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May 22, 2023

Ms. A. Shonta Dunston
Chief Clerk
North Carolina Utilities Commission
430 N. Salisbury Street
Room 5063
Raleigh, NC 27603

Re: In the Matter of
Joint Application of Bald Head Island Transportation, Inc. and Bald Head Island
Limited, LLC, for Approval of Transfer of Common Carrier Certificate to Bald Head
Island Ferry Transportation, LLC, and Permission to Pledge Assets
NCUC Docket No. A-41, Sub 22
Applicants and NCUC Public Staff Joint Proposed Order

Dear Ms. Dunston:

On behalf of Applicants Bald Head Island Transportation, Inc. (BHIT), Bald Head Island
Limited, LLC (BHIL), and Bald Head Island Ferry Transportation, LLC (BHIFT),
(collectively "Applicants"), and the Public Staff of the North Carolina Utilities
Commission ("Public Staff"), we herewith submit a Joint Proposed Order for filing in the
above-referenced docket for the Commission's consideration.

Public Staff and the Applicants both believe that it is not necessary for the Commission to
establish at this time a rate base for parking or barge operations for ratemaking purposes,
and therefore the Joint Proposed order does not address that issue and instead allows the
rates for those services to be continued at their current level (with annual inflationary
increases). But, if the Commission feels otherwise, the respective parties may offer, in a
separate filing, finding and conclusions, in the alternative, for the Commission's
consideration that does address the rate base valuation methodology for parking and barge
services.

A Pennsylvania Limited Liability Partnership

California Colorado Delaware District of Columbia Florida Georgia Illinois Minnesota
Nevada New Jersey New York North Carolina Pennsylvania South Carolina Texas Washington

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This Proposed Order will also be filed with Briefs@ncuc.net.

If you should have any questions concerning this filing, please do not hesitate to contact me.

Sincerely,

/s/ M. Gray Styers, Jr.

M. Gray Styers, Jr.

pbb

Enclosure

cc: All Parties and Counsel of Record
William E. H. Creech, Esq. – NC Public Staff
Lucy Edmondson, Esq. – NC Public Staff
Jessica Heironimus – NC Public Staff

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. A-41, SUB 22

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Joint Application
of Bald Head Island Transportation,
Inc., Bald Head Limited LLC, and Bald
Head Island Ferry Transportation,
LLC, for Approval of Transfer of
Common Carrier Certificate to Bald
Head Island Ferry Transportation,
LLC, and Permission to Pledge Assets

ORDER GRANTING TRANSFER
OF CERTIFICATE OF
AUTHORITY

HEARD: Tuesday, March 7, 2023, at 2:00 pm in Commission Hearing Room
2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North
Carolina

BEFORE: Commissioner Kimberly W. Duffley, Presiding; Chair Charlotte A.
Mitchell and Commissioners ToNola D. Brown-Bland, Daniel G.
Clodfelter, Jeffrey A. Hughes, Floyd B. McKissick, Jr., and Karen M.
Kemerait.

APPEARANCES:

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

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For Village of Bald Head Island:

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For Bald Head Island Club:

Daniel C. Higgins
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Raleigh, NC 27608

For Bald Head Island Association:

Edward S. Finley, Jr.
Edward S. Finley, Jr., PLLC
2024 White Oak Road
Raleigh, NC 27608

For the Using and Consuming Public:

Gina C. Holt
William E.H. Creech
Public Staff – North Carolina Utilities Commission
4326 Mail Service Center
Raleigh, NC 27699-4300

BY THE COMMISSION: In this proceeding, Bald Head Island Limited, LLC (BHIL), Bald Head Island Transportation, Inc. (BHIT), and Bald Head Island Ferry Transportation, LLC (BHIFT, collectively with BHIL and BHIT, the Applicants), a wholly owned subsidiary of Pelican Legacy Holdings, LLC (Holdings), and managed by SharpVue Capital, LLC (SharpVue), seek approval, pursuant to N.C. Gen. Stat. § 62-111, to transfer BHIT's Common Carrier Certificate (the Certificate) to BHIFT to operate the passenger ferry transportation services to and from Bald Head Island (the Ferry Operations), the tram services on the island (the Tram Operations), parking services on the mainland at Deep Point marina (Parking

Operations), and barge and tug services to and from Bald Head Island (Barge Operations and collectively with Ferry, Tram, and Parking Operations, the Transportation Assets) (the Transfer). The Applicants also seek permission for BHIFT or SharpVue to pledge assets and borrow/issue debt pursuant to N.C. Gen. Stat. §§ 62-160 and 62-161 (the Pledging of Assets, and collectively with the Transfer, the Proposed Transaction).

On May 17, 2022, and amended on August 2, 2022, December 20, 2022, February 10, 2023, and May 2, 2023, an Asset Purchase Agreement (APA) was entered into by "Sellers," BHIL and BHIT, and "Buyers", SharpVue Capital, LLC,¹ and three wholly owned subsidiaries of Holdings, BHIFT (f/k/a Pelican Services, LLC, for regulated assets), Pelican Logistics, LLC (for non-regulated assets), and Pelican Real Property, LLC, (for real property) to effectuate the Transfer.²

On July 14, 2022, the Applicants filed their initial application for these approvals. In support of the application, the Applicants also filed testimony of Charles A. Paul, III, President of BHIT and CEO and a Manager of BHIL; Shirley A. Mayfield, Chief Financial Officer for both BHIT and BHIL; and Lee H. Roberts, Managing Partner of SharpVue.

