

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. A-41, SUB 21

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of)	
Village of Bald Head Island,)	
Complainant,)	
)	
v.)	ORDER HOLDING MOTION FOR
)	PRELIMINARY INJUNCTION IN
Bald Head Island Transportation, Inc.,)	ABEYANCE
and Bald Head Island Limited, LLC,)	
)	
Respondents.)	

BY THE COMMISSION: On February 16, 2022, the Village of Bald Head Island (VBHI or Movant) filed with the Commission in the above-captioned docket (Sub 21 Docket) a Complaint and Request for Determination of Public Utility Status (Complaint) against Bald Head Island Transportation, Inc. (BHIT), and Bald Head Island Limited, LLC (BHIL). The Complaint in part seeks a ruling upon the regulatory nature of the parking lot operations and facilities, located at the Bald Head Island Mainland Ferry Terminal at the Deep Point Marina, as well as the barge and tugboat operations, each owned by BHIL (parking and barge assets).

On August 1, 2022, SharpVue Capital, LLC (SharpVue), was joined as a party.

On September 30, 2022, VBHI filed a verified Motion for Preliminary Injunction Prohibiting Sale of Assets Prior to Determination by Commission (Motion for Preliminary Injunction or Motion).

On October 4, 2022, BHIT, BHIL, and SharpVue (collectively, Respondents) filed a Response in Opposition to Complainant's Motion for Preliminary Injunction (Response).

On October 6, 2022, VBHI filed a Reply in Support of Motion for Preliminary Injunction (Reply).

On October 10, 2022, the parties appeared before the Commission and were heard on the Motion.

On October 11, 2022, Respondents filed Stipulation Commitments in Lieu of Preliminary Injunction.

DISCUSSION AND CONCLUSIONS

On July 14, 2022, BHIT and Bald Head Island Ferry Transportation, LLC (BHIFT), confidentially filed with the Commission in Docket No. A-41, Sub 22 (Sub 22 Docket), an Asset Purchase Agreement (APA), dated May 17, 2022; the APA is also filed in the above-captioned docket as a confidential exhibit. The APA is signed by Lee H. Roberts (Roberts), Manager of SharpVue and Pelican Legacy Holdings, LLC, on behalf of SharpVue and its affiliates, Pelican Services, LLC, Pelican Logistics, LLC, and Pelican Real Property, LLC (collectively, Buyer). The APA is also signed by Charles A. Paul (Paul), President and CEO/Manager of BHIT and BHIL, respectively, on behalf of BHIT and BHIL (collectively, Sellers). Under the terms of the APA, Buyer plans to acquire all of the assets of BHIT and a significant portion of the remaining assets of BHIL, to include the parking and barge assets that are the subject of this proceeding.

In its Motion VBHI moves the Commission to enjoin BHIT, BHIL, and SharpVue from closing on, and transferring ownership of, the assets that are the subject of the APA. VBHI also seeks a temporary injunction pending a determination of the Motion. VBHI argues that Respondents should not be able to disrupt the status quo prior to a Commission determination in this proceeding, such action would be prejudicial to VBHI and other parties, would impair the Commission's ability to award relief, and would interfere with the orderly conduct of the proceeding. VBHI argues that it is likely to succeed on the merits, restating the several arguments and facts it presented in support of its Complaint. VBHI also argues that it and other stakeholders will be irreparably harmed if the parking and barge assets—which it contends are subject to the Commission's regulatory authority—are able to be sold without the Commission determining that the transfer is justified by the public convenience and necessity pursuant to N.C. Gen. Stat. § 62-111(a). VBHI argues that Respondents are attempting to evade this statutorily required oversight by rushing to complete the sale. Finally, VBHI argues that it and other stakeholders will be irreparably harmed if the common ownership—the “corporate linkage”—of the utility property is broken, with no assurances that the status quo could be restored.

Respondents argue that VBHI seeks to improperly influence or restrain the sale of private assets, contrary to its earlier statements. Respondents argue that the Motion does not meet the standard for a preliminary injunction insofar as it does not seek to preserve the status quo of the parties. Respondents also argue that the request is not germane to the subject of the action. Respondents further state that a reviewing court must engage in a balancing process, weighing the potential harm to the plaintiff against the potential harm to the defendant, and argue that VBHI has failed to show that the balance tips in its favor. Respondents agree that courts regularly enjoin pending transactions of property to preserve the status quo but argues that those courts only do so on the condition that the asset disposition imperils the ability of the court to make a decision that has a binding effect on the asset. Respondents argue that no such condition exists here.

At the hearing, Respondents presented witnesses Roberts and Paul who, after being sworn under oath, answered questions propounded by the Commission. The

witnesses and Respondents' counsel made representations and commitments to the Commission on behalf of BHIL, BHIT, and SharpVue and its affiliates. Following the hearing on the Motion, Respondents filed with the Commission their Stipulation Commitments in Lieu of Preliminary Injunction. Among other things, Respondents represented or stipulated that: (1) there has not been any assignment of the APA to any party who was not already a party to it; (2) there have not been any amendments or modifications to the APA; (3) Buyer and Sellers have neither requested to waive nor waived any of Buyer's or Sellers' conditions or required consents; (4) Buyer and Sellers will not close on the parking or barge assets on or before November 18, 2022; and (5) Respondents will provide to the Commission at least 10-days written notice prior to any closing date on the parking and barge assets and prior to execution of any proposed waiver, modification, or amendment to any material terms of the APA.

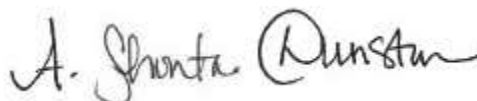
Based upon Respondents' representations and stipulations, the Commission concludes that good cause exists to hold the Motion for Preliminary Injunction in abeyance at this time.

IT IS, THEREFORE, SO ORDERED.

ISSUED BY ORDER OF THE COMMISSION.

This the 17th day of October, 2022.

NORTH CAROLINA UTILITIES COMMISSION

A handwritten signature in black ink that reads "A. Shonta Dunston". The signature is written in a cursive, flowing style.

A. Shonta Dunston, Chief Clerk

Chair Charlotte A. Mitchell and Commissioner Karen M. Kemerait did not participate in this decision.