

PLACE: Dobbs Building, Raleigh, North Carolina
DATE: Thursday, March 9, 2023
TIME: 2:05 p.m. - 5:42 p.m.
DOCKET NO.: A-41, Sub 22
BEFORE: Commissioner Kimberly W. Duffley, Presiding
Chair Charlotte A. Mitchell
Commissioner ToNola D. Brown-Bland
Commissioner Daniel G. Clodfelter
Commissioner Jeffrey A. Hughes
Commissioner Floyd B. McKissick, Jr.
Commissioner Karen M. Kemerait

IN THE MATTER OF:
Joint Application of
Bald Head Island Transportation, Inc., and
Bald Head Island Ferry Transportation, LLC, for
Approval of Transfer of Common Carrier Certificate to
Bald Head Island Ferry Transportation, LLC, and
Permission to Pledge Assets

VOLUME: 6

1 A P P E A R A N C E S:

2 VILLAGE OF BALD HEAD ISLAND:

3 Marcus Trathen, Esq.

4 Craig D. Schauer, Esq.

5 Amanda Hawkins, Esq.

6 Brooks Pierce McLendon Humphrey & Leonard, LLP

7 Wells Fargo Capital Center

8 150 Fayetteville Street, Suite 1700

9 Raleigh, North Carolina 27601

10

11 Jo Anne Sanford, Esq.

12 Sanford Law Office.

13 721 North Bloodworth Street

14 Raleigh, North Carolina 27604

15

16 FOR BALD HEAD ISLAND TRANSPORTATION, INC. and

17 BALD HEAD ISLAND FERRY TRANSPORTATION, LLC:

18 M. Gray Styers, Jr., Esq.

19 Bradley M. Risinger, Esq.

20 Elizabeth Sims Hedrick, Esq.

21 Fox Rothschild LLP

22 434 Fayetteville Street, Suite 2800

23 Raleigh, North Carolina 27601

24

1 A P P E A R A N C E S Cont'd:

2 FOR SHARPVUE CAPITAL, LLC:

3 David Ferrell, Esq.

4 Nexen Pruet, PLLC

5 4141 Parklake Avenue, Suite 200

6 Raleigh, North Carolina 27612

7

8 FOR BALD HEAD ISLAND CLUB:

9 Daniel C. Higgins, Esq.

10 Burns, Day & Presnell, P.A.

11 Post Office Box 10867

12 Raleigh, North Carolina 27608

13

14

15

16

17

18

19

20

21

22

23

24

1 A P P E A R A N C E S Cont'd:
2 FOR THE USING AND CONSUMING PUBLIC:
3 Gina C. Holt, Esq.
4 William E. H. Creech, Esq.
5 Public Staff - North Carolina Utilities Commission
6 4326 Mail Service Center
7 Raleigh, North Carolina 27699-4300

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

OFFICIAL COPY

Apr 13 2023

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

T A B L E O F C O N T E N T S
E X A M I N A T I O N S

	PAGE
DR. JULIUS A. WRIGHT	
Direct Examination by Mr. Trathen.....	10
Prefiled Direct Testimony of Dr. Julius A. Wright	13
Prefiled Summary of the Direct Testimony of ... Dr. Julius A. Wright	55
Cross Examination By Mr. Higgins.....	60
Cross Examination By Mr. Styers.....	63
Cross Examination By Mr. Ferrell.....	97
Cross Examination By Mr. Creech.....	103
Redirect Examination By Mr. Trathen.....	104
Cross Examination By Mr. Styers.....	112
Redirect Examination By Mr. Trathen.....	118
PANEL OF	PAGE
KRISHNA K. RAJEEV, MICHELLE BOSWELL, AND JOHN R. HINTON	
Direct Examination By Mr. Creech.....	125
Prefiled Direct Testimony of Sonja Johnson, ... Krishna Rajeev, and John R. Hinton as Substituted and Adopted By Michelle Boswell	131
Prefiled Amended and Supplemental Testimony ... of Sonja Johnson, Krishna Rajeev, and John R. Hinton as Substituted and Adopted By Michelle Boswell	155

1	Prefiled Summary of the Amended and	184
2	Supplemental Testimony of Michelle Boswell, Krishna Rajeev, and John R. Hinton	
3	Cross Examination By Mr. Styers.....	187
4	Cross Examination By Mr. Ferrell.....	197
5	Cross Examination By Mr. Schauer.....	200
6	Cross Examination By Mr. Higgins.....	242
7	Redirect Examination By Mr. Creech.....	248
8	Examination By Chair Mitchell.....	251
9	Examination By Commissioner Clodfelter.....	257
10	Examination By Commissioner McKissick.....	260
11	Examination By Commissioner Kemerait.....	267
12	Examination By Commissioner Duffley.....	269
13	Examination By Mr. Styers.....	272
14	Examination By Chair Mitchell.....	274
15	Examination By Mr. Ferrell.....	275
16	Examination By Mr. Schauer.....	277
17	Examination By Mr. Higgins.....	278
18	Examination By Mr. Creech.....	279

19
20
21
22
23
24

E X H I B I T S

IDENTIFIED/ADMITTED

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

Confidential Exhibits JLL-1	-/8
through JLL-6	
BHIT Wright Cross Examination	85/124
Exhibit 1	
Wright Exhibits 1 through 11.....	11/124
Public Staff Joint Panel	130/-
Exhibit 1 - Public and	
Confidential	
BHIT Public Staff Cross	193/-
Examination Exhibit 1	
BHIT Public Staff Cross	193/-
Examination Exhibit 2	

OFFICIAL COPY

Apr 13 2023

1 P R O C E E D I N G S

2 COMMISSIONER DUFFLEY: Let's go back on
3 the record. I'll take motions.

4 MR. SCHAUER: Sorry, I'm just checking
5 to make sure I have the exhibit list. I apologize.

6 COMMISSIONER DUFFLEY: I'm waiting.

7 MR. SCHAUER: Commissioner Duffley, at
8 this time, the Village moves for the admission of
9 the exhibits attached to Lee Lloyd's testimony,
10 which is JLL-1 through JLL-6, that those be
11 admitted into evidence.

12 COMMISSIONER DUFFLEY: Okay. Without
13 objection, those exhibits will be received into
14 evidence at this time.

15 (Confidential Exhibits JLL-1 through
16 JLL-6 were admitted into evidence.)

17 COMMISSIONER DUFFLEY: And before we
18 call the next witness -- did you have a motion?

19 MR. FERRELL: Just wanted to make sure
20 it was noted for the record that those were
21 confidential, attorneys' eyes only.

22 COMMISSIONER DUFFLEY: Yes. Thank you
23 for that. Yes. Those will be marked confidential
24 exhibits.

1 So as to Mr. Trathen's request to take
2 judicial notice of Mr. Roberts' testimony and
3 Commission Docket A-41, Sub 21, and he wanted
4 the -- it's Volume 3, the location of the
5 testimonies in Volume 3 of the transcript on
6 pages 229 through 311. I'm going to sustain the
7 objection by Mr. Ferrell; however, we are an
8 administrative body. Therefore, Mr. Trathen,
9 Mr. Roberts, if you'll please review those pages of
10 the testimony before tomorrow. And Mr. Trathen,
11 I'll allow you to ask any questions that are
12 relevant to this case of Mr. Roberts when he's on
13 rebuttal tomorrow. I assume he'll go on rebuttal
14 tomorrow.

15 And keep in mind, we are on witness
16 number 7, so let's make efficient use of our time,
17 please, for the remainder of today and all day
18 tomorrow.

19 MR. TRATHEN: Are we ready to proceed to
20 the next witness?

21 COMMISSIONER DUFFLEY: Yes.

22 MR. TRATHEN: So the Village would call
23 Dr. Julius Wright.

24 COMMISSIONER DUFFLEY: Good afternoon.

1 DR. WRIGHT: Good afternoon.

2 Whereupon,

3 DR. JULIUS WRIGHT,
4 having first been duly sworn, was examined
5 and testified as follows:

6 DIRECT EXAMINATION BY MR. TRATHEN:

7 Q. Good afternoon, Dr. Wright. Could you please
8 state your name and official address for the record?

9 A. Julius A. Wright, 6 Overlook Way,
10 Cartersville, Georgia.

11 Q. And did you cause to be filed in this
12 proceeding direct testimony consisting of 42 pages and
13 11 exhibits?

14 A. Yes, I did.

15 Q. Do you have any corrections to your
16 testimony?

17 A. I have one spelling correction on page 24,
18 line 3. The acronym "BHIT" should be "BHIFT."

19 MR. HIGGINS: Which line?

20 THE WITNESS: Line 3.

21 MR. TRATHEN: Page 24, line 3.

22 Q. Do you have any other corrections to your
23 testimony?

24 A. No, I do not.

1 Q. Dr. Wright, if I asked you the questions in
2 these prefiled submissions today as corrected, would
3 your answers be the same?

4 A. Yes, they would.

5 Q. And did you cause to be filed in this
6 proceeding a summary of your testimony?

7 A. Yes.

8 Q. And is the summary true and accurate to the
9 best of your information and belief?

10 A. It is.

11 MR. TRATHEN: Madam Chair, I'd ask that
12 Dr. Wright's direct testimony be copied into the
13 record as if orally given from the stand and the
14 corresponding exhibits be marked for identification
15 as set out in his prefiled submission.

16 COMMISSIONER DUFFLEY: The direct
17 prefiled testimony of Julius Wright will be
18 received in evidence and treated as if given orally
19 from the witness stand, and the prefiled exhibits
20 will be identified as prefiled.

21 (Wright Exhibits 1 through 11 were
22 identified as they were marked when
23 prefiled.)

24 (Whereupon, the Prefiled Direct

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

Testimony of Dr. Julius A. Wright was
copied into the record as if given
orally from the stand.)

OFFICIAL COPY

Apr 13 2023

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. A-41, SUB 22

Direct Testimony of Dr. Julius A. Wright

On Behalf of the Village of Bald Head Island

February 20, 2023

I. INTRODUCTION AND PURPOSE

1

2

3 **Q. PLEASE STATE YOUR NAME, OCCUPATION, TITLE AND BUSINESS**
4 **ADDRESS.**

4

5 A. Julius A. Wright, Managing Partner, J. A. Wright & Associates, LLC, 6 Overlook
6 Way, Cartersville GA, 30121. I am a consultant to regulated utilities and regulatory
7 agencies and other public bodies on issues related to economics, economic
8 modeling, regulatory policy, industry restructuring, demand-side investments, and
9 resource planning.

9

10 **Q. ON WHOSE BEHALF ARE YOU SUBMITTING THIS DIRECT**
11 **TESTIMONY?**

11

12 A. I am submitting this Direct Testimony on behalf of the Village of Bald Head Island
13 (the "Village").

13

14 **Q. PLEASE DESCRIBE YOUR EDUCATIONAL AND PROFESSIONAL**
15 **EXPERIENCE.**

15

16 A. I received an undergraduate degree from Valdosta State College (B.S. Chemistry),
17 an MBA in Finance from Georgia State University, and a Master's and Ph.D. in

17

1 Economics from North Carolina State University, where I focused on regulatory
2 and environmental economics. Among other past experiences, I served as a
3 Commissioner on the North Carolina Utilities Commission (“NCUC” or the
4 “Commission”) from 1985 to 1993. Prior to serving as a member of the
5 Commission, I served three terms as a North Carolina State Senator and worked in
6 process engineering for 12 years at three chemical plants, the last with Corning in
7 Wilmington, NC.

8 Over the past 25 plus years in my consulting practice, I have dealt
9 extensively with electric, natural gas, and other regulated utilities focusing on a
10 number of issues. In this context, I have testified before regulatory commissions
11 and legislative bodies, presented studies and authored reports on issues related to
12 electric and gas regulation, and I have been a guest speaker at the Bonbright
13 Conference, other seminars, and at the Georgia Institute of Technology. I have
14 been a visiting professor teaching both microeconomics and macroeconomics
15 courses at the University of The Virgin Islands, and I have an Adjunct Economics
16 Professor appointment with the Emory University School of Nursing where I have
17 also lectured and worked with graduate students on economic issues related to
18 health care. A copy of my resume is attached as Exhibit JAW-1.

19 **Q. ARE YOU THE SAME JULIUS A. WRIGHT WHO PROVIDED DIRECT**
20 **AND REBUTTAL TESTIMONY ON BEHALF OF THE VILLAGE OF**
21 **BALD HEAD ISLAND (THE “VILLAGE” OR “VBHI”) IN DOCKET A-41,**
22 **SUB 21?**

1 A. Yes. I provided testimony in the Sub 21 docket where the Village was seeking a
2 determination of the regulatory status of the parking and barge operations. In my
3 view, many of the issues raised in that proceeding are relevant in this proceeding
4 given the intertwined nature of the utility operations serving Bald Head Island.

5 **Q. WHAT INFORMATION DID YOU HAVE ACCESS TO FOR PURPOSES**
6 **OF YOUR TESTIMONY IN THIS PROCEEDING?**

7 A. I only had access to the information that was available to the Village. As the
8 Commission is aware, there was a significant amount of information which had
9 been withheld by SharpVue Capital, LLC (“SharpVue”) – including information
10 provided to the Public Staff but not to the Village – that has been the subject of
11 motions to compel by the Village.¹ Not having all the information provided to the
12 Public Staff, along with the Village having to file several motions to compel, makes
13 it problematic to be certain that I have all the information that might be relative to
14 this proceeding. In addition, there were some late-filed responses that I received
15 just a couple of days (i.e., Saturday, around 4:00 pm) before this testimony filing
16 was due, which limited my time to review that information.

17 Notwithstanding these restrictions, I did not see anything in these latest
18 responses, and I do not know what information the Public Staff might have that I
19 do not, that would alter my conclusions and recommendations at this time. In fact,
20 this latest information I received just a couple of days ago actually increases my
21 concerns related to SharpVue’s proposed ownership and management of the

¹ SharpVue’s discovery responses to the Village’s second through fifth requests are attached as Exhibits JAW-8 – JAW-11.

1 regulated and unregulated assets and supports my recommendations in this
2 testimony.

3 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

4 A. The purpose of my testimony is to evaluate the transaction proposed in the transfer
5 application in this proceeding in light of the Commission's governing standards, to
6 articulate various concerns with the proposed transaction, and to offer
7 recommendations for addressing those concerns should the Commission move
8 forward with the proposal.

9 **Q PLEASE SUMMARIZE YOUR TESTIMONY.**

10 A. This case is not the usual certificate transfer proceeding. SharpVue, the proposed
11 buyer here, is a private equity firm. They are not in the utility business. To evaluate
12 a proposed transaction, this Commission has established a three-part test. I discuss
13 in this testimony why I believe that SharpVue has failed to meet its burden of proof
14 related to this three part test and, consequently, for this reason alone the
15 Commission should deny the transfer of the certificate as proposed.

16 Notwithstanding my position that the application should be denied, my
17 testimony discusses other concerns with the proposed transaction.

18 First, I discuss evidence that I believe indicates that SharpVue intends to
19 seek to recover an acquisition premium from ferry passengers, barge passengers,
20 and parking in the next rate case. Related to this issue is the fact that the evidence
21 indicates the purchase price is likely well above the true asset value, or the value
22 that would be reflected in a rate base determination. Because of these
23 circumstances, I recommend that the Commission make clear in its Order—and

1 consistent with Commission precedent—that, if the transaction is approved, the
2 Commission is not approving the purchase price and SharpVue will not be
3 permitted to recover an acquisition premium in the next rate case. This approach
4 is consistent with historical Commission practice.

5 Next I review SharpVue’s corporate structure and why this type of corporate
6 structure imposes some regulatory oversight issues on the Commission and
7 ratepayers. Because of this, I discuss affiliate issues and recommend the adoption
8 of protective measures that are traditionally required in other similar corporations
9 with regulated and unregulated operations. I also recommend that the
10 Commission’s Order reflect the fact that it is not approving any expenses or
11 transactions between the affiliates in this proceeding.

12 I also recommend that the Commission should declare that BHIFT,
13 SharpVue, and SharpVue’s affiliates in this transaction (including, Pelican Legacy
14 Holdings, LLC, SVC Pelican Partners, LLC, Pelican IP, LLC, Pelican Logistics,
15 LLC, and Pelican Real Properties, LLC) are public utilities under North Carolina
16 G.S. Chapter 62. This does not mean the Commission will regulate these entities,
17 but rather that their books and the records of transactions between BHIFT and its
18 related SharpVue affiliates are open to inspection and the potential that some costs
19 may be disallowed for recovery in regulated rates by this Commission.

20 Next, I review SharpVue’s proposed asset ownership whereby all of the real
21 estate, both marinas, and both ferry terminals are owned by unregulated SharpVue
22 affiliates while only the ferry boats and island tram are owned by the regulated
23 operations. I discuss that this arrangement does not appear to be beneficial to

1 ratepayers and the Commission may wish to deny the application under this
 2 proposed asset ownership arrangement. In addition, SharpVue is seeking
 3 permission to pledge assets as collateral and, should the Commission approve the
 4 certificate transfer, I discuss my recommendations relating to restrictions I believe
 5 the Commission should place on such a pledge. I then address some additional
 6 concerns that can be cured by simply requiring SharpVue to make Commission
 7 filings for the barge and parking services similar to those required of the passenger
 8 ferry. I also make a final recommendation that the Public Staff or its representative
 9 should be called upon in the Order in this proceeding to initiate a study investigating
 10 service quality issues.

11 I conclude my testimony with a list of my various recommendations for
 12 addressing the various issues I have identified.

14 **II. SHARPVUE'S BURDEN OF PROOF**

15 **Q. PLEASE PROVIDE A BRIEF OVERVIEW OF THE WHAT IS BEING**
 16 **PROPOSED IN THIS PROCEEDING?**

17 A. Bald Head Island Transportation, Inc. ("BHIT"), Bald Head Island Limited LLC
 18 ("BHIL"), and Bald Head Island Ferry Transportation, LLC ("BHIFT") have made
 19 application to the Commission seeking the following:

- 20 • Approval for the transfer to BHIFT, an entity described by the Applicants
 21 as an "affiliate" of SharpVue, of BHIT's Common Carrier Certificate to
 22 operate the passenger ferry transportation services to and from Bald Head
 23 Island and the related tram services on the Island.
- 24 • Approval for the transfer of ownership of and operational control of the
 25 mainland parking facilities and operations and the ferry barge facilities and
 26 operations to BHIFT;

- 1 • Approval for the transfer of ownership of and operational control of the
2 barge/tug facilities and operations to BHIFT; and
- 3 • Approval for SharpVue and/or one of its affiliates to pledge and
4 borrow/issue debt secured by Transportation Assets as may be necessary to
5 finance the proposed transaction.²

6 **Q. WHO IS SHARPVUE AND WHAT IS THEIR ROLE IN THIS**
7 **TRANSACTION?**

8 A. SharpVue is a North Carolina-based private equity firm providing, in their words,
9 “flexible debt and equity capital solutions to lower middle market companies.”³ As
10 I understand it, SharpVue is not a direct investor in the proposed transaction here
11 but rather is the entity responsible for securing funding for the transaction and
12 negotiating the purchase agreement with the sellers. Post transaction, SharpVue
13 describes itself as providing “managerial” services to the utility although they have
14 declined to provide specificity to the Village as to the scope and nature of these
15 services.⁴

16 **Q. SHOULD THE COMMISSION BE OVERLY CONCERNED ABOUT THE**
17 **TRANSFER OF A COMMON CARRIER CERTIFICATE?**

18 A. Normally, the answer would likely be “no.” But this is not a normal transaction.
19 There are several factors relevant to this application that should give the
20 Commission pause.

21 First, the transportation system being sold is a monopoly transportation
22 service that is the lifeblood of Bald Head Island, an island municipality that is
23 completely dependent – in every way – on this transportation system (including the

² Amended Application, Jan. 24, 2023, pp. 1-2.

³ See www.sharpvuecapital.com/#down

⁴ See Village Reply in Support of Fifth Motion to Compel, at 4-5 (Feb. 15, 2023).

1 ferry, barge, and parking) for public access. The Commission itself has already
 2 made factual findings confirming this in its December 30, 2022 Order in Docket A-
 3 41, Sub 21. Given the extensive record supporting these findings in the Sub 21
 4 Order, in my opinion, the highest purpose of Commission regulation – to protect
 5 the public in public utilities transactions – is at play here.

6 Second, this transaction is a watershed event for the Island. Until now, the
 7 transportation system has been owned and operated by entities affiliated with the
 8 Island’s developer. The effect of this association has been to ensure that all parties’
 9 interests are aligned – the Island and its residents and workers rely on the
 10 transportation system and the developer has had a strong economic incentive to
 11 operate the transportation system in a manner that best promotes the long-term
 12 interests of the Island. A new owner may not be similarly incented. It may, instead,
 13 be incented to extract short-term maximum value from the assets being acquired
 14 (such as selling assets, siphoning off cash, cutting costs, and not making capital
 15 improvements) which can all be detrimental to the long-term interests of the public
 16 and a public utility.

17 Third, the proposed buyer here is a private equity firm. Based on the
 18 investor presentations I have reviewed,⁵ [BEGIN AEO CONFIDENTIAL] [REDACTED]
 19 [REDACTED]
 20 [REDACTED]

⁵ See SharpVue Capital Project Pelican Investment Opportunity, March 2022, April 2022, May 2022, and June 2022, where [BEGIN AEO CONFIDENTIAL] [REDACTED] [REDACTED] [END AEO CONFIDENTIAL] Copies of the investment presentations I reference in my testimony are being contemporaneously filed with the Commission, under seal, with the testimony of Lee Lloyd on behalf of the Village.

1 [REDACTED] [END AEO
2 CONFIDENTIAL]

3 Finally, there is no evidence of widespread public “buy in” to this
4 transaction. The Village, through its Council, is not supportive of the transaction,
5 as detailed in the Supplemental Direct Testimony of Scott Gardner. And numerous
6 individual citizens have stated their own concerns, including a survey of 1500
7 property owners where 78% of the respondents either oppose the transaction or do
8 not have enough information to support it.⁶ I point this out because I believe the
9 Commission should be concerned when it appears the transaction only advances
10 the interests of the seller and the buyer and when that transaction is opposed by the
11 public the utility serves.

12 **Q. ISN'T SHARPVUE JUST STEPPING INTO LIMITED'S SHOES IN THIS**
13 **TRANSACTION?**

14 A. That is what they claim, implying that the transaction will have no substantive
15 impact on the operation of the utility assets. I completely disagree with this
16 characterization. The purchase of these assets by a private equity firm – particularly
17 one untethered by regulatory oversight of critical assets if their appeal of this
18 Commission's Order in Docket A-41, Sub 21 is successful – would be
19 fundamentally different from Limited's ownership of those assets.

20 **Q. COULD YOU ELABORATE ON THE APPLICABLE LEGAL STANDARD**
21 **THAT THE COMMISSION WILL APPLY IN THIS PROCEEDING?**

⁶ See Direct Testimony of Scott T. Gardner, Docket No. A-41, Sub 22, at 4 (Dec. 14, 2022).

1 A. The Commission has established a three-part test for determining whether a
2 proposed utility transfer subject to G.S. § 62-111 is justified by the public
3 convenience and necessity:

4 (1) whether the transfer would have an adverse impact on the rates and
5 services provided by the resulting utility;

6 (2) whether ratepayers would be protected as much as possible from
7 potential costs and risks of the transfer; and

8 (3) whether the transfer would result in sufficient benefits to offset
9 potential costs and risks.

10 See Amended Application, at ¶ 23 (citing *Order Approving Merger Subject to*
11 *Regulatory Conditions and Code of Conduct* (Duke/Piedmont Order), Docket Nos.
12 E-2, Sub 1095, E-7, Sub 1100, and G-9, Sub 682, at 68 (Sept. 29, 2016)). Given
13 that the Applicants cited this standard in their application, it is not disputed that this
14 is the applicable standard.

15 **Q. BASED ON YOUR REVIEW AND YOUR EXPERTISE IN STATE**
16 **REGULATORY MATTERS, HAVE THE APPLICANTS SATISFIED THIS**
17 **STANDARD?**

18 A. No, SharpVue has not met its burden of proof that it has satisfied the standard for
19 approval in my view. I have several serious concerns here.

20 As regards the first factor, there is reason for concern that the transaction
21 will have an adverse impact on service. [BEGIN AEO CONFIDENTIAL] [REDACTED]

22 [REDACTED]

23 [REDACTED]

1 [REDACTED] 7
 2 [REDACTED]
 3 [REDACTED]
 4 i [REDACTED]
 5 [REDACTED]
 6 [REDACTED]
 7 [REDACTED]
 8 [REDACTED]

9 [REDACTED] [END AEO CONFIDENTIAL] This type
 10 incentive may not be in the best interest of public utility customers. All of these
 11 factors work together to suggest that either rates, service, or both will suffer as a
 12 result of the transaction.

13 As regards the second factor – whether ratepayers would be protected as
 14 much as possible from potential costs and risks of the transfer – SharpVue has
 15 declined to commit that it will not seek to recover an acquisition premium from
 16 ratepayers. This creates the possibility that SharpVue will seek to burden
 17 ratepayers with the excess purchase price amounts that are above net book or
 18 historic costs of the assets. Without a commitment from SharpVue not to do so,
 19 ratepayers are not “protected as much as possible” from the costs and risks of the
 20 potential future recovery of an acquisition premium.⁹

⁷ See, e.g., SharpVue Capital Project Pelican Investment Opportunity, June 2022, pp. 4, 16, and 17.

⁸ See, e.g., SharpVue Capital Project Pelican Investment Opportunity, June 2022, pp. 24, 25.

⁹ The Commission has usually not allowed recovery of an acquisition premium in regulated rates, but SharpVue is contesting this Commission’s Order in Docket A-41, Sub 21. Should SharpVue

1 As regards the third factor – whether the transfer would result in sufficient
 2 benefits to offset potential costs and risks – I have already discussed what I perceive
 3 as a risk that SharpVue will make decisions based on short-term financial gain
 4 rather than the long-term public interest. Furthermore, SharpVue’s main “benefit”
 5 claim appears to be that it will continue operating the transportation system as it is
 6 currently operated using the same employees, but I do not perceive this is a situation
 7 where there is a risk of service disruption,¹⁰ so the maintenance of current
 8 operations achieves no incremental benefit to the using and consuming public. As
 9 I see it, the main benefits are (1) to SharpVue and its investors if the transaction
 10 proceeds as it’s being proposed and (2) to the family that owns BHIL and BHIT,
 11 whereby they are relieving themselves of a public utility obligation while, at the
 12 same time, receiving an inflated price (as I discuss later) for the utility assets. Thus,
 13 I fail to see any real benefits to the third party in this transaction, the using and
 14 consuming public.

15 **Q. IS THERE ANY OTHER FACTOR RELEVANT TO THIS ANALYSIS?**

16 A. Yes. One of the factors that the Commission historically considers in evaluating
 17 transactions of this nature is “whether effective regulation of the merging utilities
 18 can be maintained.”¹¹ Here, SharpVue’s appeal from the Sub 21 Order creates legal
 19 uncertainty regarding the scope of the Commission’s authority over the parking and

prevail, it would mean that the parking and barge operations” rates would be unregulated, and SharpVue could then raise these unregulated rates to recover any acquisition premium – unless SharpVue agrees to the Commission’s jurisdiction over these parking and barge operations’ rates.

¹⁰ See BHIL and BHIT Responses to Village’s Third Data Requests, at DR 3-2 (“BHIL has no plans to discontinue utility services and has never threatened to do so.”) (Exhibit JAW-7).

¹¹ See Duke/Piedmont Merger Order; Order Approving Merger and Issuance of Securities, Docket No. E-7, Sub 596 (April 22, 1997).

1 barge operations and, potentially, over other ancillary assets such as the Island and
2 Deep Point ferry terminals which are used and useful in connection with the
3 regulated utility operations. SharpVue's appeal is at tension with the conclusions of
4 the Commission in the Sub 21 Order.

5 Stated another way, if SharpVue sought approval to acquire the barge and
6 parking assets to operate on an unregulated basis the Commission would, and
7 should, deny that application. Yet, with its appeal, SharpVue is seeking to
8 effectively create the same outcome, which, if permitted, would be detrimental to
9 the public interest. While the Commission obviously will conform to any decision
10 of the appellate courts, it is appropriate in the meantime for the Commission to make
11 determinations which are consistent with its understanding of its authority and to
12 advance the public interest. Given this, should the Commission wish to proceed and
13 agree to the certificate transfer, I believe it should only do so with SharpVue's
14 express acquiescence to, and acceptance of, the Commission's jurisdiction and
15 authority over parking and barge (and other ancillary assets).

16 **Q. NOTWITHSTANDING THOSE CONCERNS, DO YOU HAVE**
17 **RECOMMENDATIONS FOR WAYS THE COMMISSION COULD**
18 **REDUCE RISKS IN THIS TRANSACTION IF IT CONCLUDES THAT**
19 **THE TRANSACTION IS IN THE PUBLIC INTEREST?**

20 A. As discussed, I do not believe that SharpVue has met its burden of proof that the
21 proposed certificate transfer is in the public interest and for this reason alone the
22 Commission should deny the application. Notwithstanding my overriding
23 concerns, should the Commission move forward with this application, my

1 following testimony discusses a variety of regulatory mechanisms and conditions
2 that could be used by the Commission to reduce risk and help protect ratepayers
3 and the public.

4
5 **III. AMENDED APPLICATION AND ACQUISITION PREMIUM ISSUE**

6 **Q. HAVE YOU REVIEWED THE AMENDED APPLICATION AND**
7 **TESTIMONY FILED BY THE APPLICANTS ON JANUARY 24, 2023 IN**
8 **THIS PROCEEDING?**

9 A. Yes.

10 **Q. WHAT WERE THE KEY DIFFERENCES IN THE AMENDED FILINGS?**

11 A. There were several notable differences between the Amended Application and
12 Amended Direct Testimony and that filed on July 14, 2022, including revisions
13 necessary to conform to the Sub 21 Order. Thus one key difference is that this
14 Amended Application identifies the parking and barge assets and operations as
15 among the assets for which transfer authority is sought.

16 **Q. DO THE APPLICANTS ACCEPT THE COMMISSION'S AUTHORITY**
17 **OVER PARKING AND BARGE IN THE AMENDED FILINGS?**

18 A. No. They recognize that the Sub 21 Order found such authority and that they are
19 required to file the amended application, but the amended application notes that
20 BHIL, in particular, "does not concede that the Commission has any jurisdiction or
21 authority over the Parking and Barge Operations or that the Commission's approval
22 of the sale of those assets as requested is necessary as a matter of law."¹² Consistent

¹² Amended Application, at 2.

1 with this position, the Applicants (including SharpVue) filed a notice of appeal
 2 seeking review by the North Carolina Court of Appeals of the Sub 21 Order on
 3 January 27, 2023.

4 **Q. WHAT DO YOU SEE AS THE RELEVANCE TO THIS PROCEEDING OF**
 5 **SHARPVUE’S “RESERVATION OF RIGHTS” AND APPEAL OF THE**
 6 **COMMISSION’S ORDER IN DOCKET NO. A-41, SUB 21?**

7 A. While I am not a lawyer and am not offering a legal opinion, from my regulatory
 8 perspective I find it substantively problematic that they would contest the
 9 Commission’s authority while at the same time they are seeking an order from the
 10 Commission which requires the exercise of that authority. Should the Commission
 11 move forward, notwithstanding the appeal, to avoid future disputes I think, as I
 12 stated earlier, that it is important that the Commission require SharpVue’s
 13 acquiescence to the Commission’s authority as regards the parking and barge
 14 operations, especially given the Commission’s conclusions that the parking and
 15 barge operations are “necessary components of a single, holistic transportation
 16 service.” Sub 21 Order, at 17.¹³

17 **Q. DO YOU HAVE ANY OTHER OBSERVATIONS ABOUT THE**
 18 **DIFFERENCES BETWEEN THE ORIGINAL AND AMENDED**
 19 **TRANSFER APPLICATION?**

20 A. Yes, I found it quite significant that SharpVue revised the Amended Application to

¹³ The Commission made multiple similar factual findings in the Sub 21 Order. *See, e.g.*, Sub 21 Order, at Findings of Fact 13, 15 (the parking facilities provide “the only means of public parking access” to the ferry and the public’s use of the parking is “derivative of” the public’s use of the ferry “and vice versa.”) and *id.*, at Finding of Fact 29 and p. 24 (recognizing the barge is the “the ‘lifeblood’” to the island) and p. 25 (“[w]ithout these [barge] services, the Ferry Operations would either have to provide the same or most public travel to the Island would cease”).

1 delete the prior commitment not to seek acquisition premium from ratepayers.
 2 Previously, SharpVue stated that “[BHIFT] is not seeking to recover any
 3 transaction costs or acquisition premium related to this transaction from
 4 passengers” See Application for Transfer of Common Carrier Certificate, at ¶
 5 37 (Jul. 14, 2022) (emphasis added). This commitment was repeated in Mr.
 6 Robert’s Direct Testimony: “Q. Will SharpVue seek to recover any transaction or
 7 acquisition premiums related to this transaction from passengers? A. No.” See
 8 Direct Testimony of Lee Roberts, at 7 lines 1-3 (Jul. 14, 2022). This commitment
 9 to not seek recovery of any acquisition premium has been excised from both the
 10 Amended Application and the Amended Direct Testimony of Mr. Roberts.¹⁴

11 **Q. WHAT CONCLUSION DO YOU DRAW FROM THIS OMISSION OF THE**
 12 **PLEDGE NOT TO SEEK TO RECOVER ACQUISITION PREMIUM?**

13 A. It was obviously intentional and it signals to me that SharpVue likely intends to
 14 seek to recover an acquisition premium from ferry passengers, barge passengers,
 15 and parking, either through future unregulated services rates (potentially parking
 16 and barge services) or in the next regulated services rate case.

17 **Q. IN MR. ROBERTS’ AMENDED DIRECT TESTIMONY (PAGE 7, LINES**
 18 **14-18) HE STATES THAT THERE WILL NOT BE A RATE INCREASE**
 19 **REQUEST AS A RESULT OF THIS PROPOSED TRANSACTION FOR**
 20 **ONE YEAR. DOES THIS ALLEVIATE YOUR CONCERN THAT**
 21 **SHARPVUE WILL NOT SEEK RECOVERY OF AN ACQUISITION**
 22 **PREMIUM IN A FUTURE RATE CASE?**

¹⁴ See Amended Application at ¶ 38; Amended Direct Testimony of Lee Roberts, at 7-8 lines 21-1.

1 A. No, that does not alleviate my concern in this matter. However, I believe Mr.
2 Roberts can clarify this issue by making it clear that this statement includes no
3 future efforts to recover an acquisition premium in any passenger ferry rates, barge
4 operation's rates, or parking rates.

5 **Q. WHAT ARE YOUR CONCERNS REGARDING THE RECOVERY OF**
6 **ACQUISITION PREMIUM?**

7 A. This is a huge issue. It has a potential significant adverse impact on ratepayers. In
8 addition, I believe that SharpVue investors should be aware of the financial
9 consequences of this issue and how it will likely be resolved if Commission
10 precedent is any guide. Based on the evidence I have reviewed, it is apparent that
11 the primary reason that Limited's prior effort to sell the system was unsuccessful
12 (in that case, to the Bald Head Island Transportation Authority) was that Limited,
13 acting through the Authority, was unable to justify the proposed transaction price,
14 which greatly exceeded the tax valuation of the assets.

15 Specifically, regarding the Bald Head Island Authority proposed purchase,
16 the Local Government Commission ("LGC"), the state agency entrusted with over-
17 seeing local governing financing, indicated discomfort with two appraisals offered
18 in support of the authority purchase (appraisals of \$50.9 million and \$48 million).
19 Comments of the State Auditor, one of the members of the LGC, indicated she felt
20 the two appraisals were higher than the actual value of the property. Attached as
21 Exhibits JAW-2 and JAW-3 are letters from the State Auditor expressing those
22 concerns with the two appraisals. Attached as Exhibit JAW-4 is a public statement
23 of the State Treasurer explaining the LGC's decision declining to move forward on

1 the Authority financing application. Attached as Exhibit JAW-5 is a transcript of
 2 an LGC discussion on the financing application at its November 2, 2021 meeting.
 3 Also, attached as Exhibit JAW-6 is a citizen letter discussing valuation issues.
 4 While the LGC discussion centered on the proposal of the Bald Head Island
 5 Transportation Authority, (a) it is my understanding that the underlying valuations
 6 relied on by the parties have not significantly changed, and (b) [BEGIN AEO
 7 CONFIDENTIAL] [REDACTED]
 8 [REDACTED]
 9 [REDACTED]
 10 [REDACTED] [END AEO CONFIDENTIAL]

11 **Q. WHAT IS THE CONCERN IF THE PRICE BEING PAID AND RELATED**
 12 **VALUATIONS ARE “TOO HIGH”?**

13 A. The basic concern with the appraisals valuation being too high is that it could mean
 14 that the debt service obligations might not be supported by the revenues generated
 15 by the ferry, barge and parking operations. Consequently, I am curious whether
 16 and how the income from the these operations can support the even higher purchase
 17 price being proposed by SharpVue. In this regard I would caution that the
 18 Commission should be aware of [BEGIN AEO CONFIDENTIAL] [REDACTED]
 19 [REDACTED]

¹⁵ [BEGIN AEO CONFIDENTIAL] [REDACTED]
 [REDACTED]
 [REDACTED] [END AEO CONFIDENTIAL]

1 [REDACTED]
 2 [REDACTED]
 3 [REDACTED] [REDACTED]
 4 [REDACTED] [END AEO

5 CONFIDENTIAL]

6 **Q. DO WE KNOW THE MAGNITUDE OF THE ACQUISITION PREMIUM**
 7 **AT ISSUE?**

8 A. Yes. This actual financial analysis is sponsored by Mr. O'Donnell and addressed
 9 in his testimony, as supported by an Affidavit from Julie Perry. My review of his
 10 testimony and data leads me to believe that SharpVue will potentially seek to
 11 recover [BEGIN AEO CONFIDENTIAL] [REDACTED]

12 [REDACTED] [END AEO CONFIDENTIAL] In the context of these
 13 assets, this would represent a significant wealth transfer which from ratepayers to
 14 the private equity firm which the Commission should not allow.

15 **Q. DO YOU HAVE A RECOMMENDATION FOR THE COMMISSION ON**
 16 **THIS ISSUE?**

17 A. Yes. Quite simply the Commission should not approve this transaction with this
 18 issue left unresolved because doing so would be wrong to both the ferry system's
 19 using and consuming public and wrong to SharpVue's investors. Consequently, I
 20 believe the Commission's Order in this proceeding should state definitively that
 21 (1) SharpVue will not be permitted to recover an acquisition premium for all the
 22 assets being acquired (including parking and barge), (2) the Commission in this

¹⁶ See forward looking rate assumptions in SharpVue Investment Opportunity, January, March, April, May and June, 2022.

