

PLACE: Dobbs Building, Raleigh, North Carolina
DATE: Wednesday, October 12, 2022
TIME: 9:31 a.m. - 12:31 p.m.
DOCKET NO: A-41, Sub 21
BEFORE: Commissioner ToNola D. Brown-Bland, Presiding
Commissioner Daniel G. Clodfelter
Commissioner Kimberly W. Duffley
Commissioner Jeffrey A. Hughes
Commissioner Floyd B. McKissick, Jr.

IN THE MATTER OF:

Village of Bald Head Island,

Complainant

V.

Bald Head Island Transportation, Inc.,
and Bald Head Island Limited, LLC,

Respondents

Volume 4

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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

3	LEE ROBERTS	PAGE
4	Continued Cross Examination By Mr. Styers.....	7
5	Cross Examination By Mr. Higgins.....	11
6	Redirect Examination By Mr. Ferrell.....	23
7	Examination By Commissioner McKissick.....	34
8	Examination By Commissioner Duffley.....	37
9	Examination By Commissioner Brown-Bland.....	38
10	Examination By Commissioner Duffley.....	41
11	Examination By Mr. Schauer.....	43
12	Examination By Mr. Higgins.....	45
13	JAMES LEONARD	PAGE
14	Direct Examination By Mr. Risinger.....	48
15	Prefiled Direct Testimony of James Leonard.....	52
16	Prefiled Summary Testimony of James Leonard....	81
17	Cross Examination By Mr. Trathen.....	86
18	Cross Examination By Mr. Higgins.....	116
19	Redirect Examination By Mr. Risinger.....	120
20	Examination By Commissioner Brown-Bland.....	123
21	Examination By Commissioner Clodfelter.....	127
22	Examination By Mr. Trathen.....	132
23	JAMES FULTON	PAGE
24	Direct Examination By Mr. Styers.....	138

1	Prefiled Direct Testimony of James Fulton.....	142
2	Prefiled Summary Testimony of James Fulton.....	155
3	Cross Examination By Mr. Trathen.....	160
4	Cross Examination By Mr. Higgins.....	179
5	Redirect Examination By Mr. Styers.....	184
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		

E X H I B I T S

IDENTIFIED/ADMITTED

Roberts Rebuttal Exhibit A..... -/46

Roberts Cross Examination Exhibits -/46
1 and 2

Leonard Exhibits A through L..... 50/137

Village Leonard Cross Examination100/137
Exhibit 1

Village Leonard Cross Examination109/137
Exhibit 2

Village Leonard on Commission's133/138
Questions Exhibit 1

Fulton Exhibits 1 through 6.....140/-

Village Fulton Cross Examination161/-
Exhibit Number 1

Village Fulton Cross Examination167/-
Exhibit Number 2

Village Fulton Cross Examination174/-
Exhibit Number 3

Village Fulton Cross Examination177/-
Exhibit 4

P R O C E E D I N G S

COMMISSIONER BROWN-BLAND: Good morning.

Let's return and go back on the record. We left off with the witness on the stand. The witness may return to the stand. He remains under oath, and BHIT is -- had just begun its cross examination and there was a pending question on the table.

MR. STYERS: There was a pending question. I'll try to remember the pending question and repeat it to the best of my knowledge and recollection.

Whereupon,

LEE ROBERTS,

having previously been duly sworn, was examined and testified as follows:

CONTINUED CROSS EXAMINATION BY MR. STYERS:

Q. Mr. Roberts, prior to making an offer to purchase the assets from Bald Head Island Limited, did you or your company, SharpVue, undertake due diligence of investigation of those assets?

A. Good morning. Yes, we did. Thank you. We undertook extensive due diligence. We were fortunate in that there had been this process underway between Limited and Transportation on the one side and the

1 Authority and the Village on the other side that had
2 been underway for, I think, about four years. So a
3 significant amount of work had been done already.

4 They had sought a public bond rating for the
5 ferry system, itself. It had achieved an investment
6 grade bond rating from Standard and Poor's. There had
7 been an array of appraisals and due diligence reports
8 prepared before we -- before we got involved, but then
9 we, obviously, had to do all of our own due diligence
10 as well, including all the evaluation and appraisal
11 work, so. I've been doing this for about 30 years.
12 This is certainly on the more thorough end of the
13 spectrum, in terms of the amount of due diligence that
14 was done.

15 Q. And there had been appraisals done of the
16 assets that you evaluated?

17 A. Of each asset individually, yes, including
18 the land, including the vessels, including the aspects
19 of what's being called the transportation system. So,
20 I mean, just about every component of the transaction
21 has been individually appraised.

22 Q. Based upon that due diligence, your
23 evaluation of appraisals and other documents, did you
24 make an offer to purchase those assets? You, SharpVue,

1 made an offer to purchase those assets?

2 A. We did.

3 Q. All right. One thing -- did you look at --
4 did your company look at other ferry operations in
5 other parts of the country as part of your due
6 diligence?

7 A. We did. They're -- they're of limited
8 relevance, but we did.

9 Q. Okay. So -- and you made an offer based upon
10 your due diligence?

11 A. We did.

12 Q. Okay. And the amount of that offer for the
13 barge, parking, ferry, tram -- what I'll call
14 transportation assets -- do you remember how much that
15 offer was, approximately?

16 A. Well, that was the \$67.2 million for all of
17 the assets combined, and the \$56 million for the ferry,
18 tram, barge, parking assets.

19 Q. So there are additional assets, in addition
20 to just those associated with the barge, ferry, tram,
21 and parking?

22 A. They are referred to as the supplemental
23 assets in various materials, and those include the
24 marinas on both the mainland and on the island, some

1 development land that was discussed yesterday, some
2 other real estate on the island.

3 Q. You are acquiring interest of the Mitchells'
4 in addition to the assets we talked about in this
5 hearing?

6 A. We believe that we're acquiring just about
7 all of the estate's remaining interests in and around
8 Bald Head and Southport, with the exception of the
9 Indigo property that was -- that's already been
10 discussed, and there is some lighthouse keeper cottages
11 on the island that are being sold separately.

12 Q. So certainly you are a willing buyer of these
13 assets, are you not?

14 A. Indeed.

15 Q. And Bald Head Island Limited and Bald Head
16 Island Transportation are a willing seller?

17 A. Absolutely.

18 Q. And you've reached an agreement on that
19 price?

20 A. We did.

21 Q. And that price is memorialized in the Asset
22 Purchase Agreement?

23 A. That's right.

24 MR. STYERS: No further questions.

Page 11

1 COMMISSIONER BROWN-BLAND: Mr. Higgins?

2 MR. HIGGINS: Yes, ma'am.

3 CROSS EXAMINATION BY MR. HIGGINS:

4 Q. Good morning, Mr. Roberts.

5 A. Good morning.

6 Q. You say in your testimony that SharpVue has a
7 greater interest in the success of Bald Head Island
8 than the Mitchell family did, and the Mitchell family,
9 would you agree, has owned and developed the property
10 for approximately the last 40 years?

11 A. They have.

12 Q. And is SharpVue's -- and I'm quoting --
13 greater interest a product of the purchase price it's
14 prepared to pay for these assets?

15 A. No. I think it's a function of a couple of
16 things. So the Mitchells did, in fact, develop the
17 property, but for the last nine years, as you've heard,
18 the Mitchell estate has been run by professional
19 executors whose interest is in liquidating these
20 assets, and they are exiting entirely their interests
21 in North Carolina, in and around Bald Head and
22 Southport, whereas we are -- we are a local firm. We
23 are based here in Raleigh. Our investors are almost
24 entirely North Carolina based. They all understand

1 what Bald Head is. We have a significant number of
2 homeowners invested with us in this transaction, and
3 we're committed to the state, obviously, but also to
4 the ecosystem in and around the island.

5 Since announcing the transaction, I didn't
6 realize how many people I knew who owned homes on Bald
7 Head until we made this deal public, and since then,
8 I've gotten to know many more. But there's -- there is
9 almost not a day that goes by, literally, that I don't
10 get a call or a text or an email from somebody on the
11 island about something. Sometimes constructively,
12 sometimes about their dog getting seasick on the ferry.
13 But we haven't even closed the transaction yet, and we
14 feel very -- very integrated into the -- the life of
15 the island and the ecosystem there, I think more so
16 than remote managers -- third-party managers based in
17 Texas who are trying to liquidate assets for a -- for
18 an estate have been or would be. It's also important
19 to recognize that the management who's been involved
20 with these assets for decades is staying in place and
21 will continue to stay in place.

22 Q. SharpVue won't be in the business of building
23 homes and developing the island, will it?

24 A. No, but we are acquiring a good bit of real

1 estate on the island and at Deep Point that needs to
2 be -- that needs to be developed or otherwise handled
3 appropriately. And so there's not lots for sale --
4 residential lots for sale that we're buying, but there
5 is plenty of commercial real estate.

6 Q. And that's the building at the Bald Head
7 Marina that you are referring to?

8 A. Well, there's the trailer building at the
9 Bald Head Marina; there's the marinas on both sides,
10 themselves; there's a utility lot on the island;
11 there's another commercial lot on the island; there's
12 the development land at Deep Point that we discussed
13 yesterday. So it's a pretty wide array of real estate.

14 Q. Remind me, what's the extent of what you just
15 called the development land, the Deep Point?

16 A. I think that's, like, 7 and a half acres.

17 Q. I'm sorry, I interrupted you. In terms of
18 acres?

19 A. It's about 7 and a half acres.

20 Q. Okay. Has SharpVue, or any of its
21 subsidiaries, ever owned or operated a passenger ferry?

22 A. We've never owned and operated a passenger
23 ferry before, but our job, as investors, is to make
24 sure that there is strong management in place, which,

Page 14

1 obviously, there is in this case. It's -- we don't
2 have to wonder about their capabilities or sufficiency,
3 because the -- as I say, been doing it for decades. We
4 certainly have good familiarity with operating assets,
5 generally, that are operationally intensive and putting
6 the right management teams in place.

7 I also got to know the ferry system that --
8 the North Carolina publicly owned and operated ferry
9 system pretty well when I was in the -- when I was in
10 the budget office serving as the state budget director.
11 That was actually a time when the state-operated ferry
12 system was going through some financial difficulty, and
13 so we spent a lot of time trying to get that onto a
14 sound footing.

15 Q. For the sake of time, if I was to ask you the
16 same question as to whether SharpVue or its affiliates
17 have ever owned or operated either a parking facility
18 or a barge operation, would your answer be the same as
19 what you just said?

20 A. For a barge operation, yes. For a parking
21 facility, no. We routinely have parking operations as
22 part of our investments.

23 Q. And those are at commercial buildings, or
24 what setting?

1 A. Yes, a commercial building.

2 Q. And those are paid parking arrangements?

3 A. Indeed.

4 Q. Okay. You made a statement in your testimony
5 about the testimony of Mr. Sawyer, who is the CEO of
6 the Bald Head Island Club. You stated that he
7 expressed a fear that parking would be eliminated.

8 Now, would you indulge me and accept, subject
9 to check, as we say in the utility world, that if you
10 did a word search of his testimony, you can't find the
11 word "eliminated"?

12 A. I think there was a general fear created from
13 his testimony that somehow we would develop all the
14 parking lots and there would be no options or fewer
15 options for parking than there are now, when, in fact,
16 we made a commitment to keep all of the parking that's
17 currently available available.

18 Q. Wasn't at least part of Mr. Sawyer's fear
19 also that an unregulated monopolist would acquire the
20 parking operation, and that they consider that
21 essential to the health of the island?

22 A. Well, as I say, we've already made the
23 commitment to keep all of the parking that's available
24 available and to keep pricing constant in real terms.

1 Q. Let's talk about those commitments for a
2 minute.

3 Those -- did SharpVue file a stipulation that
4 the Commission called for yesterday?

5 A. As far as I know, yes.

6 MR. HIGGINS: Counsel, has that
7 happened, actually?

8 MR. FERRELL: It has.

9 Q. Okay. In terms of commitments, those are --
10 do you envision those as being contractual commitments,
11 structural commitments, somehow -- how would they --
12 how would this Commission enforce those commitments if
13 SharpVue is not subject to -- if it acquires these
14 assets and it's not subject to the Commission's
15 regulatory oversight?

16 A. I tried to make clear yesterday that we're
17 willing to enshrine those commitments in whatever way
18 the Commission finds suitable. I thought we had put
19 them in writing. I think we have put them in writing
20 to the Public Staff, and we're willing to enshrine them
21 in any format that the Commission desires.

22 Q. So there was testimony yesterday afternoon
23 during a closed session regarding different plans that
24 SharpVue has analyzed with regard to its prospective

1 acquisition of these assets.

2 Would you agree that there is a broad range
3 of potential outcomes with regard to how these assets
4 are disposed of if you're able to acquire them?

5 A. Of course, just as there has been under the
6 prior ownership.

7 Q. Correct. But human experience tells us that
8 plans can change, correct?

9 A. Of course.

10 Q. You state in your testimony then -- I'm
11 quoting -- that the parking can be operated and achieve
12 a strong cash flow using conservative operating and
13 CapEx assumptions.

14 In fact, the parking is achieving a strong
15 cash flow right now, isn't it?

16 A. Indeed. That's the point. It doesn't
17 require aggressive assumptions or aggressive price
18 increases to make it profitable. It's profitable
19 already. It's -- parking is an inherently profitable
20 business. These parking lots across the street, across
21 McDowell Street, run by the State of North Carolina
22 with no profit motive are highly profitable.

23 Q. Speaking of the parking lots in Raleigh, if
24 SharpVue, hypothetically, decided after a year or two

Page 18

1 to sell the parking operation to McLaurin Parking,
2 how -- how then are the interests of the Bald Head
3 businesses, homeowners, contractors, how are they
4 protected by the Commission?

5 A. First of all, that's not our plan, and I
6 don't think that's gonna happen. I think, if that
7 buyer were out there, then the estate who, again, is
8 trying to liquidate assets as aggressively as possible,
9 would have sold to them already. But we've made clear
10 that we're willing to convey the commitments that we've
11 made on a contractual basis to another buyer. I also
12 think that the market operates -- in this case, you
13 heard testimony yesterday about the 106 acres of land
14 that are for sale directly across the street from our
15 lots. Our lots are 36 acres. There is more than
16 enough land across the street available to replicate
17 our entire operation, and in general, Southport and
18 Brunswick County are not especially land constrained.
19 It's not -- it's not exactly downtown Raleigh.

20 Q. Let's talk about your reference to the
21 market.

22 You stated, in your testimony, and I'm
23 quoting, market forces and basic economics dictate that
24 available parking would be reasonably priced.

Page 19

1 Do you remember making that statement?

2 A. I do.

3 Q. Do you agree or will you concede that there
4 is no existing option for parking in Southport right
5 now for taking the ferry?

6 A. Well, no, I'm not sure I do agree. So there
7 are plenty of other ways of getting to the ferry. If
8 you get there at, you know, 7:00 in the morning, you
9 will see a lot of employees or contractors being
10 dropped off by friends or maybe by rideshare. It's
11 hard to tell by watching.

12 Q. Well, I believe that the evidence that came
13 out yesterday afternoon shows that parking facilities
14 are, during the summer peak months, occupied nearly at
15 100 percent.

16 A. Not during peak months. I think there are
17 three peak weekends.

18 Q. And that facilities are otherwise
19 significantly occupied more than half capacity.

20 My point to you is that, if there is no
21 functional competitor available in Raleigh -- available
22 in Southport offering parking to the public, then there
23 are no market forces disciplining the pricing at Deep
24 Point, are there?

1 A. No, I'm not sure I agree. I think just the
2 fact that the pricing has been -- that parking has been
3 priced at such a reasonable level with so few increases
4 over time -- you heard \$4 a day, \$3 a day, depending on
5 what kind of parking you have -- has meant there is
6 very little incentive to set up a competing operation.
7 If parking were to increase beyond those reasonable
8 levels, which we've committed not to do, then I think
9 you would see competitors arise. Again, there is
10 plenty of land nearby.

11 Q. Let's talk about that daily rate number you
12 just threw out. You testified yesterday that
13 40 percent of the ferry traffic is day-trippers.

14 A. Well, I want to clarify something I said
15 about that. I also said that it's very hard to tell
16 who is a day-tripper and who isn't, because that's not
17 the -- there is not a day-tripper ticket class. 40
18 percent buy a what's called a general fare ticket.

19 Q. Gotcha. 40 percent buy a general fare
20 ticket.

21 If those are day-trippers or other folks who
22 elect not to buy the annual pass --

23 A. Right.

24 Q. -- and they're using the general parking lot,

1 what are they paying per day?

2 A. You pay \$12 a day if you just drive up and
3 park without any sort of pass.

4 Q. Will you agree that, if the parking
5 facilities and the parking operation that's available
6 at Deep Point is Coca-Cola, that there is no Pepsi in
7 Southport?

8 A. No. Again, I'm not sure I agree. There are
9 other ways to get to the -- to the ferry.

10 Q. I understand there are other ways to get to
11 the ferry. Is there any other place to park?

12 A. You can park in Southport and have a friend
13 drop you off. You can take Uber. If you're a
14 contractor and you live in Southport, why wouldn't you
15 get your teenage son to take you to the airport -- take
16 you to the parking the way I do to get you to the
17 airport?

18 Q. You made a statement in your testimony with
19 regard to the commitments that SharpVue's prepared to
20 make, and if you have your testimony, I would ask you
21 to turn to page 11.

22 A. Yup.

23 Q. And look at line 16. Just tell me when
24 you're there.

1 A. You know, again, I'm not sure I have the same
2 copy that counsel here is --

3 Q. Let me just ask you -- see if we can do this
4 just by a question.

5 A. Yeah.

6 Q. I read your testimony to say at that location
7 that Sharp- -- one of SharpVue's proposed commitments
8 was that it would continue the imputation of the
9 approximately \$523,000, which is currently -- which is
10 currently being imputed from parking to the ferry
11 operation.

12 A. Indeed.

13 Q. I read your statement in that regard to
14 indicate that that imputation -- or that SharpVue
15 proposed that that imputation would end when the next
16 ferry rate case was filed; is that correct?

17 A. No, that wasn't my intention. My assumption
18 is, during the next ferry rate case, all that would be
19 discussed, and the appropriate level will be -- will be
20 decided.

21 Q. I don't have any more questions. Thank you.

22 A. Thank you.

23 COMMISSIONER BROWN-BLAND: Redirect?

24 MR. FERRELL: Yes. And, Madam Chair, if

Page 23

1 I might, I just would like to clarify my answer to
2 Mr. Higgins' questions. When he said, "Were the
3 stipulations filed," it was my interpretation that
4 he was speaking about the stipulations we discussed
5 at the end of the preliminary injunction hearing.
6 The conditions that Mr. Roberts has talked about
7 have been included in his rebuttal testimony and
8 have been discussed with the Public Staff. I just
9 wanted to make sure I didn't answer that question
10 improperly. Thank you.

11 COMMISSIONER BROWN-BLAND: All right.
12 Thank you for that clarification.

13 MR. HIGGINS: Yes. My question was only
14 about the stipulation that was discussed during the
15 preliminary injunction hearing.

16 MR. FERRELL: Thank you.

17 MR. HIGGINS: I hadn't seen it, so I
18 didn't know if it had been filed.

19 MR. FERRELL: All right. Then I
20 answered it correctly. Thanks.

21 REDIRECT EXAMINATION BY MR. FERRELL:

22 Q. Mr. Roberts, you were asked about some
23 representations that you've made in various meetings
24 with stakeholders; do you remember that?

1 A. Yes.

2 Q. And I think -- do you recall that Mr. Briggs
3 testified that you were wonderfully cooperative with
4 him and the association in your meetings in your
5 intentions about the assets you were buying from the
6 Mitchell family?

7 A. Yes.

8 Q. How about other stakeholders; were you also
9 able to meet with the Village or their representatives?
10 And if so, how many times, and tell us a little about
11 that.

12 A. Thank you. I think we met with the -- well,
13 we made it a point to meet with Mayor Quinn the day
14 that we announced the transaction, as a courtesy to
15 him, as well as with Susan Rabon from the Authority. I
16 think we then had three formal meetings with the -- the
17 representatives of the Village, the mayor, and the
18 mayor pro tem at Brooks Pierce's offices in Wilmington
19 and then in Raleigh. And then I think we did two
20 formal presentations on the island under the auspices
21 of the Bald Head Island Association, and we've had two
22 formal meetings with the Authority.

23 Q. And during those meetings, did you make the
24 same assurances to the Village personnel that you made

1 to Mr. Briggs and the Association during those
2 meetings?

3 A. We did.

4 Q. Okay. And you believe those assurances have
5 been memorialized in your testimony and your conditions
6 and commitments in this matter?

7 A. I do. I would just add, when it comes to
8 Mr. Briggs and Mayor Pro Tem Gardner and Mayor Quinn,
9 you know, the rest of us get paid for being here, it's
10 our day jobs. They're here on a volunteer basis, and
11 it's probably a lot more than they thought they had
12 signed up for when they agreed to take on these roles.
13 So I really appreciate the time and effort that they
14 spent with us and other stakeholders trying to ensure a
15 good outcome here. It really is a labor of love for
16 them and probably a thankless job back there -- back
17 there on the island.

18 Q. Understood. In those meetings, you also
19 reiterated your intent for a long-term hold of these
20 assets; is that correct?

21 A. Indeed.

22 Q. And I believe you testified yesterday, during
23 questions from the Village, that that long-term hold is
24 the model that's gonna be followed here, correct?

1 A. That's correct.

2 Q. And that's represented in the January 2022
3 presentation?

4 A. It is.

5 Q. Okay. And you've also referred to that as
6 the base case; is that right?

7 A. Yes.

8 Q. Okay. And did you have to basically arrive
9 as the base case before your fiduciary duty allows you
10 to sign APA and move forward with those assets on
11 behalf of the investors?

12 A. Absolutely.

13 Q. You have answered some questions about the
14 conditions that SharpVue is willing to make.

15 Is it your thought, in discussions with the
16 Public Staff, that those would be made as a part of the
17 transfer proceedings in the Sub 22 matter?

18 A. Yes. Again, we're -- we're happy to enshrine
19 those in whatever manner the Commission thinks is
20 appropriate, but we've already put it in writing to the
21 Public Staff.

22 Q. In looking at those conditions, and
23 particularly the rates, do you recall Mr. Briggs'
24 testimony yesterday that the individuals that park at

1 the Deep Point parking lot have a good deal?

2 A. I think so.

3 Q. And do you agree that they have a good deal?

4 A. Absolutely.

5 Q. And does SharpVue intend to continue the good
6 deal that the individuals that park in that lot have?

7 A. Yeah. You don't have to take our word for
8 it. You saw the projections that we showed to our
9 investors, \$0.50 increase in pricing every other year.

10 Q. And there's been questions about the timing
11 of the commitments as it relates to parking. I believe
12 your rebuttal testimony says that you have proposed or
13 are considering a four-year commitment on those
14 conditions.