On July 27, 2022, the Village of Bald Head Island (the Village) and the Bald Head Island Association (the Association) were each granted the right to intervene in this docket.

On August 24, 2022, the Commission issued an Order scheduling a hearing, establishing procedural deadlines, and requiring public notice for the Scheduling Order. In the Scheduling Order, the Commission provided discovery guidelines and set the matter for a public witness hearing on Tuesday, November 1, 2022, at the Brunswick County Courthouse in Bolivia, North Carolina, and for an expert witness hearing to begin on Tuesday, January 17, 2023, in the Commission Hearing Room in Raleigh, North Carolina.

On October 6, 2022, the Applicants filed Affidavits of Publication and certification of posting notice to customers of the application and public hearing.

On October 21, 2022, the Bald Head Island Club (the Club) was granted the right to intervene in this docket.

¹ SharpVue is a named "Buyer" and signatory to the APA, though SharpVue is not acquiring any assets in the transaction.

² Following closing of the Proposed Transaction, the Applicants indicate that Pelican IP, LLC, another wholly owned subsidiary of Holdings, will own the intellectual property acquired from the Seller.

On November 1, 2022, a public hearing was held on the Application in Courtroom 2, Brunswick County Courthouse, 310 Government Center Drive NE, Bolivia, North Carolina 28422, for the purpose of receiving the testimony of public witnesses in accordance with Commission Rule R1-21(g).

On November 23, 2022, the Public Staff filed a motion to extend the time for the Public Staff and other intervenors to file direct testimony and the time for Applicants to file their rebuttal testimony. On November 28, 2022, the Commission issued an Order granting the motion.

On December 14, 2022, the Public Staff filed the joint testimony of Sonja R. Johnson, Financial Manager of the Natural Gas and Transportation Section of the Accounting Division of the Public Staff; Krishna K. Rajeev, Director of the Transportation Rates Division of the Public Staff; and John R. Hinton, Director of the Economic Research Division of the Public Staff, and proposed regulatory conditions attached as an exhibit. The Association filed the direct testimony and exhibits of witness Robert Drumheller, and the Village filed testimony of Scott T. Gardner, Mayor Pro Tem for the Village.

On December 21, 2022, the Commission issued an Order holding the proceeding in abeyance, which stated, among other things, that the expert witness hearing was continued and would be rescheduled by further order of the Commission.

On December 30, 2022, the Commission entered an order in Docket No. A-41, Sub 21, (the Sub 21 Order) pursuant to which the Commission found the Parking and Barge Operations to be subject to the Commission's jurisdiction and regulatory authority. In the Sub 21 Order, the Commission found it to be in the public interest for the Parking and Barge Operations to continue to operate consistent with their existing operations, rates, and services and granted BHIL authorization to continue to do so under BHIT's Certificate pending further order by the Commission. The Sub 21 Order has been appealed by the Applicants to the North Carolina Court of Appeals pursuant to the applicable rules of appellate procedure.

On January 20, 2023, the Commission issued an Order rescheduling the hearing and establishing additional procedures which, among other things, set the expert witness hearing to begin on March 7, 2023.

As a result of the Sub 21 Order, the Applicants filed on January 24, 2023, an Amended Application in this docket (as amended, the Application). The Application included BHIT's Financial Statements; Financial Statements for the Parking and Barge Operations; SharpVue's current corporate organization; statements of BHIT's gross operating revenues, the gross revenues of the Parking Operations, and the gross revenues of the Barge Operations from March 2022 through May 2022; statements of the total number of ferry miles and barge miles traveled from March 2022 through May 2022; the Asset Purchase Agreement

(APA) between SharpVue and BHIT and BHIL; and BHIFT's debt and equity financing statement. In support of the Amended Application, the Applicants also filed amended testimony of Charles A. Paul, III, Shirley A. Mayfield, and Lee H. Roberts.

On February 3, 2023, the Village moved the Commission to hold the proceeding in abeyance. On February 6, 2023, the Commission issued an Order requiring responses to the motion. On February 8, 2023, the Applicants and the Public Staff filed responses. The Village filed a reply on February 9, 2023.

On February 13, 2023, the Commission entered an Order denying the Village's request to hold the proceeding in abeyance.

On February 20, 2023, the Public Staff filed the Amended and Supplemental Joint Testimony of Sonja J. Johnson, Krishna K. Rajeev, and John R. Hinton with revised proposed regulatory conditions attached as an exhibit with an addendum providing parking, barge, and tug rates and operation schedules.

On February 20, 2023, the Village filed testimony of Kevin W. O'Donnell, President of Nova Energy Consultants, Inc.; J. Lee Lloyd, owner and Senior Advisor of J. Lee Lloyd, LLC; Dr. Julius A. Wright, Managing Partner of J.A. Wright & Associates, LLC; and supplemental testimony of Scott T. Gardner.

