the ferry services that serve NPS areas, the free market drivers of supply and demand may act as a natural governor on prices.

Some practice of applying different levels of regulation may already exist to an extent. Specifically, the Bald Head Island Ferry, Morris Marina Ferry, and Island Ferry Adventures have requested and have been subject to a full rate case review where assets and expenses have been examined and considered, whereas some leisure ferry services (including Morris Marina Ferry) have been allowed to submit a rate tariff for review by and agreement from the Public Staff Transportation Division. Island Express, Morehead City Ferry, Cape Lookout Ferry, Davis Shore Ferry, and Portsmouth Ferry are the Ferries that have submitted non-cost of service rates to the Public Staff Transportation Division.

To the extent application of differing levels of regulation is desired, the Commission could consider a classification system such as the Class A, B, and C designations in the water and sewer context, where classification is based upon revenue or other factors and then differing requirements are applied based on the classification. In such a framework, Class A could receive the highest level of regulation (cost of service), Class C light regulation, and Class B a level in between

A and C. Ferries could be assigned to classes based on whether they provide leisure or non-leisure services, which would be subject to the Commission's review. However operations are classified, the Public Staff believes that the tariffs of all Commission-regulated ferries should be filed with the Commission, with the Commission then determining whether they are reasonable and should be approved following input from the Public Staff, customers, and relevant intervenors.

3. What factors should be considered in determining whether proposed rates and charges are just and reasonable?

Pursuant to statute, utility rates must be just and reasonable. N.C.G.S. § 62-131. Moreover, "every public utility shall furnish adequate, efficient and reasonable service." *Id.* Approved rates must be supported by substantial evidence in view of the whole record. *State ex rel. Utils. Comm'n v. Carolina Util. Customers Ass'n*, 323 N.C. 238, 372 S.E.2d 692, (1988).

N.C.G.S. § 62-133 Cases from the North Carolina Supreme Court have also found that the Commission must also consider whether there are differences in service or conditions to justify different rates.

There must be substantial differences in service or conditions to justify difference in rates. There must be no unreasonable discrimination between those receiving the same kind and degree of service. It follows that where substantial differences in services or conditions *do exist*, unreasonable application of the *same* rates may be discriminatory and thus improper.

State ex rel. Utils. Com. v. Edmisten, 291 N.C. 424, 428, 230 S.E.2d 647, 650 (1976) (internal citations omitted) (emphasis in the original).

Under this statutory and case law guidance, the Commission has discretion to consider a wide range of factors in determining whether proposed rates, or increases to rates, are just and reasonable. Those factors may vary with the applicant, its customers, and the proposed service area. Such factors may include, but are not limited to, the capacity, number, and types of boats the applicants propose to use in operations, costs of operations, the service territory, the distances traveled, the conditions those boats will encounter, the number of passengers per trip, whether the travel is for leisure or non-leisure purposes, requirements of the destination port, additional jurisdictions, transportation alternatives to ferry service, the costs and benefits of regulation, and many other factors.

4. Should changes be made to the Commission's rules and procedures for ferry operations?

While the Commission's current rules and procedures may have been adequate in the past, the Public Staff believes certain changes are required to fully comply with applicable statutes and to benefit both the using and consuming public and ferry utilities. Changes would also provide greater transparency.

First, the Public Staff recommends that prior to implementation of, or change to, any rates, all tariffs should be filed with the Commission, reviewed, and then approved by the Commission if found to be reasonable. All applicants would file an application with proposed tariffs, including any revisions with the Commission, serve a copy on the Public Staff. The Commission would then review

the application and recommendations of the Public Staff and any intervenors and determine whether the application should be approved based upon the record.

Second, the Public Staff recommends that, to the extent further levels of regulation are desired, the Commission consider a classification system such as the Class A, B, and C designations in the water and sewer context. In so doing, the Commission should seek and consider comments and other proposals from the Public Staff and other parties.

Implementation of these and other recommendations could require conforming changes to Commission Rules, including revising the existing standard application or adopting additional application forms. Whatever changes may be made, the Public Staff believes that a less restrictive level of regulation of competitive leisure service is appropriate.

Respectfully submitted this the 1st day of March, 2024.

PUBLIC STAFF
Christopher J. Ayers
Executive Director

Lucy E. Edmondson
Chief Counsel

Electronically submitted
/s/ William E. H. Creech
Staff Attorney
/s/ James Bernier, Jr.
Staff Attorney
4326 Mail Service Center

Raleigh, North Carolina 27699-4300
Telephone: (919) 733-0975
james.bernier@psncuc.nc.gov
zeke.creech@psncuc.nc.gov

CERTIFICATE OF SERVICE

I certify that a copy of this Petition has been served on all parties of record or their attorneys, or both, by United States mail, first class or better; by hand delivery; or by means of facsimile or electronic delivery upon agreement of the receiving party.

This the 1st day of March, 2024.

Electronically submitted
/s/ William E. H. Creech
Staff Attorney
Zeke.Creech@psncuc.nc.gov

Exhibit A

Form Clearance Sheet

APPLICATION CLEARANCE SHEET FERRY SERVICE OPERATOR

TO: XXX, Transportation Utilities Analyst, Operations Division, North Carolina
Utilities Commission

FROM: XXX, Director, Transportation Division, Public Staff-North Carolina Utilities
Commission

The following information concerns the application filed by the named carrier for
intrastate authority:

NAME: _____

ADDRESS: _____

APPLICATION FOR: _____ New Authority _____ Additional Authority

_____ Sale & Transfer Transferor: _____

_____ Other _____

DATE FILED: _____ DOCKET NO. _____

DATE ORDER ISSUED: _____ Temporary _____

_____ Permanent _____

_____ Denied _____

COMPLIANCE WITH ORDER GRANTING AUTHORITY:

_____ Tariff/Supplement Filed No.: _____

Date Filed: _____ Effective Date: _____

_____ Transferor's Annual Report Filed

_____ The document(s) required for clearance have been filed.

(Signature)

(Date)

cc: Carrier
Attorney
File Copy