15 Why four years? Why not go ahead and say
16 it's forever?

17 A. Not set in stone. It's -- we're obviously
18 happy to discuss an appropriate length with everybody
19 here. Perpetuity is obviously a long time. We need --
20 we need some ability to make predictions for our
21 investors, and so four years seemed like a reasonable
22 amount of time. But again, it's not set in stone.

23 Q. So that's something you would anticipate
24 discussing with the Public Staff as a part of any

1 consideration of conditions going forward with the
2 transfer?

3 A. By all means.

4 Q. And there's been also discussion about what's
5 next; what happens if SharpVue is approached by an
6 unexpected buyer that would buy these assets. And you
7 said that you were open to discussing, you know,
8 binding any purchaser of those assets for some period
9 of time.

10 How would you envision that would work?

11 A. I think contract law has the ability to
12 handle that nuance.

13 Q. So it would just be part of any transfer of
14 any asset that might been sold that's related to the
15 proceeding?

16 A. That's my instinct. If there are other
17 better ways of doing it, we're certainly open to that.

18 Q. Okay. In discussing SharpVue's investment on
19 the island, you just answered a series of questions
20 from Mr. Higgins. Talk about the access to the marina.

21 Is it your understanding that that's public
22 and would continue as such?

23 A. They are private roads once you turn off of
24 State Road 211, and I think that's probably better for

1 everybody than the taxpayers of Brunswick County
2 maintaining those roads. But access is unfettered and
3 will remain unfettered. So there is a marina that uses
4 the same roads that people need to get to and from.
5 The shipping and receiving operations for the barge use
6 those roads. There are easements in place governing
7 those roads. The Town of Southport has a substation on
8 the property for which it has an easement. And, more
9 broadly, we're just incentivized to have traffic --
10 we're operating a ferry, a commercial operation, we're
11 incentivized to make it as easy as possible for people
12 to get there and use our service, just like North Hills
13 Mall is incentivized. Those are private roads too.
14 You don't see anybody stopping access there. So we'll
15 make whatever commitments necessary there about access,
16 but they're already governed by these easements.

17 Q. Right. Mr. Styers asked you some questions
18 about your valuation of the assets and the due
19 diligence that you performed before entering the APA.

20 Can you talk a little bit about your
21 fiduciary duty to the investors in order to make sure
22 those are wise decisions, the purchase assets and the
23 valuation?

24 A. Look, we are fiduciaries. It's not my money.

Page 30

1 It's mostly not my money. And we have a responsibility
2 to ensure that we're using our investors' money wisely
3 and in a prudent way, and that we're committing it in a
4 way that we think has a sound opportunity of earning
5 them a fair return, and I think we've done that in this
6 case.

7 Obviously, Mr. Paul and the representatives
8 of Limited and Transportation have the same fiduciary
9 responsibility to -- to their investors, as it were, to
10 the estate, and that's what makes an arm's-length
11 transaction.

12 Q. In valuing the assets, and in some of the
13 information included in the investor presentation that
14 you discussed yesterday, there were certain assumptions
15 made about approvals going forward either for rates or
16 otherwise.

17 Do you recognize that those are all open
18 questions that the Commission would decide at the
19 appropriate time?

20 A. Yes, of course.

21 Q. And you just had to build in certain
22 projections for purposes of analyzing the transaction?

23 A. Indeed.

24 Q. There is also discussion about the increased

1 ridership as a goal.

2 Does the analysis build in a modest increase
3 based on construction on the island, as far as
4 analyzing the potential returns on those assets?

5 A. The analysis we showed yesterday in the
6 financial materials shows an increase of ridership
7 that's actually significantly below what's been
8 achieved, historically, again, just in the -- in the
9 interest of showing conservative projections that
10 reflect the stability of these -- of these cash flows.

11 Q. Okay. Yesterday -- well, you were asked some
12 questions about language you used in your investor
13 presentation that -- the phrase de facto monopoly; do
14 you remember that yesterday?

15 A. Yes.

16 Q. Okay. And were you in the Commission room
17 when Dr. Wright testified that parking is not a natural
18 monopoly but is in a de facto monopoly position?

19 A. Yes.

20 Q. Okay. And the use of that phrase "de facto
21 monopoly," what does that, kind of, mean to you when
22 you made it, and what was the context?

23 A. So I think what we have at Deep Point now is
24 there's -- there's not another place to park adjacent

1 to the ferry. So if you want the most convenient way
2 of getting to the ferry and you're willing to pay
3 between \$3 and \$12 a day to do that, depending on what
4 kind of ticket you buy, you use the lots that are part
5 of this transaction. But that's far different from a
6 natural monopoly, which is what you think of in the
7 context of utilities law or in a trust law in which
8 something like power generation -- in which there truly
9 is no choice, no options, no elasticity for the
10 consumer.

11 Q. And you talked a lot about the economic
12 properties and pressures that exist here that are not
13 likely to lead to predatory pricing such that the
14 protection of the public is needed.

15 Can you just expand on that a little bit?

16 A. Well, so I think the biggest misconception,
17 from the complainant's case, is that the homeowners
18 represent the largest source of marginal demand.
19 You've heard the testimony that homeowners make up
20 7 percent of the traffic on the ferries. You heard Mr.
21 Gardner's testimony about their vote on the bond, I
22 think, 275, 280 people. That's two ferries. Less than
23 two ferries of capacity. Their entire electorate. So
24 what drives ridership and what drives usage of the

1 parking is all of these other uses: the renters, the
2 employees, the contractors, and the day-trippers.
3 Their demand -- I don't want to pretend that their
4 demand is perfectly elastic, but it's a heck of a lot
5 more elastic than the average utility consumer. They
6 are price sensitive, they have choices, they have other
7 options for getting to the ferry. They have other
8 options for getting to the island. You heard about the
9 water taxis. There are plenty of people who take their
10 own boats back and forth. There are marinas on both
11 sides. There is a marina at Southport that's not part
12 of this transaction, it's not owned either by Limited
13 or Transportation. It will be owned by SharpVue, owned
14 by an independent third-party where a lot of islanders
15 keep their boats. And I think everybody on the island
16 also knows there is a pretty healthy black market. A
17 lot of college kids earning money for college running
18 people back and forth on their own boats. Again, not
19 using the Deep Point Marina. So there is a pretty
20 healthy market already, and if pricing wasn't as
21 reasonable as it was now, you'd just see that market
22 grow.

23 Q. And even though you believe that the economic
24 pressures are such that prices and availability would

Page 34

1 stay in place, you're still going to make those
2 conditions to raise comfort levels in the transfer
3 proceeding?

4 A. That's right.

5 Q. Okay.

6 MR. FERRELL: Madam Chair, I do not have
7 any further questions at this time.

8 COMMISSIONER BROWN-BLAND: All right.
9 Any questions from the Commission?

10 Commissioner McKissick?

11 EXAMINATION BY COMMISSIONER MCKISSICK:

12 Q. Just one or two questions. There has been
13 discussion about this 106-acre tract of land that's
14 across from the Deep Point terminal.

15 Are you familiar with that tract of land?

16 A. I'm certainly aware of it. I haven't walked
17 it.

18 Q. You haven't walked it. Now, if -- have --
19 has SharpVue, or any of its affiliates, or any other
20 entity that you may own or control, expressed interest
21 in acquiring that property?

22 A. No. In fact, when there was testimony
23 yesterday about the purchase price, that was news to
24 me.

1 Q. That was news to you.

2 A. I hadn't heard that. I was simply aware.
3 You can't miss that there is a big "for sale" sign
4 across the street from the Deep Point lot. So I was
5 aware that it was for sale, but that's -- that's about
6 as much as I know.

7 Q. And in terms of the parking that's available
8 where, I guess, Indigo Plantation is, you are familiar
9 with that as well?

10 A. I am.

11 Q. And I guess I ask the same question.
12 Has SharpVue or any of its affiliates, or any
13 other entity that you own or control, expressed
14 interest in acquiring that parcel?

15 A. We will not be acquiring that parcel. So we
16 did have conversations with Limited early on and with
17 the developer who is acquiring that parcel, who I
18 believe is under contract to acquire that parcel, about
19 whether we could play a constructive role, but those
20 discussions ultimately never went anywhere, and I could
21 say here, on the record, we will not be acquiring any
22 assets related to Indigo or any part of that property.

23 Q. All right. And are you aware of what the
24 entity that will be acquiring it -- I gather is there a

1 contract separate and apart where they may be selling
2 that Indigo property to, kind of, a --

3 A. I don't want to speak to the details of a
4 transaction that I'm not a part of. My -- and Mr. Paul
5 is here and is part of that transaction, but my
6 understanding is that it is under contract to a -- to a
7 real estate developer, but that's -- that's the extent
8 of my understanding.

9 Q. The extent of your knowledge?

10 A. Yes.

11 Q. And then lastly, I mean, of course there is
12 the Asset Purchase Agreement that includes, you know,
13 everything that we discussed.

14 If for some reason the North Carolina
15 Utilities Commission decided that the parking and/or
16 the barge should be subject to a Utility Commission
17 regulation, would SharpVue and its affiliates proceed
18 in closing on the transaction?

19 A. I think we're contractually obligated to do
20 so under the APA.

21 Q. Thank you. I don't have any further
22 questions.

23 COMMISSIONER BROWN-BLAND: Commissioner
24 Duffley?

1 EXAMINATION BY COMMISSIONER DUFFLEY:

2 Q. Good morning. So yesterday you testified
3 about a path to profitability for the ferry, and
4 without mentioning the numbers, you gave certain
5 numbers for one year and then the next year.

6 And with that path to profitability, were you
7 including the imputation of the parking revenues, and
8 if you were, is it the current amount or did you use
9 different amounts?

10 A. We used the -- we used the current amount,
11 but I also do think that it's possible for the -- for
12 the ferry to become more profitable on its own without
13 the imputation, largely through -- again, through the
14 increased ridership. So every ferry that leaves with
15 an empty seat on it is a loss to us. It's just like an
16 airplane taking off, and there are an awful lot of --
17 people talk about 4th of July weekend, but that's not
18 the average ferry ride. The average ferry ride is not
19 particularly full. And by increasing ridership, we
20 can -- we can increase the profitability of that
21 operation. The costs are relatively fixed. It costs
22 roughly the same amount to run the ferry with one
23 person on it as with 150 people on it. So the path to
24 profitability is through increase in the ridership.

1 Q. Okay. Thank you.

2 EXAMINATION BY COMMISSIONER BROWN-BLAND:

3 Q. Good morning, Mr. Roberts.

4 A. Good morning.

5 Q. So earlier in the hearing, I think on the
6 first day, we heard that -- something to the effect
7 that a tolling agreement was being worked on with
8 regard to the APA; has that been entered into at this
9 point? And I think it pertained to the outside date.

10 A. We certainly reached an agreement from a
11 commercial standpoint, whether it's been formally
12 executed and --

13 Q. No. That answers --

14 A. Yes.

15 Q. -- answers my question right there. Thank
16 you.

17 So is the Deep Point terminal and the Bald
18 Head Island terminal, are they parts of the parking
19 facility asset?

20 A. No. The terminal building, itself, is not --
21 is not part of the parking. That's part of the ferry
22 operations. And same on the -- same on the island.

23 Q. And -- but in that manner, it's, therefore,
24 part of the assets that are being purchased --

1 A. The --

2 Q. -- as part of the ferry?

3 A. Yes. The part of the transaction includes
4 the -- there is a terminal building on the mainland at
5 Deep Point. There is not really a terminal building in
6 the same way on the -- on the island. There's a --
7 there's a dock. There is a landing with a covered
8 area.

9 Q. All right. Thank you. Is it true that there
10 is no market for the parking lot facility that would
11 support its valuation if it were not used as a parking
12 lot for the ferry?

13 A. I think that probably is true at the current
14 time. I think the highest and best use for that
15 36 acres of land is as parking.

16 Q. And that's the current -- that was my next
17 question.

18 Is there another better use -- is there
19 another better use for the property that would support
20 the same valuation?

21 A. I think the highest and best use is as
22 parking. As I mentioned yesterday, there is some
23 development land adjacent to the marina, adjacent to
24 the parking that's not currently being used. It's

Page 40

1 undeveloped land that's not needed for parking that we
2 believe we can develop as -- into an alternative use,
3 but that -- that won't touch the current parking at
4 all. And again, we're committed to keep the same
5 amount of parking available.

6 Q. And a moment ago you gave a response about
7 the availability of other means for people to travel
8 back and forth to the island. You mentioned, like, the
9 water taxis.

10 Given that the island is a private island, do
11 you know whether there -- whether there are landing
12 points for these vehic- -- for these other vehicles
13 that would remain unimpeded?

14 A. Yeah. That happens routinely now. And
15 importantly, the Village owns the entrance to the
16 marina.

17 Q. All right. And the last question, are there
18 any concerns, from SharpVue's point of view, about the
19 parking and barge being subject to the regulation of
20 this Commission that we haven't discussed? And if we
21 need to go into confidential session to answer that
22 question, I just want to be sure all the concerns are
23 in the record.

24 A. No, I appreciate that. To me, regulation --

Page 41

1 there is a cost to the regulation, itself. I mean,
2 look around. You've got all these lawyers. You would
3 have to go through the rate case process. It's likely
4 that that would be contested. So that process imposes
5 a cost which is then borne by the users. Those costs
6 of regulation are in the rate base and flow through to
7 the cost of parking the way they do now to the cost of
8 riding the ferry. And so if the -- if pricing has been
9 stable for 30 years and the new buyer commits to
10 keeping pricing stable, and market forces, in our view,
11 ensure that pricing will remain stable, to me,
12 regulation would just add a cost borne by the users in
13 exchange for something that's not necessary.

14 Q. And any other concerns, or from where you
15 sit, all the concerns have now been vetted and stated
16 in this record?

17 A. I think so, thank you.

18 Q. All right.

19 COMMISSIONER BROWN-BLAND: Commissioner
20 Duffley?

21 EXAMINATION BY COMMISSIONER DUFFLEY:

22 Q. On page 10 of your testimony -- and this is
23 your commitment to parking -- you talk about how you
24 would succeed in that commitment, and you state,

1 "Through the acquisition and development of other
2 conveniently located parking lots with regular shuttle
3 service to convey passengers and their baggage to and
4 from the Deep Point terminal."

5 My question is, how far, or the timing, do
6 you think is reasonable? Does that question make sense
7 to you? What's a reasonable amount of time to provide
8 quality service for parking? Is it a 10-minute shuttle
9 ride, is it a 30-minute shuttle ride?

10 A. Thanks. First of all, we don't have any plan
11 to develop the lots and the parking somewhere else.
12 Hopefully I made that clear. And I do think the
13 highest and best use for that land is as parking. What
14 we had in mind when we made that commitment was the
15 previous parking that was available at Indigo, and I
16 don't mean using Indigo to service Deep Point. What I
17 mean is when all -- when the ferry terminal was at
18 Indigo, there were shuttle lots moving passengers from
19 more remote parking areas at Indigo to the ferry
20 terminal at Indigo. And so that's what we had in mind
21 when we -- when we made that commitment. And others
22 with more history with the Indigo assets could speak to
23 how long that shuttle ride was, but I think it was a
24 few minutes.

1 Q. So the answer to the question is 5 to 10
2 minutes?

3 A. Yeah, I think that's fair.

4 Q. Thank you.

5 COMMISSIONER BROWN-BLAND: All right.

6 Are there questions on Commission's questions? And
7 I'll start with the Village.

8 MR. SCHAUER: I do.

9 COMMISSIONER BROWN-BLAND: Mr. Schauer.

10 EXAMINATION BY MR. SCHAUER:

11 Q. Commissioner Brown-Bland asked you about some
12 of the other means of transportation, and I believe you
13 referenced earlier -- she was responding to your
14 testimony about, I guess, private boats, water taxis,
15 and what I'll call the college students, those three
16 categories.

17 A. Yes.

18 Q. My understanding is roughly 400,000
19 passengers traveled on the ferry in 2021; is that about
20 right?

21 A. I have a slightly different number, but for
22 these purposes, that's fine.

23 Q. Okay. Is it your understanding that the
24 water taxis, private boats, and college students have

1 the capacity to transfer 400,000 individual passengers?

2 A. Oh, no, no. I wasn't trying to imply that
3 they were full substitutes for the ferries. My point
4 was that most inelastic source of demand is the
5 homeowners. Everybody -- the demand from all of the
6 other riders, which is the bulk of that demand, that
7 demand is more elastic than it is for the homeowners.
8 That demand is least elastic for the homeowners who
9 have to get to their houses, and they're the ones who
10 have these other sources. The boats, for example, the
11 private boats, I think most people who own boats also
12 own homes on the island.

13 Q. Okay. But in terms of the -- I would say,
14 maybe the broader public, they don't have the same
15 ability to use these other means of transportation?

16 A. I don't know about -- they certainly have the
17 same ability. I think you heard testimony from the
18 Club that they're a heavy user of the water taxi
19 services. It's all about marginal demand.

20 MR. SCHAUER: No further questions.

21 MR. STYERS: I have no questions.

22 COMMISSIONER BROWN-BLAND: Questions on
23 Commission's questions?

24 MR. STYERS: No.

1 COMMISSIONER BROWN-BLAND: Questions on
2 Commission's questions, Mr. Higgins?

3 MR. HIGGINS: Yes, ma'am.

4 EXAMINATION BY MR. HIGGINS:

5 Q. I have a question, Mr. Roberts. You talked
6 about the inelasticity of the demand of the roughly 275
7 full-time residents.

8 Do you recall the evidence that there are now
9 approximately 1,250 homes on Bald Head?

10 A. Yes.

11 Q. So there are more than 275 homeowners that
12 are going back and forth from the island, aren't there?

13 A. Oh, yes. No. They're just not full-time
14 residents. And I think if it's your beach house, your
15 vacation house, your demand is probably a little more
16 elastic than if it's your primary residence. I'm not
17 saying fully elastic. It's all on a spectrum. I'm
18 just saying more elastic.

19 Q. Well, if it's your beach house and you want
20 to get there, you have to get across the water somehow?

21 A. But as you said, if you want to get there.
22 If it's your primary residence, you have to get there;
23 if it's your beach house, you want to get there.

24 Q. Fair enough. I don't have any other

1 questions.

2 COMMISSIONER BROWN-BLAND: Questions,
3 Mr. Ferrell?

4 MR. FERRELL: No questions.

5 COMMISSIONER BROWN-BLAND: All right. I
6 will entertain your motions.

7 MR. FERRELL: Madam Chair, move the
8 Exhibit A to the rebuttal testimony of Lee Roberts
9 into evidence. I believe the testimony is already
10 admitted.

11 COMMISSIONER BROWN-BLAND: Correct.
12 There being no objection, that motion is allowed
13 and Exhibit A is received into evidence.

14 (Roberts Rebuttal Exhibit A was admitted
15 into evidence.)

16 MR. SCHAUER: Commissioner Brown-Bland,
17 we would ask that Roberts Cross Examination
18 Exhibits 1 and 2 be moved into evidence.

19 COMMISSIONER BROWN-BLAND: That motion
20 is also allowed.

21 (Roberts Cross Examination Exhibits 1
22 and 2 were admitted into evidence.)

23 COMMISSIONER BROWN-BLAND: I think that
24 was all.

Page 47

1 MR. FERRELL: And actually one last
2 thing. There was one other document used in cross
3 with Mr. Roberts, the July 2022 presen- --
4 January 2022 presentation. That's not going to be
5 moved in by the Village; we would like to move that
6 into evidence.

7 COMMISSIONER BROWN-BLAND: Is that the
8 one that's already in as a part of Dr. Wright's
9 testimony?

10 MR. SCHAUER: Correct.

11 MR. FERRELL: It was attached? Okay.
12 Just wanted to make sure. Thank you.

13 COMMISSIONER BROWN-BLAND: All right.
14 Mr. Roberts, thank you. You may be excused.

15 All right. The case is now down to the
16 Respondent -- Respondents.

17 MR. RISINGER: Limited and BHIT call
18 James Leonard.

19 COMMISSIONER BROWN-BLAND: Would you
20 place your left hand on the Bible and raise your
21 right.

22 Whereupon,

23 JAMES LEONARD,
24 having first been duly sworn, was examined

1 and testified as follows:

2 COMMISSIONER BROWN-BLAND: All right.

3 Please be seated.

4 Mr. Risinger?

5 DIRECT EXAMINATION BY MR. RISINGER:

6 Q. Good morning, Mr. Leonard.

7 A. Good morning.

8 Q. Could you please state your name and business
9 address for the record, please?

10 A. My name is James Leonard. My business
11 address is 4040 Lake Washington Boulevard, Kirkland,
12 Washington.

13 COMMISSIONER BROWN-BLAND: Mr. Leonard,
14 your voice, sort of, trails off at the end, so just
15 make sure you --

16 THE WITNESS: I'm sorry about that.
17 I'll get a little closer.

18 COMMISSIONER BROWN-BLAND: All right.
19 That will help our court reporter out.

20 THE WITNESS: Thank you.

21 Q. Mr. Leonard, could you describe the -- how
22 you're employed?

23 A. I'm a founding partner in Mercator
24 International, LLC. We're a transportation logistics

Page 49

1 consulting firm.

2 Q. Mr. Leonard, have you caused to be filed in
3 this docket direct testimony consisting of 29 pages in
4 question and answer format and 12 associated exhibits?

5 A. I have.

6 Q. And are those exhibits identified within the
7 testimony?

8 A. Yes, they are.

9 Q. Was that testimony prepared by you or under
10 your direction?

11 A. Yes, it was.

12 Q. If you were asked those same questions today,
13 now that you're under oath, would you provide the same
14 answers as in your prefiled testimony?

15 A. I would.

16 Q. Do you have any corrections or additions to
17 either -- to your testimony in this action?

18 A. I had one small correction. Sorry. I had it
19 written down on a note.

20 (Witness peruses document.)

21 Page 15, line 11, strike the word "30" and
22 "year."

23 MR. TRATHEN: Could you say that again?

24 THE WITNESS: Strike the two words "30"

1 and "year."

2 MR. TRATHEN: Thank you.

3 Q. Mr. Leonard, have you prepared a summary of
4 your prefiled testimony to present today?

5 A. I have.

6 Q. And were you to deliver that summary today
7 orally and under oath, would you do so as it has been
8 supplied and filed with the Commission?

9 A. Yes, I would.

10 MR. RISINGER: Madam Chair, at this
11 time, Respondents move for admission into evidence
12 the prefiled direct testimony consisting of 29
13 pages in question and answer format and the 12
14 associated exhibits, as well as the summary of
15 Mr. Leonard's testimony.

16 COMMISSIONER BROWN-BLAND: The direct
17 evidence of witness James Leonard will be received
18 into evidence at this time and treated as if given
19 orally from the witness stand. The summary will
20 also be received into evidence at this time. The
21 exhibits attached to the prefiled direct testimony
22 will be identified as they were when prefiled.

23 (Leonard Exhibits A through L were
24 identified as they were marked when

1 prefiled.)