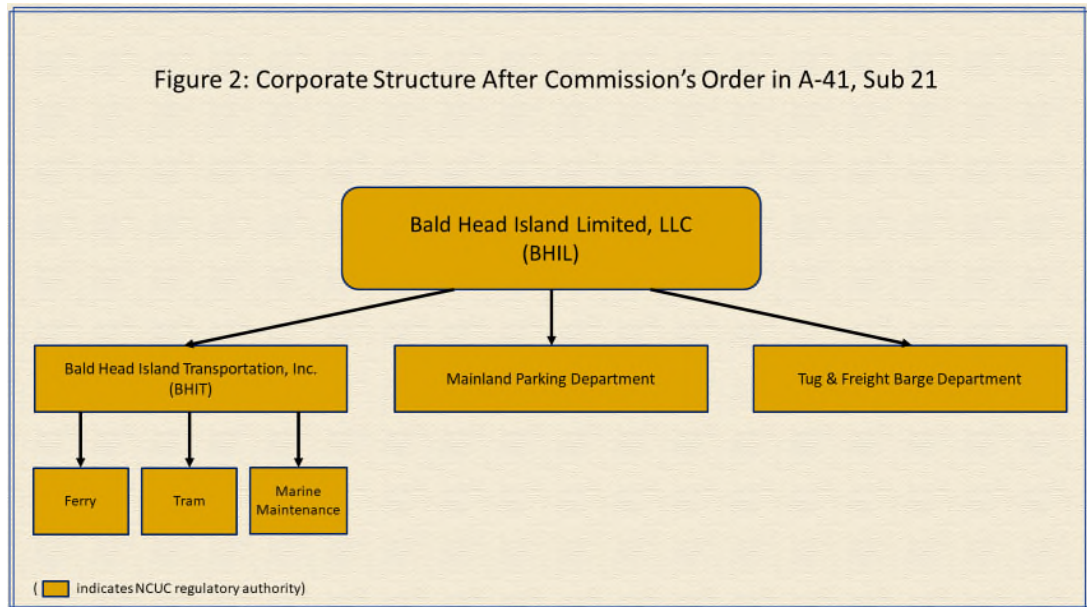
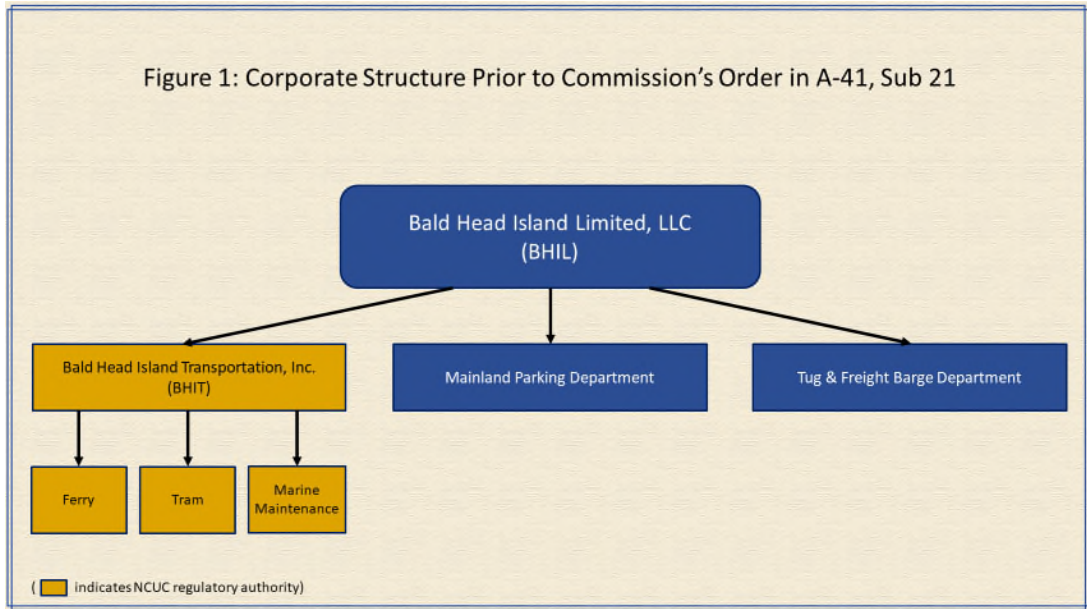
1 Order is not evaluating or approving the purchase price, nor is the purchase price
2 reflective of the rate base the Commission will use in a future rate proceeding, and
3 (3) SharpVue should be required to acquiesce to the Commission's jurisdiction and
4 authority for purposes of this requirement, as SharpVue should not be permitted to
5 recover an acquisition premium from users of the passenger, barge, or parking
6 operations even if the Courts find in their favor in the appeal case. This approach
7 is consistent with the Commission's well-established approach in merger and
8 transfer cases and is necessary to ensure that ratepayers are not harmed as a result
9 of the transaction. Addressing this issue now will avoid what will otherwise be a
10 contentious hearing on this issue in the future and it will also help SharpVue and
11 its investors manage their expectations as regards going forward utility operations.
12

13 **IV. SHARPVUE'S PROPOSED CORPORATE STRUCTURE**

14 **Q. PLEASE DISCUSS SHARPVUE'S CORPORATE STRUCTURE AND THE**
15 **RELATED TRANSACTIONS BEING PROPOSED.**

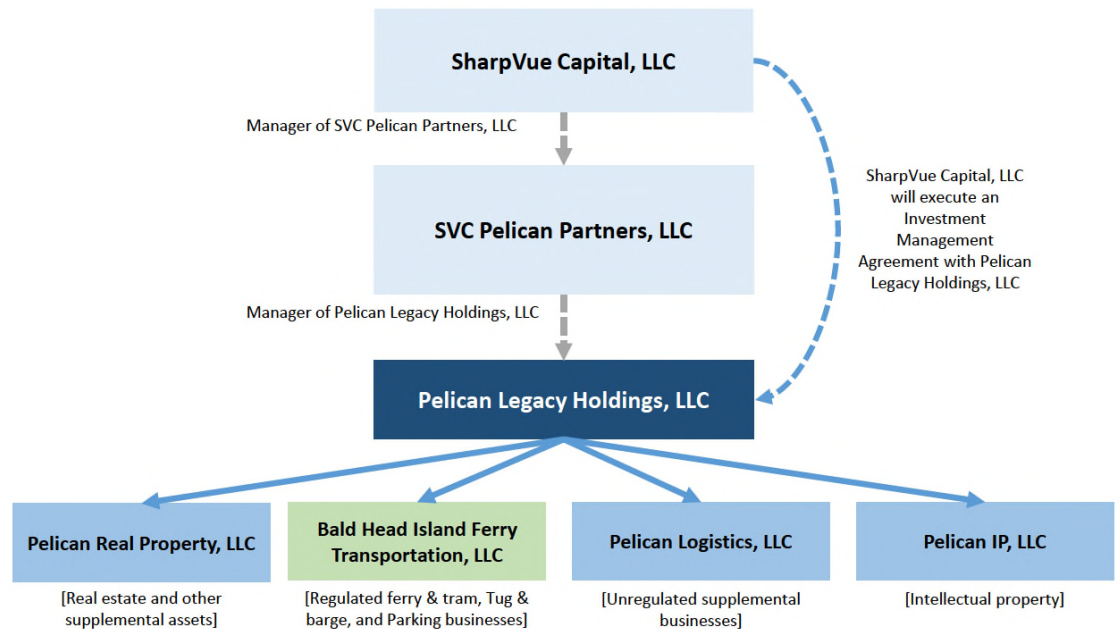
16 A. Figure 1 below provides an illustration of the historical Bald Head Island ferry
17 services corporate structure as perceived by SharpVue prior to the Commission's
18 Order in Docket No. A-41, Sub 21. This figure indicates that BHIT is the current
19 holder of the NCUC Common Carrier Certificate, and, prior to the recent order in
20 Docket A-41, Sub 21 (Dec. 30, 2022), both BHIL and SharpVue (and its various
21 affiliates) claimed that only the assets held by BHIT were subject to this
22 Commission's regulatory authority. In the recent Sub 21 Order, the Commission
23 made clear, as shown in Figure 2, that all of the primary ferry related assets and

1 operations, including mainland parking and the barge services, were subject to this
2 Commission’s regulatory authority (subject to SharpVue’s recent appeal of this
3 Commission Order).



1 Figure 3 illustrates SharpVue and its related affiliate’s current corporate structure
2 associated with the proposed BHIL transaction.

FIGURE 3:
Proposed Organizational Structure
Exhibit B to the Amended Application under Sub 22 as of 2/16/2023



3 **Q. PLEASE DESCRIBE THE VARIOUS AFFILIATE OWNERSHIP AND**
4 **MANAGEMENT ARRANGEMENTS, AS YOU UNDERSTAND THEM,**
5 **THAT WOULD RESULT FROM THE SHARPVUE TRANSACTION.**

6 **A.** As illustrated in Figure 3, and based on the filings made by SharpVue, these various
7 SharpVue affiliates ownership and management relationships are:

8 **[BEING AEO CONFIDENTIAL]**

- 9 • [REDACTED]
- 10 [REDACTED]

1 [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 • [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 • [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

¹⁷ SharpVue Responses to Public Staff Data Request 3-1 to SharpVue; SharpVue Responses to Public Staff Second Data Requests to BHIFT, at DR 2-5.

¹⁸ SharpVue Responses to Public Staff Data Request 3-1 to SharpVue.

¹⁹ SharpVue Supplemental Responses to Second Data Requests to BHIFT, at DR 2-2.

²⁰ Operating Agreement of Pelican Legacy Holding, at Exhibit D (SHARPVUE-0878).

²¹ Operating Agreement of Pelican Legacy Holdings, LLC, at § 1.01 (SHARPVUE-0838).

²² Operating Agreement of Pelican Legacy Holdings, LLC, at § 5.02(a), (SHARPVUE-0853).

²³ See Amended Application, at ¶ 17.

²⁴ SharpVue Responses to Public Staff Second Data Requests to BHIFT, at DR 2-9.

1 [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 • [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 ▪ [REDACTED]

8 ▪ [REDACTED]

9 ▪ [REDACTED]

10 ▪ [REDACTED]

11 ▪ [REDACTED]

12 [REDACTED]

13 • [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 ▪ [REDACTED]

17 ▪ [REDACTED]

18 ▪ [REDACTED]

²⁵ SharpVue Responses to Public Staff Second Data Requests to BHIFT, at DR 2-6.

²⁶ Amended Application, at ¶ 16; Amended Direct Testimony of Lee Roberts, at 3:16-19.

²⁷ SharpVue Responses to Village Fifth Data Requests, at DR 5-5.

²⁸ It is not clear at all from SharpVue’s Amended Application and discovery responses exactly what parking assets will be owned by BHIFT or what BHIFT’s role in operating the parking facilities will be. It does seem clear that BHIFT will not own the parking real estate itself.

²⁹ SharpVue Responses to Village Fifth Data Requests, at DR 5-3(d).

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17

▪ [REDACTED]

• [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

• [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

³⁰ [AEO CONFIDENTIAL]

[REDACTED]

[AEO CONFIDENTIAL]

³¹ SharpVue Responses to Public Staff Seventh Data Requests to BHIFT, at DR 7-3.

1 [REDACTED]

2 [REDACTED]

3 [END AEO CONFIDENTIAL]

4 **Q. WHAT DO YOU SEE AS THE MOST IMPORTANT ISSUES WITH**
5 **SHARPVUE’S PROPOSED AFFILIATE RELATIONSHIP’S AND ASSET**
6 **OWNERSHIP.**

7 A. There are two things that stand out to me. First, the multiple affiliates and the
8 related overlapping management illustrate a need, if the certificate transfer is
9 approved, for the Commission to require various affiliate transaction conditions.
10 The second, and one of the more troubling aspects of SharpVue’s proposal, is that
11 it is proposing that the only regulated assets owned by BHIFT are the ferry boats,
12 the tug and barge boats, the island tram, and I assume the parking operation’s ticket
13 machine and parking gate.

14 None of the underlying real estate of the parking facilities, none of the real
15 estate at either ferry terminal, neither of the ferry terminal buildings, and no other
16 ferry operations buildings or other assets, are owned by the proposed regulated
17 affiliate! As I discuss later, I find this proposed asset ownership quite troubling and
18 believe the Commission may wish to deny the proposed certificate transfer under
19 the proposed asset ownership structure in the absence of a demonstration of positive
20 ratepayer benefits. In addition, as I discuss later, this proposed asset ownership is
21 also problematic to me as it relates to the pledging of assets and to the establishment
22 of a future rate base.

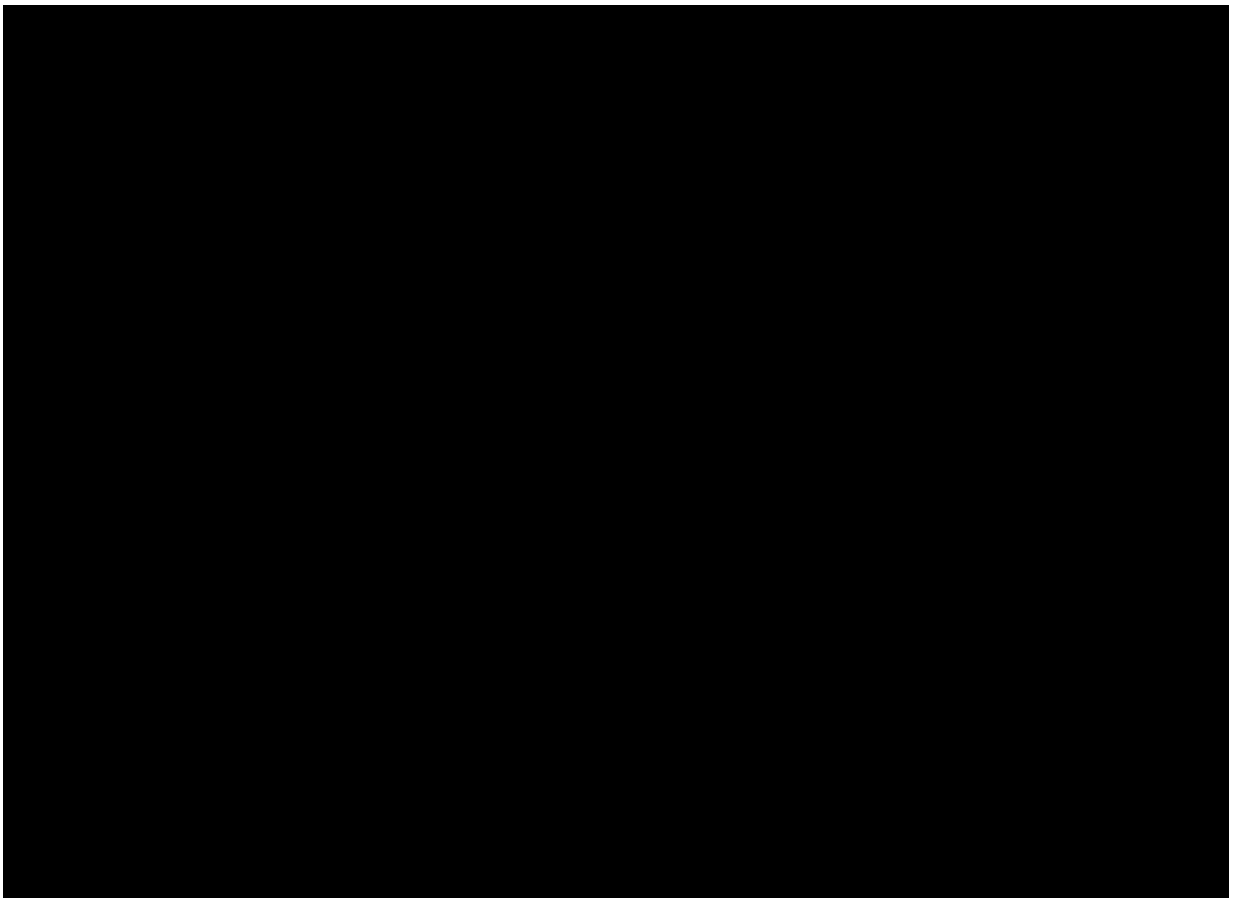
23 **Q. HAVE YOU REVIEWED RECENT DISCOVERY RESPONSES THAT**

1 **SUGGEST THAT THE CORPORATE STRUCTURE IS EVEN MORE**
2 **COMPLICATED THAN YOU HAVE DESCRIBED?**

3 A. Yes. We received additional information pursuant to Commission order on two
4 day ago. Copied below is the new organization charge which provides additional
5 layers of complexity that had not been disclosed previously

[BEGIN AEO CONFIDENTIAL]

Figure 4



6 **[END AEO CONFIDENTIAL]**

7 As illustrated by the multiple and overlapping arrows in this diagram, unraveling
8 the manner in which Pelican Legacy Holdings, LLC and its subsidiaries will be
9 controlled and managed is somewhat complex and will require thorough and

1 cooperative (with the Commission and Public Staff) affiliate relationship
 2 transaction and accounting practices. This type of arrangement may be customary
 3 in private equity deals, but it complicates the task before the Commission in
 4 ensuring that appropriate regulatory controls are in place.

5 **Q. WHY IS SHARPVUE'S CORPORATE STRUCTURE IMPORTANT TO**
 6 **THE TRANSACTION BEING PROPOSED?**

7 A. It is critical that the Commission have a clear understanding of who will own and
 8 control the regulated operations. The Commission has emphasized in a prior
 9 transfer involving a private equity firm that it

10 . . . strives to do all that it can to maintain the stability of the public
 11 utilities that the Commission regulates. To that end, **the**
 12 **Commission needs to know who is in control of the operations**
 13 **of each utility.** Further, the Commission needs to ensure as much as
 14 possible that each utility has **stability in its management and in**
 15 **the people who are making the operations decisions.** One
 16 situation the Commission wants to avoid is having the control of a
 17 utility passed to a new parent company on a frequent basis merely
 18 because an opportunity for selling the utility comes along.³²
 19

20 In that proceeding, the Commission was expressing a particular concern that the
 21 proposed ownership of the upstream owner had changed hands *while the transfer*
 22 *proceeding was pending*, causing the Commission to observe: **“To say the least,**
 23 **this has not given the Commission any comfort about the future stability of**
 24 **Frontier’s ownership if the Commission should give its approval for Frontier**
 25 **to be owned by an equity investor.”** (*Id.*) (emphasis added) As the
 26 Frontier/Blackrock situation illustrated, assessing ownership and control is much
 27 more difficult in the private equity setting where asset ownership is disbursed,

³² Frontier Natural Gas, *Order Joining Necessary Party and Requiring Additional Verified Information*, Docket No. G-40, Sub 136, at 6-7 (July 11, 2017) (emphasis added).

1 management and ownership is separated, multiple affiliate relationships are
 2 envisioned, and the entire structure is often intended to facilitate future transactions.

3 **Q. WHAT OTHER OBSERVATIONS WOULD YOU MAKE ABOUT**
 4 **OWNERSHIP AND MANAGEMENT AS PROPOSED BY SHARPVUE?**

5 A. As shown in Figure 3 and Figure 4, the proposed SharpVue corporate structure has
 6 several levels of management, several different affiliates that own different parts of
 7 the regulated and unregulated assets, and several different affiliates that provide
 8 management services and other services to the tariff-regulated ferry operations.
 9 Notwithstanding my earlier concerns about the proposed regulated and unregulated
 10 asset ownership, given this proposed corporate and management structure, it is
 11 important for the parties to understand which of SharpVue's various affiliates are
 12 subject to the Commission's regulatory authority and how that regulatory authority
 13 should be exercised.

14

15 **V. SHARPVUE'S AFFILIATE RELATIONSHIPS**
 16 **AND RELATED REGULATORY OVERSIGHT**

17 **Q. WHAT IS THE BASIS OF YOUR CONCERNS REGARDING THE**
 18 **PROPOSED AFFILIATE TRANSACTIONS?**

19 A. The SharpVue proposed corporate structure involves several entities who each own
 20 different parts of the overall Bald Head Island ferry services. In addition, there are
 21 management agreements between the various affiliates and there have historically
 22 been, and will continue to be, various operations that will provide unregulated
 23 services to the regulated entities, such as ferry and barge maintenance (the
 24 maintenance operations are unregulated). Because of this intermingling of

1 regulated and unregulated services and the charging of fees to the regulated entities
 2 by the unregulated entities, this creates the need for additional affiliate relationship
 3 regulatory oversight. This Commission has often cited a concern for these types of
 4 regulated and unregulated relationships. For example, in the Commission’s Order
 5 approving the Duke Energy Corporation merger with Cinergy Corporation, the
 6 approval order stated that the “[k]nown and potential costs and risks of the Merger
 7 to ratepayers include.... potential adverse effects on Duke Power of transactions
 8 within the holding company family and the resulting need for increased regulatory
 9 oversight of such transactions, the potential for Duke Power to unreasonably favor
 10 its unregulated affiliates over non-affiliated suppliers of goods and services,”³³

11 Simply put, the overriding concern is that unregulated affiliates might
 12 provide services to the regulated entity that are too costly or unnecessary, and
 13 potentially lead to unwarranted increases in the regulated rates. I would add that
 14 SharpVue witness Mayfield acknowledged this same concern stating in her Direct
 15 Testimony in the Sub 21 proceeding, “Financial transparency allows the
 16 Commission to ensure that a regulated utility does not, for instance, divert revenue
 17 to an unregulated entity that would artificially reduce the utility's revenue or absorb
 18 expenses not specifically used in the regulated activity and perhaps bolster a case
 19 for higher than justified rates.”³⁴

20 **Q. HOW HAS THIS COMMISSION TRADITIONALLY REGULATED**
 21 **AFFILIATE TRANSACTIONS?**

³³ Order in Docket No. E-7, Sub 795, March 24, 2006, at p. 7 ¶ 14.

³⁴ Mayfield Direct Testimony, Docket No. A-41 Sub 21, Sept 8, 2022, pp. 2-4, lines 19-22:1-4.

1 A. Affiliate transactions are usually governed and accounted for under a document
2 often called a Code of Conduct, which contains rules, procedures, and filing
3 requirements that govern the various affiliate interactions and transactions. This
4 Commission has required affiliate Codes of Conduct be filed as a condition of
5 regulatory approval of many types of utility filings including, but not limited to
6 utility mergers, utility holding Company organizations, utility reorganizations, and
7 utilities initiating new unregulated business operations.

8 **Q. WHAT RULES, PROCEDURES AND FILING REQUIREMENTS WOULD**
9 **YOU RECOMMEND THIS COMMISSION ADOPT AS A REGULATORY**
10 **CONDITION FOR APPROVAL OF THIS CERTIFICATE TRANSFER?**

11 A. Based on the fact that this Commission has required affiliate Codes of Conduct for
12 numerous utilities and affiliate operations, I believe the basic issues and related
13 procedures found in the aforementioned Duke/Cinergy merger Code of Conduct
14 found in Dockets E-2, Sub 998, E-22, Sub 551 (or in other Codes of Conduct)
15 provide a reasonable guide, subject to the elimination of those procedures not
16 applicable to this certificate transfer filing. These procedures and requirements
17 include, but are not limited to, the following on all SharpVue affiliates:

- 18 ▪ G.S.§ 62-51 - allowing inspection of books and records.
- 19 ▪ G.S. § 62-153 - requiring the filing, with this Commission, the various
20 contracts for services between affiliates.
- 21 ▪ G.S. § 62-160 - related to security regulation and the ability to pledge assets.
- 22 ▪ Maintenance of separate accounting books and records for each affiliate.
- 23 ▪ Nondiscrimination in that affiliates will not unduly discriminate against
24 services offered by non-affiliates.

- 1 ▪ Restrictions related to the provision of goods and services, transfer pricing,
2 and cost allocation between a non-tariff regulated affiliate and a tariff-
3 regulated affiliate (tariff regulated in this context includes the provision of
4 parking, passenger ferry, tram and barge operations).
- 5 ▪ Any costs for services provided to a tariff-regulated entity shall be at the
6 lower of market price or affiliate cost.
- 7 ▪ Any provision of services from a tariff-regulated affiliate to another affiliate
8 shall be at the higher of market price or tariff-regulated affiliate cost.
- 9 ▪ Shared costs, including those related to management and joint purchases,
10 between affiliates shall be distributed on a reasonable and justifiable basis.

11 **Q. DO YOU HAVE ANY OTHER CONCERNS RELATED TO THE**
12 **AFFILIATE FINANCIAL RELATIONSHIPS BEING PROPOSED IN THIS**
13 **PROCEEDING?**

14 A. Yes. I recognize the Commission has approved, through stipulation, the current
15 affiliate financial relationship between BHIT and BHIL. This includes BHIT
16 paying the parent company BHIL a lease for certain facilities required for the
17 operation of the ferry business [BEGIN CONFIDENTIAL] ██████████ [END
18 CONFIDENTIAL] per year.³⁵ However, it is not apparent to me how the
19 separation of these critical assets makes regulatory sense post-transaction, and there
20 are also one or more management contracts between SharpVue's various affiliates
21 that are being proposed in this proceeding which may duplicate services provided
22 under the existing lease arrangements. Further, at this time it is unclear to me
23 whether and how these existing financial relationships have been examined and
24 placed into the regulated ferry services rates.

³⁵ James Leonard Direct Testimony, Docket No. A-41 Sub 21, Sept 8, 2022, at Exhibit B pp. 64-65.

1 Should the Commission move forward in this docket, I recommend the
 2 Commission’s Order include language that (1) notifies SharpVue and its affiliates
 3 that any proposed change to the current ferry and parking regulated tariffs could
 4 trigger an investigation of and a report related to justification for these current
 5 affiliate costs, and (2) clearly indicates that the level of these current affiliate related
 6 costs are not being approved in this Order and that these costs will be examined and
 7 adjudicated in the ferry system’s next filed rate case, and these costs may be found
 8 to be unjustified and unrecoverable in regulated ferry or parking rates in this future
 9 rate proceeding.

10
 11 **VI. THE COMMISSION’S REGULATORY AUTHORITY**

12 **Q. DOES THIS COMMISSION HAVE THE AUTHORITY TO DECLARE**
 13 **SHARPVUE AND ITS AFFILIATES INVOLVED IN THIS TRANSACTION**
 14 **PUBLIC UTILITIES?**

15 **A.** Yes. To explain, refer to Figure 2 which illustrates the current corporate structure
 16 of the Bald Head Island ferry transportation services. Note in the current (not
 17 SharpVue proposed) corporate structure that BHIL is the parent corporation of all
 18 the ferry transportation operations. Under the BHIL corporate ownership umbrella
 19 is BHIT which owns the ferry, tram, and marine maintenance operations. BHIL
 20 owns the mainland parking and the barge operations. The Commission’s Order in
 21 Docket No. A-41, Sub 21, noted that “BHIL [the parent company of BHIT] was a
 22 public utility under Chapter 62 because it was the parent corporation of BHIT and
 23 BHIL’s operations would have an impact on BHIT’s rates or services.” This

1 reasoning is based on the clear language of G.S. § 62-3(23)c which states “The
2 term ‘public utility’ shall include all persons affiliated through stock ownership
3 with a public utility doing business in this State as parent corporation or subsidiary
4 corporation to such an extent that the Commission shall find that such affiliation
5 has an effect on the rates or service of such public utility.”

6 In a similar vein, SharpVue’s proposed corporate structure indicates both
7 various levels of corporate entities that either have a stock ownership interest in or
8 management contracts with BHIFT, the regulated ferry operations. These
9 relationships include the provision of various services and the payment of fees from
10 the regulated ferry operations to the heretofore unregulated BHIFT affiliates, and
11 these various payments will impact the rates and services of BHIFT’s ferry
12 operations. Consequently, based on both stock ownership and on the impact on
13 regulated rates, as it did with BHIT and BHIL, this Commission should declare that
14 BHIFT, SharpVue Capital, LLC, Pelican Legacy Holdings, LLC, SVC Pelican
15 Partners, LLC, Pelican IP, LLC, Pelican Logistics, LLC, and Pelican Real
16 Properties, LLC are public utilities under North Carolina G.S. Chapter 62.

17 **Q. IF THE COMMISSION DECLARES SHARPVUE AND ALL OR SOME OF**
18 **ITS AFFILIATES AS PUBLIC UTILITIES, DOES THIS MEAN THE**
19 **COMMISSION MUST REGULATE THEIR SERVICES AND FESS?**

20 A. No. Just as it does with holding company affiliates of regulated electric utilities, it
21 simply means that the books and records of transactions between BHIFT and its
22 related SharpVue affiliates are open to inspection by this Commission and that the
23 various affiliate costs charged to BHIFT may be disallowed in future rates.

1
2 **VII. SHARPVUE'S PROPOSED ASSET OWNERSHIP STRUCTURE**
3 **AND ITS PROPOSAL TO PLEDGE REGULATED**
4 **ASSETS TOWARD FINANCING ITS PROPOSED ACQUISITION**
5

6 **Q. PLEASE PROVIDE A BRIEF OVERVIEW OF THE PROPOSAL BY**
7 **SHARPVUE TO PLEDGE THE ASSETS AND BORROW/ISSUE DEBT.**

8 A. It is my understanding that under the terms of the Asset Purchase Agreement
9 SharpVue is proposing to pay \$67.2 million to acquire all of the assets of BHIT and
10 a portion of the remaining assets of BHIL, which include both the assets associated
11 with ferry operations, tram operations, parking facilities, and barge, as well as other
12 assets. To support this transaction SharpVue is seeking approval to pledge assets
13 and borrow/issue debt secured by the ferry and tram assets as may be necessary to
14 finance the transaction described herein.³⁶

15 **Q. DO YOU HAVE ANY CONCERNS REGARDING HOW SHARPVUE IS**
16 **PROPOSING TO PLEDGE ASSETS AND THE RELATED OWNERSHIP**
17 **OF THESE FERRY RELATED ASSETS?**

18 A. Yes. As I discussed earlier, SharpVue is proposing that the unregulated affiliate,
19 Pelican Real Property, LLC, will own both ferry terminal buildings and the
20 associated real estate, the parking facility real estate, and all other real estate and
21 building assets labeled as supplemental assets. This is an unusual regulatory
22 relationship, where the underlying real estate and structures that support the
23 regulated operations are not owned by the entity with the regulated operations.
24 Based on this proposed asset ownership alone, I believe the Commission may wish

³⁶ Amended Application, ¶ 19.

1 to deny transfer of the certificate in the absence of an affirmative demonstration of
 2 ratepayer benefit. [BEGIN AEO CONFIDENTIAL] [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 [REDACTED]
 6 [REDACTED] [REDACTED]
 7 [REDACTED] [END AEO
 8 CONFIDENTIAL]

9 Consequently, the Commission’s Order, if this ownership proposal goes
 10 forward, should indicate (1) that the utility-related real estate (i.e., parking) and
 11 terminal buildings assets cannot be sold or leased absent Commission approval,
 12 (2) that any financial arrangements made between parties owning or leasing these
 13 real estate and terminal buildings assets cannot be assumed or payments made by
 14 the regulated operations be assumed absent Commission approval of said
 15 payments, and (3) based on both ownership and on the impact on regulated rates,
 16 as it did with BHIT and BHIL, this Commission should indicate that in any sale or
 17 lease of these assets the purchaser or leasing party shall be declared a public utility
 18 and subject this Commission’s authority under G.S. Chapter 62.

19 **Q. DO YOU HAVE ANY ADDITIONAL CONCERNS WITH SHARPVUE’S**
 20 **PROPOSAL TO PLEDGE ASSETS TO SUPPORT THE PROPOSED**

³⁷ [BEGIN AEO CONFIDENTIAL] [REDACTED]
 [REDACTED]
 [REDACTED] [END AEO CONFIDENTIAL]

1 **TRANSACTION?**

2 A. Yes. I would observe that SharpVue has not specifically identified the assets which
3 it is proposing to encumber for the proposed financing. In the absence of this
4 information, I question whether the Commission is in a position to make a
5 determination on the request for approval to pledge regulated assets – particularly
6 for an acquisition that involves a mix of “regulated” and “unregulated” assets.

7 In any event, to the extent that SharpVue is proposing to pledge only
8 regulated assets in support of a transaction which includes a mix of regulated and
9 unregulated assets, I believe that would be contrary to Commission and public
10 policy. Moreover, I believe the “unregulated” assets – like real estate intended for
11 development – likely have a significant value and that they reflect a significant part
12 of the overall purchase price. Furthermore, I do not believe it is consistent with
13 public policy for this Commission to allow the pledging of public utility property
14 to support the purchase of assets that are not owned or controlled by that public
15 utility – even if related to the operation of utility.

16 **Q. WHAT WOULD YOU RECOMMEND REGARDING THE PLEDGING OF**
17 **ASSETS TO SUPPORT THE PROPOSED \$67.2 MILLION**
18 **TRANSACTION?**

19 A. I believe there are two possible alternatives. First, and the best option, would be
20 for all the transportation assets, except the supplemental assets, be defined as tariff-
21 regulated public utility property. In such an arrangement, the tariff-regulated
22 transportation assets could be pledged to support only those costs related to a
23 purchase of the tariff-regulated transportation assets and the other supplemental

1 assets could be pledged to support that part of the transaction related to a purchase
2 of non-transportation assets. This would require an appraisal of these two asset
3 bases and an amendment to the purchase agreement specifying this amended asset
4 pledge.

5 A second alternative would be for all the assets being purchased, including
6 the real estate assets, supplemental assets, and transportation assets be equally
7 pledged to support the proposed transaction. I would add that these two options are
8 also based on an assumption that the lienholder pledge is only to support the
9 proposed \$42 million in debt cost of the total \$67 million purchase price. In
10 addition, as I previously stated, the Commission's Order should make clear this
11 does not mean that it is approving the purchase price or the amount of debt in this
12 transaction.

13
14 **VIII. OTHER CONCERNS WITH THE PROPOSED TRANSACTION**

15 **Q. DO YOU HAVE ANY OTHER CONCERNS RELATED TO THIS**
16 **PROCEEDING?**

17 A. Yes. I have the following additional concerns to mention before I conclude:

- 18 • Currently, as all utilities do, the passenger ferry files certain reports and its
19 tariffs with the Commission. I would recommend that these filings be
20 required of both the parking and barge operations in the future.
- 21 • The Amended Application and supporting testimony does not sufficiently
22 address customer service quality issues. Based on the evidence surfaced in
23 Docket No. A-41, Sub 21 and the initial testimony submitted by the Village

1 in this proceeding there have been expressed concerns about significant
2 service issues which should be addressed in the context of a change in
3 ownership. I do not believe these concerns can be properly addressed in
4 this proceeding, but I do believe that the Public Staff should be called upon
5 in the Order in this proceeding to initiate a study investigating these, and
6 any other, service quality issues.

7 **Q. DOES THE VILLAGE UNDERSTAND THAT IF THE APPLICANTS ARE**
8 **REQUIRED TO UPGRADE SERVICES, SUCH AS IMPROVEMENTS TO**
9 **THE ISLAND FERRY TERMINAL, THAT THE COSTS MUST BE BORNE**
10 **BY FERRY RIDERS?**

11 A. Yes, but that would initiate a rate proceeding which at that time should include a
12 consideration of all the ferry services' revenues and costs, including parking and
13 barge services.

14

15 **IX. CONCLUSION**

16 **Q. PLEASE LIST YOUR RECOMMENDATIONS.**

17 A. I believe that SharpVue has failed to meet its burden of proof that the proposed
18 certificate transfer is in the public interest and, for this reason alone, the proposed
19 certificate transfer should be denied. In addition, I believe SharpVue's proposed
20 regulated and unregulated asset ownership is not in the public interest and this is
21 another reason the Commission may wish to deny the certificate transfer
22 application.

1 However, should the Commission approve the certificate transfer I
2 recommend the Commission's Order include the following statements and
3 conditions:

- 4 • Require SharpVue's express acquiescence to and acceptance of the
5 Commission's jurisdiction and authority over parking and barge (and other
6 ancillary assets).
- 7 • Make clear that SharpVue will not be permitted to recover acquisition premium
8 in any future rate proceeding.
- 9 • Make clear that the Commission in this Order is not evaluating or approving
10 the purchase price, nor is the purchase price reflective of the rate base the
11 Commission will use in a future rate proceeding.
- 12 • Require that SharpVue file an affiliate Code of Conduct that covers each of its
13 affiliates that supply services or collect fees from the regulated passenger ferry,
14 parking and barge operations.
- 15 • Notify SharpVue and its affiliates that any proposed change to the current ferry
16 and parking regulated tariffs would require a rate proceeding and could trigger
17 an investigation of and a report related to justification for the current or
18 proposed affiliate costs.
- 19 • Indicate that the level of these current affiliate related costs are not being
20 approved in this Order and that these costs will be examined and adjudicated in
21 the ferry system's next filed rate case and that these costs may be found to be
22 unjustified and unrecoverable in regulated ferry or parking rates in this future
23 rate proceeding.

- 1 • Declare that BHIFT, SharpVue, and all SharpVue’s affiliates (specifically
2 Pelican Legacy Holdings, LLC, SVC Pelican Partners, LLC, Pelican IP, LLC,
3 Pelican Logistics, LLC, and Pelican Real Properties, LLC) in this transaction
4 are public utilities under North Carolina G.S. Chapter 62.
- 5 • That the real estate and terminal buildings assets cannot be sold or leased absent
6 Commission approval.
- 7 • That any financial arrangements made between parties owning or leasing the
8 real estate and terminal buildings assets cannot be assumed or payments made
9 by the regulated operations be assumed absent Commission approval of said
10 payments.
- 11 • In any sale or lease of the parking, passenger ferry, and barge assets the
12 purchaser or leasing party shall be declared a public utility and subject this
13 Commission’s authority under G.S. Chapter 62.
- 14 • That the Commission only allow the pledging of assets as lien collateral under
15 the conditions discussed in this testimony.
- 16 • Require SharpVue to file with the Commission tariffs and other data and
17 reports required now of the passenger ferry system.
- 18 • Have the Public Staff or its representative initiate a study investigating the ferry
19 system service quality issues.

20 **Q. DOES THIS COMPLETE YOUR DIRECT TESTIMONY?**

21 A. Yes.

1 MR. TRATHEN: And I would note that his
2 testimony has two different versions, a
3 confidential and a public version. I would ask
4 that the confidential version be treated
5 accordingly.