On February 27, 2023, the Applicants filed joint rebuttal testimony of Charles A. Paul, III, and Lee H. Roberts, and rebuttal testimony of John D. Taylor, Managing Partner of Atrium Economics, LLC, and Captain Bion Stewart, the Vice-President and Chief Operating Officer of BHIT. The joint rebuttal testimony of Mr. Paul and Mr. Roberts also included, as an exhibit, the Applicants' proposed regulatory conditions for the Merger.

On March 1, 2023, the Public Staff moved to substitute witness Michelle Boswell in lieu of witness Sonja Johnson as one of the sponsors of the joint testimony and exhibit and amended supplemental joint testimony and exhibit filed on behalf of the Public Staff. The Commission allowed that motion on March 3, 2023.

On March 2, 2023, the Village moved to substitute witness Julie G. Perry as the sponsor of the testimony and exhibits previously filed on behalf of witness Kevin W. O'Donnell. The Commission allowed that motion on March 3, 2023.

On March 6, 2023, the Village filed notice of amendment to the testimony of Kevin W. O'Donnell as adopted by Julie G. Perry, which motion was granted.

The hearing on the application was held on March 7-10, 2023.

Following the hearing, the Applicants and the Public Staff entered into a Settlement Agreement and Stipulation agreeing that the Application should be approved and included an agreed-upon set of proposed regulatory conditions (the Regulatory Conditions). These documents were jointly filed on May 10, 2023.

The Regulatory Conditions set forth requirements to be imposed upon Holdings, BHIFT, SharpVue, and other entities as described in the Regulatory Conditions attached hereto as a condition of approval of the Proposed Transaction.

On May 11, 2023, the Village moved for an extension of time to file Post-Hearing Briefs and Proposed Orders in order to review and respond to the Stipulation (as herein defined) and incorporate its response in those filings with the Commission. The Commission granted that motion and extended until May 22, 2023, the time for all parties to file proposed orders and/or briefs.

Based on the foregoing and the entire record, the Commission makes the following:

FINDINGS OF FACT

I. Jurisdiction and Procedure

1. BHIT is a North Carolina corporation engaged in the business of transporting passengers and their personal effects by ferry to and from the Deep Point ferry terminal in Southport, North Carolina and the Bald Head Island ferry terminal on Bald Head Island (BHI or Island) and by tram to and from their destinations on the Island.

2. BHIT is a public utility under the laws of the State of North Carolina and owns and operates the Ferry and Tram Operations, including the Certificate.

3. BHIL is a Texas limited liability company registered to do business in North Carolina. BHIL owns and operates the Parking Operations and Barge Operations. BHIT is a wholly owned subsidiary of BHIL.

4. BHIFT is a North Carolina limited liability company and a wholly owned subsidiary of Holdings. Under the terms of the APA, as the regulated assets Buyer, BHIFT will acquire the Ferry, Tram, Parking and Barge Operations, including the Certificate.

5. SVC Pelican Partners, LLC, is a North Carolina limited liability company and the manager of Holdings. Partners is governed by a Board of Managers comprised of Charles A. Paul, III, Lee H. Roberts, and Douglas A. Vaughn.

6. Upon Commission approval of the Proposed Transaction and closing, Holdings will ultimately be controlled by principals at SharpVue, including Mr. Roberts and Mr. Vaughn. Holdings, Partners, and SharpVue will enter into a

management agreement, pursuant to which SharpVue will manage the operations of Holdings and, thereby, its wholly owned subsidiaries, including BHIFT.

7. The Applicants are lawfully before the Commission pursuant to G.S. 62-111(a) with respect to the relief sought in the application.

8. The Application, testimony, exhibits, affidavits of publication, and public notices submitted by the Applicants are in compliance with the procedural requirements of the North Carolina General Statutes and the Rules and Regulations of the Commission.

9. The Village is a municipal corporation with all the powers, duties and rights conferred by its charter and the laws of the State of North Carolina.

10. The Association is an association of homeowners and property owners on the Island and is organized and incorporated as a non-profit association under the laws of the State of North Carolina.

11. The Club is a non-profit corporation organized under the laws of the State of North Carolina for social and recreational purposes on the Island.

II. History of Operations

12. BHIL purchased Bald Head Island in 1983 and oversaw real estate development and sales on the island as well as resort and island operations while advancing stewardship of the island and its resources.

13. BHIL's mission was, in part, to ensure that the Island was developed in a responsible and sustainable manner to preserve the Island's natural environment. It is accessible only by boat, and on-island personal transportation is largely restricted to trams, golf carts, and bicycles.

14. Most persons access the Island via the Ferry Operations, which consist of four passenger ferries that transport passengers between Southport and the Island. Once on the Island, most passengers are transported to their on-island destination via the Tram Operations. Certain tariffs for ferry tickets include tram service to and from the passenger's on-island location or destination.

15. BHIT owns the Ferry and Tram Operations and has operated them pursuant to the authority granted by the Certificate since 1995.

16. BHIT leases the ferry terminals and infrastructure in Southport and on the Island from BHIL.

17. BHIL also owns and operates the Parking Operations, which are located in the municipality of Southport. Ferry passengers may park their vehicles in the parking lots. Different rates are available for annual parking, premium parking, general parking, contractor parking, and employee parking.