2 (Whereupon, the prefiled direct
3 testimony of James Leonard and the
4 prefiled summary testimony of
5 James Leonard were copied into the
6 record as if given orally from the
7 stand.)
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**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.)	
)	
BALD HEAD ISLAND)	
TRANSPORTATION, INC. and)	
BALD HEAD ISLAND LIMITED,)	
LLC,)	
Respondents.)	

**PUBLIC REDACTED
DIRECT TESTIMONY
OF JAMES LEONARD**

September 8, 2022

PUBLIC REDACTED LEONARD DIRECT TESTIMONY

Q: Could you please identify yourself for the record?

A: My name is James Leonard, and I am a founding partner of Mercator International LLC.

Q: What is Mercator International?

A: Mercator International is an independent and experienced advisor to stakeholders across the global transportation sector. It provides services to a diverse group of stakeholders operating in industries across the freight transportation spectrum – from private equity investors looking for appropriate infrastructure assets to carriers, port authorities, terminal operators, industrial real estate developers, and beneficial cargo owners. Mercator regularly works for, and addresses issues relevant to, port authorities, terminal operators, ocean carriers, rail and motor companies, financial institutions, and real estate investors.

Q: Could you describe for the Commission your experience with maritime transportation issues?

A: I have more than 40 years of experience in the transportation and infrastructure field and have had a particular focus in shipping economics and port strategies as well as the financial and operational analysis of a wide variety of

1 transportation businesses. I have designed and evaluated passenger and freight
2 transportation networks and marine terminals, developed operational and financial
3 models for transportation infrastructure projects, and evaluated and prepared
4 forecasts for cargo markets. I have developed productivity and profitability
5 improvement strategies for carriers and terminal operators, and have been deeply
6 involved in the design and construction of cargo ships.

7 I have considerable experience in shipping, ferry and maritime activities. I
8 provided market research, and commercial and operational planning for the Hawaii
9 Superferry system – an intra-island ferry system for the Hawaiian Islands. I have
10 provided network planning and forecasting for the Panama Canal Authority that
11 aided consideration of shipment volumes and demand for additional terminal
12 capacity, and have advised on financing for more than USD 1.5 billion of recent
13 port developments on the US East Coast.¹ I worked for Macquarie Capital to
14 identify, evaluate, purchase and manage infrastructure assets for Macquarie's
15 infrastructure funds, and count as clients many leading infrastructure investment
16 funds which are actively investing in and managing transportation assets.

¹ Projects included bond financing of the PNCT expansion at the Port of New York, Seagirt terminal expansion at Port of Baltimore, Port Authority of South Carolina container expansions at Charleston; Georgia Port Authority container capacity expansions at Savannah.

1 I have provided expert testimony before the International Center for the Settlement
2 of Investment Disputes, the World Bank, the ICC International Court of
3 Arbitration, the U.S. Federal Maritime Commission, the Impact Assessment
4 Agency of Canada, and in cases before the United States District Court for the
5 Southern District of Florida.

6 My CV is attached as Exhibit A.

7 **Q: Are you familiar with the assets which are the subject matter of this**
8 **proceeding – the parking and tug/barge systems operated by Bald Head**
9 **Island Limited, LLC (“Limited” or “BHIL”)?**

10 **A:** Very much so. My firm, with me as the lead, conducted a detailed analysis
11 of the parking and tug/barge systems in 2017 as part of an overall analysis of
12 transportation and logistics assets held and operated by Limited as well as those of
13 Bald Head Island Transportation, Inc. (“BHIT”). That work, which involved more
14 than 500 person hours of effort, resulted in a 75-page, January 14, 2018 report,
15 “Bald Head Island Seller’s Due Diligence” that I understand has been produced to
16 all parties as a confidential document in this matter and is attached as Exhibit B.

17 Further, Mercator was subsequently engaged by the Bald Head Island
18 Transportation Authority (“Authority” or “BHITA”) in support of its efforts to
19 acquire the regulated and unregulated assets of BHIL and BHIT. Building on the

work performed for the Due Diligence report, Mercator prepared a “Bond Feasibility Study” for the Authority that was designed to aid the efforts of the transaction’s lead financial advisors – Davenport Capital Management and UBS. Our report was aimed at providing assurance that the assets and operations being acquired would allow the Authority to pay off its debts. This report was shared with Standard and Poor’s, which on the basis of our work and their own analysis, assigned an investment grade rating (BBB-) to the prospective debt offering. I understand that the Bond Feasibility Study has been produced to all parties as a confidential document in this matter and is attached as Exhibit C. Because of events outside of Mercator’s control, only a draft of the Feasibility Study exists because of the inability of the Authority to move forward with its acquisition of the BHIL and BHIT assets.

Q: What were the circumstances under which your work that resulted in the Due Diligence report was conducted?

A: The North Carolina General Assembly had passed, and the Governor had signed into law, a bill that created a regional, multi-jurisdictional Authority to which BHIL intended to sell the unregulated logistics assets at issue in this proceeding – the parking and barge/tug systems – and to which BHIT also intended to sell the ferry and tram systems that are currently regulated by the Commission.

1 **Q: What did you understand was the reason that the analysis and**
2 **conclusions in your report were sought?**

3 **A:** I understood there to be two objectives: 1) to identify any issues that would
4 best be addressed by the sellers (BHIL-BHIT) prior to undertaking a transaction, so
5 that BHIL could take steps to reduce the chance that a buyer would find a problem
6 with the assets or operations that might disrupt a sale process, and 2) to develop an
7 independent valuation of the assets to help the seller better understand the price at
8 which an arms length commercial transaction might be completed. We understood
9 that the need for this “commercial reference” was related to the mandate of the
10 Authority to purchase the assets at a price that reflected reasonable commercial
11 values that were in line with what the operations and assets would receive in a
12 private sale to a commercial buyer or investor.

13 **Q: Was Mercator hired to set the price for a transaction between Limited**
14 **and the Authority?**

15 **A:** No. Our work was undertaken to develop an estimated valuation to help the
16 parties come to an agreement on the market value for the underlying operations
17 and assets. With our report, including our analysis, assumptions, forecasts, and
18 models, the parties gained the tools to make further refinements and decide for
19 themselves on a valuation and transaction price.

1 **Q:** As we sit here today, of course, no sale to the Authority occurred. Has
2 there been any subsequent data that would support or contradict the
3 commercial value estimate you and Mercator developed for the Due Diligence
4 report?

5 **A:** We have not undertaken a new valuation since completing the Due
6 Diligence Report in 2018. Our estimate, based on analysis of then current data and
7 forecasting for future performance of the regulated and unregulated activities of
8 BHIT and BHIL, was that they had a combined, or collective Enterprise Value of
9 **[BEGIN CONFIDENTIAL]** [REDACTED] **[END**
10 **CONFIDENTIAL]**.

11 While passenger and freight traffic and the financial performance of the various
12 operations initially declined during the COVID pandemic, I understand the system
13 has largely returned to the traffic levels that we had forecasted.

14 As a result of the delays to the Authority transaction, some of the capital spending
15 that we had assumed a buyer would undertake, such as for the expansion of
16 parking areas, has already been incurred and paid for by BHIL, which would have
17 the effect of increasing the value.

18 I understand that in a private sale of those same assets to SharpVue Capital, LLC,
19 that is a part of the record of this proceeding, the portion of the \$67.7 million

1 transaction between BHIL, BHIT and SharpVue that is allocated to the same assets
2 we valued, and which the Authority would have purchased, is approximately \$56
3 million, effectively the same amount as our estimate.

4 The Authority and BHIL had reached agreement on a sale of those same assets for
5 approximately \$48 million, about 15% less than our estimate.

6 Our estimated market value and the market reference from SharpVue would seem
7 to confirm that the Authority was poised to acquire them at or below fair market
8 value, satisfying what I understand to be the Authority's statutory obligation with
9 respect to the price to be paid.

10 **Q: So that the Commission has a frame of reference for the various assets**
11 **and operations at issue, could you briefly describe the regulated assets?**

12 **A:** First, of course, BHIT owns and operates a ferry that provides passenger and
13 luggage transport services across the Cape Fear River between terminals in
14 Southport, NC and on Bald Head Island, and a tram operation that transports ferry
15 passengers and their luggage to their ultimate destinations on the Island. BHIT is a
16 privately owned subsidiary of BHIL, and the rates and service of BHIT are
17 regulated by the Commission. For those that may not have visited the Island, or
18 have a frame of reference for how it is situated on the North Carolina coast, Figure
19 1 (*see Exhibit D*), below, illustrates it:

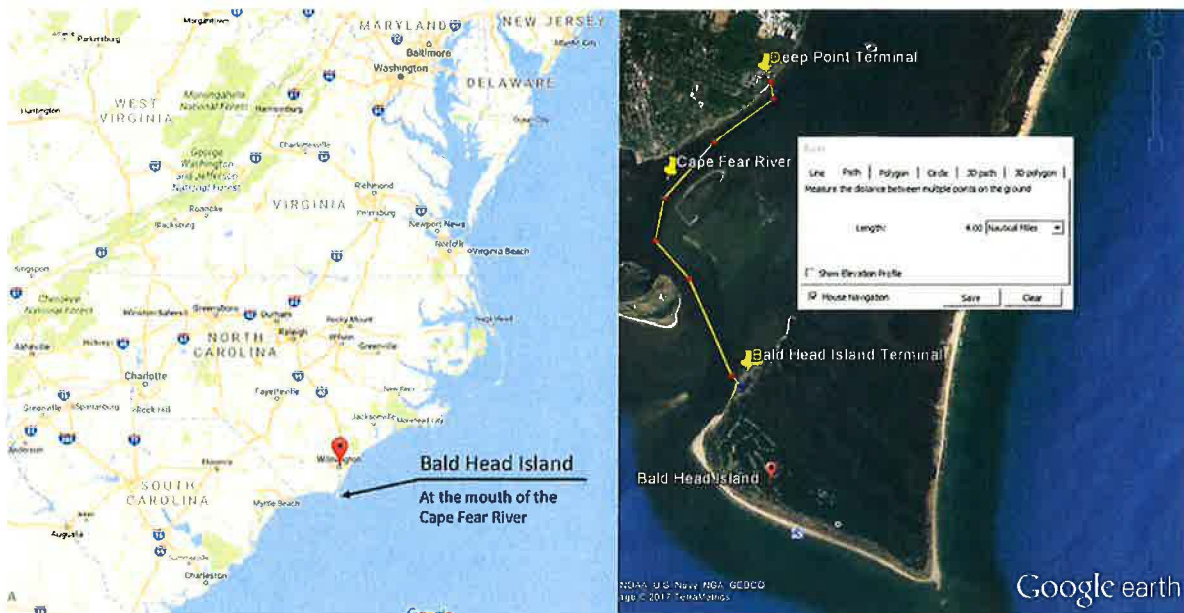


Figure 1: Location and route of the ferry and freight barge services across the Cape Fear River

As noted in Figure 1, a one-way trip is approximately 4 nautical miles and requires about 30 minutes, including loading and discharge time. BHIT's ferry operations are conducted using four passenger ferries – the *Adventure*, *Sans Souci*, *Patriot*, and *Ranger* – each capable of carrying 150 passengers. BHIT's ferries typically make a minimum of 17 roundtrip sailings per day during the low season and a minimum of 24 during the summer season. BHIT's ferries operate on a schedule approved by the Commission, and our observation in producing the Due Diligence report was that the ferry operation was well managed and carefully run, and resulted in a high level of schedule integrity and vessel safety.

BHIT also provides tram service that carries passengers between the Island terminal and their Island destination. This tram service is included in some NCUC

1 ticketing/tariff classes and not included in others. Our analysis indicated that on
2 average, no more than about [BEGIN CONFIDENTIAL] [REDACTED] [END
3 CONFIDENTIAL] of ferry passengers use the tram. For those that may not have
4 visited the Island or have a frame of reference for the tram's services, Figure 2 (*see*
5 Exhibit E), below, shows the typical tram equipment used:



6
7 Figure 2: BHIT tram truck and passenger trailer

8 Trams make one round trip in just under an hour, dropping and picking up
9 passengers along the way. Departing passengers are picked up on the round trip
10 and taken to the Island terminal.

11 **Q: Could you briefly describe the unregulated assets?**

1 **A:** BHIL operates a parking facility adjacent to the Deep Point Terminal in
2 Southport, as well as a tug/barge operation that operates between Southport and the
3 Island. Neither of these activities has ever been regulated by the Commission. As
4 of the December 2020 draft of the Feasibility Study for the Authority, there were
5 approximately [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]
6 dedicated to the parking operation (although some of these acres are comprised of
7 drive lanes and greenscape separating the terraced lots, and some are not fully
8 developed). Figure 3 (*see* Exhibit F), below, illustrates the layout of BHIL's
9 parking facilities: [BEGIN CONFIDENTIAL]

10



11

1 [END CONFIDENTIAL]

2 Figure 3: Deep Point Ferry landing terminal layout with developed parking lots

3 There were then [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]

4 paved/striped parking stalls in the Deep Point terminal lots when Mercator

5 conducted its analyses. Those [BEGIN CONFIDENTIAL] [REDACTED] [END

6 CONFIDENTIAL] parking stalls were segregated among several categories that

7 are associated with differing price levels and distances from the terminal, as set

8 forth, below, in Figure 4: [BEGIN CONFIDENTIAL]

General Lot	[REDACTED]
Premium Lot	[REDACTED]
Contractor Lot	[REDACTED]
Employee Lot	[REDACTED]
Total Stalls	[REDACTED]

9

10 [END CONFIDENTIAL]

11 Figure 4: Parking facilities at Deep Point Marina in 2020 (number of paved / striped stalls)

12 Since completion of the second Mercator report, parking capacity at Deep Point

13 has extended to [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]

14 after accounting for additional parking spaces recently added but not yet paved, as

15 reflected in Figure 5, below (see Exhibit G): [BEGIN CONFIDENTIAL]



(a) Lot also used by employees in winter and as overflow lot during summer.

[BEGIN CONFIDENTIAL]

Figure 5: Parking facilities at Deep Point Marina (total spaces, 2022)

When the ferry system experienced its peak historical ridership in 2019, it resulted in a parking lot utilization of about [BEGIN CONFIDENTIAL] [REDACTED] [BEGIN CONFIDENTIAL] across the year, and approximately [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] during the June through August peak period ([BEGIN CONFIDENTIAL] [REDACTED] [BEGIN CONFIDENTIAL] during July). During certain peak periods, some cars are parked in unstriped or unpaved spaces, which allows reported utilization to exceed 100 percent.

The parking system run by BHIL is part of a larger Deep Point Terminal campus with a total area of approximately 76 acres. Within that larger tract, the terminal and associated ferry, parking and barge facilities (current and planned parking lots,

1 the maintenance and repair facility, the tug/barge operations area, dredge spoils
2 area, ferry marina, and other miscellaneous areas, cover approximately 57.4 of the
3 76 acres.

4 In addition to the Deep Point parking areas, BHIL also owns the parking lots that
5 previously served ferry operations at another site in Southport – Indigo Plantation.
6 Indigo Plantation had been the mainland terminus for the ferry until the Deep Point
7 Terminal opened in June 2009. Since then, BHIL has not had to utilize the Indigo
8 lots for overflow parking accessible via furnished shuttle, but could do so until that
9 property is re-developed.

10 As previously noted, BHIL also operates a tug and freight barge system that
11 provides year round, five day a week service between the Deep Point area and the
12 Bald Head Island Marina. This service utilizes a tugboat, the *Captain Cooper*, and
13 a 100-foot by 30-foot barge, the *Brandon Randall*. Round trip voyages require
14 approximately two hours, and demand is generally met by a schedule of four or
15 five sailings per day, five days per week. The barge is a roll-on/roll-off type –
16 carrying only vehicles, in varying sizes, up to and including large highway trucks
17 and construction vehicles. Space on the barge is sold for each six lane feet of space
18 taken up by the vehicle (i.e., larger vehicles can purchase 12-feet, 18-feet, or 24-
19 feet lengths, as needed).

Q: How did you approach your analysis of the regulated and unregulated assets in the process of examining them for potential purchase by the Authority?

A: As mentioned above, we approached the work from the perspective of an infrastructure investor because we were interested in knowing what such a commercial buyer would be willing to pay for the assets. We applied a methodology commonly used by such investors, which is to model the operational and investment cashflows for the various businesses and calculate the Net Present value of those cash flows. Doing this required us to independently forecast ferry passenger, barge traffic, and parking demand, and to calculate the associated cost of operating, growing and maintaining the system over the 30-year analysis period. The three distinct operations had been independently and separately operated by BHIL and BHIT, and separate financial accounts at a fairly detailed level had been maintained for each of the lines of business (ferry and on-island tram, freight barge and parking), and so we built our revenue and cost models for each business along the same accounting structure that was in use.

Q: Did Mercator make a detailed analysis of whether the parking and barge operations were conducted separate and apart from the ferry and tram systems?

1 **A:** Not specifically. In our engagements, we were not closely inspecting the
2 corporate boundaries of the entities because it was not relevant to our objectives.
3 Because the assets were all slated to be purchased by the Authority, a public entity
4 that would own and operate each of those business lines free of any oversight or
5 regulation by the Commission, there was no need to focus on the differentiation of
6 ownership. Our principal focus was to understand the drivers of revenues and
7 costs so that we had clean and transparent cash flow models, that reflected as
8 accurately as possible expected revenues and costs and that could be understood by
9 and relied upon by prospective investors, lenders, and ratings agencies.

10 In the course of interviewing the current operators and studying the historical
11 financial reports, we were nonetheless able to make several observations that relate
12 to your question. In a general sense, we did not observe any abnormalities that
13 raised red flags with respect to whether the separate business lines were, in fact,
14 being conducted separately. Our analysis included an examination of the finances
15 of the involved business lines (to extract the cost data and cost relationships needed
16 to construct our model), and we did not identify concerns about whether each of
17 the activities was appropriately accounting for its costs. The activity with the
18 greatest potential for misallocation of costs between operating groups was the
19 marine maintenance and repair (M&R) department of BHIT that supports both the

1 passenger ferry operation and the tug and freight barge system. We did not uncover
2 issues that gave us concern.

3 The M&R facility is shown in Figure 5 (*see* Exhibit H), below:



4
5 **Figure 5: The Marine Maintenance Facility at Deep Point**

6 Because the maintenance work required by the ferry fleet and the tug/barge fleet is
7 so similar, it is natural to use the same staff and shop resources to support both
8 operations, and this is what BHIL and BHIT did. The dedicated facility shown in
9 Figure 5 is located immediately adjacent to the Deep Point Marina piers where the
10 ferries and the tug and freight barge are kept when not in active service.

Moreover, our analysis included a detailed inspection and examination of the Deep Point terminal, which serves as the base for several BHIT and BHIL operations. Our inquiry showed the custom and practice of BHIL and BHIT was to allocate costs and expenses among the appropriate entities. I understand those issues are further discussed in the direct testimony of BHIL's CFO Shirley Mayfield.

Q: In the course of preparing the Due Diligence and Bond Feasibility studies, did Mercator make assessments about the relative values of the involved business lines conducted by BHIL and by BHIT as they related to the overall evaluation to support purchase by the Authority?

A: Yes, with our 2018 analysis, we concluded that nearly [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] of the value of the overall enterprise to be sold by BHIL and BHIT was accounted for by the parking system operated by BHIL. Approximately [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] of the value was attributable to the tug and freight barge operations, with the remaining approximately [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] accounted for by the ferry and tram business. Those segment valuations are charted in Figure 6 (see Exhibit I), below: [BEGIN CONFIDENTIAL]



[END CONFIDENTIAL]

Figure 6: Enterprise Value Segments of BHIT's Regulated and BHIL's Unregulated Assets

Q: What is the primary driver of the [BEGIN CONFIDENTIAL]

[REDACTED] [END CONFIDENTIAL] percentage value of the parking and lease activity as opposed to the tug and freight barge or the ferry and tram systems?

A: As mentioned earlier, our valuation was developed using the discounted cash flow method. The ferry has positive and growing EBITDA (earnings before interest, taxes, depreciation and amortization), but it also has a substantial requirement for new capital expenditures, including the replacement of ferries and the upgrading and renovation of terminal and wharf facilities. The parking

1 business has positive and growing cash flows, with a lower capital requirement for
2 future capital expenditures. I would also note that in our 2018 report, we assumed
3 that the “parking and terminal” segment became the owner of the Deep Point
4 campus, and so became the recipient of the [BEGIN CONFIDENTIAL] [REDACTED]
5 [REDACTED] [END CONFIDENTIAL] lease payment that has historically been made
6 by BHIT to BHIL. If we had assumed that after the sale the regulated ferry
7 business became the owner of the terminal, then the value of the terminal would
8 have been reflected in the ferry valuation.

9 I would also mention that the 2018 parking segment valuation of [BEGIN
10 CONFIDENTIAL] [REDACTED] [BEGIN CONFIDENTIAL] was checked using
11 the “capitalization rate” approach that is commonly applied to income generating
12 real estate assets. Applying a 7% capitalization rate (which we had found at the
13 time to be a reasonable rate for real estate that was used for parking operations) to
14 the expected 2018 EBITDA of [BEGIN CONFIDENTIAL] [REDACTED] [END
15 CONFIDENTIAL] yielded a value of [BEGIN CONFIDENTIAL] [REDACTED]
16 [END CONFIDENTIAL] for the terminal and parking sector alone, which
17 confirmed as conservative the valuation we had derived using our discounted cash
18 flow model.

1 We did not undertake a “highest and best use” analysis for the Deep Point land,
2 which may have shown that development of the 40+ acre waterfront property for
3 use as something other than a ferry terminal parking lot (such as a mixed use
4 residential / retail / entertainment property, for example), yielded a higher value,
5 but rather assumed that the property would continue to be used to support a
6 parking operation.

7 **Q. Do you consider maritime transportation and parking to be similar**
8 **businesses?**

9 **A.** The scheduling and operational complexity, importance of operational
10 execution and need for highly trained staff, capital requirements and maintenance
11 requirements, the revenue streams, safety risks for people and assets, etc. of ferry
12 operations are quite different than for parking operations, so I would not consider
13 them to be similar businesses.

14 **Q: Based on your review of market participants, and arrangements for**
15 **parking for ferry passengers across the country, do you have an opinion as to**
16 **whether ferry services and parking services are so integrated that they must**
17 **be regulated as if they were a single operation?**

18 **A:** My observations and experience in maritime transportation and my research
19 into the industry has afforded me the opportunity to contrast and compare some of

1 the similarities and differences in ferry and parking arrangements. The functional
2 relationships that we see between BHIL's parking and BHIT's ferry operations
3 suggest that these business lines are commercially complementary. We do not have
4 the same ridership and parking data for other ferry systems around the country that
5 we have for BHIL, but we would expect relationships to be similar.