6 COMMISSIONER DUFFLEY: It shall be
7 treated as -- the confidential version will be
8 treated as confidential.

9 MR. TRATHEN: And I also ask that his
10 summary be copied into record.

11 COMMISSIONER DUFFLEY: The summary is
12 received into evidence.

13 (Whereupon, the Prefiled Summary of the
14 Direct Testimony of Dr. Julius A. Wright
15 was copied into the record as if given
16 orally from the stand.)

17
18
19
20
21
22
23
24

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

This case is not the usual certificate transfer proceeding. First, the transportation system is a monopoly and the lifeblood of Bald Head Island in that the Island is completely dependent—in every way—on this system. Until now, the system has always been owned and operated by entities affiliated with the Island’s developer, ensuring that all parties’ interests are aligned. On the other hand, I believe it is important to note that there is no evidence of widespread public support for this proposed transaction.

In its evaluation of this type of proposed transaction, this Commission has established a three-part test. I believe that SharpVue has failed to meet its burden of proof related to this three part test and, consequently, for this reason alone the Commission should deny the transfer of the certificate as proposed.

First, there is reason for concern that the transaction will have an adverse impact on service. **[BEGIN AEO CONFIDENTIAL]** [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] **[END AEO CONFIDENTIAL]**

As regards the second factor – whether ratepayers would be protected as much as possible from potential costs and risks of the transfer – SharpVue has declined to commit that it will not seek to recover an acquisition premium from ratepayers. This creates the possibility that SharpVue will seek to burden ratepayers with the excess purchase price amounts that are above net book or historic costs of the assets.

As regards the third factor – whether the transfer would result in sufficient benefits to offset potential costs and risks – while there may be benefits to SharpVue and the current

ferry system owners, I fail to see any real benefits to the third party in this transaction, the using and consuming public.

Finally, one of the factors that the Commission historically considers in evaluating transactions of this nature is whether effective regulation of the merging utilities can be maintained. SharpVue's appeal from the Sub 21 Order creates legal uncertainty regarding the scope of the Commission's authority over the parking and barge operations and, potentially, over other ancillary assets. Should the Commission wish to proceed and agree to the certificate transfer, I believe it should only do so with SharpVue's express acquiescence to the Commission's jurisdiction and authority over parking, barge, and any other ancillary assets.

Notwithstanding my position that the application should be denied, my testimony discusses other concerns with the proposed transaction.

First, I believe the evidence shows that SharpVue intends to seek to recover an acquisition premium from ferry passengers, barge passengers, and parking in the next rate case. The purchase price is likely well above the value that would be reflected in a rate base determination. Because of this, I recommend that the Commission make clear in its Order—and consistent with Commission precedent—that, if the transaction is approved, the Commission is not approving the purchase price and SharpVue will not be permitted to recover an acquisition premium in the next rate case.

Next I review SharpVue's corporate structure and why this type of corporate structure imposes some regulatory oversight issues on the Commission and ratepayers. There are two things that stand out to me. First, the multiple affiliates and the related overlapping management illustrate a need, if the certificate transfer is approved, for the

Commission to require various affiliate transaction conditions. The second troubling aspect of SharpVue's proposal is that it is proposing that the only regulated assets owned by BHIFT are the ferry boats, the tug and barge boats, the island tram, and I assume the parking operation's ticket machine and parking gate. None of the underlying real estate of the parking facilities, none of the real estate at either ferry terminal, neither of the ferry terminal buildings, and no other ferry operations buildings or other assets, are owned by the proposed regulated affiliate.

I recommend that, if the Commission were to approve the transfer, it declare that BHIFT, SharpVue, and SharpVue's affiliates in this transaction (including, Pelican Legacy Holdings, LLC, SVC Pelican Partners, LLC, Pelican IP, LLC, Pelican Logistics, LLC, and Pelican Real Properties, LLC) are public utilities under North Carolina G.S. Chapter 62. This does not mean the Commission will regulate these entities, but rather that their books and the records of transactions between BHIFT and its related SharpVue affiliates are open to inspection and the potential that some of the affiliate-related costs may be disallowed for recovery in regulated rates by this Commission.

I further recommend that, if the Commission approves the transfer, its Order require the following. First, that SharpVue file an affiliate Code of Conduct that covers each of its affiliates that supply services or collect fees from the regulated passenger ferry, parking and barge operations. Second, that it notifies SharpVue and its affiliates that any proposed change to the current ferry and parking regulated tariffs would require a rate proceeding and could trigger an investigation of and a report related to justification for the current or proposed affiliate costs. And third, that indicates the current level of any affiliate related costs are not being approved in this Order and that these costs will be examined and

adjudicated in the ferry system's next filed rate case.

In addition, I recommend the Commission's Order, if this ownership proposal goes forward, should indicate (1) that the utility-related real estate (i.e., parking) and terminal buildings assets cannot be sold or leased absent Commission approval, (2) that any financial arrangements made between parties owning or leasing these real estate and terminal buildings assets cannot be assumed or payments made by the regulated operations be assumed absent Commission approval of said payments, and (3) based on both ownership and on the impact on regulated rates, as it did with BHIT and BHIL, this Commission should indicate that in any sale or lease of these assets the purchaser or leasing party shall be declared a public utility and subject this Commission's authority under G.S. Chapter 62.

Also, it is unclear to me which assets SharpVue is proposing to encumber for the proposed financing. Until this information is made clear, I do not think the Commission is in a position to make a determination on the request for approval to pledge regulated assets – particularly for an acquisition that involves SharpVue's proposed ownership split of unregulated real estate and buildings and regulated boats and barges.

Finally, should the transaction be approved, I would recommend that the same filings that are required of the passenger ferry be required of both the parking and barge operations in the future and I recommend the Commission have the Public Staff, or its representative, initiate a study investigating the ferry system service quality issues.

In sum, I recommend that the Commission deny the application because SharpVue has failed to meet its burden of proof that the proposed certificate transfer is in the public interest. I also believe SharpVue's proposed regulated and unregulated asset ownership is

not in the public interest and this is another reason the Commission may wish to deny the certificate transfer application.

This completes the summary of my direct testimony.

1 MR. TRATHEN: The witness is available
2 for cross examination.

3 CROSS EXAMINATION BY MR. HIGGINS:

4 Q. Good afternoon, Dr. Wright. Dan Higgins for
5 the Bald Head Island Club. Turn, if you would, please,
6 sir, to page 17 of your prefiled testimony.

7 My question for you -- are you there?

8 A. Yes, sir.

9 Q. My question for you concerns the question and
10 answer that begins at line 11. You state there -- or
11 make a reference to recovering an acquisition premium
12 from the ferry passengers and barge passengers and
13 parking, and you indicate there are two means by which
14 SharpVue might attempt to do that.

15 One is -- you describe as future unregulated
16 service rates, potentially parking and barge services,
17 or alternatively, in the next regulated rate case. As
18 to the first one, the through future unregulated
19 service rates, are you referring to a scenario where --
20 the parking and or barge services are in a scenario
21 where they're not subject to Commission regulation, and
22 SharpVue simply recovers its premium by increasing its
23 monopoly parking and barge rates?

24 A. They could -- it depends on how they do it,

1 but that's one way. They could also be charging lease
2 rates or something to the regulated side for certain
3 services or maintenance rates that -- or however they
4 otherwise would be stuck with this nature.

5 Q. Okay. Fair enough. Good point.

6 Page 38, line 7.

7 A. I'm there.

8 Q. My question concerns the testimony beginning
9 on line 4 which reads as follows: "I question whether
10 the Commission is in a position to make a determination
11 on the request for approval to pledge regulated assets,
12 particularly for an acquisition that involves a mix of
13 regulated and unregulated assets."

14 Is the issue you identified there relating to
15 a scenario where only the regulated assets would be
16 used to secure third-party debt, and the unregulated
17 assets would not be incumbent?

18 A. Yes. And I got a late-filed exhibit, just a
19 few days ago that had the XXXXXX loan information, and
20 I think that's resolved this issue. Up until that
21 time, I didn't --

22 MR. FERRELL: Commissioner Duffley --

23 COMMISSIONER DUFFLEY: Mr. -- yeah. Go

24 ahead.

1 MR. FERRELL: I was just going to note
2 that I think the witness has now already stated on
3 the record, and I would ask that it be at least
4 removed from the printed record --

5 COMMISSIONER DUFFLEY: It will be
6 stricken.

7 MR. FERRELL: -- confidential
8 information.

9 MR. HIGGINS: I'm sorry.

10 COMMISSIONER DUFFLEY: We need to be
11 very careful about confidential information. Okay.

12 Q. Without stating -- without naming any lender,
13 sir, could you answer my question?

14 A. Yes. I received information that cleared up
15 this issue for me, I guess is the best way to put it,
16 and I think it resolved it in a way -- in a fashion
17 that was consistent with one of my recommendations.

18 Q. All right. Thank you.

19 Did you file testimony on behalf of the
20 Village and the Bald Head Island Club and the Bald Head
21 Association in the 2010 rate case?

22 A. Yes.

23 Q. And did your testimony in that docket
24 indicate that the Commission regulate the parking

1 operations at Deep Point Ferry landing as an integral
2 part of the ferry service?

3 A. Yes.

4 Q. And was the imputation of the excess parking
5 revenue a result of the negotiated settlement and
6 resolution of that issue?

7 A. Yes. It was part of the negotiated
8 settlement, the stipulation.

9 MR. HIGGINS: I don't have any more
10 questions for Dr. Wright.

11 COMMISSIONER DUFFLEY: Okay. Questions?

12 MR. STYERS: Yes.

13 CROSS EXAMINATION BY MR. STYERS:

14 Q. Dr. Wright, good afternoon. My name is
15 Gray Styers. Good to see you again. I'll primarily
16 going be walking through various pages of your
17 testimony if you have it there in front of you.

18 A. I do.

19 Q. So I'd first like to refer you to page 9.
20 On -- starting at the end of line 6, you state, "Until
21 now the transportation system has been owned and
22 operated by entities affiliated with the Island's
23 developer." Did I read that correctly?

24 A. Yes.

1 Q. Okay. And then on line 12, you then go on to
2 say, "A new owner may not be similarly incented." Is
3 that --

4 A. That's correct.

5 Q. Okay. So let me just ask you a little bit
6 about your knowledge of the Island and the investments
7 on the Island. Were you aware that the Mitchell family
8 businesses once owned the water and wastewater
9 utilities on Bald Head Island?

10 A. I don't know that I was aware specifically of
11 that, but I assumed that --

12 Q. Okay.

13 A. -- because they developed it, and usually the
14 developers, you know, do develop the wastewater system
15 and stuff.

16 Q. And were you aware that those utility assets
17 were sold off in 2005?

18 A. No.

19 Q. Okay. Were you aware that the Maritime
20 Market, the retail market, had been sold off by the
21 Mitchell family business in 2011?

22 A. The Maritime Market on the Island?

23 Q. Correct.

24 A. I was not aware of that. I know of the

1 Maritime Market.

2 Q. But you were not aware the Mitchells had sold
3 that as of 2011?

4 A. No.

5 Q. Okay. Were you aware that the Mitchells sold
6 the Sh- -- are you familiar with the Shoals Club on the
7 tip of the Island?

8 A. I know about it.

9 Q. Were you aware that the Mitchells sold the
10 Shoals Club in 2019?

11 A. I think I read something about that.

12 Q. Um --

13 A. I don't know that that was a utility, but --

14 Q. No -- other interests on the Island. Now,
15 the Mitchell family businesses also had a real estate
16 brokerage and vacation rental management company at the
17 Island. Were you aware they sold that off in 2020?

18 A. I don't recall reading about that, no.

19 Q. Okay. Since 2011, were you aware that the
20 Mitchells have sold off 26 different businesses on or
21 associated with Bald Head Island?

22 A. Well, I'm aware they've sold some, but I
23 don't -- I've never had the number 26.

24 Q. Okay. That's including restaurants --

1 subject to check, they've sold off all the restaurants
2 they owned. They sold off the retail establishments
3 they've owned. So --

4 MR. TRATHEN: Is -- I'm sorry, is this a
5 question?

6 MR. STYERS: It is.

7 MR. TRATHEN: I don't understand --

8 MR. STYERS: I'm asking if he's awa- --
9 he -- if he was aware. Thank you, Mr. Trathen.

10 Q. Were you aware they have sold off the
11 restaurants on the Island?

12 A. No.

13 Q. Okay. Were you aware they've sold off all
14 their retail operations on the Island?

15 A. No, and I didn't know they owned them.

16 Q. Okay. So you heard earlier testimony, I
17 think, by Mr. Paul that now the Mitchell estate is
18 selling all of the remaining operational assets that
19 they own to SharpVue, the operations. All of those are
20 being sold by SharpVue. Do you remember that testimony
21 by Mr. Paul?

22 A. I remember that testimony.

23 Q. Okay. If this sale closes, did you consider
24 that SharpVue will be one of the largest pro- --

1 SharpVue and its affiliates will be one of the largest
2 private land owners on the entire Island?

3 A. That wasn't something that I was asked to
4 investigate.

5 Q. Okay. So you were not aware of that?

6 A. I was not asked to investigate it, so I
7 didn't know.

8 Q. Okay. Let me turn to page 10, the next page.
9 On line -- the sentence that starts on line 16 -- and
10 I'm going to leave out the dashed part -- and finishing
11 on line 18, 19, your testimony is that "the purchase of
12 these assets by a private equity firm...would be
13 fundamentally different from Limited's ownership of
14 those assets." That's your testimony?

15 A. Well, you left out the middle part of the
16 sentence, but --

17 Q. Yeah. Yeah, I did. I did, but -- that y- --
18 I did, and for the purpose of -- if you'd like me to
19 read the whole thing. I just wanted to make sure I
20 read -- I said I was leaving that out.

21 A. Okay. "The purchase of these assets by a
22 private equity firm -- particularly one untethered by
23 regulatory oversight of critical assets if their appeal
24 of this Commission's Order in Docket A-41, Sub 21, is

1 successful -- would be fundamentally different from
2 Limited's ownership of those assets."

3 Q. Were you aware that the Mitchells' investment
4 in Bald Head Island was in the form of common equity
5 through Mitchell Island Investments when they purchased
6 the Island?

7 A. I do not how they purchased the Island.

8 Q. Okay. It's your understanding -- was it your
9 understanding that it was Mr. Mitchell and his family's
10 private personal equity that invested in the Island?

11 A. I have no reason to doubt that. I mean, if
12 that's what you say it was.

13 Q. Okay. In fact, all of the development of the
14 entire Island was in the form of Mr. Mitchell's private
15 equity; was it not?

16 A. I have no reason to know that. I've never
17 investigated that.

18 Q. So you're not aware of there being any debt
19 financing of his investments in Bald Head Island. You
20 just don't know, correct?

21 A. I don't know if he had any debt financing or
22 not. I have no idea.

23 Q. So you really don't know whether -- not
24 knowing what Limited's ownership of these assets,

1 whether they were fundamentally different than what's
2 being proposed at this time when those assets were
3 first financed?

4 A. I understand how they're owned today --

5 Q. Today.

6 A. -- based on this Commission's order, that
7 they, the parking and the barge service, are regulated
8 and subject to this Commission's regulation. If the
9 appeal is successful, then SharpVue -- and the deal
10 goes through, then those assets will no longer be
11 regulated by this Commission. So that's a significant
12 concern of mine.

13 Q. And is it fair to say that BHIL has
14 considered these assets to be unregulated -- the
15 parking and barge assets to be unregulated from the
16 time that they started operating until
17 December 30, 2022?

18 A. I don't know what -- how they saw them, but I
19 think the Commission saw them quite different since at
20 least as early as the 2010 order --

21 Q. So --

22 A. -- and before that, in fact.

23 Q. Moving on, Dr. Wright, certainly you're
24 familiar with this Commission's processes rights. You

1 would agree that the Commission has the right to impose
2 regulatory conditions on the transfer of the
3 certificate, would you not?

4 A. That's true.

5 Q. And these conditions can include restrictions
6 on cash distributions by the owner, correct?

7 A. Yes. I would assume.

8 Q. And regulatory conditions can include
9 restrictions on pricing and affiliate transactions; can
10 they not?

11 A. True.

12 Q. In fact, they typically do?

13 A. Yes.

14 Q. Regulatory conditions can also include
15 service goals and standards, correct?

16 A. Correct.

17 Q. Utilities are also subject to the
18 Commission's jurisdiction to hear customer complaints,
19 correct?

20 A. Correct.

21 Q. And if there are deficiencies in service
22 quality, the Commission has the authority to order
23 injunctive relief to address those service issues; can
24 they not?

1 A. Correct.

2 Q. Let me just step back. This is a general
3 principle of regulatory law in compact that utilities
4 has a right -- they have a right to earn a reasonable
5 rate of return on their used and useful assets and rate
6 base as a general principle?

7 A. Yes.

8 Q. Okay. And as a general principle, you would
9 agree that there are occasions -- sometimes frequently,
10 sometimes infrequently -- but that rate increases can
11 be justified and appropriate; would you not? As a
12 general principle?

13 A. True.

14 Q. On page 12 -- and I apologize, I don't have
15 the line marked, but I think it's on page 12, but you
16 reference the possibility of SharpVue seeking to burden
17 ratepayers with rate increases. And I --

18 MR. HIGGINS: Line 16?

19 MR. STYERS: I'm sorry, line --

20 MR. HIGGINS: Sixteen.

21 THE WITNESS: Page 12, li- -- beginning
22 on line 16. Okay.

23 MR. STYERS: Yes, thank you.

24 Q. "This creates the possibility that SharpVue

1 will seek to burden ratepayers with excess purchase
2 price amounts;" is that correct?

3 A. Correct.

4 Q. Okay. But ultimately, it's up to the
5 Commission to determine whether price increases are
6 justified and appropriate; that's the Commission's
7 jurisdiction, correct?

8 A. That's true but you need to read the sentence
9 before that where I talk about the -- "SharpVue has
10 declined to commit that it will not seek to recover an
11 acquisition premium from ratepayers." I think that is
12 essential that SharpVue do that, and it's not just for
13 the ratepayers. It's for the benefit of investors and
14 actually for the benefit of the Commission and the
15 Commission's integrity. I believe it's incumbent on us
16 as regulators, when I was a regulator, and I think it's
17 incumbent on SharpVue to be sure that the investors
18 know exactly what they are getting and what is and is
19 not going to be included.

20 And the acquisition premium is a lot of
21 money. I've seen numbers of around XXXXXXXXXXXX. We
22 can discuss whether that's correct or not, but that
23 would have a significant impact on rates, and I think
24 that's something that needs to be decided right now.

1 Q. Well, let's talk about -- and -- let's talk
2 about rates.

3 COMMISSIONER DUFFLEY: And we need to be
4 careful. I'm not sure that the amount of the
5 acquisition premium is confidential information,
6 Mr. Wright -- Dr. Wright. Is it within public
7 information? Do we know? Okay.

8 MR. SCHAUER: I don't believe the
9 acquisition premium is public information because
10 it's determined based on the purchase price. So in
11 other words, rate base is public, acquisition
12 premium is not, and you need the second component
13 to calculate.

14 COMMISSIONER DUFFLEY: So --

15 MR. STYERS: So let's just strike the
16 number, and we'll just refer to the acquisition
17 premium in whatever amount that is.

18 COMMISSIONER DUFFLEY: Thank you.

19 THE WITNESS: I'm sorry.

20 MR. STYERS: Is that -- I'm comfortable
21 with that.

22 COMMISSIONER DUFFLEY: Well guys, we're
23 breaking down on the confidential information,
24 so --

1 MR. STYERS: Okay, okay. All right, I
2 can -- I don't have any further follow up. I mean,
3 that was -- I didn't intend to solicit --

4 COMMISSIONER DUFFLEY: Okay.

5 MR. STYERS: -- that question.

6 COMMISSIONER DUFFLEY: Okay, but when
7 we're asking questions, maybe if you're asking a
8 question that could potentially elicit confidential
9 information, from this point going forward if we
10 could just be very careful with that.

11 MR. STYERS: Completely agree. I didn't
12 intend that -- to solicit that, but I will try to
13 be more cognizant.

14 COMMISSIONER DUFFLEY: Thank you.

15 Q. Cause actually, what I wanted to talk about
16 is the rates because the sentence that I'd read and you
17 read properly -- the sentence before it talks about
18 burdening ratepayers, and so I wanted to talk about
19 rates, Dr. Wright. Do you have an opinion -- so you
20 were here in the room yesterday when Mr. Gardner said
21 that he thought the current rates for parking and barge
22 were reasonable, were you not?

23 A. I don't recall him saying that.

24 Q. Okay.

1 A. I was in the room when he was testifying, I
2 just do not recall that answer.

3 Q. Okay. Do you have an opinion as to whether
4 the current rates that are in place are just and
5 reasonable?

6 A. I think the current rates have been approved
7 by this Commission and under that scenario, yes, they
8 have been deemed just and reasonable.

9 Q. I'm referring to the parking and barge rates
10 that are currently being charged.

11 A. I think those were part of the stipulated
12 agreement, and the Commission accepted that
13 stipulation, and under that scenario, they are deemed
14 just and reasonable.

15 Q. Are you aware that Bald Head Island Limited
16 has raised parking rates several times since the 2010
17 rate case?

18 A. Yes, under the stipulation, they had the
19 ability to do so.

20 Q. And they've never sought Commission approval
21 for those -- any of those rate increases?

22 A. The approval was contained within the
23 stipulation.

24 Q. And they've also inclu- -- they've also

1 raised rates for barge?

2 A. I think those were included within the
3 stipulation too.

4 Q. Is there any reference to the barge -- and
5 again, subject to your recollection, is there any
6 reference to barge anywhere in the A-40, Sub 7, rate
7 case order?

8 A. I would have to go back and look, but I just
9 know there was a stipulation in that case on rates.

10 Q. And the Commi- -- and Bald Head Island
11 Limited's never provided notice to the Commission of
12 any rate increases of barge or parking, have they?

13 A. Of which ass- -- of wh- --

14 Q. Of the barge or parking rate increases, they
15 have never provided notice to the Commission?

16 A. As long as they've been part of that
17 stipulation, I don't know that they need to provide
18 notice, so I wouldn't know that they have or haven't,
19 but I don't think they would have to if they're
20 following along the lines of the order.

21 Q. And they've never reported any financial data
22 about the parking or barge to the Commission at any
23 time, have they?

24 A. I do not know that they have on the barge or

1 parking. I know they file reports. I think they're
2 quarterly, maybe monthly, reports. I don't know that
3 they have that. I do know that there were some rates
4 filed on -- I believe, on the parking and barge in that
5 2010 case. I think they were part of --

6 Q. But the quarterly rep- -- subject to check,
7 the quarterly reports are just ferry operation data?

8 A. Subject to check, that's fine.

9 Q. So --

10 A. And just so we're clear, that is one of the
11 recommendations I make, that the parking and barge
12 start to file quarterly reports, just like it's
13 required of the parking.

14 Q. Going forward, there're now under the A-21
15 [sic] order of all -- as it stands today, as though
16 they are utilities, and they would fall under the
17 jurisdiction?

18 A. Yes.

19 Q. So that brings me to the next question. You
20 referenced several times through your order -- through
21 your testimony about the appeal of the Sub 21 order; do
22 you not?

23 A. I mention it, yes.

24 Q. Okay. The determination of the legal issues

1 in the Sub 21 appeal will apply to BHIL if the sale to
2 SharpVue does not occur. BHIL will still own the
3 assets, and they'll be subject to whatever the rule is
4 by the Court and that -- you would agree with that?

5 A. I'm not an attorney, but I would agree with
6 that from what I do know.

7 Q. Now, if the sale to SharpVue does occur, then
8 the determination of the legal issues in the Sub 21
9 appeal would apply to SharpVue as owner of those
10 utilities, correct?

11 A. To the best of my knowledge, yes.

12 Q. So the Court's decision, whatever it is, will
13 not depend upon who owns the transportation assets at
14 that time, will it?

15 A. I don't see that the Court's decision would.

16 Q. Will not be dependent or rely --

17 A. Yeah, no.

18 Q. -- or be affected by ownership? The answer's
19 no, I'm sorry?

20 A. As far as I know, no.

21 Q. Yeah.

22 A. I don't think so.

23 Q. So the scope of the Commission's jurisdiction
24 will apply to the parking and barge assets or not

1 regardless of whether BHIL owns them or SharpVue owns
2 them, correct?

3 A. Yes and no, and let me explain. One of the
4 regulatory conditions I recommend is that SharpVue go
5 ahead and acquiesce to the jurisdiction of this
6 Commission over the parking and barge service. I think
7 that is a very important point. The fact that SharpVue
8 view is appealing this Commission's regulatory
9 authority is one of the things that's troublesome to
10 me, just from the standpoint that I think it's wrong
11 you're asking the Commission to do something for you at
12 the same time you're appealing their authority.

13 Q. I understand your position. Assume for my --
14 assume for purposes of my question that BHIL will not
15 withdraw that appeal. The scope of the Commission's
16 jurisdiction after that appeal will apply to these
17 assets regardless of whether BHIL owns them or SharpVue
18 owns them, correct?

19 A. I would assume that's correct.

20 Q. Okay. And you state on page 13 of your
21 testimony, Dr. Wright, line 7, 8, "The maintenance of
22 current operations achieves no incremental benefit to
23 the using and consuming public." Is that your
24 position?

1 A. Yes.

2 Q. Okay. So you don't believe that there are
3 any risks in leaving the ownership of these utilities
4 in the hands of an estate that is largely liquidated?

5 A. Well, I referenced what we got in response to
6 a discovery request where -- and I'll read it. It
7 says, BHS -- "BHIL has no plans to discontinue utility
8 services and has never threatened to do so." So I'm
9 taking you at -- your client at their word that they
10 are not going to discontinue service.

11 Q. Now, would you agree with me that the hiring
12 and retention of qualified personnel is important to
13 service quality by any utility?

14 A. Yes.

15 Q. Would you agree that the maintenance and
16 replacement, when needed, of utility equipment
17 materials is an important part of utility operations?

18 A. Yes.

19 Q. Would you agree that there can still be a
20 decline in service quality even if there's not a
21 service disruption?

22 A. There could, but at the same time, that's one
23 of the things that the Commission oversees and the
24 Public Staff. If service from a utility gets poor and

1 they get complaints, then they can do some sort of show
2 cause order or investigation to find out what's going
3 on.

4 Q. You heard Mr. Carter's testimony yesterday
5 about the decline of service quality over the past few
6 years?

7 A. Yes, sir.

8 Q. In fact, on page 40, towards the very end of
9 your testimony, I think you reference that you think
10 there should be a -- at the very top, line 1, "There
11 have been expressed concern about significant service
12 issues."

13 A. That's correct.

14 Q. Do you have an opinion as to when those
15 reported service quality issues began?

16 A. I would have to rely on the testimony from
17 yesterday, so I -- it appeared it began to deteriorate
18 several years ago, whether it just started with COVID
19 or not, I just don't know. I know from my interactions
20 with several people on the Island and my visits to the
21 Island, I can understand some of their concerns and
22 that's why I'm suggesting this is not proper form to
23 necessarily address those issues, but rather, we need
24 to do an investigation.

1 Q. You heard Mr. Gardner's testimony yesterday
2 about how service had been previous- -- a few years ago
3 had been exceptional, I think was his word?

4 A. He said something along those lines, yes.

5 Q. Are you aware of any problems with the ferry
6 operations in the 1990s, as shortly when its -- shortly
7 after it was certificated, that you're aware of?

8 A. Well, actually, I'm aware that it began to
9 get more and more crowded as the Island grew, and
10 I'm -- I was aware of that because I lived in that area
11 for a long time.

12 Q. And as a result, Bald Head Island Limited --
13 Bald Head Island Transportation had additional boats
14 added to the fleet over the years?

15 A. And then they moved to the new terminal, yes.

16 Q. And that was to accommodate the growth?

17 A. Yes.

18 Q. Okay. So were you aware of any specific
19 problems with the service quality of ferry operations
20 in the 2000s, other than growth, prior to moving to the
21 Deep Point terminal?

22 A. No.

23 Q. Okay. Do you have any knowledge of any
24 service quality problems even after moving to the

1 Deep Point terminal until a few years ago, since that's
2 kind of what Mr. Gardner testified to yesterday?

3 A. No, I do not.

4 Q. Okay. In the 2010 rate case, you know, were
5 there any major service quality problems pertaining to
6 the ferry operations that were raised in that 2010 rate
7 case to your recollection?

8 A. I don't recall.

9 Q. I don't either, so. You've expressed some
10 concern that the regulated utilities might not own
11 their own real estate.

12 A. Yes.

13 Q. Okay. Are you aware that throughout BHIT's
14 history, in the 1990s and the 2000s, through the rate
15 case, service was exceptional, that BHIT has never
16 owned any real estate for its own terminals?

17 A. I'm aware that the real estate was owned by
18 BHIL, yes.

19 Q. Are you aware that through most of BHIT's
20 history, they didn't even own their own vessels, they
21 didn't own their own boats?

22 A. I know they leased them at first.

23 Q. In fact, they didn't own their own boats
24 until 20-- until March 29, 2013, subject to check.

1 Is that -- would you have any reason to dispute that?

2 A. No.

3 Q. Okay. You're aware of other utility
4 operations that control aspects of their needed
5 property by lease or easement. That's not that
6 untypic- -- atypical for utilities, is it?

7 A. It's not necessarily atypical, but it is --
8 to me, it is a little bit different, and let me explain
9 why. This Commission would never approve Duke Power
10 Company leasing land and putting a generator on it, nor
11 would Duke Power probably ever ask to do that. But
12 what you have here is literally all of the real estate
13 is going to be in one area, and then you have the boats
14 and the ticket booth and the parking gate is going to
15 be owned by the regulated. To me, that's -- that is a
16 difference that is -- I find problematic, and I'll tell
17 you one reason why.

18 If you go to set parking rates, and the only
19 thing you have in rate base is the ticket thing that
20 hands you the electronic ticket, you have no rate base.
21 There's no land. There's no pavement. There's
22 nothing. So it's just a different and unusual way to
23 operate, and I find it somewhat problematic. And I
24 also look at this as something that SharpVue has

1 expressed an interest, and likely, they're going to be
2 selling the parking or leasing it out. But let's say
3 they sell it, and five years down the road, they --
4 it's sold again, and five years down the road, it's
5 sold again. To me, it becomes problematic for the
6 Commission to maintain regulatory control over these
7 assets when they can be sold and resold and resold.
8 I -- it's just -- it's a difference that I find
9 somewhat troubling. Let me just put it that way.

10 Q. And there's types of -- well, let me --
11 before I get there, certainly for water and sewer
12 companies, it's very typical for water and sewer lines
13 and pipes to be, you know, in easements; is it not?

14 A. Yes.

15 Q. That's a fairly typical situation.

16 MR. STYERS: I'd like to -- I want to
17 use one exhibit, so I'd like to distribute them.

18 I distributed and handed to the witness
19 a document that has -- I'd ask to be identified as
20 BHIT JAW Cross Examination Exhibit 1.

21 COMMISSIONER DUFFLEY: This will be
22 marked as BHIT Wright Cross Exhibit Number 1.

23 (BHIT Wright Cross Examination
24 Exhibit 1 was marked for

1 identification.)

2 Q. Have you had a chance to look at the rebuttal
3 testimony that's been filed by Chad Paul and
4 Lee Roberts on February 27th?

5 A. Yes.

6 Q. Do you recogni- -- so I will represent to you
7 that these are the regulatory conditions that were
8 attached at the end of that rebuttal testimony.

9 Have you have a cha- -- did you see that at
10 the end of the rebuttal testimony?

11 A. Yes, I saw it, yes.

12 Q. Okay. So I'd like to first turn to condition
13 number 21. And number 21 -- I'm sorry. I'm sorry, 22.
14 I'm sorry. Page -- paragraph 22. And it says, "BHIFT
15 shall continue to have the right to maintain the
16 long-term lease for ferry terminal facilities on the
17 mainland and Island and the right to secure and
18 maintain a perpetual easement or long-term leases or
19 otherwise ensure ownership or control of all property
20 necessary for regulated parking and barge and tug
21 operations at reasonable rates." Do you see that
22 condition?

23 A. Yes.

24 Q. Okay. I think you expressed in your earlier

1 answer concern about the complexity of the corporate
2 structure of SharpVue and its affiliates. Is that
3 fair, that you've expressed that in your testimony?

4 A. I don't think I expressed it as concern, I
5 just said that it makes it a little more problematic
6 for the Commission's regulatory authority when you have
7 so many affiliates.

8 Q. I'm sure that you are at least somewhat
9 familiar -- or not -- or are you familiar with the kind
10 of corporate structure among the affiliates and
11 subsidiaries of Duke Energy Corporation?

12 A. Yes.

13 Q. Okay. And that's a very, very complicated
14 corporate structure; is it not?

15 A. Absolutely.

16 Q. Okay.

17 A. And I'm not saying it's impossible or
18 anything for the Commission to oversee or regulate.
19 I'm just saying it's more problematic for the Public
20 Staff when you have so many affiliates and the
21 provision of services from different affiliates, then
22 you have to do a lot of accounting to make sure all the
23 cost allocations are fair and accurate.

24 Q. So you're not questioning the ability of the

1 Public Staff to monitor --

2 A. Oh, no.

3 Q. -- or the Commission to regulate utilities
4 with complicated corporate structure?

5 A. No.

6 Q. Okay. Or the ability to regulate affiliate
7 transactions?

8 A. No, I'm not questioning that.

9 Q. In fact, there's a statute specifically
10 addressing affiliate transactions, North Carolina
11 General Statute § 62-53 [sic], and I'm not going to
12 mark that as an exhibit. That specifically establishes
13 requirements for affiliate agreements among utilities;
14 does it not?

15 A. I'll accept that, subject to check.

16 Q. Fair enough.

17 A. I'm not going to go read the statute right
18 now.

19 Q. Fair enough.

20 A. But I know there is a statute covering it.

21 Q. Thank you, Dr. Wright. Let me refer you to
22 condition 18, a few pages before, of the conditions in
23 Wright Cross Examination Exhibit -- I'm sorry, 19. My
24 numbering is off. Condition 19. That condition

1 obligates Holdings and BHIFT, it says, "Shall file with
2 the Commission agreements pursuant to
3 NCGS §62-153," which we said, subject to check, governs
4 affiliate transactions, "and all such agreements that
5 involve payment of fees or other compensation by
6 Holdings or BHIFT shall require acceptance and
7 authorization by the Commission." Is that what this
8 condition reads?

9 A. That part you read, yes.

10 Q. Yeah. Okay. So to the extent that BHI- --
11 excuse me, that BHIFT and Holdings and to all to whom
12 this -- these conditions pertain, they have committed
13 that this Commission has jurisdiction over all
14 affiliate contracts subject to this condition and the
15 statute, correct?

16 A. They are suggesting these. Whether or not it
17 pertains to everything that you're talking about, I
18 cannot judge that, but there are things that you have
19 in here that I don't agree with, and things that --

20 Q. Now, I --

21 A. -- I have in my conditions that I think
22 should be in here.

23 Q. Do you think this should be in here?

24 A. I think that should be in there. On that 22

1 we just referenced, you said that there's a thing where
2 your escalation will not exceed an annual 12-month
3 period of annual increasing the CPI. When you start
4 just doing rate increases every year tied to the CPI,
5 that's what we call single-issue ratemaking, and while
6 it may be easy to do, I'm not sure it's the right thing
7 to do, and I don't think the Commission should accept
8 something like that. I think there ought to be a rate
9 case, and if they want to adopt a formula rate plan in
10 that rate case, then I think that's the time to do it,
11 not in a transfer proceeding.

12 Q. That condition really just -- there had been
13 issues asked about lease rates, and that condition
14 really, condition 22, just refers to an escalation of
15 expense to make sure that the lease expense -- it does
16 not have to do with rates, subject to check. Would you
17 agree with that, condition 22?

18 A. Well, it says --

19 Q. That that just is lease expenses?

20 A. Reasonable rates and escalations not to
21 exceed the rate of inflation for an annual 12-month
22 period. The long-term lease -- if it's just the lease,
23 that's fine, but I --

24 Q. Just want to make sure we're clear.

1 A. I just want to make sure it doesn't pertain
2 to the rates. I know in the Public Staff, they have
3 something tied to the CPI on rates, and I just don't
4 think you ought to do that in a transfer proceeding.

5 Q. Okay.

6 A. I think there should be a rate case filing.

7 Q. The last page of the regulatory conditions,
8 condition 28 notes that these conditions apply to all
9 successors and assigns. And Holdings be- --

10 COMMISSIONER DUFFLEY: And Mr. Wright,
11 keep in mind that some portions of this, such as
12 certain names of entities, are attorney's eyes
13 only, so if you will please not use names in any
14 answers.

15 Q. Okay. So -- that's -- they -- that's --
16 thank you.

17 But the -- you see that the condition 28
18 applies these conditions to all successors?

19 A. Yes, I see that.

20 Q. Okay. Now, in your testimony, you, yourself,
21 noted that you recommend conditions -- I think page 32
22 of your testimony -- as an appropriate way to mitigate
23 risks; is that correct?

24 A. Yes.

1 Q. Have you, yourself, proposed a set of
2 regulatory conditions in the record in this case as to
3 what you think would be appropriate for this
4 transaction?

5 A. I have a list of conditions. It is not
6 couched as all the regulatory conditions, but it's the
7 minimum that I would say is reasonable. I think
8 there's some more that the Public Staff has that are
9 reasonable.

10 Q. So I'll move on from conditions, but this is
11 a way to mitigate many of the risks that you've
12 identified in your testimony, is it not, Dr. Wright?
13 That the concept of regulatory conditions -- not these,
14 but generally -- regulatory conditions can mitigate the
15 risks of a transaction and a transfer?

16 A. Yes, they can mitigate some of the risks.

17 Q. On page 29 in your testimony, you quote from
18 the Commission's order and Frontier Docket G-40, Sub
19 136, the --

20 A. Yes.

21 Q. Is it your understanding that the Commission
22 did, in fact, approve the transfer in that docket?

23 A. Yes, they did.

24 Q. You would agree -- or do you know -- well, do

1 you know that the assets acquired, used and useful by
2 Frontier in providing natural gas service that were
3 being acquired in that docket, had always been part of
4 Frontier's rate base from the time of the
5 groundbreaking of that system in 1998. Do you know
6 that?

7 A. I was not in the case, so I don't know those
8 issues, no.

9 Q. Do you have any reason to doubt that all
10 of -- that the used and useful assets by Frontier were
11 in its rate base?

12 A. No, I have no reason to doubt that.

13 Q. Okay. Did you know that in 2017, the same
14 year as this order, Frontier was actually subject to a
15 show cause Docket G-40, Sub 142, over Frontier's
16 failure to invest funds to implement their integrity
17 management program under the prior ownership by Gas
18 Natural, Inc. Did you know that?