18. BHIL also owns and operates a tugboat and roll-on/roll-off barge transporting commercial service vehicles to and from the Island.

19. In its Sub 21 Order, the Commission held that the Parking and Barge Operations were subject to the Commission's jurisdiction and regulatory authority. The Commission allowed BHIL to continue to operate the Parking and Barge Operations consistent with their existing operation, rates, and services under BHIT's Certificate until otherwise ordered by the Commission.

20. BHIT and BHIL are currently parts of the Estate of George P. Mitchell (the Estate). Mr. Mitchell died in 2013. Almost all operating assets of the Estate have been liquidated, and the proceeds have been distributed to the Cynthia and George Mitchell Foundation and other heirs pursuant to the terms of Mr. Mitchell's will.

21. Because of the need to close the Estate, BHIL and BHIT have been planning for a transfer of these assets since Mr. Mitchell's death in 2013.

III. Nature of Proposed Transaction

22. In 2017, BHIL and BHIT negotiated an agreement to sell the Transportation Assets to the Bald Head Island Transportation Authority (the Authority). The Authority was created pursuant North Carolina General Statutes Chapter 160A, Article 29 and chartered by the City of Southport, Brunswick County, and the Village in order to purchase the Transportation Assets. However, that transaction could not occur because the Authority was unable to secure required approvals from the Local Government Commission.

23. Ultimately, BHIL and BHIT identified SharpVue as a prospective buyer who was local to North Carolina and would purchase the various transportation assets together. BHIL and BHIT expressed their desire to find a buyer with the financial wherewithal and managerial experience to continue services without interruption or delay, who had an appreciation and understanding of Bald Head Island and North Carolina, and who was committed to maintaining and continuing Mr. Mitchell's vision and mission for the island.

24. In May 2022, BHIT and BHIL, as "Sellers," entered into the Asset Purchase Agreement with SharpVue and three wholly owned subsidiaries of Holdings, being BHIFT (for regulated assets), Pelican Logistics, LLC (for non-regulated assets), and Pelican Real Property, LLC (for real property), as "Buyers".³ The Asset Purchase Agreement was subsequently amended by the parties on four occasions.

³ The parties intend for Pelican IP, LLC to ultimately acquire the Seller's intellectual property assets.

25. Under the APA, BHIL will sell its remaining operating assets upon closing. BHIFT will acquire the Certificate and Transportation Assets to carry out the Ferry, Tram, Parking, and Barge Operations, including the ferries, the trams, the tugboat and barge, and the long-term lease for the ferry terminals. Mirroring BHIL's and BHIT's historical structure and relationship, the Buyers intend for the real estate assets to be held by an affiliated entity (Pelican Real Property, LLC), and BHIFT plans to enter into long-term leases with Pelican Real Property, LLC for use of the real estate and infrastructure associated with the Parking Operations and Barge Operations.

26. Although appealing the Sub 21 Order, the Applicants nonetheless amended the Application to seek permission to transfer the Parking and Barge Operations to BHIFT under the Commission's jurisdiction as articulated in that Order, subject to any appellate decision. The Applicants continue to move forward with their efforts to close the Proposed Transaction.

IV. The Stipulation with Public Staff

27. On May 10, 2023, the Stipulating Parties filed the Settlement Agreement and Stipulation (Stipulation), pursuant to which they stipulated to regulatory conditions (Regulatory Conditions) and agreed that the Application should be approved. The Village, the Club, and the Association were not parties to the Stipulation.

28. The Stipulation is the product of give-and-take negotiations between the Stipulating Parties, is material evidence in this proceeding, and is entitled to appropriate weight along with the other evidence of record in this proceeding.

V. Acceptance of Stipulation

29. As discussed further herein, the Regulatory Conditions attached to the Stipulation will protect and advance the public interest and will ensure that reasonable rates and high-quality service for all of the regulated operations will continue. It is therefore appropriate to approve the Stipulation in its entirety.

VI. Post-Closing Operations and Commitments

30. Following the closing, BHIFT intends to hire nearly all current employees of BHIT, including obtaining employment commitments from Mr. Paul, Ms. Mayfield, and Captain Stewart, ensuring continuity of management and operations.

31. BHIFT will be operated as a North Carolina public utility in compliance with and subject to all existing obligations of BHIT and BHIL under applicable statutes, rules and regulations, and Commission orders.

32. The Transaction will not diminish Commission's jurisdiction over BHIFT and the Ferry, Tram, Parking, and Barge Operations, and the Commission will continue to exercise the oversight authority and all powers granted to it by the Public Utility Act, Chapter 62 of the North Carolina General Statutes (Act), and the Commission's Rules and Regulations.

33. With respect to the Ferry and Tram Operations, BHIFT will not seek to change the rates of service for at least one year following closing of the Transfer.

34. With respect to the Parking and Barge Operations, the rates BHIL is currently charging for Parking and Barge are reasonable and should be allowed to continue, consistent with the Commission's decision in Docket No. A-41, Sub 21.