6 As summarized in the table set forth in Exhibit J, passenger ferries exist in a
7 variety of settings. For example, the ferries serving Catalina Island in California,
8 Fire Island in New York, and some of the Rhode Island-based ferries that serve
9 Block Island operate with no parking at all that is controlled or offered by the ferry
10 operator. Parking facilities are provided by third-party parking operations. In
11 some markets, the ferry operator does operate the parking facilities, often with
12 differentiated levels of price and service (valet / on dock / near dock / offsite,
13 shuttle served). We see this, for example, in the Mackinac Island market in
14 Michigan. In some markets, notably from Cape Cod to Nantucket and Martha's
15 Vineyard, the ferry operator offers parking alongside third-party lots, each serving
16 the same passenger base.

17 I also see that in some markets, such as Catawba OH to Put-in-Bay OH, parking
18 costs are low or even "free" for daytrip riders (which is to say included in the price

1 of the ferry ticket, which in this case is over \$50 per passenger), but with a charge
2 for overnight parking.

3 It is also interesting to take note of the range of parking rates (prices) that exist
4 across North America, which range from free or nearly free for day-use to more
5 than \$30 per night. My research revealed rates of \$45/night at Star Line in
6 Michigan; \$25/day at Davis Park in New York; up to \$30/day at Newport Beach,
7 California.

8 What I take away from my canvassing of ferry operations around the country is
9 that parking can be provided to ferry riders in a number of ways. We also note that
10 we found no evidence that parking rates were being regulated in any of these ferry
11 markets, whether or not ferry operators were subject to regulation of passenger
12 fares or not.

13 The existence of multiple parking supply models indicates that the two activities
14 are NOT so integral to one another that they should be regulated as one, despite the
15 fact that the past economic success of the parking operation can be linked to the
16 existence and usage of a ferry system. Indeed, in Long Beach, for example, where
17 the ferry is operated by Catalina Express, the operator of a parking lot used by the
18 ferry's passengers (the commercial parking operator ABM Parking Services)

1 would find it quite a surprise that its rates should be regulated by the same
2 authorities that regulate a transportation utility.

3 **Q: If the Commission should determine that the operation of parking lots is**
4 **integral to the delivery of ferry service, are there issues you would commend**
5 **to its attention with regard to the continued operation of a parking system?**

6 **A:** What I believe to be critical for ferry riders is that there is reasonable access
7 to a sufficient amount of suitable parking facilities. Based on our observation of
8 other systems, the parking does not need to be provided by the ferry system
9 operator, and it does not need to be located at the ferry terminal. Remote parking
10 served by shuttle is a common solution for passenger ferries and could be an option
11 for the BHI ferry, just as it is at airports all across North America.

12 The concern I heard during the BHITA's public meetings in early 2021 (when the
13 Authority was seeking approval to issue bonds for the acquisition of the system)
14 and that I read in the submitted comments, was not centered on the cost of parking
15 but rather was focused on the availability of parking and the ability to expand
16 parking capacity as and when needed. Economic principles tell us that a good way
17 to reduce the supply of a good or service is to drive down its price, and so it would
18 seem that price regulation of parking would run counter to the desire that more
19 parking be created. Although capacity has been expanded since 2021, a change in

1 how parking is operated and priced could of course have an impact on future
2 capacity additions.

3 Given that many other ferries operate successfully with remote parking that is
4 efficiently served by shuttle, it would seem reasonable that the Commission not
5 regulate parking, but rather that it ensure that parking is available *either* at the
6 terminal or in convenient community locations, and that independent parking
7 operators be allowed to access the market.

8 **Q: Did Mercator identify in its research that the parking system operated by**
9 **BHIL has experienced frequent, or large, price increases?**

10 **A:** No. Based on data provided by BHIL, parking rates have increased only
11 modestly since 2009 when the ferry operation moved to Deep Point from Indigo
12 Plantation. There was a \$1/day increase in 2019 and another \$1/day increase in
13 2021, each applicable to the daily lots that I understand account for about [BEGIN
14 **CONFIDENTIAL**] [REDACTED] [END CONFIDENTIAL] of parking revenue.
15 Considering the price increases from 2009 to 2021, I calculate that parking rates
16 for all categories except contractors have increased at well below the rate of
17 inflation. An historical accounting of BHIL's parking rates is included as Exhibit
18 K.

Furthermore, Contractors and employees may now take advantage of the new “90 Use Daily Exit Pass” that was introduced in 2019 and which dramatically reduced parking costs. With the new multi-use ticket, the cost per day for frequent daily users of the parking lots is reduced to about 50% of the normal daily price.² That pricing innovation reduces costs for both contractors and employees who pay their own costs to travel to the Island for work, and for the businesses who pay these costs for their employees.

Current parking rates at the Deep Point Facility are summarized in Figure 7 (*see Exhibit L*), below:

DEEP POINT PARKING RATES				
Class	Premium	General (a)	Contractor	Employee
Annual Pass	\$1,350.00	\$1,200.00	\$700.00	\$650.00
General Daily	n/a	\$12.00	n/a	n/a
Contractor Daily	n/a	n/a	\$10.00	n/a
QR Exit Pass Coupon	n/a	n/a	\$6.00	\$6.00

(a) First 2-hours free.

Figure 7: Deep Point Parking Rates (2022)

As shown in Figure 7, the Deep Point Terminal parking rates are less than or equal to \$12/day.³ To put this in perspective, I looked at rates at more than 30 other parking operations that support ferry terminals, and my canvassing revealed that

² The “90 Use Daily Exit” pass was introduced with a cost of \$5/day in 2019, and increased to \$6/day in 2021.

³ There is also an option to pay half this much by purchasing a 90-exit pass.

1 24-hour parking rates are typically \$12-15 or more, with some charging more than
2 \$20. All-in-all, I find the parking rates at Deep Point to be reasonable and in-line
3 national references.

4 **Q: In your view, should the Commission be concerned that BHIT's**
5 **regulated ferry operation exists within a BHIL corporate structure that**
6 **includes other, more profitable non-regulated businesses?**

7 **A:** From the standpoint of a regulatory agency looking at the situation of an
8 entity having regulated and nonregulated activities operating under its broader
9 umbrella, the concern would typically run in the other direction. That is, a
10 regulator would have heightened concern about a parent siphoning off revenues to
11 its nonregulated business lines in a manner that could "lower" the income of the
12 regulated entity and occasion an illusory need for rate increases.

13 Here, the opposite has occurred. In the 2010 Rate Case, for instance, a settlement
14 was reached and approved by the Commission under which revenues from one of
15 BHIL's nonregulated businesses (parking) was "imputed" to BHIT for the express
16 purpose of lowering the required revenue target so that the ferry's rate increase
17 could be smaller.

18 **Q: In examining matters in this docket, have you identified any issues that**
19 **may be of concern to the Commission that arise from the valuation work**

1 **Mercator did in connection with a potential sale of these assets to the**

2 **Authority?**

3 **A:** Access to the terminal is freely available to taxis, busses, shuttles,
4 pedestrians, personal vehicles, etc. and has, to my knowledge, never been
5 restricted. Thus, third-party parking operators could have established operations to
6 serve ferry passengers and delivered them directly to the terminal building if they
7 had chosen to do so. Given that many other ferries operate successfully with
8 remote parking that is served by shuttle, and that there is nothing to prevent such
9 operators from serving passengers at Deep Point, I think it is fair to conclude that
10 the Deep Point parking lot is not a natural monopoly, and that alternative parking
11 can develop if in the future there is inadequacy or dissatisfaction with the Deep
12 Point parking lot.

13 Historically, parking services have been provided for over thirty years without rate
14 regulation. This particular land has been used by BHIL for parking for over 15
15 years. I understand that BHIL did not purchase it for regulated utility operations
16 (except via the lease of the terminal building), and it has never been included in
17 any rate base for ratemaking purposes. Based upon my review of the financial
18 records, it appears BHIT never requested a regulated rate of return on the land nor
19 ever sought or recovered any depreciation expense for its improvements to the land

1 as a component of its rates. Today, the land on which BHIL's parking operation
2 resides has a very considerable fair market value as indicated in our valuation
3 work, by the values implicit in the arms-length purchase of these assets by
4 SharpVue, and as contained in the real estate appraisals that have been obtained by
5 the BHITA for the property. If the Commission decided to include parking assets
6 in the rate base of the regulated ferry and tram systems -- for the first time, since
7 that land had never been part of regulated utility operations in the past and thus had
8 never previously been included in ratemaking -- that situation would be analogous
9 to an initial purchase of a new, useful asset by a utility to be added to its rate base.
10 Thus, the operator's (SharpVue's) basis in the newly purchased land should be
11 equal to its fair market value, presumably as reflected by the amount actually paid.

12 Rate regulation for the parking function would be a dramatic change in the
13 regulatory treatment of the asset and in the size of the rate base of the utility, which
14 could have considerable consequences to the rates and to consumers.

**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.)
)
Bald Head Island Transportation, Inc.)
and Bald Head Island Limited, LLC,)
)
Respondents.)

**TESTIMONY SUMMARY
OF JAMES LEONARD
ON BEHALF OF
RESPONDENTS**

OFFICIAL COPY

Oct 25 2022

James Leonard Testimony Summary

Docket No. A-41, Sub 21

My name is James Leonard, and I am a founding partner of Mercator International LLC.

I have more than 40 years of experience in the transportation and infrastructure field and have had a particular focus in shipping economics and port strategies as well as the financial and operational analysis of a wide variety of transportation businesses. Mercator's clients have included infrastructure investment funds and pension funds, private equity, carriers, port authorities, terminal operators, industrial real estate developers, and beneficial cargo owners.

My testimony is intended to lend context to the Commission's consideration of issues regarding the parking and barge operations conducted by Bald Head Island Limited, LLC and the ferry and tram operations conducted by Bald Head Island Transportation, Inc. My appearance here is not to argue against the regulatory actions sought by the Village of Bald Head Island. Instead, my purpose is to familiarize the Commission with the assets and their operation in the marketplace.

My testimony draws on more than 500 person hours of time that I, my colleagues, and other retained consultants at our direction spent analyzing the Limited and BHIT operations. That work resulted in a January 2018 report, "Bald Head Island Seller's Due Diligence," that was designed to provide information to Limited about how an arm's length buyer would assess and evaluate the assets and their operation. Limited was preparing for an anticipated sale of the assets to the Bald Head Island Transportation Authority (the "Authority"), but our work was aimed at providing a market assessment for Limited that did not depend on the identity of the buyer.

At the invitation of UBS, one of the lead financial advisors working for the Authority, Mercator was later asked to provide a Bond Feasibility Study designed to provide assurance that the assets and operations being acquired would allow the Authority to pay off its debts. When we

were hired by the Authority, I understood that the Authority and Limited already had negotiated a sale price for the assets. I understand that our due diligence and feasibility documents have been produced to the parties in this docket.

In this docket, I was asked by Limited and BHIT to share information and observations from our extensive analysis of the assets involved here, and to offer some context about how the ferry and parking operations compare with other systems across North America.

As an aid to the Commission, I offer a brief summary of our investigatory findings and the conclusions we reached that hopefully can inform its consideration of the issues in this docket.

First, Limited prices its parking modestly, has avoided significant increases, and affords rates that are less than or similar to reference costs I have examined. Indeed, Limited appears to have made a special point of keeping parking prices quite low for its most regular users: workers on the Island, contractors that help it develop and grow, and residents.

Second, in surveying ferry systems and parking solutions in many markets, I conclude there is no one-size-fits-all formula. Parking can be on-site or adjacent to ferry terminals, as well as off-site. Moreover, parking can be provided by the ferry company itself, private concerns, or through municipal lots or garages. I did not identify any ferry operations in connection with which a parking lot, garage or operation was regulated. In some jurisdictions there are governmental providers of parking, but that presence as a provider does not connote a regulatory overlay.

Third, the absence of regulation in ferry-associated parking is indicative of conditions in which market solutions are working and regulatory intervention has not been required.

Fourth, the Village and its witnesses have suggested that a lack of parking alternatives in the City of Southport demonstrates the existence of excessive market power for Limited. Instead,

what it indicates is a lack of need. The pricing and availability of parking for ferry riders have been satisfactory, if not better, and have not afforded an attractive competitive opening. With market entry commitments likely limited to land, lot administration, and perhaps shuttle transportation, I would expect that inadequate or high-cost parking would attract competitors as has been the case at airports around the country, but this has not happened with respect to Bald Head Island.

Fifth, our due diligence guidance to Limited in advance of any sale included market-based valuation estimates for the assets that were later closely paralleled by the arm's length purchases negotiated by the Authority and subsequently by SharpVue Capital. There is no evidence to suggest that these three, independent analyses of the market value of the assets were skewed or inflated by abusive pricing or practices by Limited.

Sixth, our evaluation of Limited and BHIT, and their structures and operations, showed no evidence of any failure to account for the activities and finances of the regulated and unregulated activities separately and appropriately. Construction of our model required us to extract data and cost relationships from all departments of Limited and BHIT, and we discovered no misallocation of costs between operating groups.

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Testimony Summary of James Leonard has been served by electronic mail, hand delivery, or by depositing a copy of same in the United States Mail, postage prepaid, properly addressed to parties and counsel of record as shown on the Commission's Service List in docket A-41, Sub 21, and has also been provided to Commission's Counsel and to the appropriate members of the NC Public Staff.

This 11th day of October, 2022.

/s/ Bradley M. Risinger

Bradley M. Risinger

1 MR. RISINGER: With the Chair's
2 permission, Mr. Leonard is available for cross
3 examination.

4 COMMISSIONER BROWN-BLAND: All right.

5 MR. TRATHEN: Thank you. Mr. Leonard --

6 COMMISSIONER BROWN-BLAND: Just a
7 second. On our sheet we have SharpVue.

8 MR. FERRELL: No questions.

9 COMMISSIONER BROWN-BLAND: All right.
10 And then the Village.

11 CROSS EXAMINATION BY MR. TRATHEN:

12 Q. Good morning, Mr. Leonard. My name is
13 Marcus Trathen. I'm a lawyer for the Village of Bald
14 Head Island. Now, you were hired by Limited to conduct
15 due diligence on the sale of the transportation assets,
16 correct?

17 A. That's correct.

18 Q. And what was your role in that project?

19 A. Well, I was the lead partner, the project
20 manager, I visited the facilities, I retained some
21 subconsultants over some of the work.

22 Q. Okay. And that included the preparation of
23 the due diligence summary, which is attached to your
24 testimony as Exhibit B, correct?

Page 87

1 A. (Witness peruses document.)

2 Well, it was an extensive report. Is that
3 what you're talking about?

4 Q. It's your document. Is it a separated
5 report?

6 A. It's a report titled Bald Head Island
7 Seller's Due Diligence with the date of
8 14 January 2018. Is that what you're talking about?

9 Q. Yes. And you also prepared a bond
10 feasibility study for Bald Head Island Transportation
11 Authority; is that correct?

12 A. Yes.

13 Q. Okay. And is it your understanding that
14 Limited funds Bald Head Island Transportation?

15 MR. RISINGER: Objection, if you know.

16 THE WITNESS: It may. It's not been my
17 business to know. Not been important to me, so I
18 don't know what they're doing.

19 Q. You don't know?

20 A. What do I know about that? I heard it said
21 that the -- well, I know that the Authority has no
22 resources of its own. And it may be getting what it
23 needs -- I'm not sure what it actually needs -- from
24 Limited.

1 Q. Okay. And I see from your bio that was
2 included with your testimony that you were an engineer
3 by training; is that correct?

4 A. That's correct.

5 Q. Okay. And you are not a lawyer?

6 A. Is that a question?

7 Q. That is a question, yes.

8 A. I am not a lawyer.

9 Q. And you're not an economist; is that correct?

10 A. I have some economic training. I have a
11 master's degree from MIT Sloan School of Business, so
12 I'm reasonably well acquainted.

13 Q. Okay. That's a business degree?

14 A. Yes.

15 Q. Okay. And you're not an accountant, correct?

16 A. I'm not an accountant.

17 Q. Am I correct that you're not an expert in
18 utility regulation?

19 A. No, I'm not a utility regulation expert.

20 Q. Okay. And certainly you've never testified
21 before this Commission?

22 A. No, I have not.

23 Q. Have you testified before any state public
24 service commission?

1 A. I testified before the Canadian authority
2 that was reviewing development of a port project in
3 Canada. Not any state commissions.

4 Q. Okay. And have you ever provided expert
5 assistance in a rate case matter before a state
6 utilities commission?

7 A. No, I have not. I think maybe this is a good
8 time to point out that I'm not here to provide such
9 advice. I'm here to provide context and information
10 about the assets and about the operations and how they
11 are similar or different than others that might be
12 subject to -- or that are operating around North
13 America.

14 Q. Okay. If you would turn to page 29 of your
15 testimony. If you would look at -- starting at line 5
16 through the end of that paragraph.

17 Am I correct here that you were testifying
18 about valuation of assets for rate base purposes?

19 A. (Witness peruses document.)

20 I suppose you could treat it that way. I'm
21 giving an opinion about -- about this issue from my
22 perspective as an infrastructure investor analyst
23 operator.

24 Q. You see, in line 9, you're talking about rate

Page 90

1 base, and you're offering testimony about the valuation
2 of assets that should have come into rate base; do you
3 see that?

4 A. Yes.

5 Q. Did you write this?

6 A. I did.

7 Q. Okay. And this is not based on your
8 evaluation of applicable utility statutory or utilities
9 regulations with respect to rate regulation, correct?

10 A. That's correct.

11 Q. And so you're not offering an opinion on the
12 regulatory standards that would be applicable in a rate
13 case, correct?

14 A. Correct.

15 Q. Now, as I understand it, your company,
16 Mercator, has experience across the freight
17 transportation spectrum; is that correct?

18 A. Transportation, broadly speaking.

19 Q. Okay. And with respect to the word
20 "freight," freight generally refers to goods
21 transported in bulk?

22 A. No. Freight is goods. Goods transported.
23 Goods being transported, not necessarily in bulk.

24 Q. Okay. Goods of all manner; is that right?

1 A. Yes.

2 Q. Okay. And would you agree that a person is
3 not freight?

4 A. I would agree that a person is not freight.

5 Q. And a person driving a vehicle is not
6 freight?

7 A. It is attended to the freight. Is it -- I'm
8 not sure where you're going, "is it freight." It's a
9 person.

10 Q. Okay. With respect to regulation of barges,
11 I see that you have some experience with ferries in
12 Hawaii.

13 Do you recall saying that on page 3 of your
14 testimony?

15 A. I do.

16 Q. Okay. And are you aware that Hawaii is an
17 example of a state that regulates barges?

18 A. I am aware of that, yes.

19 Q. Young Brothers is an example of an entity
20 regulated in Hawaii by the Public Service Commission as
21 a barge?

22 A. It is the entity.

23 Q. Okay. With respect to Deep Point, do you
24 agree with the following statement in reference to the

1 Deep Point parking facilities: "It is critical for
2 ferry riders if there is reasonable access to a
3 sufficient number of suitable parking facilities."

4 A. Yes.

5 Q. Okay. I'm glad you said that, because, in
6 fact, that's a statement from your testimony on page
7 24, correct?

8 A. Glad I passed.

9 Q. Okay. Now, directing your attention to page
10 25 of your testimony at lines 5 and 7.

11 A. (Witness peruses document.)

12 Q. Are you there?

13 A. What's the line number, please?

14 Q. 5 to 7.

15 A. Yes, I'm there.

16 Q. Okay. There you say that the Commission
17 shouldn't regulate parking, but it should ensure that
18 parking is available either at the terminal or in
19 convenient community locations that independent parking
20 operators be allowed access to the market, correct?

21 A. That's correct.

22 Q. Now, as to the market that you're referencing
23 here, you're referring to the ferry terminal?

24 A. (Witness peruses document.)

Page 93

1 I'm referring to access to the terminal, yes.

2 Q. Okay. Now, how do you envision that the
3 Commission will ensure access to this market when the
4 owner of the terminal and the owner of all the real
5 estate and accessed roads leading to the terminal is
6 not subject to its regulatory authority?

7 A. Well, I think the -- someone can be assured
8 of something without actually doing it themselves.
9 They can be -- they can be assured that something is
10 gonna happen if you know that it's gonna happen through
11 other means. It doesn't -- achieving this assurance
12 doesn't require the Commission to issue a regulation,
13 if it knows, as I believe it does from the testimony
14 already given, that such access is already insured.

15 Q. So we have testimony that there presently is
16 access and we have testimony, as I recall -- the record
17 will speak for itself -- that if SharpVue acquires the
18 assets, they will -- intend to continue permitting
19 access, correct?

20 A. We also heard evidence that there are
21 easements granted for free access to the terminal. And
22 we heard from SharpVue that it's clearly in their
23 business interest to allow access to the ferry, because
24 they're in the business of getting people to the ferry.

Page 94

1 Q. With respect to easements, you have in your
2 report analyzed the various property and holdings and
3 rights associated with these assets, correct?

4 A. Could you repeat the question, please.

5 Q. Well, let me just get right to the point
6 here. You referenced the easements.

7 Bald Head Island Transportation, the
8 regulated entity, does not hold an easement to use the
9 access roads, does it?

10 A. I think -- well, I'm not a real estate
11 lawyer, but my understanding is an easement of the sort
12 we're talking about would attach to the land, not to
13 the -- so that the easement exists and people can
14 access the road.

15 Q. Do you have any firsthand knowledge as to a
16 public easement permitting public access to the
17 terminal?

18 A. Wasn't necessary for me to know that, and I
19 didn't research it. I'm repeating here what I learned.
20 What was necessary for me to know to evaluate these
21 assets was to develop a reasonable set of assumptions
22 about how they would be operated, who would want to use
23 them, what would be the cost of revenues, how do --
24 because the objective was clearly not to present this

Page 95

1 report to the Utilities Commission, but rather to build
2 a sound footing for a valuation and for advice to the
3 seller about what they had to offer. I wasn't making
4 judgments about regulatory issues when I did that
5 report. I was building a legitimate and supportable
6 business case.

7 Q. I'm asking about your testimony that you just
8 gave. Do you understand I'm not asking now about the
9 report?

10 A. Could you repeat the question?

11 Q. About easements. Do you have any personal
12 knowledge about the easements? And I think your answer
13 is no.

14 A. I heard sworn testimony about them today.

15 Q. That's the extent of your knowledge, is what
16 you heard today?

17 A. And I have been told that they exist. I
18 asked the question -- I don't remember exactly when
19 during the course of my investigations, but I wanted to
20 know that the -- that this was obviously -- that the
21 access would be free, because -- free to shuttle
22 services or drop off people or whoever else wanted to
23 visit the terminal. Because I thought that was
24 important, in terms of understanding the market

Page 96

1 potential of the assets. Others can testify about the
2 presence or nonpresence of the easements. That's not
3 for me. That's not why I'm here.

4 Q. Okay. Now, with respect to the -- let me --
5 let me ask you about -- let me move on from that.

6 So at pages 21 through 27, you discuss your
7 research into ferries in other states; do you recall
8 that?

9 A. Yes. Yes.

10 Q. Okay. And at line 6 and 7 on page 22, you
11 refer to your Exhibit J, and you say the ferries exist
12 in a variety of settings, but then in Exhibit J you
13 state that -- you provide a summary of ferry systems
14 which are similar to Bald Head Island.