19 A. No.

20 Q. Okay. Did you know that the -- under its new
21 private equity ownership approved by this order,
22 Frontier was, in fact, able to invest funds to bring
23 its safety measures back into compliance with its
24 integrity management program. You didn't know that

1 either, did you?

2 A. No.

3 Q. Okay. You heard, I think, Ms. Perry say very
4 briefly that the private equity ownership of Frontier
5 actually served Frontier well after this acquisition
6 was approved?

7 A. I don't recall her saying that. If she did,
8 then that's fine. That's in her testimony.

9 Q. Now, as your attorney would certainly point
10 out, perhaps on redirect, Frontier was, in fact, later
11 sold in 2021 to an open-ended private equity fund that
12 does not have a defined term of existence, and that
13 transaction was approved by the Commission as well. Is
14 that your understanding?

15 A. I'll accept that.

16 Q. Okay. Again, just want to know how much you
17 know about the context of Frontier Energy, Frontier
18 Natural Gas, since you quoted from that order. Now,
19 generally, were you aware that, basically, the private
20 equity ownership of Frontier has provided the capital
21 to enable that system to expand its growth in
22 northwestern North Carolina since they've owned it?

23 A. I've not researched that issue, so I have no
24 reason to know anything yes or no about that.

1 Q. So to your knowledge, you know, compared to
2 the ownership of Frontier by Rick Osborne's utility
3 holding company 10 years ago, to your knowledge, has
4 the fact that Frontier had been owned by private equity
5 been detrimental to the service of Frontier's
6 customers?

7 A. I have no knowledge either way.

8 Q. On page 19, I believe -- and I'm getting
9 close to the end, thank you. On page 19, you stated
10 that you believe that the purchase price is too high?

11 A. Yes.

12 Q. And you know that the transaction value
13 exceeds the tax assessment; that was part of your
14 testimony?

15 A. Yes.

16 Q. Would you agree that fair market value often
17 does, in fact, exceed tax assessments in the state of
18 North Carolina in your experience?

19 A. I have not researched that. I mean, I'm sure
20 sometimes it does, sometimes it does not.

21 Q. And, in fact, fair market value typically
22 exceeds tax assessments when real estate values are
23 rising. That would be a general economic principle you
24 would agree with, wouldn't it? Because tax assessments

1 don't keep up with rising real estate values?

2 A. Yeah, I can't agree with that. Where I live
3 in north Atlanta, they seem to change our taxes every
4 year, and a lot of my friends try to go back and say,
5 "Well, why don't you buy my house for that price,"
6 because the tax assessment is higher than what they
7 think they can sell their house for, so I can't agree
8 with that.

9 All I can tell you is like I say in my
10 testimony. When this issue was before the local
11 government committee, the state auditor could not --
12 she couldn't approve for the bonds being issued because
13 she thought the purchase price was too high, and she
14 did not have estimates of the value that she trusted,
15 and that's from my reading of the record.

16 Q. Do you have any -- have you done any analysis
17 of real estate sales and resales in Brunswick County
18 versus the Brunswick County assessed valu- --
19 tax-assessed valuations?

20 A. No.

21 Q. Okay. I know -- and I'm getting ready to go
22 to confidential issues. I want to close on
23 confidential, but let me ask this question first. I
24 know you didn't have them when you filed your response

1 testimony, but since then, have you had a chance to see
2 the appraisals of the property performed by
3 SharpVue's lender?

4 A. The two that were dated, I think, in
5 mid-December? Yes.

6 MR. STYERS: Okay. Let me -- I have
7 just a question or two on those that we'll need to
8 clear the room since those are confidential.

9 COMMISSIONER DUFFLEY: Are there other
10 confidential questions for this witness that we
11 know of? Okay. We're going to get through all of
12 the questioning --

13 MR. STYERS: Okay.

14 COMMISSIONER DUFFLEY: -- before we go
15 into confidential session, okay?

16 And so, Mr. Ferrell.

17 MR. FERRELL: Thank you.

18 CROSS EXAMINATION BY MR. FERRELL:

19 Q. Good afternoon.

20 A. Good afternoon.

21 Q. I believe in your testimony, in writing and
22 in questioning by Mr. Styers, you talked about the
23 affiliates and whether that caused any complexity to
24 the situation, the SharpVue affiliates?

1 A. The number of affiliates, yes.

2 Q. Correct. If you'll look with me on BHIT, the
3 Cross Exam Exhibit 1, the regulatory conditions --
4 again, since we're in open session, if you could
5 refrain from calling any by name.

6 A. Okay.

7 Q. But do you -- can you recognize there that
8 the regulatory conditions proposed by SharpVue would
9 include defining the affiliates to be bound by these
10 conditions?

11 A. It appears so, yes.

12 Q. Okay. Thank you. And I believe on page 10
13 of your testimony, you mentioned that you believe that
14 the sale of these -- this transaction being sold to
15 SharpVue as opposed to the current owner, BHIT, "would
16 be fundamentally different than Limited's ownership of
17 those assets." Do you see that on page 10, line --
18 starts on page -- excuse me, on line 14, but the phrase
19 is on line 19. Do you see that? Where it talks about
20 it being fundamentally different from Limited's
21 ownership?

22 A. Yes.

23 Q. Okay. And the conversation on direct was
24 what happens if the Sub 21 order is changed by the

1 Court of Appeals. Do you remember that set of
2 dialogue?

3 A. Yes.

4 Q. Do you recognize that in the exhibit in front
5 of you, the conditions, subparagraph 4, that SharpVue
6 and their affiliates are willing to make certain
7 agreements as it relates to making parking reasonably
8 available? Paragraph 4?

9 A. They do make, you know, some concessions or
10 statements about making parking available, yes.

11 Q. In fact, they were agreeing to make the
12 existing, I think, roughly 2,300 space- -- whatever the
13 count is -- 2,300 spaces available? Correct? You see
14 that?

15 A. Yes.

16 Q. Okay. And do you also see the last sentence
17 in that subparagraph 4, just make sure I'm reading this
18 right: "This obligation would continue until such time
19 as the Commission were to allow a waiver or
20 modification of this condition upon a showing of a
21 demonstrable decline in demand for parking at
22 Deep Point or the available of equivalent parking by a
23 third-party provider." Do you see that?

24 A. Yes, that's what it says.

1 Q. So this condition is not contingent on the
2 outcome of the Sub 21 appeal; is it?

3 A. Not that I see, no.

4 Q. Okay. And you would agree with me, wouldn't
5 you, that if the Sub 21 order is overturned, there is
6 no requirement that BHIL maintain existing parking
7 levels, is there?

8 A. I don't know that I can say that, and I'll
9 tell you why. This Commission has a lot of authority
10 and a lot of power. If that is overturned, then it may
11 be that the Commission and Public Staff institute a
12 proceeding to somehow ensure that parking is
13 maintained.

14 So I don't think, based on my reading of that
15 order, that this Commission is just going to allow
16 parking to go away and not be resolved in a way that is
17 reasonable for the people of Bald Head Island. So I
18 understand what your question is asking me, but I'm
19 just telling you, having been a former commissioner,
20 how I would feel.

21 Q. Well, and I'm certainly not trying to imply
22 that BHIL would eliminate parking, and you're
23 speculating about whether to do a subsequent proceeding
24 that would be instituted. What I'm asking you is --

1 and maybe trying to get you to acknowledge that
2 SharpVue has made commitments as it relates to parking
3 that survive the Sub 21 order appeal that don't exist
4 currently or would not exist at that point with BHIL.
5 Can you agree with me on that without speculating about
6 what else might happen?

7 A. If the appeal is successful, then this
8 Commission's regulatory authority over the parking as
9 it's currently, you know, stated is certainly
10 different. I know that. And whether I can agree with
11 everything about your statement, I just don't know.

12 Q. Okay. But you would agree with me that
13 SharpVue has made commitments in this transfer
14 proceeding that would survive any appeal in the Sub 21
15 order --

16 MR. TRATHEN: Objection. He's asked
17 that twice; it's been answered twice. He's not
18 willing to agree to your question.

19 MR. FERRELL: I --

20 COMMISSIONER DUFFLEY: Okay, last time
21 he's asked it. Answer what -- if you can.

22 THE WITNESS: You have made some
23 concessions on that. I would agree with you there.
24 It would be far easier for you to just to acquiesce

1 to the regulation of this Commission over the
2 parking and over the barge service. To me that
3 would eliminate this issue as an issue.

4 Q. I understand it's your position that a party
5 should waive its right to appeal under the law, but
6 that's not my question. So --

7 A. I'm sorry, you're mischaracterizing. I'm not
8 asking you to waive your right. I'm just asking you to
9 acquiesce to the regulatory authority of this
10 Commission.

11 Q. I understand that's your position and your
12 characterization of the situation. The fact that there
13 are commitments that exist that SharpVue has made on
14 parking, wouldn't that actually make it fundamentally
15 better for the consuming public, not just different, as
16 it relates to that issue?

17 A. I don't know that it makes it better because
18 under the current circumstances, I see the regulation
19 of the parking by this Commission as very important.
20 So, you know, I think the Commission will protect the
21 parking as well or better than any commitment.

22 MR. FERRELL: No further questions.

23 COMMISSIONER DUFFLEY: Okay.

24 Mr. Higgins, you don't have questions,

1 right?

2 MR. STYERS: He's already asked.

3 COMMISSIONER DUFFLEY: Oh, he's already
4 asked. Sorry. It's after lunch.

5 Mr. Creech.

6 MR. CREECH: I may have one
7 nonconfidential, and the other one may be
8 confidential, so I'll do the nonconfidential.

9 CROSS EXAMINATION BY MR. CREECH:

10 Q. You were talking about submission to
11 regulatory authority. You're not indicating that the
12 parties, the seller and buyer, did not know about the
13 prospect of Commission authority over parking when they
14 entered into this contract, are you?

15 A. No, I -- no, I'm not making any judgment on
16 that at all.

17 MR. CREECH: All right. Very good.

18 Thank you.

19 MR. TRATHEN: Madam Chair, would you
20 like me to do redirect on --

21 COMMISSIONER DUFFLEY: Yeah.

22 MR. FERRELL: -- nonconfidential, or?

23 COMMISSIONER DUFFLEY: Yes, let's go
24 ahead and just get through everything, and then

1 we'll handle your one confidential piece. So,
2 redirect.

3 REDIRECT EXAMINATION BY MR. TRATHEN:

4 Q. Dr. Wright, with respect to the regulatory
5 conditions, you were asked by counsel for the
6 Applicants about the parking condition. Can I direct
7 your attention to page 2 of the Cross Examination
8 Exhibit 1?

9 A. Okay.

10 Q. Do you see the second sentence, "The consent
11 and acknowledgement set forth above does not constitute
12 a general consent expansion of the Commission's
13 jurisdiction over such entities beyond that established
14 by Chapter 62 of the North Carolina General Statutes."
15 Do you have an understanding of what that means?

16 A. Let me reread it here.

17 Q. So I pro- -- I didn't -- I'm hitting you cold
18 with this, and you didn't get the context, but you've
19 got a number of parties up above, and we're not going
20 to name them because some of them are confidential, but
21 they're consenting to these regulatory conditions. And
22 then we have this language that says we're consenting
23 to it, but we're not agreeing to any expansion of the
24 jurisdiction under Chapter 62. I mean, that's

1 literally what it says, correct?

2 A. Yeah, that's how I would interpret it.

3 Q. Okay. And then would you read the next
4 sentence?

5 A. "Further, as long as SharpVue and its
6 affiliates own or operate ferry, tram, parking, barge,
7 and tug operations, SharpVue and the SharpVue
8 affiliates agree to submit to the Commission's
9 regulation and oversight of those operations as set
10 forth in the regulatory conditions herein and the
11 Commission's December 30, 2022, order in Docket
12 Number A-41, Sub 21, unless and until and to whatever
13 extent such order may be overturned, reversed, or
14 replaced and is thus no longer valid and enforceable."

15 Q. Okay. So this seems to be saying that if we
16 win our appeal, then we're not consenting to any
17 regulation or oversight of parking and barge. Is that
18 what you understand that to say?

19 A. That's what it appears to be.

20 Q. So turning back to regulatory condition 4,
21 counsel for the applicants was suggesting that this
22 would be binding regardless of whether or not --
23 whether the appeal was successful. Do you have any
24 thoughts about whether that is the case given this

1 reservation of rights?

2 A. Well, now that you've pointed me to this
3 reservation rights, I think it makes everything null
4 and void from here on dealing with parking or the barge
5 if they win their appeal.

6 Q. And how would -- let's say that someone was
7 to argue that the promise -- that they win their appeal
8 and would argue that there is a promise made by a party
9 that's no longer subject to the Commission's regulatory
10 authority in Chapter 62 and as for which any
11 commitments have been rescinded, how would the
12 Commission seek to enforce such an obligation?

13 A. I don't know that they could. I guess --

14 MR. STYERS: Objection. I think this
15 calls for legal conclusions of this witness, and I
16 mean, I'm just trying to keep things efficient. I
17 think it's a legal conclusion as to what's going
18 to -- could happen in the future under some legal
19 theory or not. That would be my objection.

20 COMMISSIONER DUFFLEY: Mr. Trathen?

21 MR. TRATHEN: He was asked questions --
22 several questions about this. He was not given the
23 full context, and he is a regulatory expert,
24 including former member of this Commission. If he

1 has thoughts on what the Commission might do, it
2 seems like it's appropriate for him to give a
3 response.

4 COMMISSIONER DUFFLEY: Overruled.

5 THE WITNESS: It really puts the
6 Commission in a box as to what they can do. They
7 would still have regulatory authority over the
8 passenger tram, but they own no land. All they had
9 was the boats. You have a parking ticket thing,
10 maybe. I really don't know what position that puts
11 the Commission in. And in fact, when you offer
12 regulatory conditions and say, but by the way, if
13 we win our appeal, all these are null and void --
14 that seems to be what they're saying here. And I
15 just -- that's part of the reason I have concerns
16 about this.

17 If SharpVue wanted to move forward, I
18 think they ought to acquiesce to the regulation of
19 this Commission over the parking and barge
20 services. While I appreciate their regulatory
21 conditions, you're making regulatory conditions
22 based on a condition.

23 Q. And it's -- just with respect to what's
24 actually on this page, there were some representations

1 yesterday, I think, by Mr. Roberts that this would
2 require them to keep the same number of spots at
3 Deep Point, but that's not actually what they're
4 committing to, is it?

5 A. No, they're saying that we will have this
6 number of spots, but they can do it a number of
7 different ways. They can acquire and develop other
8 conveniently-located parking lots with regular shuttle
9 service to convey passengers and their baggage to and
10 from Deep Point. They can construct a parking deck.
11 So it -- they're not necessarily saying, "We're going
12 to keep the parking here; it's going to be right next
13 to the terminal, as it is now," but, "We're going to
14 have parking somewhere." So that's what they're
15 essentially committing to, assuming that they don't win
16 the case on appeal. If they win the case on appeal,
17 they're not committing to any of this, the way I read
18 it.

19 Q. And just as it's written here, if they were
20 to move parking somewhere else, they're not promising
21 that they'll even let the Commission know about that or
22 seek approval, are they?

23 A. I don't see where that's in here.

24 Q. Okay. Mr. S- -- I think both counsel, maybe,

1 asked you -- at least Mr. Styers did -- page 13, lines
2 7 and 9 of your testimony. He asked you about the
3 maintenance of -- on lines 7 and 8 -- the maintenance
4 of current operations and whether that was a benefit of
5 using and consuming public, but he didn't give you the
6 context of this particular response. This response has
7 to do with an analysis of the overriding factors that
8 the Commission applies in approving mergers and
9 transfers, correct?

10 A. Yes.

11 Q. Okay. And so can you speak to this, that
12 this testimony relates to whether or not there's public
13 benefit in this transaction, correct?

14 A. Yes. It talks -- it starts off in this
15 section about testimony talking about the legal
16 standard, which there's a three-part test y'all have
17 heard about several times, and one of the issues in
18 this test is whether or not there is public benefit.
19 And usually, in terms of these types of transactions,
20 the public benefit is measured in a quantitative way,
21 not some qualitative, "We're going to provide good
22 management," we're going to, you know, "We're going to
23 make things look pretty," or whatever, but, "We're
24 going to give the ratepayers a reduction in rates," or

1 "We're going to improve services by investing X
2 amount."

3 There is no quantifiable public benefit that
4 I've seen in this case. All I've heard is, "Well,
5 we're going to continue the current management," "We're
6 going to continue with the current services." Well,
7 that's good, but that's not an incremental benefit.
8 There's no threat that the service is going to be
9 disrupted, so I don't see any public benefit here. If
10 there were, I would think that SharpVue would've
11 already mentioned a quantifiable public benefit, but
12 there's not one.

13 Q. And so given that, what is the impact of that
14 conclusion on your opinion as to whether or not the
15 Commission's standard for approving the transfer has
16 been met here?

17 A. Well, as I say in my testimony, I don't think
18 they've met the standard. I think that there's a
19 potential impact on rates through the acquisition
20 adjustment if they were to get it or in other ways.
21 There's also the potential impact on service. If
22 they're going to be selling the system or selling off
23 pieces of the system over the next few years, you know,
24 there could be -- now, that may be confidential, I'm

1 sorry.

2 But there -- there's -- I guess the bottom
3 line is, I don't think they've met their burden of
4 proof that there's a public benefit or that there's not
5 going to be an impact on rates or services.

6 Q. And we've talked about regulatory conditions.
7 Do the existence of regulatory conditions override the
8 statutory analysis?

9 A. No. The -- and as I say in my testimony, I
10 offer some regulatory conditions. They help mitigate
11 the risk. They do not necessarily rise to the level,
12 in my opinion, of meeting the regulatory standards for
13 approval, but that's up to this Commission.

14 Q. That's all I have, thank you.

15 MR. TRATHEN: That's all I have. Thank
16 you.

17 COMMISSIONER DUFFLEY: Okay.
18 Commissioner questions?

19 MR. STYERS: Do you want me to go ahead
20 and finish my cross?

21 COMMISSIONER DUFFLEY: No, let's do the
22 public first. We're going to get to
23 the confidential.

24 MR. STYERS: Got it. Okay.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

COMMISSIONER DUFFLEY: No questions?
Okay. Getting off easy, Mr. Wright.
So let's go into confidential session.
(Due to the proprietary nature of the
testimony found on pages 112 to 123, it
was filed under seal.)

XX

XX

XX

XX

XX

XX

XX

XX

XX

XX

XX XXX

XX

XX

XX XXXX

XX XXXXXXXXXXXXXXXXXXXXXXX

XX

XX

XX

1 XXX

2 XXX

3 XXX

4 XXX

5 XXX

6 XXX

7 XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

8 XXX

9 XX XXX

10 XXX

11 XX XXX

12 XX XXX

13 XXX

14 XXX

15 XX XXX

16 XXXXXXXXXXXXXXXXXXXXXXX

17 XX XXX

18 XXX

19 XXX

20 XXX

21 XXX

22 XXX

23 XXX

24 XXX

OFFICIAL COPY

Apr 13 2023

1 XX XXX

2 XX XXX

3 XX XXXXX

4 XX XXX

5 XX XXXXXXXXXXXXX

6 XX XXX

7 XXX

8 XXX

9 XXX

10 XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

11 XXX

12 XXX

13 XXX

14 XXX

15 XXXXXXXXXXXXX

16 XXX

17 XX XXX

18 XXXXXXXXX

19 XX XXXXXXXXXXXXXXXXXXXXX

20 XX XXX

21 XXX

22 XX XXXXXXXXX

23 XX XXX

24 XX XXXXXXXXX

OFFICIAL COPY

Apr 13 2023

1 XX XXX
2 XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
3 XX XXXXXXXXXX
4 XX XXX
5 XXX
6 XXX
7 XX XXXXXXXXXX
8 XX XXX
9 XXX
10 XXX
11 XXX
12 XXX
13 XXX
14 XXX
15 XX XXXX
16 XX XXX
17 XXXXXXXXXX
18 XX XXXXXXXXXX
19 XX XXX
20 XXXXXXXXXXXXXXXXXX
21 XX XXXX
22 XX XXX
23 XXX
24 XX XXX

OFFICIAL COPY

Apr 13 2023

1 XX XX

2 XX

3 XX

4 XXXXXXX

5 XX XX

6 XXXXXXXXXXXXXXXXXXXX

7 XX XX

8 XXXXXXXXXXXX

9 XX XXXXXXXXXXXXXXXXXXXX

10 XX XX

11 XX

12 XX

13 XX

14 XX

15 XXXXXXXXXXXXXXXXXXXXXXXXXXXX

16 XX XX

17 XX

18 XX

19 XX

20 XX XX

21 XX

22 XX

23 XX

24 XX XX

OFFICIAL COPY

Apr 13 2023

1 XXX

2 XXX

3 XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

4 XX XXX

5 XX XXXX

6 XX XXX

7 XXXXXXXXXXXXXXX

8 XX XXXXXX

9 XX XXX

10 XXX

11 XX XXXXXX

12 XX XXX

13 XXX

14 XXX

15 XXX

16 XXX

17 XX XXX

18 XXX

19 XXX

20 XXX

21 XXX

22 XXX

23 XXX

24 XXXX

OFFICIAL COPY

Apr 13 2023

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

XX

XX

XXXXXXXXXXXXXXXXXXXXXXXXXXXX

XX

XX XXX

XXXXXXXXXXXXXXXXXXXXXXXXXXXX

XX XXXXXXXXXXXXXXX

XX XXXXXX

XX XXXXXX

XX XXX

XXXXXXXXXXXXXXXXXXXXXXXXXXXX

XX XXXXXXXXXXXXXXXXXXXXXXX

XX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

XX XXX

XXXXXXXXXXXXXXXXXXXXXXXXXXXX

XX XXX

XXXXXXXXXXXXXXXXXXXX

XX XXX

XXXXXXXXXXXXXXXXXXXXXXXXXXXX

XX XXX

XX XXXXXX

XX XXX

XX

XX

OFFICIAL COPY
Apr 13 2023

1 XX XX

2 XX

3 XX

4 XX XX

5 XX

6 XX

7 XX XXXXXX

8 XX XX

9 XXXXXXXXXXXX

10 XX XXXXXXXXXXXXXXXXXXXX

11 XX XX

12 XX

13 XX XXXXXX

14 XX XX

15 XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

16 XX XX

17 XX

18 XX

19 XX

20 XX

21 XX

22 XXXXXXXXXXXXXXXXXXXXXXXXXXXX

23 XX XX

24 XX

OFFICIAL COPY

Apr 13 2023

1 XX XXXXXXXXXXXXXXXXXXXXXXXXXXXX

2 XX XX

3 XXXXXXXXXX

4 XX XXXXXX

5 XX XX

6 XX

7 XX

8 XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

9 XX XXXXXXXXXXXXXXXXXXXXXXXXXXXX

10 XX XX

11 XX

12 XX

13 XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

14 XX XXXXXXXXXXXXXXXXXXXXXXXXXXXX

15 XX XX

16 XX

17 XX XX

18 XXXXXXXXXXXXXXXXXXXX

19 XX XX

20 XXXXXXXXXXXXXXXXXXXXXXXXXXXX

21 XX XXXXXX

22 XX XX

23 XX

24 XXXXXXXXXXXX

OFFICIAL COPY

Apr 13 2023

1 XX XXXXXXXXXX

2 XX XX

3 XX

4 XX

5 XX

6 XX

7 XX XXXXXX

8 XX XX

9 XX

10 XXXXXXXXXXXX

11 XX XXXXXXXXXXXXXXXXXX

12 XX XX

13 XX

14 XXXXXXXXXXXXXXXXXX

15 XX XX

16 XXXXXXXXXXXXXXXXXXXX

17 XX XX

18 XX

19 XX

20 XX XXXXXX

21 XX XX

22 XX

23 XX

24 XX

1 XX XX

2 XXXXXXXXXXXXXXXXXXXX

3 XX XX

4 XX

5 XX

6 XXXXXXXXXXXX

7 XX XXXXXX

8 XX XX

9 XX

10 XX

11 XXXXXXXXXXXXXXXXXXXXXXXXXXXX

12 XX XX

13 XX XX

14 XX

15 XX XXXXXX

16 XX XX

17 XX XXXXXXXXXXXXXXXXXXXX

18 XX XX

19 XX

20 XX

21 XX

22 XX XX

23 XX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

24 XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

OFFICIAL COPY

Apr 13 2023

1 XX XXX

2 XXX

3 XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

4 XX XXX

5 XXX

6 XXX

7 XXX

8 XX XXX

9 XXX

10 XXXXXXXXXX

11 XX XXXXX

12 XX XXX

13 XXX

14 XXX

15 XX XXX

16 XX XXXXXXXXXXXXXXXXXXXXXXX

17 XXX

18 XXX

19 XXX

20 (Confidential testimony ended at

21 3:29 p.m.)

22 COMMISSIONER DUFFLEY: If someone could

23 grab Mr. Gardner, please.

24 Okay. Mr. Wright, thank you for

1 testifying today.

2 Are there motions?

3 MR. STYERS: It's already in the record
4 since I referred to it by labeled name. I would
5 ask that BHIT Wright Cross Examination Exhibit 1 be
6 admitted into evidence.

7 COMMISSIONER DUFFLEY: Without
8 objection, that motion is allowed. Is it a
9 confidential exhibit?

10 (BHIT Wright Cross Examination Exhibit 1
11 was admitted into evidence.)

12 MR. STYERS: It is not.

13 Mr. TRATHEN: The Village would move
14 admission into evidence the 11 exhibits attached to
15 Dr. Wright's testimony.

16 COMMISSIONER DUFFLEY: Okay, without
17 objection that motion is allowed.

18 (Wright Exhibits 1 through 11 were
19 admitted into evidence.)

20 COMMISSIONER DUFFLEY: Any further
21 motions before we move to Public Staff? And so,
22 it's 3:30. It's probably a good time for the
23 afternoon break. We'll come back at 3:40.

24 (Recess was taken at 3:31 p.m. to 3:47)

1 COMMISSIONER DUFFLEY: Okay, let's come
2 back on the record. Mr. Creech, would you mind
3 grabbing that door?

4 Okay. So with the Public Staff.

5 MR. CREECH: Thank you.

6 COMMISSIONER DUFFLEY: And so, left hand
7 on the Bible. All swearing? Okay.

8 Whereupon,

9 MICHELLE BOSWELL, KRISHNA RAJEEV,

10 AND JOHN R. HINTON,

11 having first been duly sworn, were examined

12 and testified as follows:

13 DIRECT EXAMINATION BY MR. CREECH:

14 Q. The panel before us is the panel of Michelle
15 Boswell, Krishna Rajeev, and John R. Hinton. And if I
16 may, Ms. Boswell, please state your name, position, and
17 business address for the record.

18 A. Michelle Boswell. I'm the director of
19 accounting for the Public Staff. My address
20 is 430 North Salisbury Street, Raleigh, North Carolina.

21 Q. Mr. Hinton, can you please you name,
22 position, and business address for the record.

23 A. My name's John R. Hinton. I'm director of
24 the research division of the Public Staff. My address

1 is 430 North Salisbury Street, Raleigh, North Carolina.

2 Q. And Mr. Rajeev, can you please state your
3 name, position, and business address for the record.

4 A. I'm Krishna Rajeev. I'm director for the
5 transportation rates division of the Public Staff. My
6 business address is 430 North Salisbury Street,
7 Raleigh, North Carolina.

8 Q. All right. Two pieces of testimony, the
9 Joint Testimony and Amended and Supplemental Joint
10 Testimony were originally filed by witnesses Rajeev,
11 Hinton, and Sonja Johnson, who's unable to be present
12 for hearings on this matter; is that correct,
13 Ms. Boswell?

14 A. (Michelle Boswell) Yes.

15 Q. Are you familiar with the Joint Testimony
16 Exhibit prefiled by Ms. Johnson, Mr. Rajeev, and
17 Mr. Hinton on December 14, 2022, in this docket and
18 Amended and Supplemental Joint Testimony Exhibit filed
19 by those witnesses on February 20, 2023?

20 A. Yes.

21 Q. Were you directly involved in the original
22 preparation of the Joint Testimony of the Amended -- of
23 the Joint Testimony and Amended and Supplemental Joint
24 Testimony?

1 A. Yes.

2 Q. Do you agree with the analysis and
3 conclusions in those testimonies?

4 A. Yes.

5 Q. Do you now adopt the portions of the Joint
6 Testimony and Amended Supplemental Testimony that were
7 prepared by Ms. Johnson as representing your position
8 and that of the Public Staff in this case?

9 A. I do.

10 Q. All right. Mr. Hinton, on December 14, 2022,
11 did the panel prefile public and confidential versions
12 of Joint Testimony consisting of 19 pages and one
13 exhibit entitled Regulatory Conditions?

14 A. (John R. Hinton) Yes.

15 Q. Do you have any -- do you have any changes or
16 corrections to that initial Direct -- Joint Testimony
17 that you might otherwise -- that would not have been
18 contemplated in the Amended and Supplemental Joint
19 Testimony?

20 A. I have changes for the Amended Testimony.

21 Q. Okay, very good. We'll get to that. As for
22 that, let's -- on February 20, 2023, did the panel
23 prefile public and confidential versions of the Amended
24 and Supplemental Joint Testimony consisting of 23 pages

1 and one exhibit entitled Regulatory Conditions,
2 Mr. Hinton?

3 A. Yes.

4 Q. Okay. Now as to both of those, the
5 December 14th and the February 20th filing, do you have
6 any changes or corrections to that filing in
7 particular, the Amended and Supplemental Joint
8 Testimony?

9 A. Yes. With regard to the February 20, 2023,
10 Testimony, the Amended Testimony, on page 8, there's a
11 footnote, number 2, and on that page, there's a word
12 that reads T-U-M. It should read T-U-R-N. In other
13 words, it says "tum," but it should be "turn."

14 Q. All right.

15 A. Second change is on page 21, line 1, and on
16 that page, the number 22 should read 21. Those are my
17 changes.

18 Q. So conditions 21 through 26?

19 A. Yes.

20 Q. Okay, very good. If you were asked those
21 same questions today, would your answers be the same,
22 Mr. Rajeev?

23 A. (Krishna Rajeev) Yes, they would.

24 Q. Mr. Hinton?

1 A. (John R. Hinton) Yes, they would.

2 Q. Ms. Boswell?

3 A. (Michelle Boswell) Yes.

4 Q. All right. Presiding Chair Duffley, I move
5 that the Public Staff's public and confidential
6 versions of the Direct Joint Testimony as Substituted
7 and Adopted by Michelle Boswell be copied into the
8 record as if given orally from the stand and that the
9 exhibit entitled Regulatory Conditions attached to the
10 Direct Testimony be identified as marked when filed. I
11 also move that the Public Staff's public and
12 confidential versions of Amended Supplemental Joint
13 Testimony as Substituted and Adopted by
14 Michelle Boswell be copied into the record as if given
15 orally from the stand and that the exhibit attached
16 entitled Regulatory Conditions -- that the exhibit
17 attached thereto be identified and marked as -- when
18 filed.

19 COMMISSIONER DUFFLEY: Let's go through
20 all of them, please.

21 MR. CREECH: Okay. So it is the -- we
22 have the public and confidential versions of the
23 Joint Testimony and then the public and
24 confidential versions of the Amended and

1 Supplemental Joint Testimony and the exhibits --
2 one exhibit each, both of which were -- are marked
3 Regulatory Conditions.

4 COMMISSIONER DUFFLEY: Okay. The
5 Prefiled Testimony of the Public Staff's witnesses
6 as amended shall be received into evidence and
7 treated as if given orally from the witness stand,
8 and the exhibits that have been pre-identified will
9 be identified as prefiled.

10 (Public Staff Joint Panel Exhibit 1 -
11 Public and Confidential was identified
12 as it was marked when prefiled.)

13 (Whereupon, the Prefiled Direct
14 Testimony of Sonja Johnson, Krishna
15 Rajeev, and John R. Hinton as
16 Substituted and Adopted by Michelle
17 Boswell; and the Prefiled Amended and
18 Supplemental Testimony of
19 Sonja Johnson, Krishna Rajeev, and
20 John R. Hinton as Substituted and
21 Adopted by Michelle Boswell were copied
22 into the record as if given orally from
23 the stand.)
24

1 **Q. Please state your name, business address, and present**
2 **position.**

3 A. My name is Sonja R. Johnson, and my business address is 430
4 North Salisbury Street, Raleigh, North Carolina. I am the Financial
5 Manager of the Natural Gas and Transportation Section of the
6 Accounting Division of the Public Staff – North Carolina Utilities
7 Commission (Public Staff). My qualifications and experience are
8 provided in Appendix A.

9 **Q. Please state your name, business address, and present**
10 **position.**

11 A. My name is Krishna K. Rajeev, and my business address is 430
12 North Salisbury Street, Raleigh, North Carolina. I am the Director of
13 the Transportation Rates Division of the Public Staff. My
14 qualifications and experience are provided in Appendix B.

15 **Q. Please state your name, business address, and present**
16 **position.**

17 A. My name is John R. Hinton, and my business address is 430 North
18 Salisbury Street, Raleigh, North Carolina. I am the Director of the
19 Economic Research Division of the Public Staff. My qualifications
20 and experience are provided in Appendix C.

21 **Q. Please describe the purpose of your testimony in this**
22 **proceeding.**

1 A. The purpose of our testimony is to present the results of the Public
2 Staff's investigation of the application filed on July 14, 2022
3 (Application), by Bald Head Island Transportation, Inc. (BHIT), and
4 Bald Head Island Ferry Transportation, LLC (BHIFT) (collectively,
5 with BHIT, the Applicants), pursuant to N.C. Gen. Stat. § 62-111 for
6 approval: (1) to transfer BHIT's Common Carrier Certificate to
7 BHIFT, in order to operate the passenger ferry transportation
8 services to and from Bald Head Island and the tram services on the
9 island (the Transfer); and (2) for BHIFT or SharpVue Capital, LLC
10 (SharpVue), to pledge assets and borrow or issue debt pursuant to
11 N.C.G.S. §§ 62-160 and 62-161 as may be necessary to finance the
12 Transfer (the Pledging of Assets, and collectively with the Transfer,
13 the Proposed Transaction).

14 In our testimony, we describe the scope of the Public Staff's
15 investigation of the Proposed Transaction; discuss the balancing of
16 costs and benefits of the Proposed Transaction; describe the primary
17 reasons for and major provisions of the Regulatory Conditions
18 recommended by the Public Staff, which are attached hereto as
19 Exhibit 1 (Regulatory Conditions); and present the Public Staff's
20 recommendation to the Commission regarding the approval of the
21 Proposed Transaction.

22 **Q. Please describe the Public Staff's investigation.**

1 A. The Public Staff reviewed the Application to assess potential costs
2 and benefits and service-related aspects of the Proposed
3 Transaction and analyzed the complex and multiple levels of
4 business entities in the proposed ownership chain and management
5 above BHIFT. Our investigation included written data requests,
6 review of the responses to those data requests as well as the
7 responses to other parties' data requests, a site visit, conversations
8 with representatives of intervenors and the Applicants and
9 intervenors, review of the testimony from the public witness hearing
10 on November 1, 2022, review of the consumer statement positions
11 filed in Docket No. A-41, Sub 22CS, and additional conversations
12 with users of the BHIT utility.

13 **Q. Why is it important to identify and balance the costs and**
14 **benefits of the Proposed Transaction?**

15 A. N.C.G.S. § 62-111(a) provides that "no franchise now existing . . .
16 shall be sold . . . except after application to and written approval by
17 the Commission, which approval shall be given if justified by the
18 public convenience and necessity."

19 As explained in the Order Approving Merger Subject to Regulatory
20 Conditions and Code of Conduct issued September 29, 2016, in
21 Docket Nos. E-2, Sub 1095, E-7, Sub 1100, and G-9, Sub 682
22 (Duke/Piedmont Merger Order):

1 In prior merger proceedings the Commission has
2 established a three-part test for determining whether a
3 proposed utility merger is justified by the public
4 convenience and necessity. That test is (1) whether the
5 merger would have an adverse impact on the rates and
6 services provided by the merging utilities; (2) whether
7 ratepayers would be protected as much as possible
8 from potential costs and risks of the merger; and (3)
9 whether the merger would result in sufficient benefits to
10 offset potential costs and risks. See Order Approving
11 Merger Subject to Regulatory Conditions and Code of
12 Conduct (Duke/Progress Merger Order), issued June
13 29, 2012, in Docket Nos. E-2, Sub 998 and E-7, Sub
14 986, aff'd, In re Duke Energy Corp., 232 N.C. App. 573,
15 755 S.E.2d 382 (2014). These questions are related to
16 one another and together establish a reasoned
17 framework upon which utility mergers may be
18 evaluated. In making these assessments, the
19 Commission has also examined factors such as
20 whether service quality will be maintained or improved,
21 the extent to which costs can be lowered and rates can
22 be maintained or reduced, and whether effective
23 regulation of the merging utilities will be maintained. See
24 Order Approving Merger and Issuance of Securities,
25 issued April 22, 1997, in Docket No. E-7, Sub 596.

26 Duke/Piedmont Merger Order, p. 68.

27 The Public Staff believes the Commission's three-part test for
28 determining whether a proposed merger is justified is also
29 appropriate in determining the appropriateness of the Proposed
30 Transfer.

31 **Q. Please describe BHIT's operations.**

32 A. BHIT provides ferry transportation of passengers between the Deep
33 Point passenger terminal in Southport to Bald Head Island in
34 Brunswick County, and related tram services on the island. BHIT

1 began providing service in 1988 and was granted a Common Carrier
2 Certificate on January 6, 1995. BHIT's ferry and tram services
3 require approximately 65 full-time employees and 20 additional part-
4 time staff during the summer months.

5 **Q. Please describe the Proposed Transaction.**

6 A. The Asset Purchase Agreement (APA) for the Proposed Transaction
7 (attached as Confidential Exhibit E to the Application) provides for
8 the sale of BHIT's regulated ferry and tram assets as well as other
9 assets owned by BHIL related to parking, barge operations, real
10 estate, and intellectual property at a purchase price of \$67.2 million
11 to entities wholly owned by Pelican Legacy Holdings, LLC
12 (Holdings).

13 As depicted in the organizational chart on Exhibit B to the
14 Application, BHIFT is the sub-entity of Holdings that will acquire
15 BHIT's assets, the regulated passenger ferry and tram operations.