35. Regardless of whether the Commission's Order in Docket No. A-41, Sub 21 is overturned or not, BHIFT has committed that the current aggregate rates for parking and barge services will not be increased (other than by the annual rate of inflation based on the CPI-U) for a period of six (6) years following closing of the Transfer. Future adjustment of these current rates at the rate of inflation is appropriate. BHIFT will provide notice to the Commission and to the public three months prior to making an annual inflationary rate adjustments (based on the Consumer Price Index for Urban Consumers, CPI-U, as published by the U.S. Bureau of Labor Statistics as of December 31 of the prior year), which shall be verified by the Public Staff prior to their effective date. This rate structure and methodology for Parking and Barge Operations is consistent with the Commission's Order in Docket No. A-41, Sub 21 and is appropriate for the unique facts and circumstances of this matter and the Bald Head Island transportation system services.

36. The Settlement Agreement and Stipulation between the Applicants and Public Staff states that it is reasonable for BHIFT to acquire rights to possess and utilize the real estate and infrastructure assets used and useful in providing Parking and Barge Operations via long-term leases. The leases will be filed in this docket and subject to advance approval by the Commission pursuant to N.C.G.S. § 62-153, which will occur prior to closing of the Transfer and before any rents are paid. Such filing and approval are conditions precedent for consummation of the Transfer.

37. It is not necessary for the Commission to value rate base to establish rates for these utility services pursuant to N.C.G.S. § 62-133 in this certificate transfer docket, since BHIFT is not seeking to change existing rates.

38. BHIFT will provide a minimum of 1,955 paved and 347 unpaved parking spaces available at surface lots or parking decks at the Deep Point Terminal, unless the Commission approves the relocation of those spaces elsewhere.

39. BHIFT will seek to maintain and improve the current level of integrated customer service for the Ferry, Tram, and Parking Operations.

VII. Benefits

40. Known and potential benefits of the Proposed Transaction to the users of the services include ensuring continuity and stability of the services, providing useful improvements, and a continued seamless experience for customers.

41. Unlike the Parking and Barge Operations of BHIL, the Ferry and Tram Operations of BHIT have operated at a slight loss for more than 21 years. While operations have been stable, BHIL has indicated, because of the liquidation of the Estate, it has no interest in continuing to own and operate the utility and no plans to continue making capital investments in the utility operations. Customers would benefit from ownership that would be engaged in the future of the utility services and willing to invest in capital improvements to provide continuity and stability to the utility's operations.

42. SharpVue will have significant incentive to maintain reasonable rates and provide high quality services in order to increase asset and operational utilization and because its investment in the Island will extend beyond the transportation services.

43. Additionally, the Commission-approved Regulatory Conditions are a benefit to the users of the services as they both clarify the Commission's regulation of Parking and Barge Operations and also provide assurance of benefits such as availability of adequate parking spaces and six years of stable parking rates even if the Sub 21 Order allowing regulation of parking and barge is reversed.

VIII. Mitigation of Potential Costs and Risks

44. SharpVue and the other Buyers have the financial resources and access to financing to ensure stability and continuity of Ferry, Tram, Parking, and Barge Operations.

45. The Applicants and Public Staff's agreed-upon proposed Regulatory Conditions directly address the risks associated with the Transfer. BHIFT, Holdings, SharpVue, and SharpVue Affiliates make numerous reasonable and appropriate commitments in the Regulatory Conditions to help eliminate or mitigate risks and ensure benefits to the utility customers. These Regulatory Conditions include the intent to hire current BHIT and BHIL employees and management, meeting annually with the Public Staff and semi-annually in public meetings with stakeholders, establishing new goals for on-time performance, providing a ten-year plan for maintenance, capital improvements, and vessel replacements.

46. BHIFT has committed to absorb all transaction costs rather than pass them on to the consumers, who will be held harmless from such costs.

47. BHIL and BHIT are presently bound by statutory obligations and portions of the 2010 settlement in Docket No. A-41, Sub 7, but not by any additional protections, such as the proposed Regulatory Conditions that the Applicants and the Public Staff have agreed to and that would bind the new owners.

IX. Permission to Pledge Assets and Incur Indebtedness

48. To finance the acquisition, BHIFT (via its sole owner, Holdings) may pledge utility assets and incur indebtedness to secure debt financing within the limitations, and pursuant to the requirements, of the Regulatory Conditions.

X. The Public Interest, Convenience, and Necessity

49. The Regulatory Conditions are reasonable and appropriate and help ensure that customers (a) are protected from any known adverse effects from the Transfer, (b) are protected as much as possible from potential costs and risks resulting from the Transfer, and (c) receive sufficient known and expected benefits to offset any potential costs and risks resulting from the Transfer.

50. The Proposed Transaction as described and conditioned by the Application, the testimony of the witnesses, and the Regulatory Conditions is in the public interest and should have no adverse effect on the operations of the ferry or any other utility. BHIFT is fit, willing, and able to assume the Ferry, Tram, Parking, and Barge Operations.

51. The Proposed Transaction is justified by the public convenience and necessity and should be approved as conditioned herein.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 1-11

The evidence supporting these findings of fact is contained in the Application, the testimony of Applicants' witnesses Paul, Mayfield, and Roberts, the testimony of Public Staff witnesses Boswell, Rajeev, and Hinton, the filings of the Village, the Association, and the Club, and the record as a whole. These findings are essentially informational, procedural, and jurisdictional in nature, and are not in dispute.