15 Is that your testimony in Exhibit J, that
16 these ferries are similar to Bald Head Island?

17 A. I would say they are similar, in the sense
18 that they are ferries. Yes, they are similar in some
19 dimension or another.

20 Q. Okay. Now, with respect to the last -- are
21 you on column -- excuse me, Exhibit J?

22 A. Yes.

23 Q. The last column on the right, with respect to
24 regulated parking.

Page 97

1 A. Yes.

2 Q. Okay. I want to ask you a few questions
3 about your understanding of that term for purposes of
4 this chart. And for purposes of my questions, I'm
5 talking about a situation where a ferry company also
6 provides parking, okay?

7 A. Okay.

8 Q. Which is the situation we have at Bald Head
9 Island, correct?

10 A. All right.

11 Q. Okay. If a ferry and parking is regulated by
12 a local government, do you count that as regulation?

13 A. If the ferry is regulated in what sense? I'm
14 sorry.

15 Q. Regulated by local government.

16 A. I think, for the purposes of this chart, what
17 I was getting at is whether or not their rates and
18 services are regulated, not whether or not they meet
19 local jurisdictional requirements or any other normal
20 regulatory requirement of a local business. That would
21 not qualify here as regulated.

22 Q. You didn't look for that?

23 A. No. I mean, do you have to -- health and
24 safety rules and other things unrelated to the issue of

1 rates and service and so forth, I did not look at, no.

2 Q. And so if a state public service commission
3 tells a ferry operator that they can't raise parking
4 rates by more than CPI, is that regulation under your
5 definition?

6 A. I suppose it would be.

7 Q. Okay. And are you aware that this utilities
8 commission, in fact, ordered that with respect to Bald
9 Head Island ferry in the 2010 rate case?

10 A. Yeah, but I produced this table this year.

11 Q. Okay. If a state's public service commission
12 tells a ferry operator that they have to make parking
13 available, is that regulation?

14 A. It would be -- it would depend. I suppose it
15 would. I'm not aware of it, because I can see from
16 the -- from my survey that sometimes parking is
17 provided by the ferry operator and sometimes it's not.
18 So that seems to not be a major issue for ferry
19 operators.

20 Q. Okay. Did you --

21 COMMISSIONER BROWN-BLAND: Let me stop
22 you, Mr. Trathen. Up here, the Commissioners
23 aren't able to locate this Exhibit J, and we don't
24 see it --

Page 99

1 COMMISSIONER CLODFELTER: It's not
2 online and it's not in our copy.

3 MR. TRATHEN: Oh, dear.

4 COMMISSIONER CLODFELTER: None of us
5 have it either in hard copy or online.

6 COMMISSIONER BROWN-BLAND: Mr. Risinger,
7 do have you additional available copies? Was it
8 filed confidentially?

9 MR. RISINGER: No. This document was
10 public, and the -- I printed out a copy off the one
11 that we circulated among the parties. I didn't
12 bring copies of it to -- intended to do it, but we
13 could make copies of it.

14 MR. TRATHEN: I have an exhibit that is
15 Exhibit J.

16 COMMISSIONER BROWN-BLAND: All right.
17 At least one of us --

18 MR. STYERS: We could circulate it at
19 the next recess. We could try to make a copy and
20 circulate it at the next recess.

21 MR. TRATHEN: If I can approach?

22 COMMISSIONER BROWN-BLAND: Let's get --
23 you can approach the witness. Mr. Mertz, can you
24 get enough copies for the Commission to have copies

Page 100

1 with us? You can do that right next door.

2 (Pause.)

3 Q. All right. Mr. Leonard, I've handed you a
4 document.

5 Is this a copy of your Exhibit J, albeit with
6 some markings in red and some shading in yellow that
7 were not part of your original filing?

8 A. It appears to be.

9 Q. Okay. I'll represent to you that the writing
10 and the shading is -- are my additions to it, but
11 otherwise, it's Exhibit A [sic].

12 Does that look accurate?

13 A. I believe so.

14 Q. Exhibit J.

15 MR. TRATHEN: I would like to mark this
16 as -- help me out here -- Village Leonard Cross
17 Exhibit Number 1.

18 COMMISSIONER BROWN-BLAND: It will be so
19 identified.

20 (Village Leonard Cross Exhibit Number 1
21 was marked for identification.)

22 Q. So I'll get to this in just one second. But
23 to reorient folks, we were talking about the right-hand
24 column with regards to regulation, and I was exploring

1 with you what you looked at for purposes of this
2 evaluation. And I believe where we were -- let me back
3 up. I'd asked you about raising parking rates by more
4 than inflation, and you said that was regulation.

5 Did you look for that in the states that you
6 examined, whether or not those were, sort of, borders,
7 regulating, putting caps on rates?

8 A. Maybe the way to answer that question is to
9 tell you what I did. I contacted a good number of
10 ferry operators, and I contacted state agencies with
11 the question of whether or not they were regulating, or
12 mandating, controlling, whatever the word is you choose
13 to use, the rate setting of -- for parking at locations
14 that serve the ferries. I got -- the answer was no
15 each time I tried.

16 I spoke to somebody at each of these in the
17 state or had some reason to believe that I was getting
18 a no answer. It's important to note that this isn't
19 presented as a collectively exhaustive list of all
20 ferries and whether or not they are regulated and all
21 ferry -- you know, looked everywhere. It's very hard
22 to prove a negative, as you probably know. So what I
23 set out to do was to see if I could find a yes. And I
24 asked everybody that I could that knew about what was

1 happening at the ferry operations, ferry parking,
2 across this spectrum of places.

3 I used the membership list of the Passenger
4 Vessel Association, which is a broad list of ferry
5 passenger vessel operators, and I asked everybody I
6 could whether or not they knew of a situation where
7 ferry parking was regulated, and the universal answer
8 was no. So I don't represent that one doesn't exist.
9 What I represent is that my good faith efforts to find
10 one yielded nothing.

11 I talked to operators, an engineering firm
12 that does ferry design throughout the country and who
13 wrote a large report about the Mackinaw Island ferries,
14 which are actually similar to the Bald Head Island
15 situation. The Carlos Island served by, in this case,
16 two ferry services, but nonetheless, very similar
17 geography and characteristics, and I universally got
18 the answer no, we don't have that here. From
19 California to Rhode Island, I did my best to find one.
20 And as far as I know, no one else has found one either.

21 Q. Okay. When you ask somebody a question, the
22 response that you get back is based on the information
23 that you're seeking, correct? That's what I'm trying
24 to explore with you, the extent of your investigation.

1 So let me ask you this. Just, sort of,
2 another iteration of this.

3 So if parking is included in a ferry
4 company's rate base, it would be regulated, would it
5 not?

6 A. If I had -- if that -- I suppose, yes. And
7 so --

8 Q. And you didn't ask that question when you
9 asked folks whether you regulated pricing; you didn't
10 ask if it was in rate base?

11 A. In that circumstance -- if I received that
12 question, whether my -- if I was a ferry and parking
13 operator, and someone asked me that question, about
14 whether my parking rates were regulated, and my parking
15 was in the rate base and controlled by the same people
16 who controlled my ferry ticket prices, my answer would
17 surely have been yes, it's regulated. And so for
18 anybody who would have had it in their rate base, they
19 would have said yes, and I got no yeses.

20 Q. Okay. And would you agree that the Bald Head
21 Island ferry is passenger only?

22 A. Yes. It would meet the criteria for
23 passenger only.

24 Q. Okay. And would you agree that there are no

1 nearby parking alternatives for the public to access
2 that ferry?

3 A. At the present time, that's correct.

4 Q. And would you agree that there are no other
5 ways for the public to get to Bald Head Island, other
6 than the ferry?

7 A. No. I think that's not true. There are
8 other ways to get to the ferry -- to get to the island.
9 We heard about them this morning, for instance.

10 Q. I'm talking about public means of
11 transportation. I'm not talking about the off -- water
12 taxi. I'm talking about the public getting to the
13 island. There's not a road.

14 A. Well, those people on the water taxi are
15 surely members of the public. The people who own boats
16 that go there on their own are surely members of the
17 public. So that was the context of my answer.

18 Q. Okay. And also heard Mr. Roberts say that
19 that's not a substitute for the ferry in any shape,
20 form, or fashion?

21 A. No. The scale is too small. The number --
22 the capacity is not there to replace the ferry, surely
23 not.

24 Q. Okay. Can you identify -- well let me talk

1 about some of these.

2 So with respect to this Exhibit J, the -- the
3 ferries that I've highlighted are all instances where
4 parking is supplied by a third party, correct?

5 A. Each of those highlights.

6 Q. Your column -- your next -- your column next
7 to regulated parking.

8 A. Yeah. You haven't highlighted all of them,
9 but all those that are highlighted meet that criteria,
10 yes.

11 Q. Okay. And so that's not the Bald Head
12 situation; we do not have third-party parking?

13 A. At present, no. We have a potential for it,
14 which I think is an important distinction, but at the
15 moment, we do not.

16 Q. And with respect to my notation of VF, that
17 stands for vehicle ferry.

18 For example, Steamship Authority is a vehicle
19 ferry; is it not?

20 A. Yes. The Steamship -- well, they run both.
21 They run vehicle ferries and they run high-speed
22 passenger-only ferries.

23 Q. And with respect to -- sticking with this
24 Nantucket example, there is an airport in Nantucket, is

1 there not?

2 A. I believe there is. I haven't flown into it,
3 but I believe it exists, yes.

4 Q. Okay. So you've got four different ferries
5 and an airport and third-party parking for Nantucket?

6 A. Correct.

7 Q. Looking at Martha's Vineyard, Steamship
8 Authority again is vehicle ferry, correct?

9 A. Yes.

10 Q. And there's an airport in Martha's Vineyard?

11 A. Again, if you say there is, I won't disagree
12 with you. I haven't flown there.

13 Q. Okay. You're willing to accept, subject to
14 check, that there is an airport?

15 A. There probably is.

16 Q. Okay. So Martha's Vineyard, got a vehicle
17 ferry, you got four different providers, and you've got
18 an airport, correct?

19 A. (Witness peruses document.)

20 Q. Did you respond?

21 A. I'm sorry, was there a question?

22 Q. Yes. Did you agree with that?

23 A. You were talking about what geography at that
24 point?

1 Q. Okay. We were talking about Martha's
2 Vineyard.

3 A. Martha's Vineyard?

4 Q. Yes.

5 A. Yes. There is multiple ferry operators and
6 some third-party operators -- third-party parking
7 suppliers.

8 Q. Okay. Just continuing on, don't know that we
9 need to go through the whole list, but just continue on
10 a little bit. Interstate -- well, before we get to
11 that, Bay State going to Provincetown, that's
12 accessible by road, is it not?

13 A. Yes, it is. You could drive to Provincetown.

14 Q. And this ferry leaves from Boston?

15 A. Correct.

16 Q. Okay. Interstate Navigation, Block Island,
17 vehicle ferry, correct?

18 A. Yes.

19 Q. A&R Marine, Prudence Island, is a vehicle
20 ferry?

21 A. I believe so. I'm less familiar with that.
22 That's one I would check my list, but --

23 Q. Would you accept that subject to check?

24 A. Yes, fine.

1 Q. Okay. Fire Island. This is right off Long
2 Island, New York, correct?

3 A. Uh-huh, it is.

4 Q. Okay. There are multiple ferries, correct?

5 A. Yes. Yes and no. The island is exceedingly
6 long and the ferries are serving rather distinct areas
7 on the island. My review of the maps -- I haven't been
8 to Fire Island, but I can see that the distance between
9 the points on Fire Island is quite large, and
10 transportation on Fire Island quite limited. So
11 they -- they are rather distinct ferries.

12 Q. And there is actually a bridge to Fire
13 Island, or a couple of bridges?

14 A. Yeah. I saw that there is vehicle access to
15 the Island, but it's very limited. And as a practical
16 matter, I think, for people visiting the island, it's
17 not something that's very often used, because it's a
18 difficult -- it's difficult to have a car there. The
19 roads are so limited.

20 Q. With respect to Mackinaw Island, you
21 mentioned that before.

22 (Pause.)

23 MR. TRATHEN: If we could approach with
24 handouts, an additional exhibit?

Page 109

1 COMMISSIONER BROWN-BLAND: You may.

2 (Pause.)

3 MR. TRATHEN: If we could mark this as
4 Village Leonard Cross Exam Number 2.

5 COMMISSIONER BROWN-BLAND: It will be so
6 identified.

7 (Village Leonard Cross Exhibit Number 2
8 was marked for identification.)

9 Q. Mr. Leonard, have you seen this document
10 before?

11 A. I have not.

12 Q. Okay. Does it appear to be a franchise to
13 Shepler's ferry to serve Mackinaw Island issued by the
14 City of Mackinaw?

15 A. It does. I'm not sure what that -- say again
16 how you're describing it?

17 Q. As a franchise. The first word, a
18 non-exclusive franchise ferry boat.

19 A. Yes, that's how it's labeled.

20 Q. Okay. And so this appears to be a franchise
21 granting authority to operate for Shepler's, one of the
22 ferry boat operators, to Mackinaw Island; is that what
23 it appears to be?

24 A. Yes.

Page 110

1 Q. Now, with respect to Mackinaw Island, itself,
2 there is an airport on the island, correct?

3 A. I don't know that.

4 Q. Okay. Willing to accept that subject to
5 check?

6 A. I suppose.

7 MR. STYERS: Objection, asked and
8 answered. He said he didn't know. I mean, no
9 reason to ask a question that he says he doesn't
10 know the answer to. There is evidence coming into
11 the record. He could accept that evidence, but
12 otherwise, the witness doesn't know.

13 COMMISSIONER BROWN-BLAND: Then he asked
14 him if he would accept it subject to check.
15 Overruled. That means you may answer the question.
16 Subject to check, do you accept that there --

17 THE WITNESS: If it's true, it's true.
18 Simple as that.

19 COMMISSIONER BROWN-BLAND: That's your
20 answer, Mr. Trathen.

21 MR. TRATHEN: That's fine. Thank you.

22 Q. There is competition here; there's two
23 different ferries that are serving Mackinaw Island,
24 correct?

Page 111

1 A. That's correct.

2 Q. Beaver Island is a vehicle ferry?

3 A. I believe that's the case.

4 Q. Miller Boat Company is a vehicle ferry?

5 A. Yes.

6 Q. Key West, you can drive there?

7 A. Yes, but again, unless you're going for an
8 extended period, it's a very, very long drive.

9 Q. Would you agree that there is an airport in
10 Key West?

11 A. Yes. I believe there is an airport in Key
12 West.

13 Q. Okay. All right. So I'd like to just ask
14 you a few questions with regards to the valuation that
15 you did in 2018.

16 MR. TRATHEN: I don't believe that my
17 questions will elicit any confidential information,
18 given the discussions that we had at the outset of
19 the hearing, but, counsel, please advise me if you
20 think we're getting into -- I'm not asking about
21 projected values, I'm asking about the work he did
22 back in 2018.

23 MR. RISINGER: Thank you, Mr. Trathen.

24 Madam Chair, I discussed off the record with

Page 112

1 Mr. Schauer before we started this morning that
2 we're not claiming confidentiality on any of the
3 contents in either of the Mercator reports.
4 They've been made public, and we're not gonna press
5 the issue of forward projections. It's all fair
6 game in the two Mercator reports.

7 COMMISSIONER BROWN-BLAND: Thank you.

8 Q. Okay. So you performed a valuation with
9 respect to transportation assets in 2018; is that
10 correct?

11 A. Yes.

12 Q. And you've not updated it since then?

13 A. Correct.

14 Q. Okay. And so, in essence, as I understand
15 it, you work -- did work for the seller here and then
16 did work for the buyer; you, kind of, prepared this
17 report for the seller and then you validated it for the
18 buyer that never consummated the deal with the
19 Transportation Authority, correct?

20 A. Not correct. What I did for the Authority
21 was to help them demonstrate that, if they paid the
22 price that they had agreed themselves, that they
23 could -- and the buyer -- essentially, what I did was
24 ability-to-pay analysis, what's called a bond

1 feasibility study. Different from a valuation
2 analysis, because I came on the scene with the
3 Authority after they had already reached their
4 understanding with the seller.

5 So the -- I was brought in, I think, under
6 the request of the finance team working for the
7 Authority so that they could have my input into the
8 analysis to demonstrate to the rating agencies and
9 eventually to the bond market that they had a debt
10 structure or an amount of debt, I suppose, that they
11 had a business that would underlie the debt and could
12 repay the loan. Simple as that. I wasn't validating
13 my old work and I wasn't advising on value. I was
14 advising on operational cash flows, revenue
15 assumptions, that sort of thing, all in its own report,
16 of course.

17 Q. Okay. So with respect to the valuation,
18 itself, that you -- that you performed, you summarize
19 that in your testimony as well as in Exhibit I, and is
20 it fair to say that a substantial majority of your
21 valuation is in the unregulated assets?

22 A. Yeah. That's clear from the tables.

23 Q. Okay. So it's -- just flip this around, very
24 small percentage of your valuation is due to the

1 regulated operations?

2 A. Okay. I guess that's a question. Yes,
3 that's true.

4 Q. About 6.5 percent, I believe, is what's in
5 your report?

6 A. If you've done the math correctly, I believe
7 the numbers are there.

8 Q. Okay. And my understanding is that the
9 valuation was based on a net present value of cash
10 flows methodology?

11 A. Correct.

12 Q. Okay. And so based on your analysis, is it
13 fair to say that a substantial portion of the economic
14 value of this enterprise is tied to parking? Is that
15 correct?

16 A. Actually, I'd say there's three distinct
17 enterprises here all evaluated together, and the most
18 valuable one, was, yes parking.

19 Q. And would you say that -- I believe that you
20 said in your testimony that you didn't really solve for
21 regulation with respect to valuating the Transportation
22 Authority deal, because it wasn't regulated -- the
23 Transportation Authority wouldn't be regulated; is that
24 right?

1 A. That's right. The rate assumptions -- the
2 rate increase assumptions in the feasibility study
3 model that was used to support the bond financing were
4 worked out with the Authority, frankly. They had input
5 to what the rate increase assumptions would be and an
6 understanding that the ferry and tram would no longer
7 be regulated by the Utilities Commission, but overseen
8 by this new public authority.

9 Q. Okay. And with respect to your analysis, a
10 change -- just taking Transportation Authority out of
11 equation, a change in the regulatory status of a
12 particular asset might be relevant to your valuation,
13 correct?

14 A. I'm not sure it would. It would -- it might
15 change a buyer's interest. Although we heard today
16 that maybe it doesn't. The valuation comes down to
17 expected revenues and cost. I think the -- we chose
18 revenue assumptions that we thought were reasonable,
19 that the -- that the Authority thought was reasonable,
20 and would -- I suppose, on that basis, one could
21 conclude that this -- the Utilities Commission might
22 also conclude they were reasonable, so maybe it doesn't
23 make a difference. I'm not sure about that.

24 Q. You did a revenue analysis, a cash flow

1 analysis. So to the extent that regulation would
2 impact the future cash flows, then naturally it would
3 impact your -- the number that's spit out after you did
4 your analysis and arrived at a valuation?

5 A. Yes. If regulation changes revenues and
6 costs and cash flows, it would affect the present value
7 of the entity and the enterprise value that was
8 calculated, yes.

9 Q. Okay. That's all I have. Thank you.

10 COMMISSIONER BROWN-BLAND: Mr. Higgins.
11 CROSS EXAMINATION BY MR. HIGGINS:

12 Q. Mr. Leonard, good morning. Dan Higgins for
13 the Bald Head Island Club. It's still morning.

14 You visited the Deep Point ferry landing and
15 Bald Head Island and Southport when you were doing your
16 work for either Bald Head Island Limited or the ferry
17 authority?

18 A. I did. I visited the island. I spent two
19 days on the island, and -- less time in Southport, but
20 I drove through to get to the landing.

21 Q. I want to ask you a question about -- if you
22 would turn to page 23 of your prefiled testimony.

23 A. Okay.

24 Q. And specifically at line 13, you make a

Page 117

1 statement there regarding existence of multiple parking
2 supply models. And I think I know what you're
3 referring to, but I want you to, please, clarify for
4 the record.

5 You're making a reference there, are you not,
6 to your survey of other ferry operations around the
7 country?

8 A. I am, yes.

9 Q. You're not suggesting that there is any
10 multiple parking situations available for the Bald Head
11 Island ferry, are you?

12 A. No. What I've said about that is that there
13 could be alternate parking facilities, that it's not an
14 unreasonable conclusion to reach, that if the parking
15 at the ferry terminal was not adequate or was overly
16 high priced, priced overly high, that a competitor
17 could enter and discipline that market, as was said
18 this morning, used that term, bit of a regulatory term,
19 but at any rate, the -- have I answered your question?

20 Q. Coulda, shoulda, woulda, but at present,
21 there is no other parking option available for ferry
22 riders, is there?

23 A. Not to -- no, I don't believe there is.

24 Q. You state, on page 25 of your testimony at --

Page 118

1 beginning at line 5, your opinion that the Commission
2 should -- and I'm quoting -- ensure that parking is
3 available, either at the terminal or in convenient
4 community locations, and that independent parking
5 operators be allowed to access the market. And
6 Mr. Trathen asked you about the market, and you
7 identified that as the -- actually, the Deep Point
8 ferry terminal.

9 My question for you is, you haven't
10 identified -- and this follows on the same question I
11 asked you a moment ago -- any other convenient
12 community parking locations, have you?

13 A. Let me just clarify, when we talk about
14 parking, that parking is distinct from ways to access
15 the ferry. We heard this morning, I think we all know,
16 there are other ways to get to the ferry, other than
17 parking at the terminal. In terms of your -- strictly
18 answer your question about other places to park, that's
19 your answer. There is no other established commercial
20 parking facility available at the moment. As I said,
21 there could be, but at the moment, none has seen fit to
22 enter that market.

23 Q. Page 29 of your testimony -- actually, the
24 very last part of your testimony, beginning at line 12,

1 you make the statement there that rate regulation of
2 parking would be a dramatic change in the regulatory
3 treatment of the asset and in the size of the rate base
4 of the utility, which would have considerable
5 consequences to the rates and consumers; do you see
6 that?

7 A. I do.

8 Q. Isn't it also true that, if the parking
9 operation was regulated, then all of the parking
10 revenues, not just \$523,000, would be rolled into the
11 regulated operation, which would support the combined
12 ferry and parking operation?

13 A. Yeah, but you -- you don't get the revenue
14 without having to buy the assets, so -- of course it
15 would change the revenue.

16 Q. I understand that. Your point was that the
17 assets have to come into rate base. You didn't
18 acknowledge that the revenue would come in as well, and
19 so there could be dramatic positive consequences for
20 customers and rates if those revenues were included,
21 couldn't there?

22 A. I suppose. Just to be fair, I think it goes
23 without saying that the revenue comes in. So my saying
24 it, surely not necessary. How that all plays out, I

Page 120

1 don't know. I haven't done that analysis. Weighing up
2 what you have to spend to acquire all those revenues is
3 to me unknown. It's estimates of it in the record
4 about what SharpVue will pay, and it's similar -- well,
5 let me take that back. It's not unknown to me. I did
6 an analysis of that, and you've seen my analysis. You
7 don't get those revenues without -- I mean, that's the
8 value that's attached to the assets that generate those
9 revenues, so they all have to come together.