16 As indicated in Confidential Exhibit F to the Application, the
17 acquisition is proposed to be financed with **[BEGIN**
18 **CONFIDENTIAL]** ██████████ **[END CONFIDENTIAL]** of equity
19 capital and **[BEGIN CONFIDENTIAL]** ██████████ ██████████ **[END**
20 **CONFIDENTIAL]** of debt. Thus, the financing structure is comprised
21 of approximately **[BEGIN CONFIDENTIAL]** ██████████ **[END**

1 an agreement is “commonly used in the financial advisory industry”
2 and a “common feature of private equity funds.” (BHIFT Responses
3 to PS DR 2, Item 7, and PS DR 5, Item 3)

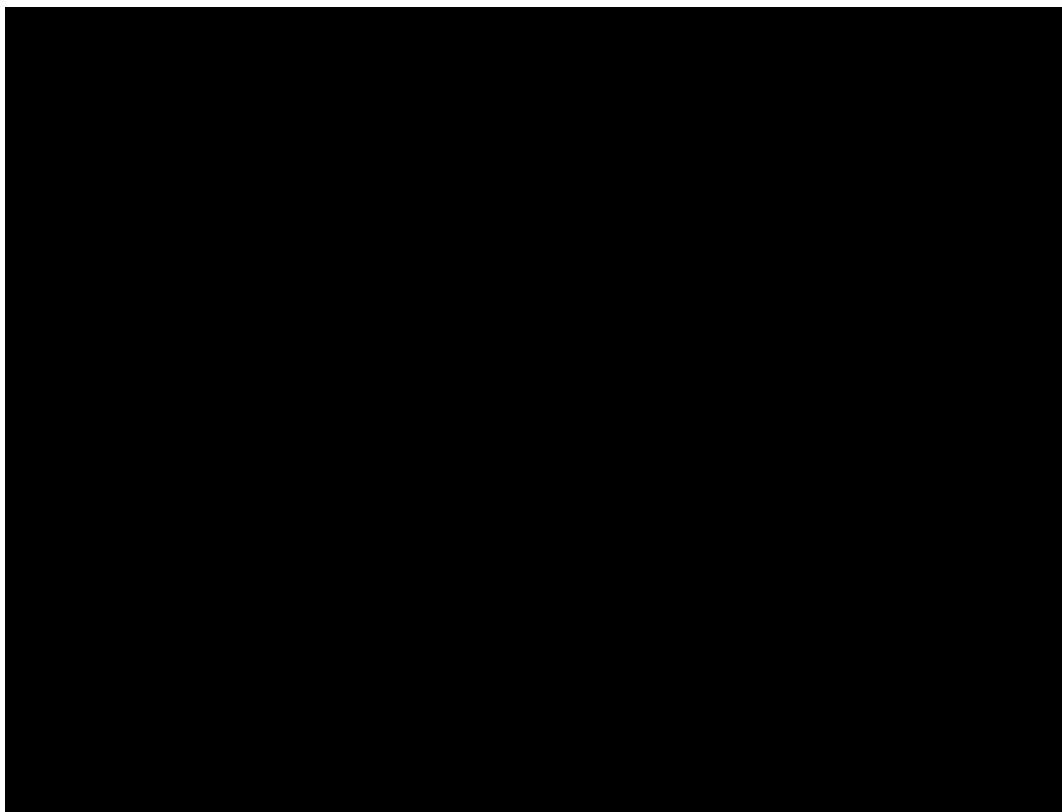
4 As for day-to-day operations, BHIFT indicated that it reached
5 agreement, which has not yet been memorialized, and intends to
6 contract with current management employees of the ferry and tram
7 operations to continue in current roles and duties⁴ including "Chad"
8 Paul, III, President of BHIT and the CEO and a Manager of BHIL;
9 Shirley Mayfield, Chief Financial Officer of BHIL; and Captain Bion
10 Stewart, the current COO of BHIT.

11 In discovery, the Public Staff obtained an updated chart of the
12 organizational structure as shown below:

13 **[BEGIN CONFIDENTIAL]**

⁴ BHIFT has indicated, in response to PS DR 2, Item 8:

“We anticipate that Bald Head Island Ferry Transportation, LLC will be the employer for current employees of the Ferry Operations and Tram Operations. We anticipate that Chad Paul and Shirley Mayfield will provide management services to all subsidiaries of Pelican Legacy Holdings, LLC (including Bald Head Island Ferry Transportation, LLC), and may have employment agreements with Pelican Legacy Holdings, LLC. This is beneficial to ratepayers in that it maintains the current structure employed by BHIL/BHIT, which has not historically resulted in any stated concern by any party, the Public Staff or the Commission. This safeguards ratepayers because the employees they interact with regarding the ferry and tram will be employed by the entity holding the certificate for the ferry and tram operation – and thus will not be confused about who they are dealing with and the Commission will have jurisdiction over the regulated utility, BHIFT.”



1
2
3
4
5
6
7
8
9
10
11

[END CONFIDENTIAL]

The above organizational structure depicts in greater detail BHIFT’s proposed ownership and management structure contemplated for closing. As part of its investigation, the Public Staff learned that, at transaction closing, SharpVue will no longer be a member of Partners,⁵ and therefore, will no longer be the ultimate parent company of Partners, Holdings, and BHIFT. Additionally, the Public Staff learned that, at closing, Partners **[BEGIN CONFIDENTIAL]** –

[REDACTED]

[REDACTED]

⁵ In its updated organizational structure, SharpVue indicates that it **[BEGIN CONFIDENTIAL]** [REDACTED] **[END CONFIDENTIAL]** Partners.

1 transition from BHIT and for ratepayers. Additionally, BHIFT
2 indicated it will “spend the first year after the purchase
3 communicating with stakeholders and evaluating the current
4 operations in more detail and . . . look[ing] for opportunities to
5 improve service and make any needed investments over time.”
6 (Roberts Direct Testimony, p. 6)⁶ The Public Staff believes that
7 Holdings and BHIFT will be adequately capitalized and supported by
8 owners with significant investment experience and owner-managers
9 Lee Roberts and Douglas Vaughn with access to sufficient capital.
10 Additionally, BHIFT agreed to continue to provide for adequate and
11 reasonably priced parking.⁷

⁶ Also, in BHIFT Response to PS DR 2 (“General Metrics for Ferry & Tram Operations”), Item 1, BHIFT indicated that:

“The due diligence reports contracted by and provided to the Bald Head Island Transportation Authority, including the analysis by Mercator, and reviewed by its finance and bond advisors, all consistently found that the transportation system has been well run, and that its assets have been well maintained. Our own due diligence confirmed these conclusions. SharpVue has not yet developed its own independent maintenance and replacement schedules for ferry and tram operating assets. Related to ferry operation, we do think steps can be taken to improve system operations. A starting point would be improved information technology, that would allow reservations and electronic ticketing. We also believe that—once the ownership of the system is settled and the sale to SharpVue has closed—we will be able to more effectively address employee hiring, training, and retention issues. 2023 will be the first full calendar year that the new baggage policies approved by the Commission in Docket A-41, Sub 20 will be in place, and we are hopeful that, with better public understanding of those policies, baggage handling will improve, which hopefully should improve on-time performance. But, as we stated in our verified Application, we will also evaluate how to improve baggage handling operations, and when and how to replace the next ferry in the fleet that may be approaching obsolescence. SharpVue will evaluate ferry and tram operations during the first year and may develop new or revised maintenance and replacement schedules if it determines these are necessary.”

⁷ For example, in SharpVue Response to PS DR 2, Item 4, SharpVue indicated that:

“After closing the transaction, SharpVue intends to continue the parking operations without significant or immediate change. SharpVue understands that the current parking rates are outlined on BHIL/IT 000719. SharpVue understands this document was

1 **Q. What is the Public Staff's recommendation with regard to the**
2 **Proposed Transaction?**

3 A. The Public Staff recommends that the Proposed Transaction be
4 approved, subject to **[BEGIN CONFIDENTIAL]** [REDACTED]
5 [REDACTED] [REDACTED] [REDACTED] **[END OF CONFIDENTIAL]** and
6 consummation of the Proposed Transaction as described above and
7 subject to the provisions of the Regulatory Conditions described
8 below. These Public Staff conditions together with the above-
9 described plans of BHIFT (with respect to employees, parking,
10 operations, and services) guard against adverse impacts on rates
11 and services, assure that the benefits of the Proposed Transaction
12 outweigh its costs, and protect customers from risks and costs as
13 much as possible consistent with the requirements of the three-part
14 test.

15 **Q. Please explain the primary reasons for, and the major**
16 **provisions of the Regulatory Conditions recommended by the**
17 **Public Staff.**

18 A. As a result of its investigation, the Public Staff developed its
19 recommended Regulatory Conditions, which we believe are
20 necessary to ensure that the Proposed Transaction is justified by the

previously provided to the Public Staff. SharpVue expects that aggregate rates will not rise faster than overall cost inflation.”

1 public convenience and necessity and serves the public interest. The
2 following is a description of the major provisions of our recommended
3 Regulatory Conditions:

4 **Applicability of the Regulatory Conditions**

5 The Regulatory Conditions apply jointly and severally to SharpVue,
6 SharpVue Affiliates (defined as Partners, **[BEGIN CONFIDENTIAL]**
7 **[REDACTED]**
8 **[REDACTED]** **[END CONFIDENTIAL]**,
9 Holdings, and BHIFT and their successors.

10 **Requirements of the Entities**

11 The Regulatory Conditions set forth the requirements the Public Staff
12 believes are necessary to be imposed on SharpVue, SharpVue
13 Affiliates, Holdings, and BHIFT to protect the public interest. Each
14 entity would further be required not to cause any other entity among
15 them to violate the Regulatory Conditions, nor to prevent the other
16 entities from taking action to comply with the Regulatory Conditions,
17 for so long as the Regulatory Conditions would remain in effect and
18 would be applicable to SharpVue, SharpVue Affiliates, Holdings, and
19 BHIFT.

20 These Regulatory Conditions are primarily designed to protect
21 ratepayers as much as reasonably possible from potential costs and
22 risks associated with the Transfer. Regulatory Conditions 1 through

1 3 provide that all transfer-related direct costs and expenses will be
2 excluded from the regulated expenses of BHIFT, and that the
3 recovery of an acquisition adjustment will not be allowed in any future
4 rate case.

5 Regulatory Condition 4 relates to adequate and reasonable price
6 parking services for ferry customers. Regulatory Condition 5 requires
7 that for future general rate cases, an appropriate level of parking
8 revenue shall be imputed in the setting of just and reasonable rates
9 for BHIFT on a level that is consistent with the prior general rate
10 case.

11 Regulatory Condition 6 is a general condition that the owners and
12 Managers of BHIFT be required to take actions to hold customers
13 harmless from the effects of the Transfer. The Condition provides
14 that BHIFT shall continue to fulfill the requirement that it provide safe
15 and reliable utility service at reasonable rates.

16 Regulatory Conditions 7, 8, 9, 10, 11, and 12 relate to financial
17 management. Condition 7 prohibits BHIFT from paying any
18 distribution in excess of 80% of BHIFT's net income, and Regulatory
19 Condition 8 ensures that BHIFT will maintain 40% of its booked
20 capitalization will be maintained as common equity. The Public Staff
21 believes that a 40% equity ratio should be maintained to ensure the
22 regulated utility's ongoing financial viability. Regulatory Condition 9

1 ensures that the Commission will be informed if SharpVue,
2 SharpVue Affiliates, or Holdings makes any investment in a business
3 entity that constitutes 10% or more of the booked capitalization of
4 BHIFT. Regulatory Condition 10 ensures that the Commission is
5 notified if SharpVue, SharpVue Affiliates, Holdings, or BHIFT
6 experiences a default on an obligation or files for bankruptcy.
7 Regulatory Condition 11 requires that the intercompany loan
8 between BHIL and BHIT as reported on BHIT's financial statement
9 of December 31, 2021, shall not be binding upon Holdings and
10 BHIFT. (SharpVue Response to PS DR 3, Item 5)⁸ This requirement
11 applies to any subsequent indebtedness through the consummation
12 of the Transfer. Regulatory Condition 12 provides that Holdings and
13 BHIFT shall file with the Commission post-closing financial
14 information and provide closing-related documents to the Public
15 Staff.

⁸ With respect to Application Exhibit A, ("Bald Head Island Transportation, Inc. Financial Report December 31, 2021"), Note 9, regarding "Company owes Limited \$19,808,228 at December 31, 2021. There is no agreement, terms, or expiration on the loan," SharpVue has indicated on behalf of BHIFT that:

"(a) SharpVue understands that this is an intracompany loan between separate legal entities, Bald Head Island Limited, LLC and Bald Head Island Transportation, Inc., which are ultimately under common ownership.

(b) SharpVue is not aware of any related filing with the North Carolina Utilities Commission or subsequent approval by the North Carolina Utilities Commission.

(c) SharpVue's transaction is structured as an acquisition of assets. SharpVue will not assume any debt, including this "loan," from Bald Head Island Transportation, Inc. As a result, this "loan" will not be part of Bald Head Island Ferry Transportation, LLC's capital structure, and will not be included in a future general rate case."

1 Regulatory Conditions 13 through 22 address various regulatory
2 and service quality concerns that further provide for safe,
3 reliable transportation, and parking at reasonable rates
4 consistent with current practices.

5 **Q. Does this conclude your testimony?**

6 A. Yes.

Appendix A
QUALIFICATIONS AND EXPERIENCE

SONJA R. JOHNSON

I am a graduate of North Carolina State University with a Bachelor of Science and Master of Science degree in Accounting. I was employed by the Public Staff from December 2002 until May 2004 and rejoined the Public Staff in January 2006. I became the Financial Manager for Natural Gas and Transportation in May 2022.

As a Financial Manager, I am responsible for the performance and supervision of the following activities: (1) the examination and analysis of testimony, exhibits, books and records, and other data presented by utilities and other parties under the jurisdiction of the Commission or involved in Commission proceedings; and (2) the preparation and presentation to the Commission of testimony, exhibits, and other documents in those proceedings.

Since initially joining the Public Staff in December 2002, I have filed testimony or affidavits in several water and sewer general rate cases. I have also filed testimony in applications for certificates of public convenience and necessity to construct water and sewer systems and noncontiguous

extension of existing systems. My experience also includes filing affidavits in several fuel cost recovery cases and Renewable Energy and Energy Efficiency Portfolio Standard (REPS) cost recovery cases for the utilities currently organized as Duke Energy Carolinas, LLC, Duke Energy Progress, LLC, and Virginia Electric and Power Company d/b/a Dominion Energy North Carolina.

While away from the Public Staff, I was employed by Clifton Gunderson, LLP. My duties included the performance of cost report audits of nursing homes, hospitals, federally qualified health centers, intermediate care facilities for the mentally handicapped, residential treatment centers and health centers.

Appendix B
QUALIFICATIONS AND EXPERIENCE

KRISHNA K. RAJEEV

I received a Bachelor of Arts degree in Business from the University of Iowa in 2011. I joined the Public Staff in October 2011 as a consumer complaint analyst and was promoted to the Transportation Rates Division in November 2013 as a rate specialist. Since August 2017, I have served as the Director of the Transportation Rates Division.

The Transportation Rates Division oversees household goods movers, regular route motor carriers of passengers, ferry-boat operators, and accordingly maintains the rates and service schedules for the Bald Head Island ferry. I have investigated and addressed consumer complaints regarding the Bald Head Island Transportation (BHIT) utility. I have testified in front of the Commission in various Transportation industry matters, including the amendment of BHIT's service schedules in Docket No. A-41, Sub 18, and BHIT's modification of baggage policies in Docket No. A-41, Sub 20.

Appendix C
QUALIFICATIONS AND EXPERIENCE

JOHN R. HINTON

I received a Bachelor of Science degree in Economics from the University of North Carolina at Wilmington in 1980 and a Master of Economics degree from North Carolina State University in 1983. I joined the Public Staff in May of 1985. I filed testimony on the long-range electrical forecast in Docket No. E-100, Sub 50. In 1986, 1989, and 1992, I developed the long-range forecasts of peak demand for electricity in North Carolina. I filed testimony on electricity weather normalization in Docket Nos. E-7, Sub 620, E-2, Sub 833, and E-7, Sub 989. I filed testimony the level of funding for nuclear decommissioning costs in Docket Nos. E-2, Sub 1023; E-7, Sub 1026, and E-7, Sub 1146. I have filed testimony on the Integrated Resource Plans (IRPs) filed in Docket No. E-100, Subs 114 and 125, and I have reviewed numerous peak demand and energy sales forecasts and the resource expansion plans filed in electric utilities' annual IRPs and IRP updates.

I have been the lead analyst for the Public Staff in numerous avoided cost proceedings, filing testimony in Docket No. E-100, Subs 106, 136, 140, 148, and 158. I filed a Statement of Position in the arbitration case involving

EPCOR and Progress Energy Carolinas in Docket No. E-2, Sub 966. I have filed testimony regarding avoided costs related to the cost recovery of energy efficiency programs and demand side management programs in Dockets Nos. E-7, Sub 1032, E-7, Sub 1130, E-2, Sub 1145, and E-2, Sub 1174.

I have filed testimony on the issuance of certificates of public convenience and necessity (CPCN) in Docket Nos. E-2, Sub 669, SP-132, Sub 0, E-7, Sub 790, E-7, Sub 791, and E-7, Sub 1134.

I filed testimony on the merger of Dominion Energy, Inc. and SCANA Corp. in Docket Nos. E-22, Sub 551, and G-5, Sub 585.

I have filed testimony on the issue of fair rate of return in Docket Nos. E-22, Subs 333, 412, and 532; P-26, Sub 93; P-12, Sub 89; G-21, Sub 293; P-31, Sub 125; P-100, Sub 133b; P-100, Sub 133d (1997 and 2002); G-21, Sub 442; G-5, Subs 327, 386; and 632; G-9, Subs 351, 382, 722 and Sub 781, G-39, Sub 47, W-778, Sub 31; W-218, Subs 319, 497, 526 and 573; W-354, Subs 360; 364, 384, and 400 and in several smaller water utility rate cases. I have filed testimony on credit metrics and the risk of a downgrade in Docket No. E-7, Sub 1146.

I have filed testimony on the hedging of natural gas prices in Docket No. E-2, Subs 1001, 1018, and 1292. I have filed testimony on the expansion of natural gas in Docket No. G-5, Subs 337 and 372. I performed the financial

analysis in the two audit reports on Mid-South Water Systems, Inc., Docket No. W-100, Sub 21. I testified in the application to transfer the CPCN from North Topsail Water and Sewer, Inc. to Utilities, Inc., in Docket No. W-1000, Sub 5. I have filed testimony on rainfall normalization with respect of water sales in Docket No. W-274, Sub 160.

I was a member of the Small Systems Working Group that reported to the National Drinking Water Advisory Council with the EPA and I have published an article in the National Regulatory Research Institute's Quarterly Bulletin entitled Evaluating Water Utility Financial Capacity.

1 **Q. Please state your name, business address, and present**
2 **position.**

3 A. My name is Sonja R. Johnson, and my business address is 430
4 North Salisbury Street, Raleigh, North Carolina. I am the Financial
5 Manager of the Natural Gas and Transportation Section of the
6 Accounting Division of the Public Staff – North Carolina Utilities
7 Commission (Public Staff). My qualifications and experience are
8 provided in Appendix A.

9 **Q. Please state your name, business address, and present**
10 **position.**

11 A. My name is Krishna K. Rajeev, and my business address is 430
12 North Salisbury Street, Raleigh, North Carolina. I am the Director of
13 the Transportation Rates Division of the Public Staff. My
14 qualifications and experience are provided in Appendix B.

15 **Q. Please state your name, business address, and present**
16 **position.**

17 A. My name is John R. Hinton, and my business address is 430 North
18 Salisbury Street, Raleigh, North Carolina. I am the Director of the
19 Economic Research Division of the Public Staff. My qualifications
20 and experience are provided in Appendix C.

1 **Q. Please describe the purpose of your amended and**
2 **supplemental testimony in this proceeding.**

3 A. The purpose of our amended and supplemental testimony is to
4 present the results of the Public Staff's investigation of the original
5 application filed on July 14, 2022, by Bald Head Island
6 Transportation, Inc. (BHIT) and Bald Head Island Ferry
7 Transportation, LLC (BHIFT), a wholly owned subsidiary of Pelican
8 Legacy Holdings, LLC (Holdings), and managed by SharpVue
9 Capital, LLC (SharpVue), as well as the Amended Application filed
10 on January 24, 2023 (as amended, the Application) by BHIT, BHIFT,
11 and Bald Head Island Limited LLC (BHIL and collectively, with BHIT
12 and BHIFT, the Applicants), pursuant to N.C. Gen. Stat. § 62-111 for
13 approval to transfer BHIT's Common Carrier Certificate to BHIFT to
14 operate the passenger ferry transportation services to and from Bald
15 Head Island, the tram services on the island, and, in addition, the
16 parking, barge, and tug operations (collectively, the Transportation
17 Assets) (the Transfer).

18 We also present the results of our investigation of the request for
19 BHIFT or SharpVue, to pledge assets and borrow or issue debt,
20 pursuant to N.C.G.S. §§ 62-160 and 62-161, secured by the
21 Transportation Assets as may be necessary to finance the Transfer
22 (the Pledging of Assets, and collectively with the Transfer, the

1 Proposed Transaction). In our amended and supplemental
2 testimony, we describe the scope of the Public Staff's investigation
3 of the Proposed Transaction; discuss the balancing of costs and
4 benefits of the Proposed Transaction; and present the Public Staff's
5 recommendation to the Commission regarding approval of the
6 Proposed Transaction.

7 Finally, we describe the basis for, and major provisions of, the
8 Regulatory Conditions recommended by the Public Staff, which are
9 attached hereto as Exhibit 1 (Regulatory Conditions).

10 **Q. Please describe the Public Staff's investigation.**

11 A. The Public Staff reviewed the Application to assess potential costs
12 and benefits and service-related aspects of the Proposed
13 Transaction and analyzed the complex and multiple levels of
14 business entities in the proposed ownership chain and management
15 above BHIFT. Our investigation included written data requests,
16 review of the responses to those data requests as well as the
17 responses to other parties' data requests, a site visit, conversations
18 with the parties, review of the testimony from the public witness
19 hearing on November 1, 2022, review of the consumer statement
20 positions filed in Docket No. A-41, Sub 22CS, and additional
21 conversations with customers of the utility.

1 **Q. Why is it important to identify and balance the costs and**
2 **benefits of the Proposed Transaction?**

3 A. North Carolina Gen. Stat. § 62-111(a) provides that "no franchise
4 now existing . . . shall be sold . . . except after application to and
5 written approval by the Commission, which approval shall be given if
6 justified by the public convenience and necessity."

7 As explained in the Order Approving Merger Subject to Regulatory
8 Conditions and Code of Conduct issued September 29, 2016, in
9 Docket Nos. E-2, Sub 1095; E-7, Sub 1100; and G-9, Sub 682
10 (Duke/Piedmont Merger Order):

11 In prior merger proceedings the Commission has
12 established a three-part test for determining whether a
13 proposed utility merger is justified by the public
14 convenience and necessity. That test is (1) whether the
15 merger would have an adverse impact on the rates and
16 services provided by the merging utilities; (2) whether
17 ratepayers would be protected as much as possible
18 from potential costs and risks of the merger; and (3)
19 whether the merger would result in sufficient benefits to
20 offset potential costs and risks. See Order Approving
21 Merger Subject to Regulatory Conditions and Code of
22 Conduct (Duke/Progress Merger Order), issued June
23 29, 2012, in Docket Nos. E-2, Sub 998 and E-7, Sub
24 986, aff'd, In re Duke Energy Corp., 232 N.C. App. 573,
25 755 S.E.2d 382 (2014). These questions are related to
26 one another and together establish a reasoned
27 framework upon which utility mergers may be
28 evaluated. In making these assessments, the
29 Commission has also examined factors such as
30 whether service quality will be maintained or improved,
31 the extent to which costs can be lowered and rates can
32 be maintained or reduced, and whether effective
33 regulation of the merging utilities will be maintained. See

1 Order Approving Merger and Issuance of Securities,
2 issued April 22, 1997, in Docket No. E-7, Sub 596.

3 Duke/Piedmont Merger Order, at 68.

4 The Public Staff believes the Commission's three-part test for
5 determining whether a proposed merger is justified by the public
6 convenience and necessity is also applicable in determining the
7 appropriateness of the proposed Transfer.

8 **Q. Please describe BHIT's and BHIL's operations.**

9 A. BHIT provides ferry transportation of passengers and BHIL provides
10 barge and tug transportation between the Deep Point Marina in
11 Southport to Bald Head Island in Brunswick County, related BHIL
12 parking operations on the mainland, and BHIT tram services on the
13 island. BHIT began providing service in 1988 and was granted a
14 Common Carrier Certificate on January 6, 1995. The mainland and
15 island terminals are owned by BHIL and rented to BHIT by lease
16 dated January 1, 2006, and amended January 1, 2011 (as amended,
17 the Terminal Lease), for consecutive five year terms, "unless either
18 party objects to the renewal prior to the expiration of the term or any
19 extension thereof, or unless earlier terminated as provided herein."
20 Pelican Real Property, LLC, another wholly owned subsidiary of
21 Holdings, would acquire BHIL's non-regulated real property assets
22 under the Asset Purchase Agreement (as amended, APA) and as

1 such, would become BHIFT's successor lessor for the Terminal
2 Lease. The Terminal Lease does not cover now-regulated parking,
3 barge, or tug operations, and there is not yet a similar long-term
4 lease or perpetual easement or other arrangement to ensure
5 ownership or control for those operations.

6 **Q. Please describe the Proposed Transaction.**

7 A. The APA for the Proposed Transaction (attached as Confidential
8 Exhibit E to the Application) provides for the sale of BHIT's regulated
9 ferry and tram assets, BHIL's parking, barge, and tug assets, and
10 other assets owned by BHIL related to real estate, intellectual
11 property, and supplemental assets, at a purchase price of \$67.2
12 million to entities wholly owned by Holdings.

13 As depicted in the organizational chart on Exhibit B to the
14 Application, BHIFT is the sub-entity of Holdings that will acquire
15 BHIL's and BHIT's regulated assets.

16 As indicated in Confidential Exhibit F to the Application, the
17 acquisition is proposed to be financed with **[BEGIN**
18 **CONFIDENTIAL]** [REDACTED] **[END CONFIDENTIAL]** of equity
19 capital and **[BEGIN CONFIDENTIAL]** [REDACTED] **[END**
20 **CONFIDENTIAL]** of debt. Thus, the financing structure is comprised
21 of approximately **[BEGIN CONFIDENTIAL]** [REDACTED] **[END**

1 **CONFIDENTIAL]** common equity and **[BEGIN CONFIDENTIAL]**
2 ██████████ **[END CONFIDENTIAL]** debt.

3 BHIFT indicated in its Application and testimony that there are no
4 immediate plans to change rates, terms, or conditions of service;
5 management; or operational structure or to make any significant
6 changes in the number of employees and staff. (Application ¶¶ 20
7 and 21, at 5-6, ¶ 19, at 6-7, ¶ 30, at 10)

8 The Proposed Transaction is impacted, however, by a “Right of First
9 Refusal” (ROFR) dated August 21, 1999, from BHIT and BHIL to the
10 Village of Bald Head Island (Village). BHIL and BHIT have filed a
11 Complaint against the Village in Brunswick County Superior Court for
12 adjudication of the merits and status of the ROFR.¹ The timing and
13 outcome of the litigation could impact the Proposed Transaction,
14 namely the ability of BHIL and BHIT to sell their regulated assets and
15 the ability of any proposed purchaser to obtain real property title
16 insurance and therefore, financing, as part of any acquisition.²

¹ A copy of the Complaint (including the ROFR) is attached to the Village’s abeyance motion filed in this docket on February 3, 2023.

² See Complaint ¶ 53: Sharp Vue has represented to Plaintiffs that it is ready, willing, and able to close the Transaction, and that its lender stands ready to finance the Transaction once title insurance is in place. Sharp Vue, in consultation with Transportation and Limited, repeatedly sought a commitment of title insurance to accompany its purchase and financing of the Transaction but has been unable to secure such policy because of the Village’s continued claims that the ROFR is valid and should remain part of the public record. SharpVue in tum has informed Plaintiffs that it may not close the Transaction without title insurance.

- 1 **Application**
- 2 **Q. Please describe issues of ownership, management, and control**
- 3 **relating to the Proposed Transaction.**
- 4 A. At the time of the Application, and as generally shown in Application
- 5 Exhibit B and the figure below,³ BHIFT's **[BEGIN CONFIDENTIAL]**
- 6 **[REDACTED]** **[END CONFIDENTIAL]** Holdings.
- 7 Holdings' **[BEGIN CONFIDENTIAL]** **[REDACTED]**
- 8 **[END CONFIDENTIAL]** SVC Pelican Partners, LLC (Partners), and
- 9 Partners' **[BEGIN CONFIDENTIAL]** **[REDACTED]**
- 10 **[END CONFIDENTIAL]** SharpVue⁴. Therefore, at the time of filing
- 11 the Application, SharpVue **[BEGIN CONFIDENTIAL]** **[REDACTED]**
- 12 **[REDACTED]** **[END CONFIDENTIAL]** BHIFT,
- 13 Holdings, and Partners.⁵

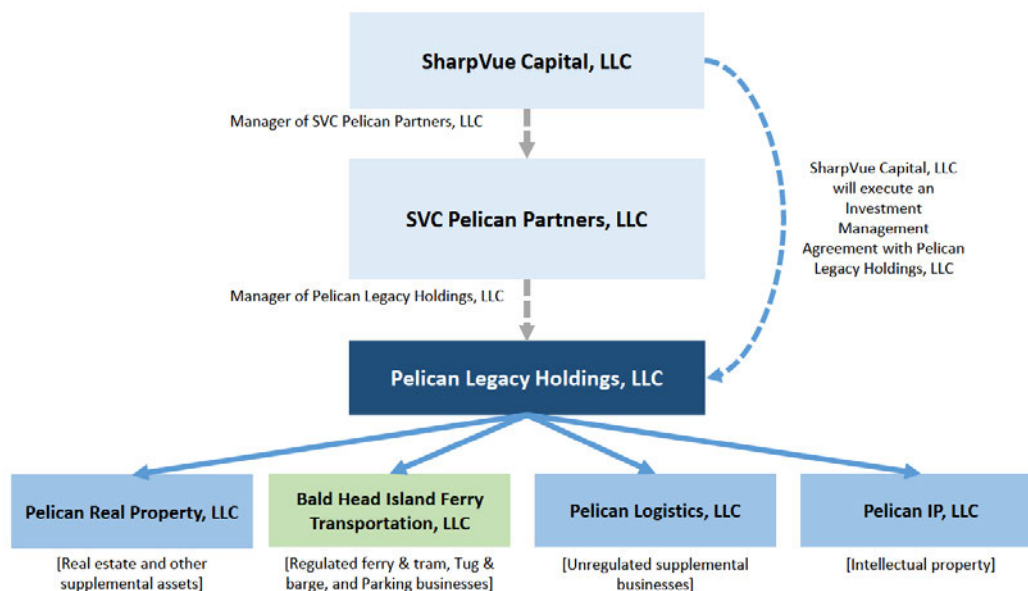
³ Representatives of BHIFT have informed the Public Staff that Exhibit B will be updated (via correction to the Application or in rebuttal testimony) to again include Pelican Logistics, LLC, as contemplated in the APA, which is wholly owned by Holdings and will own supplemental assets that are not real property or intellectual property (IP).

⁴ SharpVue was founded in 2016. SharpVue was previously an arm of Curi, formerly known as Medical Mutual. In 2019, Lee Roberts and partner Douglas Vaughn spun SharpVue off into its own investment management firm. Roberts previously served as State Budget Director and worked with Piedmont Community Bank Holdings, Cherokee Investment Partners, and Morgan Stanley. Vaughn previously served in senior management with Triangle Capital Corp. and as President of VIETRI, Inc., among other key prior experience. www.sharpvuecapital.com

⁵ It is the Public Staff's understanding that, at present, SharpVue **[BEGIN CONFIDENTIAL]** **[REDACTED]** **[END CONFIDENTIAL]** Partners, though Partners **[BEGIN CONFIDENTIAL]** **[REDACTED]** **[END CONFIDENTIAL]** Holdings, and Holdings **[BEGIN CONFIDENTIAL]** **[REDACTED]** **[END CONFIDENTIAL]** BHIFT.

SHARPVUE-1409

Proposed Organizational Structure
Exhibit B to the Amended Application under Sub 22 as of 2/16/2023



As depicted in Exhibit B, BHIFT proposed that SharpVue execute an Investment Management Agreement (IMA)⁶ with Partners and Holdings whereby SharpVue would among other things, manage the regulated parking, ferry, barge, tug, and tram assets of BHIFT. In support of the proposal, BHIFT indicated in response to discovery that such an agreement is “commonly used in the financial advisory industry” and a “common feature of private equity funds.”

As for day-to-day operations, BHIFT indicated that it intends to contract with current management employees of BHIT and BHIL

⁶ BHIFT provided a confidential copy of the draft IMA to the Public Staff in discovery and indicated that it is subject to revision prior to closing.

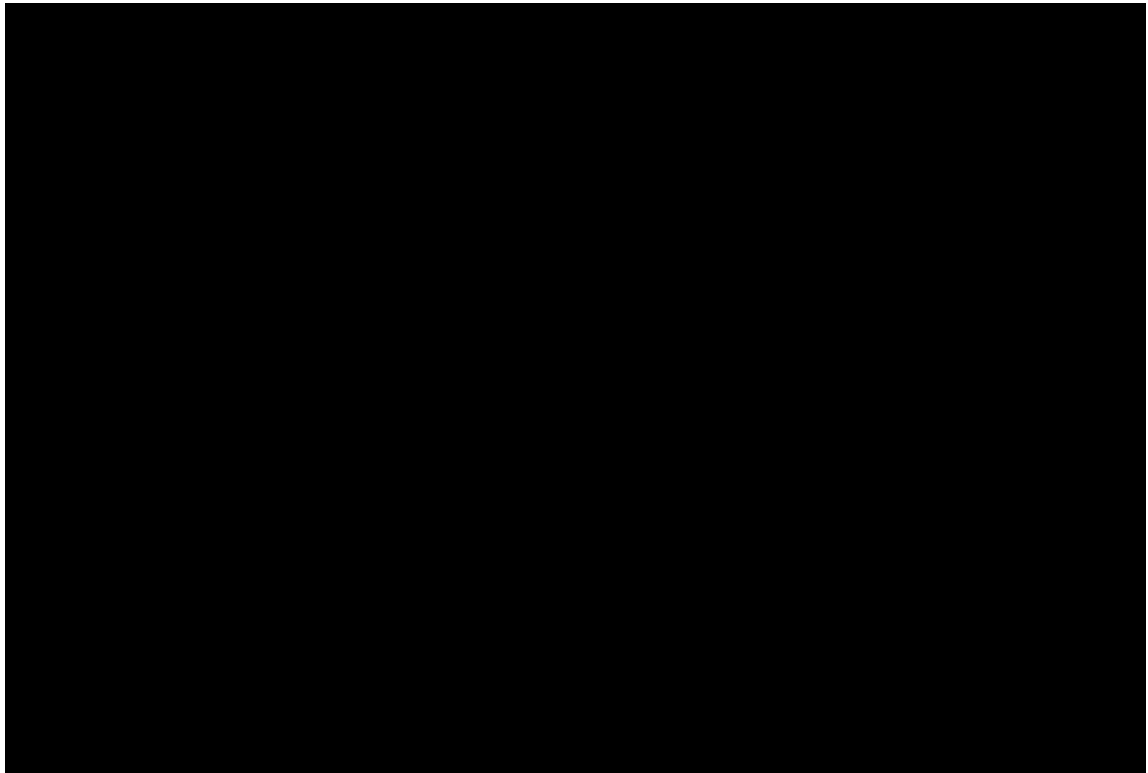
1 operations to continue in current roles and duties⁷ including "Chad"
2 Paul, III, President of BHIT and Chief Executive Officer (CEO) and a
3 Manager of BHIL; Shirley Mayfield, Chief Financial Officer of BHIL;
4 and Captain Bion Stewart, current Chief Operations Officer (COO) of
5 BHIT. (Application ¶ 17, at 7)

In discovery, the Public Staff obtained an updated chart of the organizational structure as shown below:

⁷ BHIFT stated in response to discovery:

We anticipate that Bald Head Island Ferry Transportation, LLC will be the employer for current employees of the Ferry Operations and Tram Operations. We anticipate that Chad Paul and Shirley Mayfield will provide management services to all subsidiaries of Pelican Legacy Holdings, LLC (including Bald Head Island Ferry Transportation, LLC), and may have employment agreements with Pelican Legacy Holdings, LLC. This is beneficial to ratepayers in that it maintains the current structure employed by BHIL/BHIT, which has not historically resulted in any stated concern by any party, the Public Staff or the Commission. This safeguards ratepayers because the employees they interact with regarding the ferry and tram will be employed by the entity holding the certificate for the ferry and tram operation – and thus will not be confused about who they are dealing with and the Commission will have jurisdiction over the regulated utility, BHIFT.

[BEGIN CONFIDENTIAL]



[END CONFIDENTIAL]

1 The organizational structure illustrated above depicts in greater
2 detail BHIFT's proposed ownership and management structure
3 contemplated for closing. As part of its investigation, the Public Staff
4 learned that, at transaction closing, SharpVue will no longer be a
5 member of Partners,⁸ and therefore, will no longer be the ultimate
6 parent company of Partners, Holdings, and BHIFT. Additionally, the
7 Public Staff learned that, at closing, Partners [BEGIN
8 CONFIDENTIAL] [REDACTED]

⁸ In its updated organizational structure, SharpVue indicates that it [BEGIN
CONFIDENTIAL] [REDACTED]
[REDACTED] [END CONFIDENTIAL] Partners.

1 [REDACTED]

2 [REDACTED]

3 **[END CONFIDENTIAL]** As a result, BHIFT indicated in discovery to
4 the Public Staff that it does not consider either SharpVue or Partners
5 to be the ultimate parent company of BHIFT. Rather, while BHIFT
6 will still be wholly owned by Holdings, Holdings will be comprised of
7 various investors that include Partners, **[BEGIN CONFIDENTIAL]**

8 [REDACTED]

9 [REDACTED]

10 **[END CONFIDENTIAL]** The Public Staff learned that Partners is
11 (and will continue to be after closing), along with Lee Roberts and
12 Chad Paul, one of the three initial Managers on the Board of
13 Managers of Holdings, such that Partners will be the sole owner and
14 manager of Holdings and BHIFT after closing. However, pursuant to
15 the IMA, Partners' management rights in Holdings will be assigned
16 for the term of the IMA to SharpVue. This arrangement results in Lee
17 Roberts and Douglas Vaughn, the Managing Partners of SharpVue,
18 owning or controlling over 50% of the equity ownership interests in
19 Holdings, and, therefore, a controlling interest in BHIFT's regulated
20 parking, ferry, tram, barge, and tug operations.