Through the Amended Application and supporting testimony, the Applicants described the Proposed Transaction. As explained, under the terms of the APA between the parties, SharpVue and the other Buyers plans to acquire all of the assets of BHIT and a significant portion of the remaining assets of BHIL. These assets include those used and useful for the Ferry, Tram, Parking, and the Barge Operations, including the Certificate. Affiliates of BHIFT will own the remaining assets purchased, including the real estate and infrastructure associated with the

Parking and Barge Operations. Like BHIT before it, BHIFT will also be assigned or intends to enter into long-term leases necessary to provide the utility services. BHIFT does not anticipate significant or immediate changes following closing. BHIFT has also committed to employing almost all of the current employees to ensure continuity of day-to-day operations and will retain the management of the current BHIT and BHIL operations to continue in their current roles and duties, including Mr. Paul, Ms. Mayfield, and Captain Stewart.

A review of the record in this proceeding indicates that the Applicants have complied with all procedural and notice requirements established by the Commission in the Order Scheduling Hearing.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 12-21

The evidence supporting these findings of fact is contained in the Application, the testimony of Applicants' witnesses Paul and Mayfield, the Sub 21 Order, and the record as a whole. The findings and conclusions related to general attributes of the Island, the Ferry, Tram, Parking, and Barge Operations and are generally informational and not in dispute. The Commission takes judicial notice of its Order in Docket No. A-41, Sub 21 and other orders in the A-41 dockets that recount the history of the utility operations and regulatory status.

BHIL and BHIT were founded by George P. Mitchell. (Tr. Vol. 2, 33-34). Mr. Mitchell formed BHIL to purchase the Island out of receivership in 1983, with the goal of ensuring that the Island was developed in a responsible and sustainable manner to preserve the natural environment. (Tr. Vol. 2, 33). He dedicated 10,000 acres to a permanent nature reserve. (Tr. Vol. 2, 33). BHIT, a subsidiary of BHIL, was formed in 1993 to operate the passenger ferry and on-island tram system because the Island is only accessible by boat. (Tr. Vol. 2, 34). BHIT obtained the Certificate from the Commission in 1995 and has been operating pursuant to its authority since. (Tr. Vol. 2, 34).

Most persons access the Island via BHIT's Ferry Operations, which consist of four passenger ferries that transport passengers between Southport and the Island. Once on the Island, most passengers are transported to their on-island destination via the Tram Operations. (See Tr. Vol. 2, 36-37). Certain tariffs for ferry tickets include tram service to and from the passenger's on-island location or destination. (Tr. Vol. 2, 37-38). BHIT owns the Ferry and Tram Operations and has operated them pursuant to the authority granted by the Certificate since 1995. (Tr. Vol. 2, 34, 36-37). BHIT leases the ferry terminals and infrastructure in Southport and on the Island from BHIL. (See, e.g., Tr. Vol. 2, 95). BHIL also owns and operates the Parking Operations, which are located in the municipality of Southport. (Tr. Vol. 2, 38). Ferry passengers may park their vehicles in the parking lots. Different rates are available for annual parking, premium parking, general parking, contractor parking, and employee parking. (Tr. Vol. 2, 38). BHIL also owns and operates a tugboat and roll-on/roll-off barge transporting commercial service vehicles to and from the Island. (Tr. Vol. 2, 40-41).

Mr. Mitchell died in 2013. (Tr. Vol. 2, 35). His estate (Estate) has yet to be closed but has now liquidated most of its assets, with the proceeds largely going to the Cynthia and George Mitchell Foundation, a charitable organization. (Tr. Vol. 2, 106-07). The Estate will eventually be closed and is actively working toward that closure, which will require the eventual transfer of all of its assets. (Tr. Vol. 2, 106). The only operating assets remaining within the Estate are those associated with the Island. (Tr. Vol. 2, 107).

As Applicants' witness Paul testified, because the Estate is in the process of selling its assets and closing, BHIL is no longer willing to continue providing capital infusions to fund capital improvements as needed. (Tr. Vol. 2, 107-08). Therefore, BHIL is seeking a new owner with sufficient financial resources, preferably with North Carolina ties, that would be engaged in the future of the utility services and willing to invest in capital improvements to provide continuity and stability to the utility's operations. (Tr. Vol. 2, 42-43). Moreover, BHIL recognizes that a sale of the entire set of regulated assets to one buyer (such as SharpVue) would help ensure stability of overall cash flow and allow the current level of integrated customer service for ferry, parking, and tram services to be maintained. (See, e.g., Tr. Vol. 2, 42-43; Vol 9, 16, 116).

In the December 30, 2022 Sub 21 Order, the Commission determined that the Parking and Barge Operations were subject to the Commission's jurisdiction and regulatory authority. In the Order, the Commission specifically ordered "[t]hat it is in the public interest for the Parking and Barge Operations to continue to operate, consistent with their existing operation, rates, and services, and therefore are, hereby, granted temporary authority to do so pending further Order by the Commission" and allowed the operations to "continue to operate under BHIT's CPCN pending further Order by the Commission." (Sub 21 Order, 28).