10 Q. And with regard to Mr. Trathen's question,
11 your analysis is not predicated on the ratemaking
12 metrics that are used by this Commission, are they?

13 A. No. I'm coming at it as a business person
14 with an eye towards fairness and return and normal
15 business functions. As I said at the outset, I'm not
16 here as a rate setter or a regulator. I'm here as an
17 infrastructure analyst and transportation specialist.

18 Q. No other questions. Thank you, sir.

19 COMMISSIONER BROWN-BLAND: Redirect?

20 REDIRECT EXAMINATION BY MR. RISINGER:

21 Q. Mr. Leonard, I just have a couple questions
22 about the -- some of the questions Mr. Trathen was
23 asking you. I want to take you back to the questions
24 that he was asking you regarding your research in

Page 121

1 regards to other communities with ferries that you used
2 to prepare Exhibit J to your report.

3 In those settings, were there -- were there
4 settings in those communities where you identified that
5 there was a local government serving as a provider of
6 parking in those communities?

7 A. Yes, that's correct. I -- the -- that was --
8 that was not a detail that was included in what became
9 Exhibit J, but in my working papers, you can see who
10 provides the ferries. And I think Dr. Wright made a
11 similar assessment.

12 In fact, as long as we're talking about that,
13 can I continue on that vein? There was a determination
14 by Dr. Wright, or an opinion issued, that the presence
15 of these city or -- generally, city or state
16 authorities that might operate a parking lot was, in
17 fact, regulation of parking. And I would -- I would
18 not agree that -- that would not meet my definition or
19 I think the common person's definition about what is
20 regulation. The presence of a municipal parking lot is
21 just another participant in the market, would have the
22 same effect of any other participant in the market, I
23 would say. Not as a regulator, but as a competitor in
24 that sense.

1 Q. Mr. Leonard, you were also asked some
2 questions about various communities that are covered in
3 Exhibit J to your report where there were forms of
4 competition present for parking.

5 And my only question about that is, did you
6 note any significant price difference between the
7 prices charged by Limited here versus the communities
8 where there are multiple competition points for
9 parking?

10 A. Generally, I'd say that the rates being
11 charged by Limited are lower, generally, sometimes
12 substantially lower, than the other ferry terminals
13 that I surveyed. The -- even those that have multiple
14 parking lots. Especially the ones with multiple
15 parking lots, it seemed, when I did a second-time
16 pass-through, lots of those locations with the most
17 alternate terminals often had higher -- were the
18 highest priced.

19 So I couldn't find a pattern, necessarily,
20 other than that having lots of parking didn't seem to
21 change the prices very much, which suggests that the
22 market pricing for parking is quite a lot higher,
23 generally, across the country -- across North America
24 than what we see in Southport Deep Point terminal.

1 Q. Thank you, sir.

2 MR. RISINGER: Madam Chair, nothing
3 further.

4 COMMISSIONER BROWN-BLAND: All right.
5 Questions from the Commission?

6 (No response.)

7 EXAMINATION BY COMMISSIONER BROWN-BLAND:

8 Q. In your testimony, Mr. Leonard, you discussed
9 a number of ferry services.

10 And similar to a question that I had asked, I
11 think, Dr. Wright, did you find any evidence of any
12 other ferries -- any other car or passenger ferries
13 that typically charge by size of vehicle, weight, or
14 the type of cargo?

15 A. I think the answer to that is yes. I'm very
16 familiar, for instance, with the Washington State
17 ferries where I reside and ride the ferry. There is a
18 limit on how long your car can be. That much I know,
19 because I would see the sign about car length. You pay
20 extra if you have a large car and take up more space,
21 so stands to reason. So I'm sure that the trucks are
22 also paying a substantially higher fee. They take up
23 more ferry capacity.

24 I didn't research that, specifically, in my

1 canvassing, so I can't give you a particular detailed
2 answer about that, but it would be my expectation that
3 the Washington experience is not unique.

4 Q. And could you give us other examples from
5 your testimony, or discuss it further, about the
6 specific scenario or circumstances that you would
7 contend are the most analogous to the circumstances
8 here in this action concerning Bald Head?

9 A. Yeah. The -- it's hard to find anything that
10 ticks each characteristic box simultaneously, I will
11 grant you that, but some are more similar than others.
12 I think that the -- the Cuttyhunk ferry in Cuttyhunk
13 Island, Massachusetts, is similar. Much smaller scale.
14 It's a car-only island. I'm not sure how they get
15 their freight there. I don't know the answer to that.
16 There may be a landing. Sometimes these islands,
17 somebody will come along with the -- an old navy
18 landing gear -- landing craft-type vessel that you pull
19 up on the beach and drop some cars or trucks or freight
20 or something. That may be what they're doing there,
21 I'm not sure. But it's similar, in the sense that it's
22 a car-only island, with, as far as I know, one
23 operator.

24 Daufuskie Island in Hilton Head is similar.

1 I know it's noted here that there are multiple ferries.
2 I believe that the ferries are all operated by the Haig
3 Point Club. They have a -- I spoke to the CEO of the
4 Haig Point Club about this. Well, not about this
5 particular question of multiple ferries, but about
6 whether his ferry operation is regulated, and it's not,
7 but it's a car-only -- a car-free island, if you will,
8 with limited service. And I believe it's not multiple
9 ferries, because I believe they're owned by the same
10 people, or operated by the same people.

11 I think that Catalina Island is actually
12 quite similar. Again, it's -- it's not a car-free
13 island, but I was told by somebody in the
14 harbormaster's office -- I believe it was the
15 harbormaster. You can look in my test- -- my exhibit,
16 the gentleman's name. It's, like, a 30-year waiting
17 list to get a car on the island. You more or less have
18 to apply when you get your driver's license, and you
19 hope that you can get a car before you retire. So it's
20 a practical matter, for people on the island, it's
21 car-free.

22 There are two operators. One of them is much
23 smaller than the other, with a single departure point,
24 all of them served by limited parking options, all of

1 them with shore-side parking above \$20 a day. So
2 that's reasonably similar. Those may be the ones that
3 check the most boxes simultaneously.

4 Q. All right. Thank you. And then, as I
5 understand your testimony, Mercator didn't do a high
6 and best use analysis, but rather you did the cash
7 flow, you know, based on the business' operator result;
8 is that correct?

9 A. Yes, that's exactly right.

10 Q. And so has any analysis been done, that
11 you're aware of, that does value the parking facilities
12 on the upper market separate and apart from ferry
13 operations?

14 A. Well, I know that the Authority commissioned
15 some appraisers to do a, sort of, conventional real
16 estate appraisal. I think what they did was sale --
17 comparable sales and that kind of analysis. And I
18 don't recall their specific numbers, but I believe that
19 they were found to be satisfactory to the Authority.

20 The -- let me just answer the question about
21 highest and best use analysis. That is more of a --
22 that's a term that's usually applied in real estate, as
23 you probably know, and for the purposes of valuing
24 these assets, what -- I mean, I really wasn't

Page 127

1 interested in their being used as something else. If
2 they were worth less than what I came up with for use
3 as parking- and ferry-related activities, it didn't
4 matter, because the value was already that. If they
5 were worth more, well, that's great, but it wasn't
6 necessary. We weren't valuing in that term -- in those
7 terms.

8 So it wasn't important to getting a value. I
9 wanted a reasonable value that was -- that I knew could
10 be achieved. This is the other problem with trying to
11 do a highest and best use analysis, is you have to make
12 way more assumptions, and it's far more speculative, in
13 fact, because you're imagining a business that doesn't
14 exist there. But I -- we could look at a real business
15 that was operating for all these years, had a track
16 record, had, you know, all the things that go with the
17 going concern, which makes cash flow analysis really
18 the methodology to be applied.

19 COMMISSIONER BROWN-BLAND: Okay.

20 Questions on Commission's questions? Hold on,
21 we've got one more. Commissioner Clodfelter?

22 EXAMINATION BY COMMISSIONER CLODFELTER:

23 Q. Mr. Leonard, I want to follow one point just
24 to be sure I know what we've got in Exhibit J that

Page 128

1 you've been asked questions about.

2 When you -- I read footnote 1, and it sort of
3 discusses how you used the membership list of the
4 Passenger Vessel Association in order to make your
5 selections.

6 Did you select this list of operations to
7 survey, or were you given this list by someone else?

8 A. No, this is my list.

9 Q. This is a list you prepared?

10 A. Yeah. It includes those which -- for which I
11 was able to find enough information to a level of
12 confidence that allowed me to --

13 Q. You've answered. I just wanted to know, this
14 is your work, and someone else didn't give you this
15 list and say go find out about these ferries.

16 A. Clearly not.

17 Q. Good. The question I really want to ask you
18 is, when you compiled your list, did you do or did you
19 not do any analysis of the regulatory regimes in the
20 states where these operations occur to determine
21 whether or not they are the same or different from the
22 regulatory statutes applicable in North Carolina?

23 A. That sounds like you're requesting -- you're
24 asking whether I did a fairly nuanced look at types of

Page 129

1 regulation, and I think the answer to that is no.

2 Q. So North Carolina's got one set of statutes
3 that determines who gets regulated and who doesn't get
4 regulated.

5 Did you attempt to do an analysis to what
6 extent the laws of Massachusetts or New York or
7 South Carolina and so forth did or did not parallel the
8 laws of North Carolina?

9 A. I think, to a certain extent, I did.

10 Q. Tell me what you did.

11 A. If we take the California example, as you
12 know, the -- it's in the records in reference to
13 California regulating parking at a train station or
14 something. So I really wanted to know about
15 California, because that seemed relevant. And as I
16 said earlier, I think the Catalina Island
17 transportation arrangements are fairly similar to Bald
18 Head Island. So I chased that one down with lots of
19 phone calls and messages, and I got an answer. I got a
20 call back and I got an email that clearly said that the
21 State of California doesn't have any interest in
22 regulating parking that serves ferry terminals. I know
23 they have a certificate of convenience and necessary,
24 if that's the right term, regime in place, and I know I

1 looked at those filings for the Catalina ferry
2 operators, so I know that they are regulated for this.
3 They are certificated and regulated, and I believe the
4 rates are regulated for the ferry and so forth. So, in
5 that sense, I satisfied myself that it was a regulated
6 ferry regime. Did I check every dimension of it? No,
7 I didn't. I'm not sure I would be capable of doing
8 that.

9 Q. The response you got back, though, was from
10 some official of the State of California, or the
11 California Public Service Commission?

12 A. The gentleman in charge of -- the gentleman
13 who would be in charge of such a thing if they did it.

14 Q. Okay. Did you do that with every other
15 state?

16 A. I did it where I could. I did it with
17 Rhode Island. I had an exchange with somebody from the
18 Rhode Island Public Utilities Commission which
19 regulates the Block Island ferries from Narragansett.
20 I got input. I interviewed a couple of chief
21 executives of ferry businesses in Massachusetts, but
22 the gentleman that runs the Hy-Line ferry returned my
23 call and we had a good conversation. He -- he gave me
24 a fair bit of information about their business. It's

1 not regulated in terms of rates. He competes with
2 several others. He provides about half the ferry
3 parking for his customers, he estimated. And I had the
4 pleasure of actually using his service last week to
5 visit Nantucket, and I think it bears repeating, that
6 we paid \$28 to park our car for the day at the Hy-Line
7 ferry terminal. So they are not regulated. They
8 are -- just down the street it's the Estate ferry,
9 vehicle car ferry. And so I got that bit of
10 information. I spoke to some people in New York. Hard
11 to find somebody in charge, because it seemed like
12 nobody was really paying much attention to it. And
13 then other ferry operators that I was able to reach
14 around the country.

15 Q. Thank you. I appreciate that.

16 Again, but just to be clear, what you didn't
17 do was attempt to compare the law in those states with
18 the law in North Carolina; am I correct?

19 A. That's correct.

20 Q. And nobody did that for you; no one else
21 performed that exercise and said, here you go, these
22 states have laws very much like North Carolina's law?

23 A. That's correct.

24 Q. Okay. That's what I wanted to be sure of.

Page 132

1 Thank you, sir.

2 COMMISSIONER BROWN-BLAND: All right.

3 Questions on Commission's questions, Mr. Ferrell?

4 MR. FERRELL: No questions.

5 COMMISSIONER BROWN-BLAND: Mr. Trathen?

6 MR. TRATHEN: Yes, thank you.

7 EXAMINATION BY MR. TRATHEN:

8 Q. Commissioner Brown-Bland asked you for
9 examples of ferries -- vehicle ferries that charge by
10 weight; do you recall that?

11 A. I believe the question was length or weight,
12 but yes, I did hear that question.

13 MR. TRATHEN: If I could approach?

14 COMMISSIONER BROWN-BLAND: You may.

15 Mr. Trathen, do you have very many?

16 MR. TRATHEN: I do not.

17 (Pause.)

18 MR. TRATHEN: Mr. Leonard -- first off,
19 let's mark this.

20 COMMISSIONER BROWN-BLAND: Gonna be
21 marked as Village Leonard Redirect Exhibit 1. I
22 mean, not redirect. Commission's questions. It's
23 getting late.

24 MR. TRATHEN: It is, and it's tough to

1 get all those words in, but thank you.

2 (Village Leonard on Commission Questions
3 Exhibit Number 1 was marked for
4 identification.)

5 Q. Mr. Leonard, the Prudence Bay destination is
6 on your Exhibit J, so this is one of the ones that you
7 looked at, correct?

8 A. Yes. I believe this is in Rhode Island.

9 Q. Yes. It's listed as A&R Marine, but it does
10 business as Prudence and Bay Islands Transport,
11 correct?

12 A. That's right.

13 Q. Okay. And with respect to the pricing, this
14 is a vehicle ferry. That, I believe we may have
15 already established, but it's clearly a vehicle ferry,
16 correct?

17 A. Yes, it is.

18 Q. And do you see that the standard size vehicle
19 and the rate includes driver? Do you see the pricing
20 by weight of the vehicle?

21 A. Yes.

22 Q. Okay. So you were asked for -- some
23 questions about specific locations that you thought
24 were similar to Bald Head Island. In my cross we spoke

Page 134

1 about a number of the ones on this list, but you
2 pointed specifically to Catalina Island.

3 And did -- I think we talked about this
4 before. There is an airport there, correct?

5 A. Given how big Catalina Island is, there
6 probably is.

7 Q. Actually, I don't think I asked you about
8 Catalina Island, because there were -- it was
9 highlighted. There is no ferry-owned parking for
10 Catalina Island. Let's start there.

11 A. That's right.

12 Q. It's only third-party parking?

13 A. Correct.

14 Q. Okay. And Catalina Island is located off of,
15 basically, the Los Angeles area, correct?

16 A. That's right.

17 Q. Okay. So these ferry destination points --
18 we've got several different providers here, but the
19 points where they leave, these are major metropolitan
20 areas; are they not?

21 A. Well, they divide, kind of, into two, call it
22 three, categories. They are, sort of, Long Beach, San
23 Pedro is Port of Los Angeles, Dana Point is well south
24 in Orange County, Newport Beach not far south in Orange

1 County.

2 Q. So there are multiple options for parking at
3 each of these?

4 A. I suppose there are. I was keying on the --
5 what the ferry operator website was directing drivers
6 to do. I mean, essentially, in all of these places, a
7 creative driver can find another solution. I should be
8 careful about saying "all" about anything. In most
9 ferry terminals, a creative driver can find a solution
10 that maybe wasn't contemplated by the ferry operator.
11 So I was focused on, sort of, where the operators were
12 directing their clients to go.

13 Q. Population of Catalina Island is about 4,000
14 people?

15 A. That sounds about right.

16 Q. Okay. And with respect to the other one that
17 you mentioned, Cuttyhunk ferry, there are other
18 services, other than the Cuttyhunk Ferry Company,
19 providing transport to Cuttyhunk, correct?

20 A. I don't know that. I did not -- I don't
21 believe I came across that, so.

22 Q. The Cuttyhunk Water Taxi: Division of Triton
23 Sea Enterprises; are you familiar with that?

24 A. I'm not.

1 Q. Okay. Leaving from New Bedford,
2 Massachusetts?

3 A. Same place as the Cuttyhunk ferry.

4 Q. Okay. All right. Cuttyhunk has a population
5 of 10?

6 A. It's quite small. I don't know what the
7 number is, but I know it's not -- it's not in the
8 thousands. If you say it's 10, maybe it is. I don't
9 know the number.

10 Q. Okay. That's all I have. Thank you.

11 COMMISSIONER BROWN-BLAND: Mr. Higgins,
12 questions on Commission's questions?

13 MR. HIGGINS: No, ma'am.

14 COMMISSIONER BROWN-BLAND: All right. I
15 will entertain motions. Mr. Risinger, didn't you
16 have --

17 MR. RISINGER: We had no exhibits with
18 regard to Mr. Leonard. We've already moved in his
19 direct exhibits.

20 COMMISSIONER BROWN-BLAND: No, I only
21 identified them.

22 MR. RISINGER: I'm sorry.

23 COMMISSIONER BROWN-BLAND: They will be
24 received into evidence.

1 MR. RISINGER: Thank you. With the
2 Chair's permission, we'd like to move into evidence
3 the direct examination prefiled testimony of
4 James Leonard and his oral summary and the 12
5 associated exhibits with his direct testimony, and
6 thank you for leading me down the correct path.

7 COMMISSIONER BROWN-BLAND: All right.
8 The exhibits attached to the direct testimony of
9 witness Leonard will be received into evidence
10 without objection.

11 (Leonard Exhibits 1 through 12 were
12 admitted into evidence.)

13 MR. TRATHEN: Madam Chair, I believe
14 I've got three that I'd like to move into evidence.
15 Two Village Leonard Cross Examination Exhibits 1
16 and 2, and then the Village Leonard Cross on
17 Commissioner's questions Number 1.

18 COMMISSIONER BROWN-BLAND: The motion is
19 allowed, and that's Village Leonard on Commission
20 Questions Exhibit 1.

21 MR. TRATHEN: Thank you.

22 COMMISSIONER BROWN-BLAND: That motion
23 is allowed.

24 (Village Leonard Cross Examination

1 Exhibits 1 and 2, and Village Leonard on
2 Commission Questions Exhibit 1 was
3 admitted into evidence.)

4 COMMISSIONER BROWN-BLAND: Mr. Leonard,
5 you may be excused.

6 THE WITNESS: Thank you very much.

7 COMMISSIONER BROWN-BLAND: We're gonna
8 take a break at this time and come back at 11:45.

9 (At this time, a recess was taken from
10 11:33 a.m. to 11:47 a.m.)

11 COMMISSIONER BROWN-BLAND: Let's go back
12 on the record. The case is still with the
13 Respondent.

14 MR. STYERS: Bald Head Limited and
15 Transportation will call Mr. James Fulton to the
16 witness stand.

17 Whereupon,

18 JAMES FULTON,
19 having first been duly sworn, was examined
20 and testified as follows:

21 COMMISSIONER BROWN-BLAND: You may be
22 seated.

23 DIRECT EXAMINATION BY MR. STYERS:

24 Q. Would you please state your name, address,

1 and position of employment for the record, Mr. Fulton?

2 A. Yes. My name is James Fulton. I live at 213
3 Lions Gate Drive in Cary, North Carolina, and I am a
4 consultant independent contractor to Bald Head Island
5 Limited.

6 Q. Have you caused to be prefiled in this docket
7 direct testimony consisting of 12 pages in question and
8 answer format?

9 A. I have.

10 Q. And was that testimony prepared by you or
11 under your direction?

12 A. It was.

13 Q. If you were asked those same questions today,
14 now that you are under oath, would you provide the same
15 answers as in your prefiled testimony?

16 A. I would.

17 Q. Do you have any corrections or additions to
18 your testimony?

19 A. I do. I have one, and it is on page 6 --

20 Q. 6?

21 A. -- at line number 7, and the sentence "6 feet
22 or rounded up to the nearest 6 feet," delete the word
23 "up."

24 Q. It should read, "6 feet or rounded to the

1 nearest 6 feet," and strike "up."

2 Were there six exhibits identified and filed
3 concurrently with your direct testimony?

4 A. Yes.

5 Q. Are those exhibits true and accurate in
6 representing what they purport to represent to the best
7 of your knowledge?

8 A. They do.

9 MR. STYERS: At this time, Commissioner,
10 we would ask that exhibits be identified and moved
11 into evidence. The prefiled direct testimony
12 consisting of 12 pages in question and answer
13 format and the six exhibits attached thereto.

14 COMMISSIONER BROWN-BLAND: The prefiled
15 direct testimony of the witness Fulton will be
16 received into evidence at this time, and the six
17 exhibits attached thereto will be identified as
18 they were marked when prefiled.

19 (Fulton Exhibits 1 through 6 were
20 identified as they were marked when
21 prefiled.)

22 (Whereupon, the prefiled direct
23 testimony of James Fulton was copied
24 into the record as if given orally from

the stand.)

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**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.)	
)	
BALD HEAD ISLAND)	
TRANSPORTATION, INC. and)	
BALD HEAD ISLAND LIMITED,)	
LLC,)	
Respondents.)	

**DIRECT TESTIMONY OF
JAMES W. FULTON, JR.**

September 8, 2022

OFFICIAL COPY

Sep 26 2022

1 **Q: Could you please identify yourself for the record?**

2 **A:** My name is James W. Fulton, Jr., and I am an Operations Consultant
3 with Bald Head Island Limited, LLC (“BHIL” or “Limited”). Previously, I
4 served as Director of Operations for BHIL from 1995 to 2011. In my role as
5 a director, I supervised the operations of BHIL’s freight Barge Department,
6 among seven other departments. In my supervisory capacity regarding the
7 Barge Department I regularly coordinated with the United States Coast Guard
8 on matters of vessel and terminal security, vessel inspections, and
9 credentialing. Before working with BHIL I was a colonel in the United States
10 Army and served for 28 years with a focus on logistics, planning and
11 execution of large-scale operations, and maintenance and supply issues. My
12 CV is provided as Exhibit 1 to my testimony.

13 **Q: What equipment is used in the tug and freight barge system that is**
14 **owned and operated by BHIL?**

15 **A:** It consists of the *Brandon Randall*, a 100 foot x 32 foot steel deck barge
16 that can carry up to 200 tons of cargo, in the form of vehicles and equipment,
17 and the *Captain Cooper*, a tug boat that pushes the barge, five days per week,
18 on its four nautical mile journey back and forth between the Deep Point
19 Terminal in Southport and the Bald Head Island Terminal. Each of these

vessels is domiciled in Southport, North Carolina. The barge is a Roll-on/roll-off vessel that transports vehicles of varying sizes, including trucks that supply food and other products for stores on the island, large highway trucks, and construction vehicles. Images that depict the tug and barge as they typically function (which appear on www.bhibarge.com) are below in Figures 1 and 2 (*see Exhibit 2*):



Figure 1



Figure 2

Q: Is the barge inspected or credentialed by either the federal or state government?