21 However, BHIFT indicated that, beyond the unexecuted IMA and key
22 employee agreements, various closing-related documents are not

1 yet complete, such that the Public Staff cannot confirm all proposed
2 aspects of the Transfer.

3 In light of all the foregoing, particularly the intertwined issues of
4 ownership, management, and control, the Public Staff requires that,
5 in addition to binding Holdings and BHIFT to the Regulatory
6 Conditions discussed later in our testimony, SharpVue and entities
7 under common ownership or control of SharpVue and its principals
8 Lee Roberts and Douglas Vaughn each be bound as well.

9 **Q. Please discuss the source of debt capital and the proposed**
10 **Pledging of Assets.**

11 A. With the help of SharpVue, Holdings plans to obtain its long-term
12 debt from [BEGIN CONFIDENTIAL] [REDACTED]
13 [REDACTED] [END CONFIDENTIAL] whereby the parking, ferry, barge,
14 tug, and tram assets will be pledged. [BEGIN CONFIDENTIAL]
15 [REDACTED] [END CONFIDENTIAL] has also offered to provide a [BEGIN
16 CONFIDENTIAL] [REDACTED] [END
17 CONFIDENTIAL] that will be available to fund future capital needs.
18 The Public Staff has been informed by BHIFT and [BEGIN
19 CONFIDENTIAL] [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]

1 [REDACTED]

2 [REDACTED]

3 [REDACTED] [END CONFIDENTIAL]

4 **Q. Please provide additional detail on the investors of equity**
5 **capital.**

6 A. As depicted in the updated organizational structure above, the equity
7 investors in Holdings will be comprised of Partners, [BEGIN
8 CONFIDENTIAL] [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED] [END CONFIDENTIAL]

12 The Public Staff learned from BHIFT that investors have started
13 making initial contributions towards their planned investment
14 amounts, and that a capital call for the remaining capital will be made
15 in advance of closing. BHIFT contends that the provisions embedded
16 within the investor subscription agreements and operating
17 agreement for Holdings ensure that the remaining capital will be
18 provided.

19 **Q. What are the benefits of the Transfer?**

20 A. The existing owners indicated through their representatives that they
21 are no longer interested in owning or further investing in the Bald

1 Head Island ferry operations. The proposed purchase of BHIFT and
2 retention of key managers and employees would allow for an orderly
3 transition from BHIT for ratepayers. Additionally, BHIFT indicated it
4 will “spend the first year after the purchase communicating with
5 stakeholders and evaluating the current operations in more detail
6 and . . . look[ing] for opportunities to improve service and make any
7 needed investments over time.” (Roberts Direct Testimony at 6)⁹ The
8 Public Staff believes that Holdings and BHIFT will be adequately
9 capitalized and supported by owners with significant investment
10 experience and owner-managers Lee Roberts and Douglas Vaughn

⁹ In response to discovery, BHIFT indicated that:

The due diligence reports contracted by and provided to the Bald Head Island Transportation Authority, including the analysis by Mercator, and reviewed by its finance and bond advisors, all consistently found that the transportation system has been well run, and that its assets have been well maintained. Our own due diligence confirmed these conclusions. SharpVue has not yet developed its own independent maintenance and replacement schedules for ferry and tram operating assets. Related to ferry operation, we do think steps can be taken to improve system operations. A starting point would be improved information technology, that would allow reservations and electronic ticketing. We also believe that—once the ownership of the system is settled and the sale to SharpVue has closed—we will be able to more effectively address employee hiring, training, and retention issues. 2023 will be the first full calendar year that the new baggage policies approved by the Commission in Docket A-41, Sub 20 will be in place, and we are hopeful that, with better public understanding of those policies, baggage handling will improve, which hopefully should improve on-time performance. But, as we stated in our verified Application, we will also evaluate how to improve baggage handling operations, and when and how to replace the next ferry in the fleet that may be approaching obsolescence. SharpVue will evaluate ferry and tram operations during the first year and may develop new or revised maintenance and replacement schedules if it determines these are necessary.

1 with access to sufficient capital. Additionally, BHIFT has agreed to
2 continue to provide for adequate and reasonably priced parking.¹⁰

3 **Q. What is the Public Staff's recommendation with regard to the**
4 **Proposed Transaction?**

5 A. As a result of its investigation, the Public Staff recommends that the
6 Proposed Transaction be approved, subject to the provisions of the
7 Regulatory Conditions described below. These Public Staff
8 conditions, together with the above-described plans of BHIFT (with
9 respect to employees, parking, operations, and services), guard
10 against adverse impacts on rates and services, assure that the
11 benefits of the Proposed Transaction outweigh its costs, and protect
12 customers from risks and costs as much as possible, consistent with
13 the requirements of the three-part test.

14 **Q. Please explain the primary reasons for, and the major**
15 **provisions of the Regulatory Conditions recommended by the**
16 **Public Staff.**

17 A. As a result of its investigation, the Public Staff developed its
18 recommended Regulatory Conditions, which we believe are

¹⁰ For example, response to discovery, SharpVue indicated that:
After closing the transaction, SharpVue intends to continue the parking
operations without significant or immediate change. SharpVue
understands that the current parking rates are outlined on BHIL/IT 000719.
SharpVue understands this document was previously provided to the
Public Staff. SharpVue expects that aggregate rates will not rise faster
than overall cost inflation.

1 necessary to ensure that the Proposed Transaction is justified by the
2 public convenience and necessity and serves the public interest. The
3 following is a description of the major provisions of our recommended
4 Regulatory Conditions:

5 **Applicability of the Regulatory Conditions**

6 The Regulatory Conditions would apply jointly and severally to
7 SharpVue, SharpVue Affiliates (defined as Partners, **[BEGIN**
8 **CONFIDENTIAL]** [REDACTED]
9 [REDACTED] **[END**
10 **CONFIDENTIAL]**, Holdings, and BHIFT and their successors.

11 **Requirements of the Entities**

12 The Regulatory Conditions set forth the requirements the Public Staff
13 believes are necessary to be imposed on Holdings, BHIFT,
14 SharpVue, and SharpVue Affiliates to protect the public interest.
15 Each entity would further be required not to cause any other entity
16 among them to violate the Regulatory Conditions, nor to prevent the
17 other entities from taking action to comply with the Regulatory
18 Conditions, for so long as the Regulatory Conditions would remain in
19 effect and would be applicable to Holdings, BHIFT, SharpVue, and
20 SharpVue Affiliates.

1 These Regulatory Conditions are primarily designed to protect
2 ratepayers as much as reasonably possible from potential costs and
3 risks associated with the Transfer. Regulatory Conditions 1 through
4 3 provide that all transfer-related direct costs and expenses would
5 be excluded from the regulated expenses of BHIFT, and that the
6 recovery of an acquisition adjustment would not be allowed in any
7 future rate case.

8 Regulatory Condition 4 relates to parking, barge, and tug rates and
9 operation schedules. Regulatory Condition 5 is a general condition
10 that would require the owners and Managers of BHIFT to take
11 actions to hold customers harmless from the effects of the Transfer.
12 The Condition helps ensure that BHIFT would continue to provide
13 safe and reliable utility service at reasonable rates.

14 Regulatory Conditions 6, 7, 8, 9, 10, and 11 relate to financial
15 management. Condition 6 would prohibit BHIFT from paying any
16 distribution in excess of 80% of BHIFT's net income, and Regulatory
17 Condition 7 would ensure that BHIFT maintains 40% of its booked
18 capitalization as common equity, which the Public Staff believes
19 would ensure the regulated utility's ongoing financial viability.
20 Regulatory Condition 8 ensures that the Commission would be
21 informed if SharpVue, SharpVue Affiliates, or Holdings makes any
22 investment in a business entity that constitutes 10% or more of the

1 booked capitalization of BHIFT. Regulatory Condition 9 ensures that
2 the Commission would be notified if SharpVue, SharpVue Affiliates,
3 Holdings, or BHIFT experiences a default on an obligation or files for
4 bankruptcy. Regulatory Condition 10 requires that the intercompany
5 loan between BHIL and BHIT, as reported on BHIT's financial
6 statement of December 31, 2021, would not be binding upon
7 Holdings and BHIFT.¹¹ This requirement would apply to any
8 subsequent indebtedness through the consummation of the
9 Transfer. Regulatory Condition 11 provides that Holdings and BHIFT
10 would file with the Commission post-closing financial information and
11 provide closing-related documents to the Public Staff.

12 Regulatory Conditions 12 through 27 address various regulatory and
13 service quality concerns that would further provide for safe and
14 reliable services at reasonable rates consistent with current

¹¹ With respect to Application Exhibit A, ("Bald Head Island Transportation, Inc. Financial Report December 31, 2021"), Note 9, regarding the inter-company loan wherein the Company owes Limited \$19,808,228 as of December 31, 2021, but there is no agreement, terms, or expiration on the loan. SharpVue has indicated on behalf of BHIFT that:

(a) SharpVue understands that this is an intracompany loan between separate legal entities, Bald Head Island Limited, LLC and Bald Head Island Transportation, Inc., which are ultimately under common ownership.

(b) SharpVue is not aware of any related filing with the North Carolina Utilities Commission or subsequent approval by the North Carolina Utilities Commission.

(c) SharpVue's transaction is structured as an acquisition of assets. SharpVue will not assume any debt, including this "loan," from Bald Head Island Transportation, Inc. As a result, this "loan" will not be part of Bald Head Island Ferry Transportation, LLC's capital structure, and will not be included in a future general rate case.

1 practices. Regulatory Conditions 22 through 26 have been added
2 since the Public Staff's initial testimony, and address vessel
3 maintenance and replacement plans, access for regulated
4 operations on a long-term basis, transfer of supplemental assets not
5 materially impacting customers, approval of subsequent mergers
6 and acquisitions, affiliate transactions, and timing of any future rate
7 case.

8 **Q. Does the Commission decision to regulate parking, barge, and**
9 **tug operations in Docket No. A-41, Sub 21 change the Public**
10 **Staff's recommendation as originally filed?**

11 A. While the Public Staff testimony now incorporates aspects of
12 parking, barge, and tug operations, the Public Staff's
13 recommendation that the Transfer be approved subject to the
14 Regulatory Conditions has not changed. However, in the event the
15 decision regarding the utility status of parking, barge, and tug
16 operations is overturned on appeal, a number of issues would need
17 to be revisited, for which parties should be provided the opportunity
18 to file comments and possibly supplemental testimony and
19 Regulatory Conditions. These issues include, but are not limited to,
20 the breadth and applicability of Regulatory Conditions to different or
21 additional entities in general, and especially relating to parking. The
22 Public Staff would request, among other things, that Holdings and

1 BHIFT ensure the availability of adequate and reasonably priced
2 parking, and that for future general rate cases, an appropriate level
3 of parking revenue be imputed in the setting of just and reasonable
4 rates for BHIFT on a level that is consistent with the prior general
5 rate case.

6 **Q. Is the Public Staff establishing rate base in this transfer?**

7 A. No. As discussed in further detail in the Public Staff's Response to
8 the Village's abeyance motion filed in this Docket on February 8,
9 2023, and as the Commission has already ordered existing rates to
10 remain in effect pending a future rate case, the Public Staff does not
11 believe it is necessary to establish rate base in this proceeding.
12 There have been various instances, such as with Piedmont Natural
13 Gas Company, Inc. (Piedmont) and Duke Energy Corporation (Duke)
14 in Docket Nos. G-9, Sub 682, E-2, Sub 1095, and E-7, Sub 1100,
15 where rate base was not established. The establishment of rate
16 base, to include the addition of parking, barge, and tug assets,
17 should take place in the next general rate case.

18 **Q. Are there any other issues that should be brought to the**
19 **Commission's attention relating to the Transfer?**

20 A. Yes. In the Transfer, it is not yet clear that the regulated utility
21 (BHIFT) will own the real property upon which the regulated parking,
22 barge, or tug operations are located; instead, it appears that the land

1 will be owned by Pelican Real Property, LLC, an unregulated entity.
2 Upon consummation of the Transfer, BHIFT should be assured
3 access to and control of the parking, barge, and tug facilities. This
4 could be attained, for example, by perpetual easement or long-term
5 lease or other means to ensure ownership or control, and the terms
6 of such agreement or arrangement should be included in the
7 Regulatory Conditions attached hereto.

8 **Q. Does this conclude your testimony?**

9 A. Yes.

QUALIFICATIONS AND EXPERIENCE

SONJA R. JOHNSON

I am a graduate of North Carolina State University with a Bachelor of Science and Master of Science degree in Accounting. I was employed by the Public Staff from December 2002 until May 2004 and rejoined the Public Staff in January 2006. I became the Financial Manager for Natural Gas and Transportation in May 2022.

As a Financial Manager, I am responsible for the performance and supervision of the following activities: (1) the examination and analysis of testimony, exhibits, books and records, and other data presented by utilities and other parties under the jurisdiction of the Commission or involved in Commission proceedings; and (2) the preparation and presentation to the Commission of testimony, exhibits, and other documents in those proceedings.

Since initially joining the Public Staff in December 2002, I have filed testimony or affidavits in several water and sewer general rate cases. I have

also filed testimony in applications for certificates of public convenience and necessity to construct water and sewer systems and noncontiguous extension of existing systems. My experience also includes filing affidavits in several fuel cost recovery cases and Renewable Energy and Energy Efficiency Portfolio Standard (REPS) cost recovery cases for the utilities currently organized as Duke Energy Carolinas, LLC, Duke Energy Progress, LLC, and Virginia Electric and Power Company d/b/a Dominion Energy North Carolina.

While away from the Public Staff, I was employed by Clifton Gunderson, LLP. My duties included the performance of cost report audits of nursing homes, hospitals, federally qualified health centers, intermediate care facilities for the mentally handicapped, residential treatment centers and health centers.

QUALIFICATIONS AND EXPERIENCE

KRISHNA K. RAJEEV

I received a Bachelor of Arts degree in Business from the University of Iowa in 2011. I joined the Public Staff in October 2011 as a consumer complaint analyst and was promoted to the Transportation Rates Division in November 2013 as a rate specialist. Since August 2017, I have served as the Director of the Transportation Rates Division.

The Transportation Rates Division oversees household goods movers, regular route motor carriers of passengers, ferry-boat operators, and accordingly maintains the rates and service schedules for the Bald Head Island ferry. I have investigated and addressed consumer complaints regarding the Bald Head Island Transportation (BHIT) utility. I have testified in front of the Commission in various Transportation industry matters, including the amendment of BHIT's service schedules in Docket No. A-41, Sub 18, and BHIT's modification of baggage policies in Docket No. A-41, Sub 20.

QUALIFICATIONS AND EXPERIENCE

JOHN R. HINTON

I received a Bachelor of Science degree in Economics from the University of North Carolina at Wilmington in 1980 and a Master of Economics degree from North Carolina State University in 1983. I joined the Public Staff in May of 1985. I filed testimony on the long-range electrical forecast in Docket No. E-100, Sub 50. In 1986, 1989, and 1992, I developed the long-range forecasts of peak demand for electricity in North Carolina. I filed testimony on electricity weather normalization in Docket Nos. E-7, Sub 620, E-2, Sub 833, and E-7, Sub 989. I filed testimony the level of funding for nuclear decommissioning costs in Docket Nos. E-2, Sub 1023; E-7, Sub 1026, and E-7, Sub 1146. I have filed testimony on the Integrated Resource Plans (IRPs) filed in Docket No. E-100, Subs 114 and 125, and I have reviewed numerous peak demand and energy sales forecasts and the resource expansion plans filed in electric utilities' annual IRPs and IRP updates.

I have been the lead analyst for the Public Staff in numerous avoided cost proceedings, filing testimony in Docket No. E-100, Subs 106, 136, 140,

148, and 158. I filed a Statement of Position in the arbitration case involving EPCOR and Progress Energy Carolinas in Docket No. E-2, Sub 966. I have filed testimony regarding avoided costs related to the cost recovery of energy efficiency programs and demand side management programs in Dockets Nos. E-7, Sub 1032, E-7, Sub 1130, E-2, Sub 1145, and E-2, Sub 1174.

I have filed testimony on the issuance of certificates of public convenience and necessity (CPCN) in Docket Nos. E-2, Sub 669, SP-132, Sub 0, E-7, Sub 790, E-7, Sub 791, and E-7, Sub 1134.

I filed testimony on the merger of Dominion Energy, Inc. and SCANA Corp. in Docket Nos. E-22, Sub 551, and G-5, Sub 585.

I have filed testimony on the issue of fair rate of return in Docket Nos. E-22, Subs 333, 412, and 532; P-26, Sub 93; P-12, Sub 89; G-21, Sub 293; P-31, Sub 125; P-100, Sub 133b; P-100, Sub 133d (1997 and 2002); G-21, Sub 442; G-5, Subs 327, 386; and 632; G-9, Subs 351, 382, 722 and Sub 781, G-39, Sub 47, W-778, Sub 31; W-218, Subs 319, 497, 526 and 573; W-354, Subs 360; 364, 384, and 400 and in several smaller water utility rate cases. I have filed testimony on credit metrics and the risk of a downgrade in Docket No. E-7, Sub 1146.

I have filed testimony on the hedging of natural gas prices in Docket No. E-2, Subs 1001, 1018, and 1292. I have filed testimony on the expansion of natural gas in Docket No. G-5, Subs 337 and 372. I performed the financial analysis in the two audit reports on Mid-South Water Systems, Inc., Docket No. W-100, Sub 21. I testified in the application to transfer the CPCN from North Topsail Water and Sewer, Inc. to Utilities, Inc., in Docket No. W-1000, Sub 5. I have filed testimony on rainfall normalization with respect of water sales in Docket No. W-274, Sub 160.

I was a member of the Small Systems Working Group that reported to the National Drinking Water Advisory Council with the EPA and I have published an article in the National Regulatory Research Institute's Quarterly Bulletin entitled Evaluating Water Utility Financial Capacity.

1 Q. Thank you, thank you. And Mr. Hinton, you
2 were going to read a summary, but we're not going to do
3 that today but we will -- we'll move to put that in the
4 record; is that correct?

5 A. (John R. Hinton) Yes.

6 MR. CREECH: Okay, and that's been
7 distributed to everyone. Okay, the panel's
8 available for cross examination and for questions
9 from the Commission.

10 COMMISSIONER DUFFLEY: And that's -- and
11 the summary will be received into the evidence at
12 this time as well.

13 (Whereupon, the Prefiled Summary of the
14 Amended and Supplemental Testimony of
15 Michelle Boswell, Krishna Rajeev, and
16 John R. Hinton was copied into the
17 record as if given orally from the
18 stand.)
19
20
21
22
23
24

PUBLIC STAFF – NORTH CAROLINA UTILITIES COMMISSION
DOCKET NO. A-41, SUB 22
SUMMARY OF THE AMENDED AND SUPPLEMENTAL TESTIMONY
OF MICHELLE BOSWELL, KRISHNA RAJEEV, AND JOHN HINTON
MARCH 7, 2023

The purpose of our testimony is to present the results of our analysis and recommendations as to the transfer application filed by Bald Head Island Transportation, Inc. (referred to as BHIT) and Bald Head Island Ferry Transportation, LLC (referred to as BHIFT), a wholly owned subsidiary of Pelican Legacy Holdings, LLC (referred to as Holdings), and managed by SharpVue Capital, LLC (referred to as SharpVue), as well as the Amended Application filed by BHIT, BHIFT, and Bald Head Island Limited LLC (referred to as BHIL) (and collectively, with BHIT and BHIFT, the Applicants) for approval: (1) to transfer BHIT's Common Carrier Certificate to BHIFT to operate the passenger ferry transportation services to and from Bald Head Island, the tram services on the island, and, in addition, the parking, barge, and tug operations (the Transfer); and (2) to pledge assets and borrow or issue debt pursuant to N.C. Gen.Stat. §§ 62-160 and 62-161 secured by the transportation assets as may be necessary to finance the Transfer (the Pledging of Assets, and collectively with the Transfer, the Proposed Transaction).

On December 14, 2002, we filed Joint Testimony and an Exhibit, and on February 20, 2023, we filed our Amended and Supplemental Joint Testimony and an Exhibit, which amends and supplements our prefiled Joint Testimony and Regulatory Conditions.

In our testimony, we describe the scope of the Public Staff's investigation of the Proposed Transaction, discuss the balancing of costs and benefits of the Proposed

Transaction, and present the Public Staff's recommendation to the Commission regarding approval of the Proposed Transaction.

Attached to our initial Joint Testimony was Exhibit 1, which provided Regulatory Conditions recommended by the Public Staff. The Public Staff updated its proposed Regulatory Conditions in Exhibit 1, which is attached to our Amended and Supplemental Joint Testimony. We describe in our testimony the basis for, and major provisions of, these updated Regulatory Conditions (the Updated Regulatory Conditions) recommended by the Public Staff.

In this case, the Public Staff recommends that the Transfer be approved subject to the Updated Regulatory Conditions. These Public Staff conditions, together with the plans of Holdings and BHIFT with respect to employees, parking, operations, and services, should guard against adverse impacts on rates and services, assure that the benefits of the Transfer outweigh its costs, and protect customers from risks and costs as much as possible, consistent with the requirements of the three-part test, which we outline in our testimony.

As discussed in further detail in the Public Staff's Response to the Village's abeyance motion filed in this Docket on February 8, 2023, and consistent with the Commission's Order in Sub 21 that existing rates should remain in effect pending a future rate case, the Public Staff does not believe it is necessary to establish rate base in this proceeding and has not investigated what an appropriate amount of rate base should be. Rather, the establishment of rate base, to include the addition of parking, barge, and tug assets, should take place in the next general rate case. Further, in the event the Sub 21

decision regarding the utility status of parking, barge, and tug operations is overturned on appeal, a number of issues would need to be revisited, for which parties should be provided the opportunity to file comments and possibly supplemental testimony and regulatory conditions.

Another issue that needs to be resolved by the parties to the Transfer (one that also impacts the issue of rate base) is whether the regulated utility (BHIFT) will own or control the real property upon which the regulated parking, barge, or tug operations are located; presently, it appears that the land will be owned by Pelican Real Property, LLC, an unregulated entity. Upon consummation of the Transfer, BHIFT should be assured access to and ownership or control of the parking, barge, and tug facilities.

This concludes our summary.

1 MR. CREECH: Thank you. Thank you.

2 MR. STYERS: I think the order of cross
3 has BHIT starting first.

4 CROSS EXAMINATION BY MR. STYERS:

5 Q. Good afternoon. The Public Staff's role here
6 is on behalf of the using and consuming public; is that
7 correct?

8 A. (John R. Hinton) Yes.

9 Q. Okay. And in this instance, the using and
10 consuming public includes all classes of customers and
11 ratepayers of these utilities, correct?

12 A. Yes.

13 Q. So that includes employees who may be working
14 on the Island; is that correct? Among those of the
15 using and consuming public, that would include
16 employees?

17 A. Yes, yes.

18 Q. Among those using and consuming public using
19 these utilities would be contractors going to and from
20 the Island; is that correct?

21 A. Yes.

22 Q. And residents on the Island as well?

23 A. Of course.

24 Q. And then visitors and vacationers who are

1 visiting the Island?

2 A. Certainly.

3 Q. So all of those groups of passengers are
4 within the using and consuming public?

5 A. Yes.

6 Q. Okay. I'd like to have -- ask two questions
7 regarding Q and A in your Supplemental and Amended
8 Testimony on pa- -- starting at the bottom of page 15.
9 And the question was, "What are the benefits of the
10 Transfer?"

11 A. Yes.

12 Q. Okay. So your first sentence -- I'm on page
13 15 -- is, "The existing owners indicated through their
14 representatives that they are no longer interested in
15 owning or further investing in the Bald Head Island
16 ferry operations;" is that correct?

17 A. Yes.

18 Q. And they -- is it your understanding that all
19 statement would also be true as it pertains to the
20 parking and barge operations as well?

21 A. I would assume that to be correct.

22 Q. Okay. So based upon that sentence starting
23 the list of benefits of the transfer, is it fair to say
24 the Public Staff considers that having an owner, on one

1 hand, who is no longer interested in investing in the
2 Island, it would be beneficial to the public for there
3 to be an owner who is, in fact, on the other hand,
4 interested and willing to invest in the utilities for
5 the benefit to the using and consuming public?

6 A. Yes. My job and my research over the years
7 has been a balancing act between representing the
8 interests of the owners, of the stockholders, and the
9 customers. So from that perspective, I've been a
10 little bit more open to for looking out for the owners.
11 I think the old North Topsail case, when I go back to
12 my caverns of my testimony over the years, was a case
13 when there was an owner that was not around. As you
14 remember, Mr. Bostic was found guilty of some nefarious
15 affairs, and he was no longer able to own and operate
16 the water system.

17 At that in point in time, Jimmy Little,
18 Jack Floyd, and Elise Cox were some of the principals
19 in law for the Public Staff to actually help manage
20 that system. It was mainly through their creative tap
21 free -- tap fee charges that provided capital to the
22 company, which wa- -- is traditionally the role of the
23 owner. And that was an important step, and for me,
24 personally, it kind of opened my eyes to the role of

1 ownership. Now, that's not saying -- I don't want go
2 beyond that, but that was a perspective that I gained
3 from that. So the fact that the Mitchell family is not
4 open to investing any more than probably the minimum
5 amount of capital to sustain operations is a concern.

6 Q. And just for the record, you're not comparing
7 Mr. Mitchell and Mr. Bostic, are you?

8 A. No, of course not. The Mitchells have, as
9 the record reflects, have been admirable in their
10 development of the Island and their -- the whole
11 facility. It reflects well on their family.

12 Q. Trying for a little levity in the late
13 afternoon. Thank you very much for that.

14 So at the same question, your answer goes
15 through page 16 and over to page 17, and you conclude
16 your answer about benefits by stating that,
17 additionally, BHIFT has agreed to continue to provide
18 for adequate and reasonably-priced parking; is that how
19 your answer concludes?

20 A. Yes.

21 Q. Okay.

22 A. I believe that the fact that the parking
23 rates can escalate only at rate of inflation is a
24 reasonable level.

1 Q. Okay. So is it the Public Staff's position
2 that the current parking rates are just and reasonable
3 at their current rates? To your knowledge?

4 A. There has not been an audit because they've
5 been nonregulated today, so I'm hesitant to say that.

6 Q. But you were here yesterday when Mr. Gardner
7 said that he felt the rates were reasonable?

8 A. Yeah. And the conversation I've heard from
9 Mr. Paul have indicated that the rates are reasonable
10 from their perspective.

11 Q. Okay. And to your knowledge, the rates are
12 also -- barge would be considered just and reasonable?

13 A. With those same caveats included.

14 Q. Okay. Have you reviewed the data request
15 response which had John Taylor's analysis of the rate
16 impacts of the rate base valuations at different
17 levels? And that's a question for Ms. Boswell.

18 A. (Michelle Boswell) My staff took a very brief
19 cursory view of it.

20 Q. But you di- -- you have received it?

21 A. We did.

22 Q. And your staff has reviewed it?

23 A. Briefly, yes.

24 MR. STYERS: I'm no- -- Mr. Taylor is

1 going to testify tomorrow, so I'm not going to
2 spend a lot of time with this, but I would have a
3 question or two or three of Ms. Boswell. If I may
4 ask her those questions?

5 COMMISSIONER DUFFLEY: You may.

6 MR. STYERS: And to do that, I will need
7 to distribute those calculations. These pages are
8 not well-marked, but I will make sure to identify
9 them clearly for the record. There's two. They
10 look similar, but they're actually two different
11 one -- pages. The -- I've distributed two sets of
12 calculations.

13 COMMISSIONER DUFFLEY: Are we going to
14 identify these?

15 MR. STYERS: They are identified as --
16 the one that in the upper left-hand corner, line 1,
17 reads, "Parking facilities Net Operating Income
18 Under Comparison of Rate Base." So comparison of
19 rate base parking facilities net operating income
20 with the first line, parking. I would be -- ask
21 that that be labeled Public Sta- -- BHIT Public
22 Staff Cross Examination Exhibit 1.

23 COMMISSIONER DUFFLEY: BHIT Public Staff
24 Cross Exhibit 1?

1 MR. STYERS: Correct, and the sheet
2 that's --

3 COMMISSIONER DUFFLEY: So identified.
4 (BHIT Public Staff Cross Examination
5 Exhibit 1 was marked for
6 identification.)

7 MR. STYERS: Thank you. And I'd like to
8 a- -- the other sheet, other set of calculations,
9 upper left-hand corner, "Comparison of Rate Base
10 Barge Net Operating Income," be labeled as BHIT
11 Public Staff Cross Exhibit 2.

12 COMMISSIONER DUFFLEY: That will be so
13 marked.

14 (BHIT Public Staff Cross Examination
15 Exhibit 2 was marked for
16 identification.)

17 Q. Ms. Boswell, I've handed to you the Cross
18 Examination Exhibit 1 and Cross Examination Exhibit 2;
19 is that correct?

20 A. (Michelle Boswell) Yes.

21 Q. And you said the- -- are these the
22 calculations that your staff has reviewed since
23 receiving them in data request responses?

24 A. They appear to be.

1 Q. Okay. And again, Mr. Taylor will be here
2 tomorrow to walk through these, so I'm not going to do
3 that with you, but you have had a chance to -- your
4 staff has reviewed these and the math utilized in the
5 calculations?

6 A. Through lines 14, yes.

7 Q. Okay, through lines 14. Through lines 14, do
8 you believe that these calculations are correct?

9 A. Based on the cursory review, they didn't find
10 any errors in the calculations.

11 MR. CREECH: Mr. Styers, could you
12 identify which data requests these relate to? Do
13 you know?

14 MS. HEDRICK: The Villages' Joint Data
15 Requests.

16 MR. STYERS: The Village --

17 MR. TRATHEN: The DR1 response to the
18 Village?

19 MS. HEDRICK: The joint one.

20 Mr. CREECH: All right, very good.
21 Sorry.

22 MR. STYERS: That's okay.

23 Q. So let me a- -- let me break up this, make it
24 a little clearer. Your staff reviewed the math through

1 line 14 of BHIT Public Staff Cross Examination 1?

2 A. (Michelle Boswell) Correct.

3 Q. And found no math errors --

4 A. Correct.

5 Q. -- in this calculation? And then your staff
6 also reviews BHIT Public Staff Cross Examination 2
7 through line 14?

8 A. Correct.

9 Q. And that's the barge -- that's the comparison
10 of rate base for barge?

11 A. Correct.

12 Q. And found no math errors in that exhibit of
13 Mr. Taylor?

14 A. Correct.

15 MR. STYERS: Okay. Since Mr. Taylor
16 will be available tomorrow for there to be a more
17 extensive ana- -- discussion of this, I have no
18 further questions for Ms. Boswell on this -- these
19 two exhibits.

20 COMMISSIONER DUFFLEY: Okay.

21 Q. On page 22 of your testimony, line 10 and 11,
22 the Public Staff -- the sta- -- the par- -- the
23 testimony reads, page 10 and 11, "The Public Staff does
24 not believe it is necessary to establish rate base in

1 this proceeding."

2 A. (Michelle Boswell) That's correct.

3 Q. That's your curr- -- that's your position?

4 A. Yes.

5 Q. Okay. You would agree that if the Commission
6 did not set a rate base or methodology for rate base,
7 that would create considerable uncertainty for the
8 perspe- -- from the perspective of the purchaser as to
9 the value of it being purchased; would it not?

10 A. (John R. Hinton) It's possible.

11 Q. Okay. Mr. Roberts met with each -- was in a
12 meeting each of you in which he expressed his concern
13 about that uncertainty; did he not?

14 A. I recall he was concerned about that issue,
15 yeah.

16 Q. And your understanding is that leaving this
17 issue open is likely to prevent the sale from
18 occurring?

19 A. I can't say that I know that for a fact.
20 There was a little conversation, I believe, of some
21 prefiled testimony, but, you know, this is a deal
22 that's somewhat fluid, and I can't say for sure. I
23 think it's logical to expect that the investors that
24 Mr. Roberts contacted as far as the equity and possibly

1 the debt may have known that this issue was out there
2 and would be decided ultimately by the Commission.

3 Q. Okay. But certainly, in this situation that
4 if the sale to SharpVue didn't close, then the ferry,
5 tram, barge, and parking operations would stay in the
6 hands of the estate until some future proceeding,
7 correct?

8 A. Correct.

9 MR. STYERS: Okay. No further
10 questions.

11 COMMISSIONER DUFFLEY: Mr. Ferrell?

12 MR. FERRELL: Thank you.

13 CROSS EXAMINATION BY MR. FERRELL:

14 Q. Good afternoon. Just to follow up a couple
15 points. It's correct, isn't it, that we've had some
16 conversations and meetings about some of the regulatory
17 conditions and trying to work through those that would
18 be involved in this transfer; is that correct?

19 A. (John R. Hinton) Yes. We've had several
20 meetings. I would say that.

21 Q. Right, and it's also correct that we've just
22 ran out of time before this hearing to try to continue
23 to wordsmith and find a set of conditions that capture
24 both sides' intent -- or the Public Staff and the

1 Applicant's intent; is that correct?

2 A. Correct.

3 Q. And --

4 A. We are on at least round two and looking at
5 round three before the time ran out.

6 Q. Right. So the Public Staff is willing to
7 continue to discuss those with us as we try to work
8 towards some sort of agreement on the wordsmithing and
9 the language; is that correct?

10 A. If the Commission is agreeable to it.

11 Q. Okay, thank you.

12 A. (Michelle Boswell) Well, my legal team is
13 saying yes.

14 Q. Great.

15 A. So they would be the ultimate decision makers
16 on that one.

17 Q. Thank you. All right. And so just again,
18 your conclusion is that all three of you recommended
19 approval subject to the revision of the regulatory
20 conditions subject to your -- attached to your
21 testimony; is that correct?

22 A. (John R. Hinton) Yes. At this time, that's
23 our testimony.

24 Q. Is that correct for all three of you?

1 A. (Michelle Boswell) Yes.

2 A. (Krishna Rajeev) Yes.

3 Q. Okay, thank you. And finally, just a
4 question for you, Mr. Hinton. You had an opportunity
5 to participate in a conference call with XXXXXXXXXXXXX
6 XXXXXXXXXXXXXXXXXXXXXXXXXXXXX for the --

7 MR. STYERS: Um --

8 MR. FERRELL: I'm sorry. Let's --

9 MR. STYERS: I'm sorry.

10 MR. FERRELL: My mistake. We need to go
11 into confidential on that. Let's strike that from
12 the record.

13 COMMISSIONER DUFFLEY: Okay, are you
14 ready to go into -- are you ready?

15 MR. FERRELL: I've only got one question
16 left, and it's that one. So we can either do it now
17 or do it later.

18 COMMISSIONER DUFFLEY: Okay. Anybody
19 else have questions? Nonconfidential questions?

20 MR. SCHAUER: I do, yes.

21 COMMISSIONER DUFFLEY: Okay, and do you
22 have confidential questions as well?

23 MR. SCHAUER: I do as well, yeah.

24 COMMISSIONER DUFFLEY: Okay. So why

1 don't we go ahead and do all the nonconfidential
2 questions --

3 MR. SCHAUER: Okay.

4 COMMISSIONER DUFFLEY: -- and then we'll
5 go to confidential.

6 So you have no more nonconfidential
7 questions; is that accurate?

8 MR. FERRELL: That is correct.

9 COMMISSIONER DUFFLEY: Okay. So -- and
10 I think I saw -- who's up next? Have y'all
11 decided?

12 MR. TRATHEN: I believe it's the
13 Village.

14 COMMISSIONER DUFFLEY: Okay.

15 CROSS EXAMINATION BY MR. SCHAUER:

16 Q. Good afternoon. My name is Craig Schauer.
17 I'm here on behalf of the Village. I'm going to
18 address some questions to the panel, and I'll suspect
19 you'll know the best person to answer, so I apologize
20 if I don't know who to name.

21 So as part of the Public Staff's review of
22 the proposed transfer, did you review the current
23 operations of BAI -- BHIL?

24 A. (Krishna Rajeev) What do you mean by

1 operations?

2 Q. Well, I mean, did you investigate whether or
3 not there are any complaints, any deficiencies that
4 were of concern?

5 A. We did conduct a site visit at the location,
6 and we've also reviewed the complaints that we received
7 over time regarding the -- both the regulated services
8 as well as the services that we managed previously by
9 Limited.

10 Q. Based on the Public Staff's review, did it
11 identify any deficiencies in the management of the
12 transportation system that might negatively impact the
13 quality of service to ratepayers?

14 A. We did not.

15 Q. All right. Did the Public Staff identify any
16 deficiencies in the operations of the transportation
17 system that might negatively impact the quality of
18 service to ratepayers?

19 A. We identified opportunities for improvements,
20 but I'm not if sure there is deficiencies, how you
21 would categorize that.

22 Q. What were those opportunities for
23 improvement?

24 A. Obviously on-time performance.

1 Q. Where there any others?

2 A. I believe that was the main point.

3 Q. Okay. Based on the Public Staff's review,
4 did it identify any financial deficiencies that might
5 negatively impact the quality of service to ratepayers?

6 A. (John R. Hinton) The transportation system
7 has been losing money for years, but there seemed to be
8 there wasn't any deficiencies due to capital or lack of
9 capital that we can determine.

10 Q. So Mr. Hinton, when you say the
11 transportation systems, you mean all three components?

12 A. The ferry system. No, just the ferry system.

13 Q. Okay. But the combined system has been very
14 profitable, has it not?

15 A. Correct. It has.

16 Q. Okay. And did you hear Mr. Paul's testimony
17 that BHIL was not threatening to discontinue utility
18 operations at any time, correct?

19 A. Yes.

20 Q. All right. Did you review the rebuttal
21 testimony of Mr. John Taylor?

22 A. I did read it briefly, yes.

23 Q. Do you have a copy of it with you?

24 A. I do.

1 Q. Okay. Can you turn to page 3, please.

2 A. Okay. I'm there on page 3.

3 Q. I'm going to talk to lines 18 through 20,
4 that last bullet point. Do you see that, Mr. Hinton?

5 A. Yes.

6 Q. Mr. Taylor testified in his prefiled
7 testimony that, you know, given the status quo in which
8 the Mitchell estate continues to own the transportation
9 system, he believes that it's, quote, "unsustainable
10 and fraught with regulatory risk," end of quote. Do
11 you see that?

12 A. Yes, I do.

13 Q. So he -- Mr. Taylor seems to take the
14 position that the transfer is necessary to sustain the
15 operations of the transportation system. Do you
16 understand why he would be taking that position?