Based upon this evidence, the Commission concludes that the Bald Head Island transportation system is unique. While the Commission does not, and cannot, deviate from the applicable North Carolina General Statutes and its own rules and regulations in its oversight and regulation of this utility, it can exercise its discretion within the parameters of those statutes and rules in determining the scope and nature of regulation appropriate to protect the public interest consistent with the declaration of policy under N.C.G.S. § 62-2(a) and its general and supervisory powers under N.C.G.S. § 62-30 and -32.

Therefore, in light of the unique nature of this utility, the Commission emphasizes at the outset of this Order that its conclusions set forth herein are based upon the specific facts and evidence presented in this docket and should not be considered as precedent for any other ferry operation or other utility. This Order is a function of the unique circumstances of this utility, the customers it serves (living, working, or vacationing on a resort island), and the unique timing of this docket (closely following the Commission's decision in Docket No. A-41, Sub 21 finding the Parking and Barge Operations subject to the Commission's

jurisdiction and regulatory authority to assets and operations that had previously not been subject to regulation).

The evidence in this docket, particularly the compelling testimony of Bion Stewart, indicates that the utility has been efficiently, professionally, and well managed by BHIT and BHIL. Applicants' witness Stewart, the Vice President and Chief Operating Officer for the ferry system, testified that the BHI ferry system is regarded "within the industry and by the Coast Guard as an exceptionally well-managed and well-maintained passenger ferry operation" and that during his time with the Coast Guard, his inspectors "routinely reported to [him] that BHIT had the best-maintained and most professional mariners in the North Carolina Captain of the Port Zone." (Tr. Vol. 8, 91). He also described how the ferry's "reputation as a benchmark ferry operation" has served as a guiding post for state-run ferries in both North and South Carolina, despite the fact that Bald Head lacks state and federal funding and works on a much smaller budget per passenger than other well-known ferry systems. (Tr. Vol. 8, 92, 113-15). Although Captain Stewart acknowledged that the ferry operations have had some on-time performance issues in recent years, he also explained the reasons for those. First, BHIT's metrics consider a ferry on-time if it departs within two minutes of its scheduled departure time. (*E.g.*, Tr. Vol. 8, 109-11). He also explained how the variabilities faced by any transportation system make 90 percent on-time performance a difficult goal to achieve, particularly when measured at a two-minute interval. (Tr. Vol. 8, 110-11).

Bald Head Island is a desirable place to live and visit, and its residents have moved there from around the country. (See, *e.g.*, Tr. Vol. 1, 65-66, 71). Several members of the public testified at the public hearing as to the quality of the services provided, with one witness explaining that "[t]he system has been dependable; reliable; responsive to the emergency needs, situations 24/7; accommodating to its customers [in terms of] scheduling, pricing, and quality control." (Tr. Vol. 1, 18). The concerns expressed by some public witnesses about declining customer service appear to have arisen only during the past few years -- during the COVID pandemic and while the current owner has been trying to sell the operations. (*E.g.*, Tr. Vol. 1, 27-28, 33-34, 58-59, 89-92).

Therefore, in weighing the testimony of all of the witnesses, reviewing the documents presented as evidence, and considering the alternative outcomes that its decision could dictate, the Commission places great weight on the policy goal of maintaining or improving the high level of customer service and operations that have historically characterized the operations of the transportation assets and enabled the Island to thrive. The Commission concludes that this goal can best be accomplished by providing a path for a smooth transition to a new owner, continuity of employees and management, and maintaining the same or similar rates for the utility services provided as currently charged. Finally, in light of the foregoing, the Commission concludes that allowing closure to this sale process is in the public interest.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 22-26

The evidence supporting these findings of fact is contained in the Application, the testimony of Applicants' witnesses Paul, Mayfield, and Roberts, the testimony of Public Staff witnesses Boswell, Rajeev, and Hinton, the testimony of Village witness Gardner, the Commission's prior Sub 21 Order, and the record as a whole.

Since Mr. Mitchell's death, BHIL and BHIT have been looking for a buyer of the Island assets held by them, including the Ferry, Tram, Parking, and Barge Operations, to facilitate the closure of the Estate. (Tr. Vol. 2, 42). It was important to BHIL and BHIT to find a buyer who would purchase all or most of the assets because they believed doing so would give the buyer the same incentives to foster Mr. Mitchell's vision and mission for the Island. (See, e.g., Tr. Vol. 2, 42-43).

BHIL and BHIT first attempted to negotiate a sale of the ferry system to the Bald Head Island Transportation Authority (the Authority). (Tr. Vol. 2, 42). The Authority was created pursuant North Carolina General Statutes Chapter 160A, Article 29 and chartered in 2017 by the City of Southport, Brunswick County, and the Village. (See, e.g., Tr. Vol. 2, 42). Following formation of the Authority, BHIL and BHIT negotiated an agreement to sell the ferry system and associated operations to the Authority. (Tr. Vol. 2, 42). The Authority was required to obtain approval of the public debt financing for the purchase of the system from the Local Government Commission (LGC). (Tr. Vol. 2, 42). The Authority was unable to secure the required approvals from the LGC for the needed financing, preventing that transaction from occurring. (See, e.g., Tr. Vol. 1, 19, 95).