A: Yes. The tugboat *Captain Cooper* is inspected by the Coast Guard and it operates and is governed under 46 CFR Chapter I Subchapter M “Towing Vessels.” The barge *Brandon Randall* is inspected by the Coast Guard and it operates and is governed under under 46 CFR Chapter I, Subchapter I “Cargo and Miscellaneous Vessels.” Both vessels receive a Certificate of Inspection and a Certificate of Documentation issued by the United States Coast Guard. (Exhibit 3 and 4, respectively).

Q: Under federal law, is the operation of the barge restricted in any way?

A: Yes, as a result of its inspection it is stated the barge is permitted to operate only in daylight conditions, on a route between Southport and the Island that is not more than one mile from land, and it may carry hazardous cargoes in certain highway vehicles under conditions specified in 49 CFR 176.76.

Q: Under federal law, is the barge considered a vessel that carries passengers?

1 **A:** No. The *Brandon Randall* is inspected as a “freight barge,” under 46
2 CFR Subchapter I, and is considered to carry no “passengers.” It may carry
3 12 persons in addition to its crew under 46 U.S.C. 3304 but is not subject to,
4 and is not inspected as, a passenger vessel.

5 **Q:** **Does BHIL permit a person to accompany a vehicle transported on**
6 **the barge?**

7 **A:** Yes, it generally permits one person (typically the owner or operator)
8 who is not charged a fee or required to purchase a ticket to stay inside each
9 transported vehicle. Within the 12-person limitation of federal law, the barge
10 crew has discretion to allow additional persons to accompany vehicles whose
11 size, configuration, or cargo merits additional supervision.

12 **Q:** **Can you describe the service that is offered by the tug and freight**
13 **barge?**

14 **A:** The barge transports vehicles and equipment that are driven or towed
15 to the Southport and/or Bald Head Island barge landings. Owners-operators
16 load their vehicles and equipment directly onto the barge and typically remain
17 with the vehicle during the transit to and/or from the island where they offload
18 their vehicle from the barge to continue to their destination. BHIL charges
19 the vehicle/equipment owner-operator a fee based on the length of the

1 transported vehicle or equipment, at the rate of one barge “ticket” required for
2 each six lane-feet of cargo no matter what the vehicle is carrying.

3 Barge travel is charged by deck spaces only, and each deck space authorizes
4 the holder to utilize six feet in one of three lanes aboard the barge for one
5 round trip. Barge deck spaces are \$60.00 each. The size of a vehicle
6 determines the number of deck spaces required; lengths over an increment of
7 six feet are rounded up to the nearest six feet.

8 **Q: Can any vehicle simply pay the required per-foot fee and be**
9 **transported to the Island?**

10 **A:** No, because the Village of Bald Head Island closely regulates what
11 vehicles may operate there, any vehicle that reserves space on the barge must
12 also have either a daily or annual Village-issued Internal Combustion Engine
13 (ICE) permit that is required to use any ICE vehicle on roads maintained by
14 the Village.

15 **Q: So, the barge cannot be used in a manner that many people might**
16 **have experienced with car ferries that operate in various parts of the**
17 **country?**

1 **A:** That's correct. What you are likely to see on the barge most often are
2 trucks transporting food, groceries, dry goods, and building and landscape
3 materials; container vehicles that bring diesel, gasoline, and propane;
4 construction vehicles; and solid waste. It is rare to see a passenger vehicle
5 transported on the barge, and rare for the Village to issue an ICE permit to
6 such a vehicle.

7 **Q:** **Can the barge be used to transport appliances, furniture and other**
8 **items a homeowner might need to establish a residence or rental property**
9 **for vacationers, or that a business that caters to residents and visitors**
10 **might require?**

11 **A:** Yes, individuals or businesses who wish to transport furniture,
12 materials, equipment or supplies to the Island can do so as cargo in a vehicle
13 that qualifies to rent space on the barge and has secured a Village-issued ICE
14 permit.

15 **Q:** **If the barge transports a Home Depot delivery truck that contains**
16 **a stove and patio furniture purchased by an Island homeowner, isn't the**
17 **barge a shipper of household goods?**

18 **A:** No. Some of the vehicles that are transported on the barge may contain
19 household goods, but the barge is just transporting the vehicles. Barge and

1 tug personnel do not handle nor otherwise take possession of cargo contained
2 within the vehicles that it transports. Using the Home Depot example, a
3 consumer is not ordering the stove or patio furniture to be delivered to the
4 barge for transport to them waiting at the Bald Head Terminal for delivery.
5 The customer orders, from a third-party vendor unaffiliated with BHIL, a
6 stove to be delivered to their front door on the island. The Home Depot truck
7 picks up the stove, drives via road to and onto the barge, then off the barge
8 and to the customer's front door. The barge is neither a point of origin nor a
9 final destination of any cargo, vehicles, or equipment it carries. Rather, the
10 barge is simply part of an intermodal transportation system in which freight is
11 moved by two or more modes of transportation. The BHIL barge serves a role
12 similar to vessels that transport cargo containers, vehicles, and rail cars
13 between domestic ports. The containers arrive from their point of origin at
14 the port and are loaded on the vessel. Upon arrival at the destination port,
15 they are offloaded onto trucks and/or rail and transported further to another
16 intermodal transportation node or to their final destination – neither of which
17 are a component of the intermodal service provided by the vessel. The BHIL
18 barge has no responsibility for getting HHG to their delivery point; it simply
19 gets a loaded vehicle across the river.

1 **Q: Can you describe how the Commission might think about the role**
2 **of a barge in this kind of intermodal system in the context of its regulation**
3 **of shippers of household goods?**

4 **A:** I can certainly explain why BHIL believes its freight barge operates
5 outside of the Commission's regulatory scope. Under N.C.G.S. Chapter 62,
6 Article 10, the Commission regulates intrastate household goods ("HHG")
7 movers by requiring them to have a certificate, insurance, meet specified
8 consumer protection standards, and to comply with what's known as the
9 Maximum Rate Tariff ("MRT"). The MRT is configured for over-the-road,
10 point-to-point HHG transportation including requirements for cost estimates,
11 stated/estimated value insurance coverage, and customer engagement
12 requirements that require direct communication, coordination, and contract
13 agreements with the customer. This regulatory scheme is designed to protect
14 individuals who hire movers to make end-to-end moves between current and
15 future residences. As the Commission describes it, if you are paying hourly
16 rates "the 'clock' starts when the mover arrives at your home, and it stops
17 when all the services at the destination have been completed." See Exhibit 5
18 (*Moving 101: A North Carolina Consumer's Guide*, issued by the North
19 Carolina Utilities Commission, at 4, rev. May 2021). "If you pay someone to
20 perform a move in North Carolina, whether the move is across town or across

1 the state, the move is probably regulated by the North Carolina Utilities
2 Commission,” the *Consumer’s Guide* advises. *Id.*

3 BHIL does not view the leasing of space on its barge deck for vehicles
4 carrying items and supplies to the Island as being engaged in the business of
5 HHG moves for consumers between their homes. Nor has the Commission
6 regulated the barge as an HHG mover or otherwise as falling under NCUC
7 regulatory jurisdiction. Further, BHIL does not believe that the definition of
8 a “public utility” as including a person “[t]ransporting persons or household
9 goods by street” or “by motor vehicles” draws it within the Commission’s
10 regulatory scope. N.C.G.S. § § 62-3(23)(a)(3)-(4).

11 **Q: Are there other aspects of the Commission’s regulations of HHG**
12 **movers that are inapplicable to the circumstances of the BHIL barge?**

13 **A:** First, MRT Rule 4 states that it is designed to address the transport of
14 HHGs “arranged and paid for by the householder or another party.” The BHIL
15 barge is not involved in that transaction; it simply leases space on its deck to
16 vehicles that transport items to and from the Island.

17 Second, the MRT regime is specifically configured to address the various
18 parameters incident to the HHG owner directly contracting with the movers.
19 For instance, the MRT includes separate structures for “hourly transportation

1 charges” for moves of 35 miles or less as well as for “weight and distance”
2 rates for moves of more than 35 miles. Moreover, the MRT provides an array
3 of other regulations that are specific to the kinds of services which businesses
4 that engage in point-to-point moves provide, such as for (i) packing and
5 unpacking; (ii) the cost treatment of bulky items, (iii) fuel surcharges, and (iv)
6 rules regarding waiting time.

7 Third, there are currently 354 certified HHG Carriers listed as having a
8 Certificate of Exemption from the Commission which allows them to
9 transport household goods. *See* Exhibit 6. Each of them are motor carriers
10 that use motor vehicles to conduct point-to-point moves across North Carolina
11 roads and highways for consumers.

12 **Q: Has the barge has transported vehicles to and from the Island that**
13 **have, or may have, contained furniture and other items homeowners**
14 **could use to establish private residences or rental properties?**

15 **A:** That’s true, but we believe that knowledge does not transform BHIL
16 into the kind of end-to-end shipper of household goods that the Commission
17 seeks to regulate. For instance, BHIL understands that a moving company
18 certified by the Commission might be engaged to move a family from Raleigh
19 to a new residence on the Island, and that the moving company might lease

1 space on the barge for a truck that contains the family's household furnishings,
2 but providing an intermodal link for that truck to the Island should not expose
3 BHIL to the regulations that govern the HHG movers themselves. Another
4 example is when a furniture store offers a delivery service that brings
5 purchased items to a homeowner on the Island via a delivery truck. But there,
6 even the seller and its delivery truck are not regulated as household goods
7 movers because "new furniture/retail deliveries are not under the
8 Commission's jurisdiction." *Consumer's Guide*, at 3.

9 **Q: Does this conclude your direct testimony?**

10 **A:** Yes, at this time.

1 Q. Mr. Fulton, have you prepared a summary of
2 your prefiled testimony that has been filed in this
3 docket?

4 A. Yes.

5 Q. And if you were to provide that summary today
6 under oath on the stand, would that summary be the
7 same?

8 A. Yes.

9 MR. STYERS: We would ask that the
10 summary prefiled -- filed in this docket also be
11 received into evidence and copied into the
12 transcript.

13 COMMISSIONER BROWN-BLAND: Witness
14 Fulton's summary of his direct testimony will be
15 received into evidence as if given orally from the
16 stand.

17 (Whereupon, the prefiled summary
18 testimony of James Fulton was copied
19 into the record as if given orally from
20 the stand.)

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**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.)
)
Bald Head Island Transportation, Inc.)
and Bald Head Island Limited, LLC,)
)
Respondents.)

**TESTIMONY SUMMARY
OF
JAMES W. FULTON, JR.
ON BEHALF OF
RESPONDENTS**

OFFICIAL COPY

Oct 25 2022

James W. (“Woody”) Fulton, Jr. Testimony Summary**Docket No. A-41, Sub 21**

My name is Woody Fulton. I served as Director of Operations for BHIL for sixteen years. In this position, I supervised the operations of BHIL’s freight Barge Department and developed the procedures that the barge still follows to this day.

BHIL’s tug and freight barge system consists of the *Brandon Randall*, a 100 foot x 32 foot steel deck barge, and the *Captain Cooper*, a tug boat that pushes the barge, five days per week, between the Deep Point Barge Landing in Southport and the Bald Head Island Barge Landing. The barge is a roll-on/roll-off vessel that transports vehicles of varying sizes that are driven or towed to the Southport and/or Bald Head Island barge landings.

BHIL charges the vehicle/equipment owner-operator a fee based on the length of the transported vehicle or equipment. Barge travel is charged by deck spaces only, and each deck space authorizes the holder to utilize six feet in one of three lanes aboard the barge for one round trip. Barge deck spaces are \$60.00 each. The size of a vehicle determines the number of deck spaces required. Typical vehicles that are transported on the barge include trucks transporting food, groceries, dry goods, and building and landscape materials; container vehicles that bring diesel, gasoline, and propane; construction vehicles; and solid waste. The Village of Bald Head Island closely regulates what vehicles may operate on the island, and only those vehicles that have either a daily or annual Village-issued Internal Combustion Engine (ICE) permit are allowed on the barge.

It is true that some of the moving or delivery trucks that are transported on the barge may contain household goods, such as a kitchen appliances or furniture, but the barge is just transporting the vehicles. Barge and tug personnel do not handle nor otherwise take possession of cargo contained within the vehicles that it transports. The barge is neither a point of origin nor a

final destination of any cargo, vehicles, or equipment it carries. Rather, the barge is simply part of an intermodal transportation system in which freight is moved by two or more modes of transportation.

Using a Home Depot delivery as an example: a consumer is not ordering the stove or patio furniture to be delivered to the barge for transport to them waiting at Bald Head for delivery. The customer orders, from a third-party vendor unaffiliated with BHIL, a stove, as example, to be delivered to their front door on the island. The Home Depot truck picks up the stove, drives via road to and onto the barge, then off the barge and to the customer's front door. The BHIL barge has no responsibility for getting household goods to their delivery point; it simply gets a loaded vehicle across the river.

At least since 1995 when I stated work for BHIL, we have always understood the barge operations to be outside of the Commission's regulatory scope. Under N.C.G.S. Chapter 62, Article 10, the Commission regulates intrastate household goods ("HHG") movers by requiring them to have a certificate, insurance, meet specified consumer protection standards, and to comply with what's known as the Maximum Rate Tariff ("MRT"). As you know, the MRT is configured for over-the-road, point-to-point HHG transportation including requirements for cost estimates, stated/estimated value insurance coverage, and customer engagement requirements that require direct communication, coordination, and contract agreements with the retail, end-use customer. As the Commission describes it, if you are paying hourly rates "the 'clock' starts when the mover arrives at your home, and it stops when all the services at the destination have been completed."

The leasing of space on the barge deck for vehicles carrying items and supplies to the Island is not the retail business of HHG movers for consumers between their homes. As such, the

Commission has never regulated the barge as an HHG mover or otherwise treated the barge as falling under NCUC regulatory jurisdiction.

One of the reasons for this exclusion is that MRT Rule 4 states that it is designed to address the transport of HHGs “arranged and paid for by the householder or another party.” The BHIL barge is not involved in that transaction; it simply leases space on its deck to vehicles that transport items to and from the Island.

Second, the MRT regime is specifically configured to address the various service elements arising from the HHG owner directly contracting with the movers. The MRT provides an array of other regulations that are specific to the kinds of services that businesses that engage in point-to-point moves provide, such as for (i) packing and unpacking; (ii) the cost treatment of bulky items, (iii) fuel surcharges, and (iv) rules regarding waiting time. BHIL’s barge operations do not provide any of these services.

Third, there are currently 354 certified HHG Carriers listed as having a Certificate of Exemption from the Commission which allows them to transport household goods. All of them are motor carriers that use motor vehicles to conduct point-to-point moves across North Carolina roads and highways for consumers. None of them operate like the BHIL barge.

It’s true that the barge has transported vehicles to and from the Island that have contained furniture and other items that homeowners could use to establish private residences or rental properties, but that fact does not transform BHIL into the kind of end-to-end shipper of household goods for retail customers that the Commission seeks to regulate. Therefore, the barge does not operate as a regulated common carrier of household goods.

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Testimony Summary of James W. Fulton, Jr. has been served by electronic mail, hand delivery, or by depositing a copy of same in the United States Mail, postage prepaid, properly addressed to parties and counsel of record as shown on the Commission's Service List in docket A-41, Sub 21, and has also been provided to Commission's Counsel and to the appropriate members of the NC Public Staff.

This 11th day of October, 2022.

/s/ *M. Gray Styers, Jr.*

M. Gray Styers, Jr.
Counsel for
Bald Head Island Transportation, Inc.
and Bald Head Island Limited, LLC

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Oct 25 2022

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

3 COMMISSIONER BROWN-BLAND: Mr. Ferrell?

4 MR. FERRELL: No questions.

5 COMMISSIONER BROWN-BLAND: The Village?

6 MR. TRATHEN: Yes.

7 CROSS EXAMINATION BY MR. TRATHEN:

8 Q. Thank you, Mr. Fulton. I'm Marcus Trathen.
9 I'm a lawyer for Village of Bald Head Island. Good
10 morning.

11 A. Good morning.

12 Q. I have a few questions for you.

13 So as I understand it, you are currently not
14 an employee of Limited, you are a consultant?

15 A. That's correct.

16 Q. Okay. But either as an employee or in a
17 consulting capacity, you've worked with Limited or its
18 subsidiaries for about the past 27 years?

19 A. That's correct.

20 Q. Okay. And you are not a lawyer, are you,
21 sir?

22 A. I am not.

23 Q. Okay. So to the extent that your testimony
24 discusses the law, you're not offering a legal opinion

Page 161

1 on those matters, correct?

2 A. I am not.

3 Q. Okay. Well, let's start off with the law.
4 If you'd turn to page 10 of your testimony, please.

5 A. (Witness complies.)

6 Okay.

7 Q. If you will look at lines 7 through 10. You
8 say that Limited does not believe that the definition
9 of a public utility -- as including a person --
10 transporting the person -- you're quoting here --
11 transporting persons or household goods by street or by
12 motor vehicles draws it within the Commission's
13 regulatory scope.

14 Did I read that accurately?

15 A. Yes.

16 Q. Okay.

17 MR. TRATHEN: If we could approach?

18 COMMISSIONER BROWN-BLAND: You may.

19 MR. TRATHEN: Madam Chair, if we could
20 mark this exhibit Village Fulton Cross Exhibit
21 Number 1.

22 COMMISSIONER BROWN-BLAND: It will be so
23 marked.

24 (Village Fulton Cross Examination

Page 162

1 Exhibit Number 1 was marked for
2 identification.)

3 Q. Okay. Mr. Fulton, I will represent to you
4 that this is a copy of General Statutes §62-3,
5 definitions.

6 Are you willing to accept that?

7 A. Yes.

8 Q. Okay. And if you would turn to page 3 of
9 this exhibit, please?

10 A. (Witness complies.)

11 Q. All right. And if you will look at
12 §(23)(a)(3) and (4).

13 A. Uh-huh.

14 Q. Now, did you read the Village's complaint in
15 petition for declaratory ruling or petition for
16 declaration for utility status in this matter?

17 A. Yes.

18 Q. Okay. And, sir, do you recall whether the
19 Village cited §(23)(a)(3) as a source of authority for
20 its complaint?

21 A. I believe they did.

22 Q. Okay. All right. So with respect to the
23 actual language of (23)(a)(4), the language is
24 transporting persons or household goods by motor

Page 163

1 vehicles, or any other form of transportation to the
2 public for compensation. And then it goes on and
3 accepts some other carriers.

4 Did I read that correctly from the statute?

5 A. Yes.

6 Q. Okay. So back to your testimony.

7 Your testimony leaves out the "any other form
8 of transportation," does it not?

9 A. In my testimony, yes, it does not include
10 that.

11 Q. Okay. And wouldn't you agree that a barge is
12 another form of transportation?

13 A. Yes.

14 Q. Okay. And if you would turn back to page 1
15 of this exhibit and look at the definition of common
16 carrier; do you see that?

17 A. Yes.

18 Q. Okay. And do you see that it means any
19 person which holds itself out to the general public
20 engaged in the transportation of persons or household
21 goods for compensation including by bus, truck, boat,
22 or other conveyance; do you see that?

23 A. Yes.

24 Q. And a barge is a boat, is it not?

Page 164

1 A. Yes. It's a vessel.

2 Q. I'm sorry, I interrupted it you.

3 A. I said a vessel, a boat, yes.

4 Q. Okay. Thank you. Now, you discuss in your
5 testimony regulations applicable to motor carriers,
6 don't you?

7 A. Yes.

8 Q. Okay. So if -- for example, if you turn to
9 page 9 of your --

10 COMMISSIONER BROWN-BLAND: Mr. Fulton,
11 let's be sure, when you respond to him, I know
12 you're facing him, but try to make sure you speak
13 into the mic.

14 THE WITNESS: All right. It's a little
15 hard to hear him, but thank you. I will.

16 COMMISSIONER BROWN-BLAND: I'll extend
17 the same to you, Mr. Trathen. Make sure you're
18 speaking into the mic.

19 Q. Okay. Now, page 9 of your testimony, you
20 refer to the maximum rate tariff; do you see that?

21 A. Yes.

22 Q. Okay. This is a tariff which is applicable
23 to motor carriers of household goods, right?

24 A. That is correct.

1 Q. Okay. And if you would turn back to the
2 Exhibit Number 1, and if you would turn to the
3 definition of motor carrier?

4 A. (Witness complies.)

5 Q. Do you see that on page 2?

6 A. (Witness peruses document.)

7 Okay. 17?

8 Q. Yes, sir. Definition, motor carrier means a
9 common carrier by motor vehicle; is that what it says?

10 A. That's correct.

11 Q. Okay. And right under that is a definition
12 of motor vehicle, which means a vehicle, and gives some
13 other examples, propelled by mechanical power, used
14 upon the highways within this state; do you see that?

15 A. Yes.

16 Q. Okay. So the barge is not a motor vehicle,
17 is it?

18 A. No.

19 Q. Okay. You attach, as Exhibit 6 to your
20 testimony, a long list of motor vehicle carriers
21 regulated by the Commission, correct?

22 A. Yes.

23 Q. Okay. But no one is claiming that the barge
24 is a motor vehicle carrier, are they? Is anyone

1 claiming that?

2 A. No.

3 Q. Now, the barge is used to transport vehicles
4 to the island, correct?

5 A. Yes.

6 Q. And I think -- well, let's take a look at
7 page 3 of your testimony.

8 So you've got a couple pictures here, and
9 just to focus, the one on top here, this is the USS
10 Brandon Randall; this is the barge, correct?

11 A. That is correct.

12 Q. Okay. If -- if you look at the picture here,
13 the front right, does that appear to be an example of a
14 service vehicle on the barge?

15 A. You're talking in the lower figure?

16 Q. I'm talking in the upper figure --

17 A. Upper figure.

18 Q. -- in the very front of the barge.

19 A. On the right side of the barge?

20 Q. Yes, sir.

21 A. Yeah.

22 Q. Okay. And same as the truck on the left,
23 it's a little bit difficult to make out, but it also
24 would appear to be a service vehicle, wouldn't it?

1 A. Could be.

2 Q. Okay.

3 MR. TRATHEN: And if we could approach
4 with another exhibit?

5 COMMISSIONER BROWN-BLAND: You may.

6 (Pause.)

7 MR. TRATHEN: If we could mark this for
8 identification as Village Fulton Cross Exhibit
9 Number 2.

10 COMMISSIONER BROWN-BLAND: It will be so
11 identified.

12 (Village Fulton Cross Examination
13 Exhibit Number 2 was marked for
14 identification.)