17 A. I understand what he's saying, and I can see
18 the counter-perspective. Unsustainable in the very
19 long term could be a problem if the Mitchell family
20 does not want to invest in new vessels, and they
21 decrease the number of vessels from four to three, and
22 if there was any other troubles that require -- like a
23 hurricane, of course -- that would require a large
24 capital infusion. The Mitchell family may be reluctant

1 to do just that. That's a real risk. Again, that may
2 not happen, fortunately, you know, but it's a
3 possibility.

4 Q. Now, the transportation system is very
5 profitable, correct?

6 A. The total package, yes, is profitable.

7 Q. So --

8 A. As Ms. Perry indicated, the numbers were 26
9 percent return of rate.

10 Q. Does the transportation system generate
11 enough funds that it could fund its own capital
12 expenditures going forward?

13 A. That is the position of Mr. Roberts, and it
14 seems reasonable to myself, especially in view of their
15 alternatives to lease a new vessel if a new vessel is
16 needed.

17 Q. So if the transportation system is
18 financially self-sustaining, the Mitchells' desire to
19 not invest more shouldn't matter, correct?

20 A. Not necessarily. You can look at the
21 appraisals, and the appraisals will show that vessel
22 number three -- or I forget the names of them -- may --
23 has a short life. And some -- at least one vessels is
24 near its life expectancy. So they're always -- you see

1 them pushing out a couple years for a new vessel to be
2 implemented which would, of course, require a large
3 amount capital. So it's uncertain. As I said before,
4 the day may come when a new large capital fusion will
5 be needed, and it's questionable whether the Mitchells
6 will be in a position to do just that.

7 And then there's also the issue about the
8 people that use the ferry would like to see electronic
9 ticketing. That does not appear even though it's been
10 on the -- Mr. Paul indicated it's been something that's
11 been looked at for quite some time. I believe that's
12 one thing that Mr. Roberts and SharpVue have promised,
13 which is not something that the Mitchell family has
14 delivered thus far, and I don't expect that they'll do
15 so in the near future. And the reason is because -- it
16 should be obvious -- that this company is -- excuse me,
17 the estate wants to sell the assets. They're not in a
18 position to invest into this -- invest resources into
19 this project.

20 Q. So Mr. Hinton, I want to go back to two
21 things you said. The first is capital expenditures
22 that might require the Mitchell estate to make an
23 investment. Have you determined whether or not the
24 acquisition of a new ferry would require investment by

1 the Mitchell estate?

2 A. It could be acquiring the vessel, it could be
3 just required with getting -- just overhauling the
4 motors. No. To be honest with you, I don't know if
5 that is going to happen.

6 Q. But in other words, it's very possible that
7 any new investment required for the system could be
8 funded by the system's own profitability?

9 A. Through certain lease arrangements, it could
10 be done so. That is, again, the position of
11 Mr. Roberts as he filed.

12 Q. So Mr. Roberts, who's buying the system, has
13 said the system can pay for its own capital
14 expenditures going forward?

15 A. Mr. Roberts has said that the source of
16 funding for a new capital expenditure could be done by
17 a host of ways. One is internal generation of funds,
18 or retaining earnings, as he said. The other, of
19 course, is a short-term capital loan, third-party and
20 such. And another one would be an infusion of equity
21 by, you know, either his affiliates or himself or other
22 entities.

23 Q. So I just want to clarify. In terms of
24 funding a capital expenditure through the operation's

1 own funds, that's applicable both to SharpVue, a
2 potential future owner, and BHIL, the current owner,
3 correct?

4 A. I would think so, yes.

5 Q. All right, same thing with -- I'm sorry. I
6 didn't mean to interrupt you.

7 A. No, that's it. And I also want to add that
8 the one thing that's been missing, I believe, that's
9 worthy of conversation, again, under the auspices, it
10 could happen. Nothing Mr. Roberts has noted is -- he
11 makes a point to make sure the aggregate parking rates
12 will not grow faster than the CPI. And I think that's
13 largely because he sees a way to grow ridership. And
14 he has said that several times. But if you look at the
15 usage of this ferry system, it's dying for people over
16 pricing. It's dying for some rate design elements that
17 will fill in the low usage of the ferry, which occurs
18 during the off-season months and during the off-season
19 days of the week. I mean, the ridership is extremely
20 high during the weekends and during the summer months,
21 but there's a lot of time during the year and a lot of
22 time during the week that is very low usage. They have
23 pay for these ferries to haul across with a utilization
24 factor that's very low, and they have an opportunity to

1 increase revenues while only marginally increasing
2 expenses. And I believe that's one of the thoughts
3 behind Mr. Roberts, as he says he wants to seek ways to
4 increaser ridership, increase profitability.

5 Q. In terms of rate design, though, that's
6 something that BHIL can do itself, now?

7 A. Without a doubt, but I've never -- I don't
8 believe BHIL has tried that, and possibly, that's
9 reason because they're owned by the Mitchell family,
10 and their attitude towards maximizing revenues may not
11 be the same as Mr. Roberts.

12 Q. Going back to the capital expenditures, you
13 mentioned they could be funded the profitability
14 operations. The second thing you -- I believe you
15 mentioned was a short-term loan?

16 A. A loan.

17 Q. Okay.

18 A. I'm not going to go as far as to say
19 short-term versus long-term, but yes, and talking
20 with -- Mr. Roberts has testified this -- and I
21 remember when I dealt with the lender that I was
22 impressed with the conversation to the point where I
23 believe very confidently he would be a likely source of
24 additional capital. Bankers, as you may well know,

1 will not commit to anything unless the paper is right
2 in front of them and everything is ready to go at that
3 point in time. They're very judicial in their
4 conversations. But I was very overwhelmingly impressed
5 with the conversation that we incurred that day when we
6 spoke with them.

7 Q. So -- but the availability of a loan, that is
8 equally available to BHIL currently and SharpVue in the
9 future, right?

10 A. Under different terms, I'm sure, but yeah.
11 They're -- they all have enough capital resources to
12 borrow money, yes.

13 Q. In terms of selling -- in terms of future
14 capital expenditures, both the current owner and the
15 future owner have equal access to the funds of the
16 system and general equal access loans to finance those
17 capital expenditures?

18 A. I would say they both have access. The word
19 equal bothers me. I don't think -- no one has equal
20 access.

21 Q. Okay.

22 A. You know, because we all have different
23 credit-worthiness records to stand behind.

24 Q. Certainly, and actually, given that

1 SharpVue's taking out debt to finance the
2 transaction --

3 A. Yes.

4 Q. -- it's going to have interest payments
5 associated with that debt, correct?

6 A. Yes. And as you've heard in the testimony of
7 yesterday and today, XX
8 XX
9 XXXXXXXX --

10 MR. SCHAUER: Oh, this -- sorry.

11 MR. CREECH: Is part of this going to be
12 confidential?

13 THE WITNESS: That's confidential.

14 MR. SCHAUER: Yeah, we don't need to go
15 there.

16 THE WITNESS: Okay, forget it.

17 Q. So however, without getting into the details,
18 Mr. Hinton, based on your understanding, would
19 SharpVue, once it acquires this transportation system,
20 have greater debt obligations than BHIL currently has?

21 A. (John R. Hinton) I would think that's a
22 logical conclusion, but I haven't been able -- I
23 haven't done comparative analysis, but I would think
24 that's reasonable.

1 Q. All right. So based on that reasonable
2 conclusion, that would mean that in terms of using
3 funds to generate capital expenditures, the current
4 owner has a better opportunity to use those funds to
5 generate capital expenditures than SharpVue does in the
6 future because SharpVue is going to have debt
7 obligations that BHIL doesn't have?

8 A. That's possible, but I can't say that with
9 clarity simply because, remember, there's two sides to
10 every dollar equation. There's the debt side, which
11 we're addressing now in the conversation, but there's
12 also the equity side. SharpVue has access to equity
13 capital. That's one thing the Mitchell camp --
14 Mitchell estate has to envision from the parent
15 company. But Limited does not have equity resources.

16 Q. Well, let's revisit that one a little later.
17 Okay. You mentioned that the Mitchells have not been
18 willing to invest in an e-ticketing system; is that
19 correct?

20 A. That's what I said. That's my understanding.
21 Now again, to be honest with you, we did not did not
22 make a data request to get that confirmed from the --
23 through the company -- through BHIL. But that was what
24 I understood from other conversations from other

1 people.

2 Q. So did you review the rebuttal testimony of
3 Mr. Roberts and Mr. Paul in this proceeding?

4 A. Yes, I have.

5 Q. Do you have a copy of it with you?

6 A. I believe I do, yes.

7 Q. Could you please turn to page 7?

8 A. I'm there.

9 Q. If you want to take a second to read the
10 page. But my understanding, based on the testimony --
11 of this rebuttal testimony, is that an e-ticketing
12 system has already been purchased and is starting to be
13 implemented; am I correct?

14 A. You are correct.

15 Q. Okay. So assuming -- well, either that
16 e-ticket system was funded by the profitability of the
17 transportation system or possibly the Mitchell estate
18 made an investment to make that possible; is that
19 right?

20 A. You would think so by what he's saying.
21 Again, I do not know the actual precise state -- place
22 of where the current system is done. It does say we've
23 been working for this private system for the past 24
24 months.

1 Q. So if the Mitchells ha- -- the Mitchell
2 estate had to make an investment for the e-ticketing
3 system, that would actually suggest that they're still
4 willing to make some type of investments to improve the
5 system?

6 A. I'll accept that.

7 Q. Have you spoken to anybody from the Mitchell
8 estate to confirm that they no longer are willing to
9 make investments in the system?

10 A. No.

11 Q. Okay. So you're relying on the
12 representations of Mr. Paul?

13 A. Largely, yes.

14 Q. Okay. So I want to better understand your
15 testimony that current owners' unwillingness to make
16 investments can warrant a transfer. So my
17 understanding of Section § 62-111, the transfer
18 statute, is that no franchise can be sold unless it's
19 justified by the public convenience and necessity; is
20 that correct?

21 A. Yes, I believe so.

22 Q. Okay. So how does a utility owner's decision
23 that they simply don't want to own a utility anymore
24 factor into the public convenience and necessity?

1 A. Because one of the roles of the
2 Utilities Commission is to ensure stable utility
3 service and continuance. So if there's a utility owner
4 that doesn't want to be in the system anymore, then
5 there needs to be someone to take its place. Am I
6 misreading your question?

7 Q. No, I think that's accurate. So does that
8 mean that a utility owner can simply say, "I don't want
9 to own this anymore. I have a right to sell?"

10 A. Utilities are bought and sold constantly.
11 They have to petition the Commission all the time. I
12 mean, I hate to get into a little bit of history here,
13 but I've been involved with numerous transfers, and,
14 you know, it's common. Even though it's not common in
15 the electric industry and the gas industry, it is
16 common in the water industry and also smaller gas
17 companies. I mean, if you look at HydroStar bought
18 Utilities, Inc. back in 2006. HydroStar Fund was a
19 limited fund. They were actually a subsidiary of AIG,
20 the insurance company. They were sold to Corix
21 Utilities, and then now were bought out by a British
22 Canadian closed-in mutual fund, and now they're
23 being -- Corix Utilities is proposed to be sold to
24 Southwest Water. That's all in the past, you know, 15

1 years. On the gas side, the Frontier case that
2 Ms. Perry testified to, as she's noted, it was bought
3 by Energy West, GNI, First Reserve, BlackRock, and now
4 it's Umicore. So these transfers are not uncommon, and
5 through all the transfers, the one thing I'd like to
6 echo, the role of the Public Staff, and I believe the
7 Commission as well, is to ensure that our conditions in
8 those transfers allow for a continuation of utility
9 service at reasonable rates.

10 Q. Right, but I'm trying to understand, and
11 you --- my -- it seems to be your position that because
12 the Mitchell estate no longer makes investments, that
13 warrants a transfer. That justifies a transfer under
14 the public convenience and necessity?

15 A. They proposed to sell the utility, and
16 SharpVue is a willing buyer of the utility.

17 Q. Right. But that exists in any transfer, so
18 that's universal. That wouldn't be justification in
19 the transfer occurring or in the Commission approving
20 the transfer, correct?

21 A. I mean, when you say justification, that's
22 not the sole issue at hand. But first, they have to
23 apply the sale of the utility, and someone has to want
24 to buy the utility. That's the nature of a transfer.

1 Q. Right, but your position is that because the
2 Mitchell estate has made a decision that it no longer
3 wants to invest in the utility that the Commission
4 should approve the transfer?

5 A. Not that they should approve the transfer
6 simply because the Mitchells have proposed it, but it's
7 all a part of the process.

8 Q. Okay. But that's a factor in favor of it?

9 A. Yes.

10 Q. Okay. Doesn't that create an incentive for
11 utility owners to stop investing in systems in order to
12 get -- prompt a sale that's going to be approved by the
13 Utility Commission?

14 A. I would think that's a reasonable conclusion.
15 Just like people that buy and sell their house.
16 Sometimes they don't want to invest any more additional
17 monies and fix up the house. They just want to sell it
18 and be done with it, while some other owners want to
19 fix it up so they get the highest price. It -- so it's
20 a murky issue to raise depending on the perspective of
21 the previous owner.

22 Q. So by murky issue, you mean there is the
23 danger that allowing a utility owner to sell its assets
24 or to approve the transfer simply because an utility

1 owner no longer wants to own it and no longer wants to
2 invest in it could create an incentive for other
3 utility owners to stop investing in systems and in
4 their utility operations?

5 A. I hate to say ask me again, but are you --

6 MR. CREECH: I think it's the same
7 question you asked before; is it not?

8 MR. SCHAUER: Well, he said murky, and
9 so I was trying to clarify --

10 MR. CREECH: Okay. All right.

11 THE WITNESS: The murkiness, sir, is --
12 when I said that, that's when you don't know the
13 incentive of the owner, whether they'll improve the
14 system or not improve the system prior to the sale.

15 Q. So my understanding is that SharpVue believes
16 that the system is currently well run; is that your
17 recollection of their position?

18 A. (John R. Hinton) Reasonably well I think is a
19 fair characterization.

20 Q. Okay. SharpVue, itself, has no experience in
21 operating the transportation service, correct?

22 A. That's been said in the record ad nauseam.

23 Q. And you heard Mr. Gardner testify earlier
24 about some improvements that could be made to the ferry

1 system concerning shelter on the Island and repairs to
2 ferry seats?

3 A. I did hear that.

4 Q. SharpVue has not made any commitment to
5 address those issues, has it?

6 A. No. Those have not be addressed by SharpVue.

7 A. (Michelle Boswell) But I'm not sure that
8 those issues were brought before SharpVue as being put
9 in the previous testimony, so it's unclear to us
10 whether or not those would have been addressed had they
11 been brought to their attention.

12 Q. What changes have SharpVue committed to
13 making?

14 A. (Krishna Rajeev) Just to touch back on the
15 terminal issue, I believe one of the meetings with
16 Mr. Roberts, he did commit to making those
17 improvements. He made the fact that those are -- those
18 be relatively minor improvements, and that can be
19 evaluated upon the consummation of the transfer and
20 built fairly quickly.

21 A. (John R. Hinton) And the other commitment on
22 that is that he's -- they're willing to keep the
23 parking rates and grow them up with inflation for, I
24 think they said, the first four years. The

1 Public Staff, our condition is it does not have a time
2 limit on it. Okay, um --

3 Q. But --

4 A. -- okay, oh, great. I'll stop.

5 Q. I'm sorry. So aside from Mr. Roberts'
6 remarks in a meeting that it wouldn't difficult to add
7 shelter, have there been any other commitments to
8 making improvements?

9 A. (Krishna Rajeev) I believe they've committed
10 to the 90 percent on-time performance metric.

11 Q. Did they make any suggestions on how they
12 would accomplish that commitment?

13 A. You've referenced the electronic ticketing.
14 I believe when we instituted the baggage change last
15 year in March or April, the goal with that was
16 discussions with transportation out of a complaint that
17 we'd received. They'd shared how that would be linked
18 with the electronic system, the baggaging [sic] issue.
19 Once that was resolved, that was a big factor in
20 implementing that.

21 Q. Right, but the baggaging improvements, the
22 policy changes that were approved, and the e-ticketing
23 system were both things that BHIL implemented. Those
24 are not changes that SharpVue would make, correct?

1 A. Correct. They said they did one time to
2 evaluate the system, but all those issues there, I
3 believe, it has to be evaluated by SharpVue. And then
4 what they've committed to is making the changes once
5 they've had an opportunity to review the system.

6 Q. So am I correct that in their data responses
7 to requests by the Public Staff, they said they would
8 not make any immediate changes?

9 A. They said they would want to evaluate the
10 system.

11 Q. Right, so they were not going to make any
12 immediate changes. They were going to evaluate the
13 system?

14 A. Correct.

15 Q. And then do they make any commitments beyond
16 taking a look around?

17 A. I don't have any other commitments from them
18 at this time.

19 Q. Okay, so in other words, they're going to buy
20 it, they're going to take a look, and there's no
21 commitment to do anything beyond that?

22 A. I believe that's based on their evaluation of
23 the commitments, whether it's capital expenses or
24 operational procedures that they want to modify.

1 Q. Okay. So but to be clear, the only
2 commitment they've made is that they'll -- once they
3 own it, they'll decide if they're going to make any
4 changes in the future?

5 A. Could you repeat that? I'm sorry.

6 Q. But to be clear, the only commitment they've
7 made is that once they own it, they'll then decide if
8 they're going to make any changes?

9 A. I believe they said they want to evaluate the
10 system and then make the changes appropriately. I
11 believe that's a fair request.

12 Q. Okay. Yesterday, Mr. Roberts testified that
13 he told the Public Staff that they had a plan --
14 SharpVue had a plan to buy two ferries in 10 years. Do
15 you recall that testimony?

16 A. (John R. Hinton) I believe that's a possible
17 scenario.

18 Q. Okay. But do you recall him testifying to
19 that?

20 A. Vaguely, to be honest with you, but yeah, I
21 think so, yes.

22 Q. Do you recall a conversation with SharpVue
23 about a plan to buy two ferries in 10 years?

24 A. I've seen some of their management plans, and

1 they have some future capital requirements and that's
2 one of them. Now if you know anything more?

3 A. (Krishna K. Rajeev) They've probably
4 discussed it based on -- again, going back to the
5 evaluations -- looking at the appraisals. My
6 understanding was that none of the ferries were in
7 immediate need for -- they didn't -- there was no
8 immediate need for a new purchase, but I believe down
9 the line, they would evaluate it as needed and make the
10 necessary commitments at that time, whether it was
11 leasing a vessel or purchase.

12 Q. Okay. So in other words, there wasn't a
13 commitment or there wasn't a plan. It's consistent
14 that they would own the assets then decide whether or
15 not they would do anything in the future, correct?

16 A. In regards to the vessels?

17 Q. Yes.

18 A. I believe they said the vessels were not
19 needed to be repaired at this time, so they did not
20 make a commitment to.

21 Q. Okay. So there's no plan to buy new ferries
22 in the future?

23 A. I was talking about right now. They didn't
24 make a commitment to buy a ferry right now because it's

1 not needed.

2 Q. Okay. I'd like to talk about the acquisition
3 premium. The Public Staff proposed regulatory
4 conditions; didn't it?

5 A. (Michelle Boswell) Yes.

6 Q. And regulatory condition number 3, is that
7 quote, "SharpVue, SharpVue affiliates and Holdings, and
8 BHIFT shall neither pursue nor recover an acquisition
9 adjustment in any future rate case;" is that correct?

10 A. Subject to check, yes.

11 Q. All right.

12 A. I don't have them in front of me, but.

13 Q. An acquisitio- -- now, by acquisition
14 adjustment, the Public Staff means the difference
15 between the cost of acquiring the utility asset and the
16 remaining net book value of the utility assets at the
17 time of acquisition?

18 A. I believe we provided this response to what
19 the acquisition adjustment definition was.

20 Q. I have a copy of that if you don't to refresh
21 your recollection.

22 A. Let's see.

23 MR. STYERS: As do I.

24 THE WITNESS: I believe we said the term

1 "acquisition adjustment."

2 Q. Yes.

3 A. (Michelle Boswell) "As used in the Public
4 Staff's proposed amended regulatory condition number 3,
5 is defined as the difference between the cost of
6 acquiring the utility assets and the remaining net book
7 value of the utility assets at the time of acquisition;
8 however, the Public Staff has not evaluated how an
9 acquisition adjustment should be evaluated regarding
10 assets that have not been previously deemed utility
11 assets."

12 Q. All right. And the purpose of regulatory
13 condition number 3 is to prevent the utility from
14 recovering any acquisition premium, correct?

15 A. That's deemed unnecessary, yes.

16 Q. Would you mind -- I'm sorry, but according to
17 the data response you gave me, there was no
18 qualification about it being unnecessary.

19 A. Well, there is because we said that we have
20 not evaluated how an acquisition adjustment should be
21 evaluated regarding assets that have not be previously
22 deemed utility assets. So we did qualify it.

23 Q. So then what is the intent of regulatory
24 condition number 3?

1 A. Well, there are utility assets at play.

2 Q. Uh-huh.

3 A. And those would be covered by the acquisition
4 adjustment. And we have further stated because we have
5 not evaluated whether or not those -- what did we --
6 terms we use? Whether or not the assets that have not
7 be previously deemed utility assets as of yet.

8 Q. All right. So in other words, for the
9 ferries assets, you would agree there's no tra- --
10 there's no acquisition premium, but for the barge and
11 parking assets, there's an open question?

12 A. We haven't evaluated that as if yet.

13 Q. Those assets have been declared utility
14 property at this time, though, haven't they?

15 A. I believe per Commission order on
16 December 30th, yes.

17 Q. Okay.

18 A. But once again, we haven't evaluated that.
19 As we -- I do believe our legal staff informed all
20 parties in February? He's shaking his head yes, so I
21 believe it's February.

22 Q. And I'm sorry, hadn't determined what? I
23 didn't follow your testimony.

24 A. That we haven't determined how the previously

1 nonregulated assets should be treated.

2 Q. Right. So you haven't done a rate base
3 calculation as part of this proceeding?

4 A. Correct.

5 Q. Okay. And that's because of the schedules
6 that you didn't have time to conduct one?

7 A. No. We haven't reviewed. It also wasn't
8 asked for within the purpose of the filing.

9 Q. In your testimony, you identify the Piedmont
10 merger -- and I'm looking at page 22 -- "The Piedmont
11 merger is an example of when the Commission didn't
12 establish rate base." Do you recall that in your
13 testimony?

14 A. Subject to check, sure.

15 Q. All right and -- but now, that merger was
16 between two long-standing utilities who both had
17 well-established rate bases, right?

18 A. That would be correct.

19 Q. All right. So there wasn't a potential
20 dispute over the treatment of rate base in that merger?

21 A. I wouldn't say that from the utility, but
22 with the Public Staff, no, there wasn't.

23 Q. Here there is a disagreement about the
24 calculation and treatment of rate base, correct?

1 A. I believe that you all have stated your plan
2 and policy, and the company has stated their plan and
3 policy, and the Public Staff has said we haven't looked
4 at it and have not stated a position.

5 Q. Do you recall the testimony of John Taylor in
6 which he stated that SharpVue was requesting a rate
7 base determination as part of its transfer request?

8 A. I know the company has stated that they're
9 requesting that in the rebuttal. I don't recall who
10 said it, but subject to check.

11 Q. Right. So it might not have appeared in the
12 application, but according to one of the rebuttal
13 testimonies, it's now something they would like?

14 A. Rebuttal that was filed in the middle of
15 February, yes.

16 Q. And Mr. Taylor asserts that the rate base
17 should be \$56,000,000, which is what SharpVue is paying
18 for the barge and parking assets?

19 A. Subject to check, yes.

20 Q. And if the rate base of those assets was the
21 purchase price, then there would be no acquisition
22 premium, correct?

23 A. That would be correct.

24 Q. Do you agree with Mr. Taylor that the rate

1 base for the assets should be SharpVue's purchase
2 price?

3 A. As Public Staff has stated, we haven't
4 determined an acquisition adjustment. Oh, evidently he
5 said confidential information.

6 Q. No.

7 A. Oh.

8 Q. It's the position on rate base. It's
9 publically filed. Yes, that's their position of
10 what --

11 MR. STYERS: I think it's the number. I
12 think the concern may be if we can re- -- keep it
13 referring to the publi- -- to the purchase price
14 rather than to a specific number, I think that we
15 avoid the confidentiality issues. So trying to
16 refer to it kind of generically rather than by a
17 monetary amount.

18 MR. SCHAUER: I'm sorry. Was the
19 Rebuttal Testimony of Mr. Taylor filed under seal?

20 MR. STYERS: It was not.

21 MR. SCHAUER: Okay. So that number
22 comes from his testimony.

23 MR. STYERS: That's all right.

24 Q. So Mr. Taylor gave certain reasons for why he

1 believed the purchase price should be used for rate
2 base, correct?

3 A. (Michelle Boswell) I'm sure he did.

4 Q. All right, can I have you turn to his
5 testimony, page 19?

6 A. Okay.

7 Q. I'm looking at lines 21 and 2- -- 21 through
8 23 at the bottom?

9 COMMISSIONER DUFFLEY: Mr. Schauer, what
10 page? Where?

11 MR. SCHAUER: I'm sorry. This is
12 page 19 of Mr. Taylor's Rebuttal Testimony.

13 COMMISSIONER DUFFLEY: Taylor's. Okay,
14 thank you.

15 Q. All right. So one of the reasons Mr. Taylor
16 contends the purchase price should be used for rate
17 base is because quote, "Prior to acquisition by
18 SharpVue, or at least prior to the Sub 21 order, the
19 parking and barge assets have not been owned by a
20 utility and have not been regulated assets." All
21 right. Now to be clear, SharpVue has not yet acquired
22 the parking and barge assets, right?

23 A. (Michelle Boswell) They can't until the
24 Commission approves it.

1 Q. Right, and they're currently owned by BHIL,
2 correct?

3 A. That would be correct.

4 Q. All right, and based on the Sub 21 order, you
5 already agreed that the Commission declared that those
6 assets are a utility property?

7 A. Yes.

8 Q. Okay, so at the time SharpVue acquires the
9 assets, SharpVue will be actually acquiring previously
10 regulated utility assets?

11 A. (John R. Hinton) I would argue that the
12 regulatory bargain is largely surrounds the utility
13 owner invests capital and then he gets a return on that
14 capital and if has any operating expenses associated
15 with buying the utility service, he'll -- he can expect
16 to get a return and a coverage of his operating costs.
17 And that's one of the things we will be studying as we
18 try to make an investigation.

19 Q. But so is it your position that BHIL has not
20 been has not been depreciating those assets or
21 recovering the cost of those assets?

22 A. I am not making that determination.

23 Q. Okay. So just because the Commission has yet
24 to set rates for parking and barge, that does not mean

1 that BHIL has never recovered the cost of those assets,
2 correct?

3 A. We are not in a position to say that, but I
4 can't say they haven't recovered it.

5 Q. But would you agree simply because rates
6 hadn't been established, that doesn't mean that BHIL
7 hadn't recovered its costs?

8 A. I believe it's fair to say that they have not
9 been recovered under the traditional bargain between
10 utility owners and customers.

11 Q. Okay.

12 A. That investment would be -- if it was deemed
13 prudent, it would be appropriately returned to them in
14 rates. And since rates were not filed for the parking
15 and barge, then it makes it difficult to assume they
16 had fully covered or they haven't fully recovered that.
17 We just don't know at this point in time.

18 A. (Michelle Boswell) And again, that's -- to
19 reiterate, the Public Staff believes that this is going
20 to be -- determining an acquisition adjustment and rate
21 base is best handled within the confines of a general
22 rate case, which we are not in at this point in time.
23 And the fact that a company requested two weeks, plus
24 or minus a day, to have this considered doesn't mean

1 that an emergency is then required that everybody must
2 suddenly determine a rate base and acquisition
3 adjustment. That is why the Public Staff has stated
4 numerous times that the acquisition adjustment is
5 typically purch- -- is net book value, minus the with
6 the purchase price, and that's disallowed.

7 However, we have a unique circumstance, in
8 this case, where the Commission has ordered that
9 something become a utility. And I think everybody has
10 to wrap their heads around what that means now. There
11 were things that happened in the last rate case in 2010
12 that were agreed to, per stipulation, that, otherwise,
13 would they have agreed to or not, no one in this room
14 can speak to. They were agreed to for those purposes.
15 And to bind anybody in this room today to what was
16 agreed to as part of a settlement goes against all
17 legal representations that my legal team has said that
18 can be made.

19 Q. Right. But I understand questions from the
20 Commissioners to be very interesting in the debate on
21 how to treat rate base. And so I'm not asking for a
22 calculation. I'm trying to understand how the Public
23 Staff would think through the issues that everyone's
24 trying to wrestle with?

1 A. And we would think through those when we
2 perform an audit, which we've stated that we're not
3 doing at this point in time because of the time
4 restraints associated with all of it.

5 Q. So to the extent SharpVue is requiring a
6 determination of rate base in order to proceed with the
7 transfer, they're not going to get one from -- they're
8 not going to get a position from the Public Staff on
9 that at this time?

10 A. No. Unless the Commission orders us to do
11 so.

12 Q. So is the Public Staff able to -- are you
13 willing to answer questions about some of the issues
14 that are being debated, in terms of how to properly
15 treat the cost of those assets?

16 A. The Public Staff doesn't have a stance on
17 that as of yet. As we've said numerous times, we have
18 not yet evaluated what the implications of transferring
19 a previously nonregulated asset into a regulated
20 utility is. So if your questions are related to that,
21 then likely not.

22 Q. One second. This reduces a number of my
23 questions.

24 A. Okay.

1 (Pause.)

2 Q. In the Sub 21 Order that we've discussed, the
3 Commission determined that parking and barge operations
4 were subject to its jurisdiction and regulatory
5 authority, correct?

6 A. Subject to check, yes. I believe so.

7 Q. And we all know that the applicants are
8 challenging that decision?

9 A. I do believe so, yes.

10 Q. In your testimony on page 21, the Public
11 Staff takes the position that, in the event the Sub 21
12 Order is overturned, quote, a number of issues would
13 need to be revisited.

14 What issues would need to be revisited?

15 A. (John R. Hinton) What line again, please, on
16 page 21?

17 Q. I'm looking at lines 16 and 17. So should
18 the Sub 21 Order be returned on appeal, quote, a number
19 of issues would need to be revisited. And I'm asking
20 for what issues would need to be revisited.

21 A. (Michelle Boswell) Well, I think all parties
22 who have now presented before the Commission a proposed
23 regulatory asset and rate based treatment, if the
24 decision is overturned, that would need to be re-looked

1 at, because now you're dealing with things that aren't
2 what they were upon the initial filing of the rebuttal
3 testimony.

4 Q. And so that contemplates revisiting the
5 regulatory conditions after a transfer had occurred?

6 A. It could possibly.

7 Q. Okay. So my understanding -- and I'm newer
8 to this than a lot of people in the room -- my
9 understanding is that regulatory conditions are terms
10 to which a buyer agrees in exchange for the
11 Commission's approval of a requested of transfer,
12 right?

13 A. Not necessarily. They are conditions that
14 are typically ordered by the Commission in order for
15 the Commission to approve said transfer. Whether or
16 not the company actually agrees to them, they're
17 ordered by the Commission.

18 Q. Right. But they come in time -- at the time
19 of the transfer, and the Company makes the decision
20 whether or not to accept the conditions and take the
21 transfer or to say, "We don't agree with the conditions
22 we're not going to by the utility"?

23 A. They could. But regulatory conditions are
24 updated. I don't want to say all the time, but they're

1 updated, based off of whatever has changed within the
2 confines of the business or the docket.

3 Q. And what authority -- how do they get
4 updated?

5 A. Normally, it's with filings. So it's the
6 Public Staff. Go ahead.

7 A. (John R. Hinton) Well, updated is not
8 necessarily -- there's not set standards, but we do
9 tend to use similar conditions for all transfers.
10 We've gone through several of them, and they evolve,
11 and they come from a similar point of perspective that
12 it's always to ensure that the utility service will be
13 reasonably priced and the service qualities will be as
14 expected.

15 Q. Right. But whenever they're updated, is
16 it -- does the utility owner consent to those changes,
17 or are they posed upon the utility owner against their
18 well?

19 A. Ms. Boswell said that -- I mean, ultimately,
20 it's the Commission's Order that instructs --

21 Q. As part of a tran- --

22 A. (Michelle Boswell) And I'm not sure that
23 anything is against the Company's will, since they have
24 a monopoly to operate. They have to operate within the

1 confines of the jurisdiction of the Commission. So to
2 say it's against their will would be saying, well, it's
3 against your will to have a monopoly utility.

4 Q. Well, let me put it this way. Let's say the
5 Commission approves the transfer and the Sub 21 Order
6 is overturned.

7 How would you enforce SharpVue to accept
8 regulatory conditions for the parking and barge assets
9 if those assets are no longer subject to the
10 Commission's regulation?

11 A. (John R. Hinton) One of the conditions
12 they've agreed to -- I mean they will not get any --
13 I'm sure the conditions could be structured that, even
14 in viewpoint an overturn of a parking barge, they would
15 still conform to the commitments that they have made in
16 this Order. They made commitments of the pricing. The
17 Commission said, even if it's overturned, you must
18 accept that you will continue to operate the parking
19 and barge under these guidelines.

20 Q. Right. But my understanding is those are
21 conditions that would be created at the -- prior to the
22 transfer. That would not be creating new conditions
23 after the transfer had occurred?

24 A. (Michelle Boswell) There might not

1 necessarily be a need to create new conditions, should
2 anything change. You asked if it was a possibility.
3 Anything is a possibility.

4 Q. Well, how is it possible to impose regulatory
5 conditions on SharpVue related to the parking and the
6 barge if, at the time, the Commission did not have
7 jurisdiction over the parking and the barge?

8 A. (John R. Hinton) If they wanted to get
9 approval to transfer the ferry system, that could be a
10 concession we'd be willing to make. That is not
11 unusual in the regulatory process. We've done similar
12 conditions that have gone beyond the pure regulatory
13 system, because we thought those conditions were
14 warranted. So they can -- if they agree to it in the
15 merger of the ferry, that would carried on even if
16 they're deemed unregulated for the parking and the
17 barge services.

18 Q. So what I understand you to be saying is
19 that, it's the conditions that are agreed to as part of
20 the merger that would determine the Commission's
21 ability to regulate the assets in the future?

22 A. I'm saying that if -- if SharpVue would
23 commitment to a reasonably priced condition, which
24 they've already agreed to, then this can enforced

1 through the merger of the ferry system, in my opinion,
2 speaking as a nonlawyer, of course.

3 A. (Michelle Boswell) And I do believe, in our
4 Sub 21 comments, that we did state that the courts have
5 found ancillary services, such as telephone pages, to
6 be unregulated, and nonetheless is deemed some level of
7 oversight, short of regulation by the Commission, to be
8 appropriate, and the Public Staff still found the same
9 approach as appropriate in this case as well.

10 Q. Right. But SharpVue's challenging the
11 ancillary services doctrine that's been applied to the
12 parking and barge, correct? That might be a question
13 for your counsel.

14 A. I would question my counsel. It is the
15 Public Staff's response.

16 Q. Mr. Hinton, I think I have a series of
17 questions that touch on economics, so I'm going to
18 address these to you, because I believe it's about
19 incentives.

20 If SharpVue's plan were to quickly sell the
21 assets, then I wouldn't feel the need to make
22 investments in the system because quality issues would
23 be the next owner's property -- would be the next
24 owner's problem, correct?

1 A. (John R. Hinton) Again, you're asking me
2 something that could happen down the road. And, you
3 know, that is not in my purview to know what they might
4 or might not do. That is their plan. Because they've
5 already said that their number one plan is the
6 long-term, and their alternative -- or what we still
7 call management case -- has been to sell. So I
8 don't -- I can't speculate what --

9 Q. And, again, I'm not asking about specific
10 plans. I'm talking about incentives, which I think is
11 well within your area of expertise. So let me
12 understand this.

13 So if SharpVue was going to quickly sell the
14 assets -- we don't know if they are -- but if a were,
15 it wouldn't want to make investments in the system
16 because those investments would lower its return when
17 it were to sell the assets shortly later, correct?

18 A. That's a possibility, but, again, I'm going
19 dodge that. And I hate to be evasive, but you're
20 asking me, again, to suggest something. And it's like
21 Mr. Roberts said, if someone came in with an amazing
22 offer of three times the value, he might be inclined to
23 tell sell it.

24 Q. Right, and if he knew that he --

1 A. But he also noted it's highly unlikely and
2 it's just for conversation sake.

3 A. (Michelle Boswell) And as Mr. Hinton has
4 previously stated, any possible buyer of an item, it's
5 up to them whether or not they would improve it to
6 increase the sales price or leave it be and just sell
7 it as it is to get out of it. And so I don't think we
8 can speak to what Mr. Roberts' or SharpView's mindset
9 would be, as far as should they spend the extra money.
10 That would be a question for him.

11 Q. I'm a little problem -- I'm a little troubled
12 by Mr. Hinton admitting that he's trying to evade the
13 answer to my question, so I'm going to ask it again.

14 So earlier you testified that a homeowner who
15 is going to sell their house might not make repairs to
16 it, because they know they're going to sell it.
17 Wouldn't that principle apply to SharpVue's ownership
18 of the transportation system if I had intended to sell
19 it in the short-term?

20 A. (John R. Hinton) That's a distinct
21 possibility, but just in the same token, the owner can
22 take opposite view. As most of us have probably done,
23 we've fixed up our houses to sell and get a better
24 profit. And that, you know, in other words, the owner

1 of SharpVue can make the improvements, put in the extra
2 shelter, do the electronic ticketing, make sure that's
3 actually a good service sound and operating and do
4 other improvements to make the asset and also to try to
5 improve the revenue stream. They can do all of those
6 things that would improve quality of service and then
7 sell it for a higher price. Obviously, that could be
8 the thinking of Mr. Roberts and Mr. Vaughn in the
9 SharpVue entity, LLC.

10 A. (Michelle Boswell) But they would be the best
11 ones to ask what their thinking is on that matter.

12 MR. SCHAUER: No further questions.

13 COMMISSIONER DUFFLEY: Mr. Higgins?

14 MR. HIGGINS: Thank you, ma'am.

15 CROSS EXAMINATION BY MR. HIGGINS:

16 Q. Good afternoon -- excuse me. Dan Higgins
17 for the BHI Club. Turn if you would, please, to your
18 page 10 of your amended testimony -- supplemental
19 testimony, I'm sorry. There's a diagram there. Tell
20 me when you have it?

21 A. (John R. Hinton) Yes.

22 Q. And that shows an entity, which will remain
23 nameless, as holding the -- owning real estate. It
24 says "Real estate and other supplemental assets." Do

1 you see that?

2 A. Yes, I do.

3 Q. The entity on the far left. Are you with me?

4 A. Yes, I am.

5 Q. And do you understand, would that be the real
6 estate where the terminals and the parking operations
7 are located, including the parking lots on the
8 mainland --

9 A. Yes.

10 Q. -- at Deep Point?

11 A. That are currently leased.

12 Q. If the utility entity, which is not that
13 entity, if BHI -- Bald Head Island Ferry Transportation
14 doesn't own the parking lots, doesn't own the land,
15 then that's not going not be in utility rate base, is
16 it?

17 A. I'll let Ms. Boswell.

18 A. (Michelle Boswell) There's a control and
19 ownership issue. And until a regulated utility has
20 control and ownership, they can't put that into rates.

21 Q. They can?

22 A. Cannot.

23 Q. They cannot.

24 A. (John R. Hinton) Similar to a water utility.

1 I mean, one thing --

2 COMMISSIONER DUFFLEY: Mr. Hinton,
3 please talk into your microphone. Can you start
4 over for the court reporter, please?

5 THE WITNESS: Similar to a water
6 utility, where the well lots need to be under the
7 control or ownership, it could be a lease or other
8 arrangements, but it has to be under the control,
9 is the key word, of the water utility owner.

10 Q. Yes. My question is, can those assets be
11 included in rate base if they're not owned by the
12 utility?

13 A. (Michelle Boswell) Not without a lease or
14 some kind of an agreement that gave them control or
15 ownership of the asset.

16 Q. Well, a lease wouldn't give them ownership,
17 but it would give them a right to use?

18 A. It would give them control, yes.

19 Q. It would give them control. Or if they owned
20 it in fee, then it would be a utility asset?

21 A. Correct.

22 Q. But the absent one of those two situations,
23 doesn't go into rate base, does it?

24 A. That would be correct. Which is part of the

1 reason why the Public Staff has stated that rate base
2 and acquisition adjustment cannot be determined is that
3 you don't have control or ownership. You don't have a
4 set allocation of the purchase price. We have an
5 estimate. I know estimates are great for the person to
6 my left, but estimates in accounting world don't sit so
7 well. So until you have those things set, it's really
8 hard to determine what the purchase price is, and what,
9 if any, acquisition adjustment should be.

10 Q. Thank you. Mr. Hinton, you've made the point
11 that SharpVue has made some commitments regarding
12 continuing to make parking available at reasonable
13 rates. Does the Public Staff contemplate that the
14 parking would continue to be provided at the Deep Point
15 ferry terminal?

16 A. (John R. Hinton) Yes. We have made some
17 conditions that -- on the number of lots -- I mean
18 parking space, excuse me -- that would be available,
19 and they've committed to that.

20 Q. Yes, sir. I understand they've committed to
21 the number of lots, but their proposed regulatory
22 conditions would allow them to provide the service --
23 provide the parking elsewhere and shuttle people over.
24 I'm asking if the Public Staff contemplates that the

1 regulatory condition would require that the parking
2 remain at the Deep Point terminal.

3 A. One moment.

4 MR. CREECH: May I approach?

5 COMMISSIONER DUFFLEY: You may.

6 (Pause.)

7 MR. CREECH: To clarify, Mr. Higgins,
8 you're asking about the applicant's proposed
9 regulatory conditions; is that correct?

10 MR. HIGGINS: Yes, that's correct.

11 MR. CREECH: And, do you have a number
12 on that? It's number 45; is that correct?

13 MR. HIGGINS: Well, first it's the
14 exhibit that was last marked. Give me a second.

15 COMMISSIONER CLODFELTER: BHIT Wright
16 Cross Examination Exhibit 1.

17 MR. STYERS: Number 4 of the Applicant's
18 proposed conditions on my copy.

19 MR. HIGGINS: Number 4? Thank you.
20 It's number 4, in BHIT --

21 MR. STYERS: And I have some additional
22 copies, if that would help.

23 THE WITNESS: (John r. Hinton) My
24 understanding is that they've have asked to shuttle

1 customers around, being relatively close. We --
2 our position, as I understand -- as I recall, was
3 always we didn't allow that. We just said we want
4 the parking and the number of parking spaces
5 available. And we weren't in favor of having the
6 shuttle. And one time we were agreeable with that,
7 but I think our final version does not have that in
8 there.

9 Q. All right, sir. Thank you for that
10 clarification.

11 In part of your testimony, page 8, line 12,
12 you make reference to the existing litigation filed by
13 Limited regarding the validity of the Village's -- the
14 right of first refusal that the Village asserts that it
15 has; do you recall that?

16 A. Yes.

17 Q. If that litigation is resolved in the
18 Village's favor, then -- but, if this transaction had
19 been allowed -- had been approved and -- under
20 conditions that SharpVue accepted and chose to proceed,
21 how would the transaction be unwound if it turned out
22 that the Village did, in fact, have a right of first
23 refusal?

24 A. That's certainly a legal question. That

1 sounds like a very messy event that would happen. I
2 would hope the right of first refusal would be settled
3 before any approval processes are being done.

4 Q. Before this transaction closed?

5 A. Yes. Because, as I understand, in our
6 conversation with a lender, that there was an issue.

7 MR. FERRELL: That is public. That's
8 public. That's in the complaint.

9 MR. STYERS: That's fine. That's fine.
10 (Pause.)

11 MR. HIGGINS: I don't have any further
12 questions.

13 COMMISSIONER DUFFLEY: Redirect?

14 MR. CREECH: Thank you-all.

15 REDIRECT EXAMINATION BY MR. CREECH:

16 Q. You received various questions on regulatory
17 conditions.

18 Just to be clear, if someone has -- if any
19 party has suggestions on how to make the regulatory
20 conditions better, the Public Staff is open to those
21 proposed revisions, are they not?

22 A. (Michelle Boswell) Yes.

23 A. (John R. Hinton) Yes, we are.

24 Q. All right. And the Public Staff regulatory

1 conditions were written -- were not written in the
2 alternative. Instead -- you know, on the one hand, if
3 the appeal goes through with the way the applicants
4 wants it to go through, we didn't set up two sets of
5 regulatory conditions. It was just the broad statement
6 in your testimony that you were asked about that, in
7 the event that that does, then we'll have to revisit a
8 number of issues; isn't that correct, Ms. Boswell?

9 A. (Michelle Boswell) Yes.

10 Q. As for rate base, Ms. Boswell, you were
11 talking about it.

12 Now, it is your understanding that applicants
13 didn't request a rate case -- a rate base in their
14 application; is that correct?

15 A. Correct.

16 Q. And it wasn't until after it was brought up
17 in the February 20th filings by the interveners that
18 the Applicants on February 27th in their rebuttal said,
19 "Hey, we've got to have an acquisition adjustment," or
20 they took out the pledge no to seek an acquisition
21 adjustment; is that correct?

22 A. Yes.

23 Q. All right. And so -- and you've also
24 stated -- just to confirm that there's two main reasons

1 why the Public Staff cannot determine rate base beyond
2 timing and the press of mass of other business, is that
3 there are just two, kind of, impossibilities here.

4 Number one, we've not known the allocation. And there
5 is -- as Mr. Roberts indicated, there is no true
6 allocation yet; that's not yet been filed yet, correct?

7 A. I haven't seen the final version. I believe
8 it's still estimated and won't be finalized until the
9 close of the deal.

10 Q. That's right. And then the second is, we
11 don't know -- there's no ownership and/or control of
12 the dirt underlining the parking, and so there's no way
13 to have a capital lease or -- we just don't know how
14 that's going to be memorialized, correct?

15 A. I believe the Company has indicated in
16 testimony this week that want to do a capital lease,
17 but I don't think one has been executed and it's not
18 one that we have seen, so as if right now, we don't
19 have a control or ownership to determine rate base off
20 of.

21 Q. Now, Mr. Hinton, in terms of capital, you
22 know, it's not that the Mitchells don't have the
23 capital, right? They're just -- they're in a position
24 to invest, presumably, if they wanted to but, but what

1 you're saying is that -- is that there's an applicant
2 here that's willing to invest to acquire the system.
3 The seller wants to sell, the buyer wants to by,
4 correct?

5 A. (John R. Hinton) Correct.

6 BY MR. FERRELL: Okay. And
7 then -- well, I think that's it for now. Thank
8 you.

9 COMMISSIONER DUFFLEY: Okay. Commission
10 questions on the public record?

11 THE WITNESS: (Michelle Boswell) And not
12 that I want additional questions, but I believe
13 that there was a confidential question that
14 someone --

15 COMMISSIONER DUFFLEY: We're going to
16 get through the public record first, and then we'll
17 go to.

18 THE WITNESS: I'm sorry. I get lost.
19 My apologies.

20 COMMISSIONER DUFFLEY: No worries. I've
21 been lost several times this week.

22 Commission questions?

23 EXAMINATION BY CHAIR MITCHELL:

24 Q. Good afternoon. Quickly. Do you-all have

1 Taylor's testimony in front of you? Rebuttal
2 testimony.

3 A. (Ms. Boswell) Yes.

4 A. (John R. Hinton) Yes.

5 Q. Flip to page 25, line 2.

6 A. Yes.

7 Q. You see the reference for \$1.9 million for
8 2021, the net operating income for parking facilities?

9 A. (Michelle Boswell) Yes.

10 A. (John R. Hinton) Yes.

11 Q. Do you-all -- have you reviewed net operating
12 income for -- attributable for the parking facilities
13 for any other years?

14 A. (Michelle Boswell) I have not, no.

15 Q. Okay. Do you know whether -- does any of you
16 know whether that information is anywhere in this
17 record? Income attributable for parking for years
18 other than 2021?

19 A. (John R. Hinton) No. Those are the only two
20 years that I know of.

21 Q. That are in the record?

22 A. Correct.

23 Q. Okay. I assume ya'll have reviewed the
24 testimony of BHIT witness Taylor. Have ya'll had a

1 chance to review it?

2 A. (Michelle Boswell) Yes.

3 A. (John R. Hinton) Yes.

4 Q. Okay. In the Q&A on page 24 and 25, the
5 question is:

6 "If parking and barge were rate regulated and
7 based on a rate base valuation, what would be
8 the rate impact on consumers if the rate base
9 was the current market value?"

10 Do you see that question?

11 A. Yes.

12 Q. Okay. Can you -- can you paraphrase what the
13 answer to that question is, as provided in this
14 testimony?

15 A. The first thing he says -- and I'll be honest
16 with you, I did not, and I doubt Mr. Boswell had time
17 to really to go through these analyses. But he says,
18 "He believes that, even if you put that in a rate base,
19 it would not have an impact on the actual rates that'll
20 be charged." So if the parking lot was put in at
21 market value, that it would not substantially raise the
22 rates. And I know he did a return analysis based on
23 the market price that was, I guess, allocated, but --

24 Q. Does that -- so am I hearing you correctly

1 that that doesn't seem right to you, or do you question
2 that conclusion?

3 A. I question lots of things.

4 A. (Michelle Boswell) Quite honestly, we haven't
5 had the opportunity to go through his calculation in
6 any kind of detail, given the lateness that it was
7 provided, as to whether or not it would have a material
8 impact or not. I did have my staff briefly view, just
9 for mathematical correctness, and it appeared it
10 calculated mathematically, but we haven't gone in and
11 looked at any of the assumptions or any of the dollars
12 that he has asserted within those.

13 Q. Okay. Okay. Ya'll were in the room when we
14 discussed Jim Hoard's testimony from the Sub 7 rate
15 case; isn't that correct?

16 A. Yes.

17 Q. And his testimony is, at least as I
18 understand it -- which could be wrong, which is why I'm
19 going to ask ya'll this question -- I read his
20 testimony to be in contradiction to this testimony,
21 just on the issue of including parking facilities and
22 rate base.

23 Do you recall the testimony I'm talking
24 about?

1 A. I do. And I would agree. He does dis- --
2 Mr. Hoard, in that testimony, states that it doesn't --
3 it would negatively impact ratepayers to put those
4 parking facilities into rate base and calculate rates
5 accordingly, which is why he agreed to do the
6 imputation of parking revenues.

7 Q. Okay. So can you -- recognizing that you-all
8 have had limited time -- limited to no time to review
9 this information -- and I'm sorry for putting you on
10 the spot as a result -- but can you help me understand
11 that discrepancy between Mr. Hoard's analysis and the
12 analysis that Mr. Taylor has done? How do they land in
13 different places? And if you can't answer the
14 question, I understand. I'm just hoping you can give
15 me your gut reaction here?

16 A. (John R. Hinton) While she's giving you a
17 good answer, I'll give you a gut reaction.

18 Q. Okay.

19 A. The sales increased by a large factor. So
20 the revenue that the ferry is making is making -- in
21 other words, the generation of ferry services are much
22 greater they used to back when Mr. Hoard did back in
23 2009 or 2010.

24 Q. Is that because the increased number of

1 trips?

2 A. And increased people on the island. Yes, the
3 trips.

4 Q. Increased sales of tickets?

5 A. Yes.

6 Q. I didn't mean to say increased number of
7 trips. I meant to say increased ticket sales. Okay.

8 Ms. Boswell, anything? Does Mr. Hinton's
9 answer make sense?

10 A. (Michelle Boswell) It does. And just briefly
11 looking at it, it does look like there are differences
12 in the overall revenues between what was in 2010 and
13 what they are listing here as 2021.

14 Q. Okay. Okay. How much -- I mean, do you-all
15 know -- and I recognize that you have said that you
16 haven't reviewed the data related to the parking, but
17 ticket sales, I mean, how much have a increased over
18 the past -- since the rate case in 2010? If you don't
19 have the information, that's okay.

20 A. (John R. Hinton) We don't have it handy, but
21 it been on growth rate. I don't know if it's
22 5 percent, 4 percent, 3 percent, but it is a steady
23 growth rate in annual sales. I've seen graphs in
24 presentations that bear that out.

1 CHAIR MITCHELL: Okay. All right. I
2 have nothing further. Thank you.

3 COMMISSIONER DUFFLEY: Commissioner
4 Clodfelter?

5 EXAMINATION BY COMMISSIONER CLODFELTER:

6 Q. I'm going to make another effort at this.
7 Hypothetical question. Purely hypothetical question.
8 I've listened to you. I've heard you. I don't need
9 you to repeat anything you've already said. So I
10 understand why you say you can't, today, tell us what
11 you think a proper determination of rate base would be,
12 assuming all of these are regulated assets, because
13 there's some things you don't know today. But there's
14 a separate issue that the parties have been arguing
15 about, and that's the proper methodology for
16 determining when, and what circumstances, warrant any
17 acquisition of premium. And what would it take, and
18 how long would it take it, for me to get a position
19 from the Public Staff on those questions? Not the
20 question of how much should an acquisition premium be,
21 or adjustment be, but when should one be considered?
22 Under what circumstances should they be considered?
23 And which of those circumstances would you be
24 evaluating on the facts of this case? That's a

1 different question than how much.

2 A. (Michelle Boswell) It is. Historically,
3 it's been acquisition adjustment has been determined on
4 whether or not it's a troubled system.

5 Q. Are you going to give me the answer right
6 now? I'll take it right now if you're ready?

7 A. It does not appear to us, based off of our
8 cursory review, that this is a troubled system. My
9 legal team -- and I'm not a lawyer for a reason -- my
10 legal team has informed me that there is concern over a
11 statute regarding public use. That we would have to
12 dive into and determine, on a legal perspective, what
13 that means to the previously nonregulated -- the barge
14 and parking assets that are in question here.

15 Q. Again, as a hypothetical -- the Commission
16 may decide it doesn't really care. The Commission can
17 say it doesn't need to know, it doesn't need to know.
18 But suppose the Commission decides it wants to know or
19 needs to know your position on that. You've got to
20 process that question through. Not saying you've
21 got -- you're not the decider of what the law is.
22 We're not the decider of what the law is. The
23 North Carolina Supreme Court is.

24 But, if we wanted to know what your position

1 was, how long would it take for you to be in a position
2 to tell us?

3 A. Not numbers.

4 Q. Not numbers. I said not the amount of an
5 adjustment to be made in this case. I'm talking about
6 the amount.

7 A. I would -- and I'm looking at my legal team,
8 because this is a legal question that we don't -- we
9 know that we don't have a troubled system, and so the
10 legal question is that public use --

11 Q. Again, it's a hypothetical question. We
12 might get among ourselves and decide we don't really
13 care, but suppose we care. I just want to know what
14 would it take and when -- how long would it take?

15 Mr. CREECH: Would it be appropriate for
16 us to discuss it and get back -- make sure that we
17 got the question that you're asking?

18 COMMISSIONER CLODFELTER: Absolutely
19 appropriate. Absolutely appropriate. I do not
20 mean to ask a question that you don't want to
21 answer or are not prepared to answer today. I just
22 want to have the question out there.

23 MR. CREECH: We can work with the staff
24 to make sure we've got the question, and then we

1 can file the answer.

2 COMMISSIONER CLODFELTER: Fine with me,
3 if it's fine with Presiding Chair.

4 COMMISSIONER DUFFLEY: It is.

5 MR. CREECH: We'll work with staff on
6 that, if that's appropriate.

7 COMMISSIONER CLODFELTER: That's the
8 only question I have.

9 COMMISSIONER DUFFLEY: Okay.
10 Commissioner Brown-Bland?

11 Commissioner McKissick?

12 EXAMINATION BY COMMISSIONER MCKISSICK:

13 Q. And, I guess, you know, I'll start by, kind
14 of, following up with what Commissioner Clodfelter has
15 asked for. We have a barge, and, likewise, parking
16 that's never been regulated before. So, I mean, if
17 we're not look at some kind of acquisition premium,
18 under what circumstances do you look at the fair market
19 value that should be apportioned to it, to use it, you
20 know, in rate base? Is there some timing that you
21 could state? I mean, other than just -- you know, in
22 terms of a methodology that you use for making that
23 assessment.

24 A. (Michelle Boswell) As far as the

1 allocation -- as far as the purchase price allocation
2 that would be used to determine what the ultimate
3 purchase price of each asset would be, it is my
4 understanding that the Company has stated that that
5 won't happen until close. And so you would need that
6 in order to calculate any kind of acquisition
7 adjustments first.

8 Q. Okay.

9 A. (John R. Hinton) And I will say that
10 acquisition adjustments has been addressed by the
11 Commission for many years, and the response from the
12 Commission I don't know has always been so crystal
13 clear and consistent. So we're going to be at a little
14 bit of a loss to come up with a good answer, but we'll
15 work to do just that. But there's been different
16 perspectives from the different utilities.

17 If you look back at the Carolina Water cases
18 and the Heater cases, there sometimes -- you know,
19 largely, they point to the benefits of the transfer
20 outweighing the -- you know, the cost. And so
21 everything's usually then the benefits have to exceed
22 the cost. And I believe that's always been the intent
23 of the Commission, but, you know, we will work to
24 provide you with a clear position the best we can.

1 Q. Okay. And to the extent that you can provide
2 an explanation, I mean, between your original direct
3 testimony and your supplemental testimony dealing with
4 regulatory conditions, there were deletions and
5 additions as well. Can you get into and explain what
6 the bases were for those changes?

7 A. I hate to ask you, but the conditions from --

8 Q. The initial regulatory conditions.

9 A. Well -- okay. Let me turn to that, please.

10 Q. I mean, the original regulatory conditions
11 theoretically, they went paragraph 22, and the changed
12 ones went up to I think about paragraph 27 or so, but
13 they were also some changes internally in language
14 along the way.

15 A. Obviously, some changes were due to the
16 regulations of the parking and the barge.

17 Q. Right. And in terms of the of imputation
18 from income from parking?

19 A. That was one too as well, because that was no
20 longer necessary, because the parking was going to be
21 regulated under the amended scenario.

22 Q. Okay. And in terms of the additional ones
23 that were made -- and when I say the additional ones,
24 more specifically, it looks as if ones from, like, 21

1 all the way up to 25 were added.

2 MR. CREECH: May I approach with the
3 comparison?

4 COMMISSIONER MCKISSICK: Sure.

5 Mr. CREECH: Thank you.

6 THE WITNESS: (John R. Hinton) On number
7 21, you know, the issue of the long-term lease and
8 having control became very clear to us that it's
9 something we needed to insert.

10 Q. And the others?

11 A. The supplemental assets, it also became more
12 apparent that, to protect the customers' interests, we
13 needed to make sure we had all those assets. And
14 again, if the leases were sold, we would need to know
15 about it and we'd have to approve such a sale. And
16 merger conditions exist because there's some changes.

17 Q. And likewise, there was two others there, 24
18 and 25?

19 A. 24, I believe -- if you can speak to that?

20 A. (Krishna K. Rajeev) That was based on the
21 Village's proposed conditions. We adopted that into
22 our amended testimony.

23 Q. Okay. And 25?

24 A. I believe that was an extension of the

1 supplemental asset's condition, number 22.

2 Q. Okay. And let me ask you, this under number
3 10, it was discussing what I call loans between
4 interested parties, intercompany loans?

5 A. (John R. Hinton) Yes.

6 Q. To what extent did you go back to find out
7 what the source of those loans were?

8 A. I did not go back much further than the
9 financial reports that identified that there was a loan
10 from BHIL. And we did not -- we saw that and very
11 similar to the Old North State Water Company that I
12 testified in. And I saw that personally as more equity
13 investment, not an official loan. And there were even
14 less details in this loan than there was with the Old
15 North State loan. One of the contentions I raised,
16 and Mr. Creech agreed with me, that we should make that
17 conditions, so that loan was not going to be on the
18 backs of the ratepayers under SharpVue ownership.

19 Q. Right. That I understand. I guess the
20 question is, do you know if those loans were used on an
21 ongoing basis, say, subsidized the operations of
22 facilities by the Mitchell group, as I will put it? I
23 don't know the adequacy of their working capital. I
24 don't know what they needed. I don't know what the

1 source and the use of those proceeds might have been.
2 I'm wondering if the Public Staff ever went back to
3 make any determination or assessment?

4 A. I'm afraid I did not go back and research the
5 loan and the basis for why the loan existed. I just
6 saw that as something that I do not want to see in a
7 future rate case proceeding, where the Company comes to
8 us and says, "We have this existing loan from 1947."

9 Q. Right. I would agree. I understand that
10 position.

11 And while we have not gotten into it, I mean,
12 there's been considerable testimony about the
13 \$2.1 million that's going to be part of the transaction
14 that will come to SharpVue, and this \$2 million line of
15 credit.

16 To what extent did you evaluate the
17 sufficiency of those funds to pay the operations,
18 expenses, everything related to the holdings that
19 SharpVue will now have?

20 A. I'm afraid that I did not perform any serious
21 quantitative analysis. I looked at those numbers.
22 They seemed reasonable, the level of them. But to say
23 I went through my own internal financial model, I did
24 not.

1 Q. You did not.

2 A. But again, I think they're reasonable. I was
3 a little nervous about the roughly \$4 million available
4 for working capital if need be, but I was advised early
5 on there would be additional capital necessary. And I
6 think the additional capital that now we know is
7 \$5.4 million, or possibly injection from the SharpVue
8 affiliate funds, made that even more an issue that --
9 that should not become a problem.

10 Q. Okay. And to what extent do you examine what
11 was used historically, in terms of working capital and
12 what was available under the Mitchell group?

13 A. I'm afraid, again, I did not do enough
14 legwork to be able to ascertain whether that level of
15 working capital was adequate. It just seemed like a
16 reasonable amount relative to their revenues and
17 expenses.

18 COMMISSIONER MCKISSICK: Okay. Thank
19 you.

20 Kaylene, do you need just one minute or
21 are you good to go?

22 COURT REPORTER: I'm good.

23 COMMISSIONER DUFFLEY: Okay.

24 Commissioner Kemerait?

1 EXAMINATION BY COMMISSIONER KEMERAIT:

2 Q. Thanks. I'm going to move pretty quickly. I
3 think I know that, Ms. Boswell, you've said that you're
4 not prepared to talk about methodology, but I want to
5 talk about what might or might not be analogous ways of
6 determining rate base, to just give us some background
7 information that we can all consider.

8 So we heard from Ms. Perry about the -- and I
9 think this will be for you, Ms. Boswell -- and I know,
10 Mr. Hinton, I have a question for you on the electric
11 side -- and the water wastewater situations in which a
12 developer constructs and installs water or wastewater
13 system and then sells it to a public utility. And
14 Ms. Perry said that the -- that the amount that would
15 go into the rate base would be the original cost.

16 Do you -- are you in agreement with her
17 assessment about the amount that would go into the rate
18 base for that situation?

19 A. (Michelle Boswell) Historically, it would be
20 whatever the transfer value is, which is net of the
21 charitable contribution -- not charitable
22 contributions. This is what I get for doing electric
23 cases on top of this. CIAC contributions and aid
24 construction. It normally nets out to be zero and/or a

1 de minimis amount.

2 Q. Thank you. And then, Mr. Hinton, I think
3 this would probably be directed more to you. Two
4 questions about how to determine assets for an electric
5 public utility. And in regard -- and this is if you
6 know -- but in regard to the competitive procurement of
7 renewable energy, when Duke Energy acquires a -- what
8 becomes a utility-owned facility from a third-party, in
9 that situation, what costs go in the rate base? Or how
10 is the rate base determined from the CPRE situation
11 from purchasing from a third-party? Do you -- do you
12 have any information about that?

13 A. Under CPRE it can be determined -- and it has
14 be to be determined up front -- so it can either be a
15 market base or cost recovery.

16 Q. Okay. And I think, similarly, the answer
17 would be the same. I looked at Rule R-870 for cost
18 recovery for costs incurred by an electric public
19 utility to acquire interests in electric generating
20 facilities purchased from joint municipal power
21 agencies. And I believe that rule also talks about
22 that there could be a rider to recover the cost -- to
23 recover the cost, and that the cost can be the amount
24 paid above the book value. So it could be market value

1 in that situation, or how is -- what would the rate
2 base potentially be in that situation?

3 A. (John R. Hinton) We're talking about the JAAR
4 rider, correct?

5 Q. Right.

6 A. We think it's at a purchase price.

7 Q. That was my understanding from the rule as
8 well, but I was looking for clarification if that is
9 how it's -- how the -- how it's handled for purchase
10 price.

11 Well, that's very helpful, and I appreciate
12 at least some context of ways that rate base can be
13 determined in other situations.

14 COMMISSIONER DUFFLEY: Chair Mitchell,
15 do you have one more?

16 EXAMINATION BY COMMISSIONER DUFFLEY:

17 Q. Okay. If I can turn your attention to page 4
18 and 5 of your initial testimony. It's the testimony
19 with respect to the legal standard for the transfer of
20 ferry systems. And you speak on page 4, you talk about
21 public convenience and necessity. And then on page, 5,
22 you discuss the three-part test that was outlined in
23 the Duke Piedmont merger Order. And then you state the
24 Public Staff believes the Commission's three-part test

1 for determining whether a proposed merger is justified,
2 and is also appropriate in determining this --
3 basically this transfer.

4 And, Mr. Hinton, you just testified about
5 different transfers and you mention electric, and gas,
6 and water, companies, but my question to you -- to you
7 all is did you look at prior ferry transfer cases and
8 the standards that was set forth in those prior ferry
9 cases?

10 A. (John R. Hinton) No. We did not.

11 Q. Okay. And is there any reason for that?

12 A. I don't know of any to be honest with you.

13 A. (Krishna K. Rajeev) I don't believe we've had
14 a ferry transfer case, to my knowledge.

15 Q. Okay. Can you look into this and then
16 provide feedback? There seems to be a ferry case that
17 talks about -- its a ferry transfer case, and it talks
18 about the standard, but it doesn't mention a three-part
19 test. It talks about, will not adversely effect
20 service to the public, will not adversely effect
21 service to the public by other public utilities, and
22 that the transferee is fit, willing, and able to
23 perform such service. And let me tell you what -- it's
24 A-52, Sub 7 and A-74, Sub 0.

1 And there seems to be other transfer cases,
2 and I just -- I just want to get the right standard.
3 So I just wanted to understand, were you aware of these
4 case, and what is your interpretation of these cases
5 versus a merger standard for an electric case?

6 A. (Michelle Boswell) Absolutely. We'd be happy
7 to provide that as late-filed exhibit.

8 Q. Okay. Thank you for that.

9 COMMISSIONER DUFFLEY: And if all
10 parties want to participant and provide their views
11 on the legal standard, the Commission will accept
12 those in the post-filing briefs.

13 Right. And Commissioner Clodfelter
14 would like the transfer of common carrier
15 certificates as well, if you could review those
16 transfers.

17 MR. TRATHEN: Chair Duffley, could I
18 just add -- I just want to make crystal clear,
19 you're not asking for a briefing from the parties
20 on this particular question now; it will be a
21 post-hearing in the regular post-hearing brief?

22 COMMISSIONER DUFFLEY: Right. So --
23 and, Public Staff, you can do it -- not as a
24 late-filed exhibit, you can do it in your

1 post-hearing briefs.

2 Okay. So we're at 5:30. We have to get
3 through this case tomorrow. So we can do
4 Commission questions. Question on Commission's
5 questions, if there limited. End today with that.
6 We'll start off with the confidential portion of
7 this -- the confidential questions and do the
8 confidential Commission questions and then move
9 onto the next witness.

10 What questions do we have on Commission
11 questions for today?

12 MR. STYERS: I have a few. I mean, less
13 than four or five minutes, but I do have a few.

14 COMMISSIONER DUFFLEY: Okay. Is that
15 where everyone else is?

16 One question? Okay. Go ahead Mr. Gray.
17 Or Styers.

18 MR. STYERS: That's fine. Whatever you
19 call me, that's fine.

20 EXAMINATION BY MR. STYERS:

21 Q. It's just a follow-up on Commissioner
22 Mitchell's questions regarding Taylor's testimony,
23 page 24. So you may want to turn to Taylor's
24 testimony -- rebuttal testimony, page 24, as well as

1 have handy the Cross Examination Exhibit 1 and the
2 Cross Examination Exhibit 2, the BHIT.

3 A. (Michelle Boswell) Okay.

4 Q. So Mr. Taylor basically states -- and he's
5 going to be here tomorrow, and don't let me forget
6 administer the question about order of witnesses
7 tomorrow -- that there would be no material impact, is
8 his qualitative answer.

9 Is it your understanding that, what's been
10 distributed and what you looked at as BHIT Public Staff
11 Cross Examination Exhibit 1 and Cross Examination
12 Exhibit -- regarding parking, and Cross Examination
13 Exhibit 2, regarding barge, is Mr. Taylor's
14 quantification of his answer to the question on page 24
15 of his testimony?

16 A. It appears to be, yes.

17 Q. Okay. And -- generally, again, you've
18 checked the math, but let me just ask the method by
19 which he calculates impact on revenue requirements.
20 Are you -- which is adopted from KW-03.

21 Does that approach appear to be an approach
22 to take to evaluate that impact -- appropriate approach
23 to take to evaluate that impact?

24 A. And keep in mind, I'm -- it looks like he

1 backed into a revenue requirement. And,
2 mathematically, we didn't have issue with how he backed
3 into it.

4 Q. And revenue requirement under a scenario one
5 of the rate base coming in at purchase price, and at
6 the bottom the rate base coming in at the original
7 depreciated value?

8 A. It appears to be that's what he's
9 representing, yes. I haven't verified the numbers, so.

10 Q. Again, he will be available tomorrow for more
11 questions by the Commission otherwise, but there is now
12 a quantified calculation of the answer to the question
13 that Ms. -- that Chair Mitchell asked you about?

14 A. I believe that's what he intended to do with
15 the exhibits that you've handed me today, yes.

16 MR. STYERS: No further questions.

17 COMMISSIONER DUFFLEY: Chair Mitchell
18 actually has one more question.

19 EXAMINATION BY CHAIR MITCHELL:

20 Q. I remembered my question for y'all. Very,
21 very quick.

22 Hardscrabble was not a troubled system; isn't
23 that correct?

24 A. (John R. Hinton) I believe that's correct.

1 Q. In spite of its name.

2 A. But there was some longturning --
3 longstanding benefits for financial liability, I
4 believe I remember reading in that Order. In other
5 words, there were concerns about down the road.

6 CHAIR MITCHELL: Okay. All right.

7 Thank you.

8 EXAMINATION BY MR. FERRELL:

9 Q. I have just one quick question or a series.
10 I believe the Public Staff, when you were testifying,
11 you were asked by, I believe it was Commissioner
12 McKissick, about the newly added conditions after the
13 Sub 21 hearing, and I can't remember which one of you
14 testified that number 24 dealing with vessel
15 replacements -- did I hear you correctly that that was
16 a proposed condition proposed by the Village?

17 A. (Krishna K. Hinton) I believe so.

18 Q. Okay. Do you recall what other conditions in
19 this list, either before or after the Sub 21 Order was
20 proposed by the Village?

21 A. I know they proposed a series of conditions.
22 This is the one that I can recall adopting.

23 Q. Did you adopt all of their conditions or some
24 of them you did not?

1 A. I did not adopt some others that they have
2 proposed regarding at least the operations side.

3 Q. Okay. But there were additional conditions,
4 other than number 24, that you did incorporate from the
5 Village?

6 A. That's the only one that I, myself,
7 incorporated.

8 Q. Would there have been other members of the
9 Public Staff that would have incorporated conditions,
10 other than yourself?

11 A. (Michelle Boswell) There may have been. I
12 don't -- Mr. Hinton and I don't have the comparative
13 back and forth, so there may have been. I know that
14 we, kind of, looked at what everybody's conditions were
15 and ascertained whether or not we thought they were
16 worthwhile to add.

17 Q. Okay, but you --

18 A. (John R. Hinton) I was more involved in
19 SharpVue's concerns, and, personally, I was not
20 involved with the conversations with the Village.

21 Q. Okay. And so the Public Staff does have a
22 document where they did a comparison of the Village's
23 proposed regulatory conditions as well as maybe your
24 own and SharpVue's?

1 A. (Michelle Boswell) I don't know that we
2 necessarily have a document, per se. I think we just
3 met and had the documents there and were going through
4 them.

5 MR. FERRELL: Okay. Thank you. No
6 further questions.

7 EXAMINATION BY MR. SCHAUER:

8 Q. I recall -- if I recall correctly,
9 Commissioner Kemerait was asking about the JAAR rider;
10 do you recall that line of questioning?

11 A. (Michelle Boswell) Yes.

12 Q. That rider was created pursuant to a specific
13 statute, which I believe it's §62-133.14; is that
14 correct?

15 A. Subject to check, yes.

16 Q. Okay.

17 A. It was a specific statute.

18 Q. And that statute applies only to electric
19 public utilities?

20 A. Yes.

21 Q. Okay. And it dealt with the specific
22 situation, I believe, concerning NCEMA transferring
23 assets to Duke?

24 A. It did.

1 Q. Okay. So that statute wouldn't apply in this
2 situation?

3 A. Well, they're not electric, so no.

4 Q. Thank you.

5 MR. SCHAUER: All right. Thank you. No
6 questions -- no further questions.

7 EXAMINATION BY MR. HIGGINS:

8 Q. A question for Ms. Boswell, based on your
9 response to one of Commissioner Clodfelter's questions.

10 Does the Public Staff agree that the
11 facilities at Deep Point, including the real estate,
12 have been devoted to public use?

13 A. (Michelle Boswell) I believe that the Deep
14 Point terminals were already included in the
15 calculations of rates, so yes. It is a legal question
16 as -- and I am not an attorney -- as to whether or not
17 the rest of them were what is defined in public use.

18 Q. The Public Staff agree that the public is
19 able to use the parking facilities at the Deep Point
20 ferry landing?

21 A. It is the public that utilizes the parking.

22 MR. HIGGINS: Thank you. No further
23 questions.

24 MR. CREECH: Questions, if I can, then?

1 EXAMINATION BY MR. CREECH:

2 Q. Just to follow up on some of the questions.

3 Mr. Hinton, you know, the so-called loan
4 piece that we put in there, that was an affiliate
5 transaction that was never approved by the Commission,
6 correct --

7 A. (John R. Hinton) Correct.

8 Q. -- to your knowledge? Okay.

9 And so one reason that you wanted to button
10 up in here and you just didn't want it to somehow pop
11 up down the road and say, "Hey we've got this loan,"
12 correct?

13 A. Exactly.

14 Q. All right. And then second is -- and this is
15 just to clarify on rate base -- Ms. Boswell, is it your
16 understanding, again, that the applicants weren't
17 suggesting that we have to deal with the acquisition
18 adjustment in this? In fact, that in the Commission's
19 Sub 21 Order, that applicants didn't think it was
20 needed, it wasn't in the amended application that they
21 filed in January 24th, and it wasn't until the rebuttal
22 on February 27th that said, "Hey, we got to figure this
23 out"?

24 A. (Michelle Boswell) It is my recollection that

1 the first time that we heard that an acquisition
2 adjustment rate base needed to be figured out was in
3 the filing of the rebuttal testimony.

4 MR. CREECH: All right. Thank you.

5 COMMISSIONER DUFFLEY: Okay. It's 5:41.

6 Mr. Styers, I think that --

7 You may step down for the day. We'll
8 call you back up for the confidential session first
9 thing tomorrow morning.

10 We're going to start at 9:30 tomorrow
11 morning. Everyone bring their lunches, because we
12 may take a very short lunch break, depending on how
13 far we're able to get in the morning.

14 So before we end for the day, I think,
15 Mr. Styers --

16 MR. STYERS: Would there be any
17 objection if we started with a -- reverse the order
18 of Bion Stewart and John Taylor? Again, not
19 knowing how -- we're planning to finish tomorrow,
20 certainly. But I want to make sure -- Mr. Taylor
21 is from out of state. I want to make sure, is
22 there any objection, and if not, may we switch
23 Mr. Stewart and Mr. Taylor's testimony tomorrow?

24 COMMISSIONER DUFFLEY: Any objection?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

MR. SCHAUER: No.

MR. STYERS: We'll talk to both of those witnesses and see how we want to do that. I appreciate that flexibility. Thank you.

COMMISSIONER DUFFLEY: Okay. Is there anything else for the good of the order?

(No response.)

COMMISSIONER DUFFLEY: Okay. We're in recess for today. We'll begin again at 9:30 a.m.

(The hearing recessed at 5:42 p.m. and set to reconvene at 9:30 a.m. on Friday, March 10, 2023.)

OFFICIAL COPY
Apr 13 2023

CERTIFICATE OF REPORTER

STATE OF NORTH CAROLINA)
COUNTY OF WAKE)

I, Kaylene Clayton, court reporter, the officer before whom the foregoing hearing was conducted, do hereby certify that any witnesses whose testimony may appear in the foregoing hearing were duly sworn; that the foregoing proceedings were taken by me to the best of my ability and thereafter reduced to typewritten format under my direction; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this hearing was taken, and further that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.

This the 20th of MARCH, 2023.

Kaylene Clayton

Kaylene Clayton

Notary Public 202228500270