15 Q. Okay. Mr. Fulton, does this appear to be a
16 photo of the barge?

17 A. It does, yes. The barge at its landing on
18 the mainland.

19 Q. As it's approaching the mainland, you said?
20 Okay.

21 And these vehicles, are these representative
22 of the types of vehicles you see on the barge?

23 A. Yes.

24 Q. And it looks like, on the left, Brunswick

1 Glass, if I'm reading that correctly; it looks like a
2 glass truck?

3 A. Yes.

4 Q. And the service vehicle of some sort, maybe
5 construction, in the middle?

6 A. Well, yes. I mean they're -- you can't tell
7 what they're carrying, but yes.

8 Q. Okay. And then you've got, it looks like,
9 maybe a U-haul van, something like that, on the right?

10 A. Yes.

11 Q. Okay. Now, as you observe the landing area,
12 I don't see a crane there. There is not a crane to
13 load, you know, boxes on or off or anything like that,
14 correct?

15 A. There is not.

16 Q. Okay. So each of these vehicles that we see
17 in these pictures is gonna have a driver?

18 A. Yes.

19 Q. Okay. And your position is that the barge
20 transports vehicles, right?

21 A. Yes.

22 Q. Now, you realize that the Commission
23 regulates vehicle ferries, don't you?

24 A. Yes.

1 Q. Okay. Example of that would be Cape Lookout
2 Cabins and Camps, Docket A-66, Sub 0 and 2.

3 You have any familiarity with that?

4 A. I've never been on it, but I have familiarity
5 from what I can see in their website and other
6 documents.

7 Q. And it's a vehicle ferry?

8 A. Most of them with passengers, yes.

9 Q. Okay. It's got both is what you're saying?

10 A. It could have a -- somebody's Suburban with
11 some person who's paid a fee separate from the vehicle
12 itself and every seat on the vehicle.

13 Q. And David Shore Ferry Service's Docket
14 A-65, Sub 0 would be another example?

15 A. They -- in my understanding and from what
16 I've seen, they operate the same way. Charge you a
17 ticket for the passenger and separate for the vehicle,
18 whatever that might be.

19 Q. Okay.

20 A. And they advertise that.

21 Q. Morris Marina, Docket A-26, Sub 4 is also a
22 vehicle ferry?

23 A. Operating the same way.

24 Q. Okay. So you refer in your testimony --

Page 170

1 well, let me back up here.

2 So with respect to the vehicles, I'm a little
3 confused, because you do refer quite clearly in your
4 testimony, and you just confirmed it, that your
5 position is that the ferry's transporting vehicles. I
6 heard from your lawyer now who's asserted a couple of
7 times in this proceeding that it's a freight barge.

8 And so can you clear that up; which do you
9 think it is?

10 A. It is a freight barge. It is a freight barge
11 in the eyes of the Coast Guard, and has a certificate
12 of inspection to that effect. In fact, if you --
13 that's Title 46 of the Code of Federal Regulations,
14 Chapter I -- subchapter I. And if you go further in
15 that subchapter, if you hold yourself out for passage
16 of persons for compensation, those are declared as
17 passengers. We are certificated by the Coast Guard
18 because we do not charge ferry tickets to individuals
19 as these other northern North Carolina operations do.
20 We have zero passengers. They are persons. They are
21 not charged anything over and above whatever the length
22 charge is for the vehicle or their load trailer,
23 whatever it might be.

24 Q. Okay. I'm gonna ask you about the federal

1 regulation, so we'll talk about that in just a second,
2 but I'm trying to understand what you think this --

3 A. I just wanted to clarify what we believe.

4 Q. Thank you. Okay. And I haven't heard you
5 describe any freight that it's actually carrying.

6 Is your contention that the vehicles are
7 freight?

8 A. Freight is -- freight and/or cargo is a
9 common term for vessels hauling what we are hauling.

10 Q. Okay. Well, you're hauling vehicles that
11 people drive onto the barge.

12 A. We're hauling freight.

13 Q. Okay. Did you hear the testimony of
14 Mr. Leonard?

15 A. Some of it.

16 Q. Okay. Did you hear him say that a vehicle
17 driven onto a barge is not freight?

18 A. No, I did not.

19 Q. Okay. Now, with respect to the regulation,
20 and you've gone ahead and given us a little bit on
21 that. I want to peel that back, if we could.

22 So the safety regulations that you referred
23 to in your testimony are federal safety regulations
24 administered by the Coast Guard; is that correct?

1 A. Yes.

2 Q. Okay. And this involves periodic safety
3 inspection by the Coast Guard?

4 A. It does.

5 Q. And you referenced 46 CFR Chapter 1,
6 subchapter I; I believe you already referenced that,
7 correct?

8 A. Yes.

9 Q. Okay. So just to be clear, the issue of the
10 Commission's regulatory authority over the barge is
11 governed by state law, wouldn't you agree?

12 A. Say that again, please.

13 Q. Yes. The issue at play in this proceeding,
14 the Commission's authority with respect to the barge
15 and whether it's a public utility, that's a matter of
16 state law, is it not?

17 A. Yes, as far as Commission regulating a
18 utility. Yes, state law.

19 Q. Okay. I just wanted to make sure that you
20 weren't saying anything different than that.

21 And with respect to the federal safety
22 regulations, there would be parallel regulations to the
23 ones you cited that would apply to the ferry vessel,
24 itself, correct?

Page 173

1 A. Under a different subchapter, yes.

2 Q. All right. So with respect to these federal
3 regulations, if we could tease that back just a bit,
4 you agree that the barge is not seagoing, wouldn't you?

5 A. That's correct.

6 Q. Stays wholly within the Cape Fear River?

7 A. Yes.

8 MR. TRATHEN: If we could approach with
9 an exhibit, please?

10 COMMISSIONER BROWN-BLAND: Yes, you may.

11 (Pause.)

12 COMMISSIONER BROWN-BLAND: Do you want
13 to get these marked?

14 MR. TRATHEN: Yes. If we could get
15 these marked Village Fulton Cross Examination
16 Exhibit Number 3.

17 COMMISSIONER BROWN-BLAND: Are they
18 collective?

19 MR. TRATHEN: Yes, all --

20 MR. STYERS: Both documents together?

21 MR. TRATHEN: I didn't know we had two
22 documents. Let me see what the other one is.

23 Yeah, actually, just marking the CFR -- 46 CFR,
24 Title 46, shipping.

Page 174

1 COMMISSIONER BROWN-BLAND: All right.

2 It will be marked as Village --

3 MR. TRATHEN: Village Fulton Cross
4 Number 3.

5 COMMISSIONER BROWN-BLAND: All right.

6 It will be so identified.

7 (Village Fulton Cross Examination
8 Exhibit Number 3 was marked for
9 identification.)

10 Q. All right. Mr. Fulton, I'm looking at the
11 excerpt from the Code of Federal Regulations Title 46,
12 shipping; do you see that?

13 A. Yes.

14 Q. And these are the -- this refers to the
15 classification of vessels that you were referring to in
16 your earlier testimony; is that correct?

17 A. That is correct.

18 Q. Okay. So if you would look on the -- on the
19 table here -- this is a multipart table on the left
20 side -- the left-hand column says method of propulsion.

21 So if we would start there, this is not a
22 self-propelled vessel, correct? The barge?

23 A. That is correct.

24 Q. All right. So let's find the row that

Page 175

1 relates to nonself-propelled vessels, and if you would
2 turn to page 9.

3 A. (Witness complies.)

4 Okay.

5 Q. Do you see, in the left-hand column, it's
6 numbered 4, nonself-propelled vessels greater or equal
7 to 100 gross tons?

8 A. Yes.

9 Q. And the barge in question here is greater
10 than 100 gross tons?

11 A. Yes.

12 Q. Subchapter I, do you see the columns for
13 subchapter I, which is the regulation that you are
14 asserting?

15 A. Yes.

16 Q. Okay. Do you see the first three words "all
17 seagoing barges"?

18 A. Uh-huh.

19 Q. And we've clarified that this is not a
20 seagoing barge, correct?

21 A. That is correct.

22 Q. Okay. If you would just turn to the next
23 page, and you see under column -- the third column,
24 vessels inspected certificated under subchapter H,

Page 176

1 passenger vehicle -- passenger vessels.

2 MR. STYERS: I'm sorry, where was that
3 again, Mr. Trathen?

4 MR. TRATHEN: I'm reading in the column.
5 I'm on page 10 of 25.

6 MR. STYERS: Okay. Thank you.

7 Q. Mr. Fulton, are you -- are you with me?

8 A. I'm on that page. And where?

9 Q. Okay. And I'm looking in the third column
10 under subchapter H --

11 A. Uh-huh, yes.

12 Q. -- for passenger vessels, and you see F,
13 qualification there is carry at least one passenger and
14 are ferries?

15 A. Yes.

16 Q. Okay. So let's talk about the definition of
17 passenger.

18 MR. TRATHEN: If we could approach?

19 COMMISSIONER BROWN-BLAND: Yes, you may.

20 (Pause.)

21 MR. TRATHEN: If we could mark this
22 Village Fulton Cross Examination Exhibit 4.

23 COMMISSIONER BROWN-BLAND: It will be so
24 identified.

Page 177

1 (Village Fulton Cross Examination
2 Exhibit 4 was marked for
3 identification.)

4 Q. Mr. Fulton, does this appear to be a printout
5 from 46 USC §2101, general definitions?

6 A. Yes.

7 Q. This is the same title which you were citing
8 to for purposes of your regulatory analysis?

9 A. Yes.

10 Q. Okay. Would you flip to page 2 of -- to the
11 definition of ferry, please?

12 A. (Witness complies.)

13 Q. Ferry means vessel that's used on a regular
14 schedule to provide transportation between places that
15 are not more than 300 miles apart; and B, to transport
16 only passengers or vehicles, and then it says some
17 other things.

18 Do you see that?

19 A. Yes, I do.

20 Q. If we could look at the definition of
21 passengers. Page 4.

22 A. Yeah.

23 Q. Do you see that? And it says the passenger
24 is an individual carried on the vessel, except the

Page 178

1 owner, the representative, and then there is some
2 others here, the master, a member of the crew; do you
3 see that?

4 A. Yes.

5 Q. Okay. So this -- under this definition in
6 the statutes, a driver of a vehicle would be a
7 passenger, would it not?

8 A. By this definition, you're speaking of
9 someone who might be riding in a vehicle would be a
10 passenger; is that what you're saying?

11 Q. Yes. Your barge. We talked about rolling on
12 and rolling off. They all have drivers.

13 The drivers of these vehicles are persons
14 that are carried on the vessel, correct?

15 A. Not by the certificate that we have from the
16 Coast Guard.

17 Q. Okay. But with respect to the law -- just,
18 you know, again, you're not a lawyer, so I know I'm
19 pushing you here, but with respect to the words on the
20 page, the definition of passenger is an individual
21 carried on a vessel, correct?

22 A. By the definition, if you believe that
23 definition is applicable to what the Coast Guard has
24 identified our barge as.

1 MR. TRATHEN: That's all I have for
2 Mr. Fulton.

3 COMMISSIONER BROWN-BLAND: All right.
4 Mr. Higgins?

5 MR. HIGGINS: Yes, ma'am.

6 CROSS EXAMINATION BY MR. HIGGINS:

7 Q. Mr. Fulton, good afternoon. Dan Higgins for
8 the Bald Head Island Club.

9 A. Hello. We've met before.

10 Q. We have, indeed. It's been a while.

11 The barge -- am I correct in understanding
12 the barge runs on a regular schedule?

13 A. That's correct.

14 Q. It starts leaving the mainland at -- it's a
15 two-hour round trip, correct?

16 A. For the round trip; that's correct.

17 Q. And it leaves the mainland starting at 7:00
18 in the morning and --

19 A. It depends on the time of the year, mainly
20 because of daylight and safe navigation across the
21 river. For example, the end of daylight savings makes
22 a fourth round-trip schedule, whereas, when daylight
23 savings kicks in in March, it goes to a five-round-trip
24 schedule.

1 Q. Fair enough.

2 But for purposes of, for example, people
3 making reservations to be transported on the barge,
4 there is a posted schedule?

5 A. That's correct.

6 Q. I want to ask you a question, if you'd look
7 at your -- at page 7 of your testimony, please, sir.

8 A. All right.

9 Q. And I'm gonna ask you a question about what
10 you say on line 15. This is about a hypothetical
11 regarding a delivery by a Home Depot delivery truck; do
12 you see that?

13 A. I do.

14 Q. In this hypothetical, as your question is
15 posed, you say if the barge transports a Home Depot
16 delivery truck that contains a stove and patio
17 furniture purchased by an island homeowner, isn't the
18 barge a shipper of household goods?

19 And my first question would be, in that
20 hypothetical, wouldn't the barge be the carrier and not
21 the shipper?

22 A. Well, the question as posed, is the barge a
23 shipper of household goods, because in the -- as I
24 understand and have experienced in what a household

1 goods carrier does, they are the shipper on behalf of
2 the homeowner or the person that owns the property to
3 sign the bill of lading. We have not done that.

4 Q. Understood. But the shipper is the person
5 that consigns the cargo to the carrier and the carrier
6 delivers it; is that -- do you agree with that?

7 A. Yes.

8 Q. So in this hypothetical, the barge is not a
9 shipper, it's a carrier?

10 A. Right. It's a carrier across part of that
11 shipper's route.

12 Q. Okay. In your hypothetical, the home
13 delivery -- Home Depot delivery vehicle carries stove
14 and patio furniture.

15 It also has a driver, correct?

16 A. Yes.

17 Q. And they both ride across on the barge, to
18 your knowledge?

19 A. That's correct.

20 Q. Did you hear references yesterday to
21 something that was called, quote, deck freight, close
22 quote?

23 A. Yes.

24 Q. And isn't it true that, from time to time,

1 people put things on the barge that are not contained
2 in vehicles for transport across the island?

3 A. Yes. Still freight. They do.

4 Q. I'm sorry?

5 A. It's still freight, and yes, they do.

6 Q. Yes, sir, it's still freight. Agreed.

7 For example, if somebody buys a new golf
8 cart, the way it's brought across, the golf cart is
9 driven on the barge and driven off when it gets across?

10 A. Yes.

11 Q. Back to your hypothetical, if someone
12 purchased new patio furniture, they could put the boxes
13 on the barge and they would be carried across, wouldn't
14 they?

15 A. In my experience, those kinds of things
16 are -- furniture still contained in boxes or not
17 contained in boxes is always going to be put in
18 something like a box truck. And that's one of the most
19 popular things that we carry back and forth on the
20 barge.

21 Q. Understood. But if I made a reservation, and
22 I showed up with one big box with a chair that my wife
23 bought in a box, I could actually -- and pay the fee, I
24 could put that box on the barge?

1 A. That's up to the barge crew, but they --
2 coming across the Cape Fear River can be a wet
3 experience. So they would probably tell you you need
4 to go make arrangements to put that on some sort of a
5 truck, ideally, a box truck. I've not seen a piece of
6 furniture or just a box, unless -- I'll give you an
7 example of something that has come across in a box
8 recently. Bald Head Island is, via AT&T, redoing cell
9 towers, as you know. And some of that equipment,
10 cabinets and things like that that go in the
11 electronics of a cell tower base, would be loaded on a
12 barge. Have I seen a piece of furniture in a cardboard
13 box come across the barge? Not in my experience.

14 Q. Did you hear the testimony yesterday when
15 Mr. Trathen asked a witness about the items that were
16 listed in the cargo schedules that had been produced by
17 Transportation in connection with this?

18 A. You're talking about that listing from the --
19 from the barge office, not Transportation but barge --

20 Q. I'm sorry, I'm sorry. Not intended. From
21 the barge -- from Limited's barge operation?

22 A. Correct.

23 Q. Was a multipage listing of shippers and
24 contents.

Page 184

1 And there were entries in that schedule
2 listing periodically for boxes, weren't there?

3 A. Yeah. And that's the shorthand for box
4 truck, which is in the top 10 of the kind of things we
5 carry in that over 70- -- almost 74,000-entries list.

6 Q. And there are other entries for other kinds
7 of vehicles that you're suggesting are something other
8 than box trucks but serve the same function?

9 A. Yes. And they say, generally, things like
10 concrete truck, garbage, roll-on/roll-off, whatever.

11 Q. Okay. I don't have any other questions for
12 you. Thank you.

13 A. Thank you.

14 COMMISSIONER BROWN-BLAND: All right,
15 redirect?

16 MR. STYERS: I do, and it's gonna take a
17 while.

18 COMMISSIONER BROWN-BLAND: Well, get
19 started.

20 MR. STYERS: Okay. Very good.

21 REDIRECT EXAMINATION BY MR. STYERS:

22 Q. Mr. Fulton, I think you said you'd been
23 associated either as an employee or contractor for
24 27 years for Bald Head Island Limited; is that correct?

1 A. I did.

2 Q. Okay. You wrote the standard operating
3 procedures for the Bald Head operations, did you not?

4 A. Years and years ago.

5 Q. Next question then: To your knowledge, are
6 those standard operating procedures that you wrote
7 years ago generally still in effect and followed by the
8 barge captains to this day?

9 A. Yes.

10 Q. During that 27 years, has the barge been
11 routinely inspected by the Coast Guard?

12 A. It will undergo an annual inspection, and
13 yes, we have a current inspection that needs to be
14 redone next year.

15 Q. And the -- is there ongoing communications if
16 there are issues that come up between Bald Head Island
17 Limited and the Coast Guard if there is any questions
18 about the barge operations? Is that an open line of
19 communication with the Coast Guard?

20 A. That's right. We fall under Sector
21 North Carolina up in Wilmington.

22 Q. And, in fact, the current director employee
23 of Bald Head Island Limited who does a lot of work with
24 the barge is, in fact, a retired Coast Guard employee,

Page 186

1 or former Coast Guard employee; he's retired from the
2 Coast Guard, is he not?

3 A. An officer in the Coast Guard, yes.

4 Q. So what would happen if someone walked up to
5 the barge and asked to ride across to the island? Me,
6 you, anyone walked up and said I want to ride on the
7 barge across to the island.

8 A. They would be told or redirected to the
9 passenger ferry operations.

10 Q. They wouldn't be allowed to get on?

11 A. No.

12 Q. All right. Does the barge hold itself out as
13 a passenger ferry?

14 A. It does not.

15 Q. Okay. Is there any ticket price to ride the
16 barge over to the ferry by an individual?

17 A. There are no ferry tickets offered to
18 passengers at any price on the barge.

19 Q. So follow up on Mr. Higgins' question.

20 There is a category of deck load or deck
21 freight that generally comes on by pallet, does it not?

22 A. It does.

23 Q. Explain to me how a pallet of deck freight
24 gets onto the barge.

1 A. Common size pallet -- it could be any size,
2 but a common size of a pallet is 48 inches by 40. And
3 most of the deck loads that are handled by the barge
4 are coming from either somebody like Home Depot,
5 Lowe's, Builders FirstSource. They tend to be things
6 that are used in the construction industry. And most
7 often they tend to be things that a contractor has
8 taken on a job on the island, and they find that they
9 need something they do not have. And in order to keep
10 the construction moving along, they will call one of
11 the firms or whoever and ask to get a deck load across.

12 Q. How does a deck load get onto the barge?

13 A. The deck load is put on the barge by --

14 Q. The pallet.

15 A. -- whoever this contractor has engaged to
16 deliver it.

17 Q. Does anyone from barge operations or Bald
18 Head Island Limited ever take possession of a pallet of
19 deck load going on the barge?

20 A. No. The barge deckhand would direct the
21 person to where they want the deck cargo placed so that
22 it will fit amongst any other vehicles and things that
23 are on the barge.

24 Q. But they would not take possession of the

1 pallet?

2 A. No.

3 Q. So if I walked up -- Mr. Higgins' question, I
4 walked up with a chair and said I want to take my
5 Barc- -- here, I'm gonna give you my BarcaLounger,
6 would you take it over to my brother waiting on the
7 other side and he'll carry it off, would -- what would
8 the captain do if he was handed a chair to put on the
9 barge?

10 A. Well, anybody that approaches the captain on
11 the barge has already, we hope, dealt with the barge
12 office, which is at the same Deep Point landing.
13 But -- so, in either case, the person would not be
14 accepted for passage on the barge, and they would
15 probably have been told that already by the barge
16 office.

17 Q. They either have to have a pallet, somebody
18 to drive a forklift, pallet on -- in theory, generally
19 come on with a vehicle to drive across, correct?

20 A. Yes.

21 Q. Okay. Let me shift gears slightly, and I'll
22 pose something of an odd hypothetical, but I think it
23 will hold.

24 A driver -- okay. This is a roll-on/roll-off

1 barge. Would you explain what a roll-on/roll-off
2 means; why is it called that?

3 A. Roll-on/roll-off originated in the military.
4 I used to participate in loading them down in the Port
5 of Wilmington and unloading them in Honduras and other
6 spots around the world. Cargo can go in one end, and
7 it can roll out the other end. It facilitates and
8 avoids backing a vehicle, which is harder than going
9 forward.

10 Q. So to roll on and roll off -- and again, I
11 don't want to -- I don't want to interject any humor in
12 this hearing, but it's got to have -- it's a vehicle --
13 it's a barge for vehicles; is that correct?

14 A. That's correct.

15 Q. And they have to have wheels to roll on --
16 the wheels on and roll off, correct?

17 A. That's correct. Except we can only -- we
18 have a ramp. We nest with the ramp, which is mainland
19 based and island based. And so you are backing onto
20 the barge if you're loading it, you're driving forward
21 if you are disembarking from the barge.

22 Q. So to roll a vehicle onto the barge and to
23 roll a vehicle off the barge, the vehicle needs a
24 driver to turn the ignition off and turn the ignition

1 on to roll on and roll off the vehicle on the barge,
2 correct?

3 A. Correct.

4 Q. So for roll on/roll off the barge to operate,
5 it needs an operator to drive the vehicle onto and off
6 of the barge, correct?

7 A. That's correct.

8 COMMISSIONER BROWN-BLAND: All right,
9 Mr. Styers.

10 MR. STYERS: Is this a good stopping
11 place?

12 COMMISSIONER BROWN-BLAND: This is a
13 good stopping place for us. I hope it is for you.
14 We're gonna stop for our lunch break.

15 And I want to say, while we're at lunch,
16 take -- if you can work it in, take the opportunity
17 to trim down any prepared questions that you have,
18 particularly with respect to the witnesses expected
19 to come back on rebuttal. If you know that the
20 evidence you need is in the record, I hope you take
21 the time to trim it down to make efficient use of
22 our time. You know, amongst yourselves, what
23 evidence is needed in order for the Commission to
24 make the decision that it needs to make on the

1 issues in this case, so that would be helpful to
2 us.

3 In the meantime, we will be adjourned
4 and go back on the record at 12:40. I mean 1:40.

5 (The hearing was adjourned at 12:31 p.m.
6 and set to reconvene at 1:40 p.m. on
7 Wednesday, October 12, 2022.)
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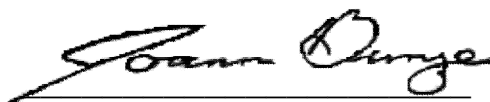
CERTIFICATE OF REPORTER

STATE OF NORTH CAROLINA)

COUNTY OF WAKE)

I, Joann Bunze, RPR, 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 19th day of October, 2022.



JOANN BUNZE, RPR

Notary Public #200707300112