Subsequently, BHIL and BHIT engaged in negotiations with potential purchasers, including SharpVue. (See, e.g., Tr. Vol. 9, 115-17). SharpVue conducted due diligence (as well as relying upon the previously completed due diligence of the Authority) and ultimately sought funding through investors and third-party lending to finance the purchase. (See, e.g., Tr. Vol. 3, 13, 15). In soliciting and educating potential investors, SharpVue engaged in a series of presentations regarding the potential returns of investors. (See, e.g., Tr. Vol. 3, 47-48). SharpVue created a special purchase vehicle (without an expiration date) and informed investors that its primary plan was to hold the assets indefinitely (or for a long period of time such as ten years). (See, e.g., Tr. Vol. 9, 20, 40, 110, 121-22). SharpVue identified investors with the ability and willingness to invest for the long term and who were attracted by the stable nature of the cash flows. (See, e.g., Tr. Vol. 3, 14; Vol. 9, 110). SharpVue also presented plans for a shorter-term disposition of the assets. (See, e.g., Tr. Vol. 3, 61-62). Mr. Roberts and Mr. Paul both testified that the shorter-term disposition was only in the event that a sale to a public entity became feasible, as both the Authority and the Village remain interested in purchasing the system. (Tr. Vol. 2, 73-76; Vol. 3, 62-63). As Mr. Roberts explained, SharpVue's plan has always been and remains to hold the assets for the long term, but it remains open to selling to a public entity if an agreement beneficial to all stakeholders can be reached. (Tr. Vol. 3, 62-63). Other

than that scenario, Mr. Roberts said he would have a duty to his investors to consider sales to third parties that might present themselves, but he does not expect such offers and understands that the Commission would have to approve any such transfers after first determining that they were in the public interest. (Tr. Vol. 3, 62-64).

Buyer's lender conducted its own due diligence as well, including obtaining appraisals to ensure that the Buyer was not paying more than the assets were worth. (Tr. Vol. 9, 25-26). Although the appraisals were conducted before the Commission's Sub 21 Order, the Public Staff confirmed with Buyer's lender that the resulting treatment of the Parking and Barge Operations as regulated utilities did not impact the lender's willingness to finance the transaction. (Tr. Vol. 7, 11-12).

In addition to the Commission's decision in this docket, another variable that may affect the manner and timing of closing of the Proposed Transaction is a purported Right of First Refusal (ROFR) in a document between BHIL and the Village. (Tr. Vol. 6, 161; Vol. 9, 131). In his testimony, Mr. Roberts acknowledged the issue but noted it was unclear at this time as to whether or how it would affect the Proposed Transaction. (Tr. Vol. 3, 119; Vol. 4, 34 & 37 ("have to work with the lender to structure around that uncertainty")).

The validity and legal efficacy of the ROFR is currently a question before the North Carolina General Courts of Justice and not this Commission (Tr. Vol. 2, 67). The purported ROFR document was not presented at the hearing in this docket, and this Commission has not been asked to review or opine on that document. As the Commission found in its February 13, 2023, Order in response to the Village's motion to hold this transfer proceeding in abeyance in light of the appeal of the Sub 21 Order and the litigation over the purported ROFR, the Commission's Sub 21 Order provides jurisdiction to the Commission to make this transfer determination for all the assets at issue regardless of the Sub 21 appeal or the ROFR litigation. Therefore, the Commission can and will decide the matters properly before it at this time.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 27-29

The evidence supporting these findings of fact is contained in the Stipulation, the testimony of the Public Staff witnesses, and the testimony of the Applicants' witnesses.

The Stipulation is material evidence. While the Stipulation and Regulatory Conditions were filed after the evidentiary hearing, the Commission has granted the Village's request for a seven-day extension of time for filing proposed orders and/or brief in order to allow time for the Village to prepare its response to the Stipulation. Late-filed (post-hearing) exhibits have been admitted by the Commission in other proceedings, so post hearing evidence is not unusual, and

no party requested a follow-up hearing on the settlement. In these circumstances, consideration of the Stipulation and Regulatory Conditions as additional evidence is reasonable, fair, and necessary to provide the Commission a complete record on which to base its decision.

A non-unanimous stipulation must be weighed along with all other evidence in a contested proceeding, and the Commission must make its own independent decision, as required by *State ex rel. Utilities Commission v. Carolina Utility Customers Ass'n, Inc.*, 348 N.C. 452, 500 S.E.2d 693 (1998) (*CUCA I*), and *State ex rel. Utilities Commission v. Carolina Utility Customers Ass'n, Inc.*, 351 N.C. 223, 524 S.E.2d 10 (2000) (*CUCA II*). In *CUCA I*, the Supreme Court held:

[A] stipulation entered into by less than all of the parties as to any facts or issues in a contested case proceeding under Chapter 62 should be accorded full consideration and weighed by the Commission with all other evidence presented by any of the parties in the proceeding. The Commission must consider the nonunanimous stipulation along with all the evidence presented and any other facts the Commission finds relevant to the fair and just determination of the proceeding. The Commission may even adopt the recommendations or provisions of the nonunanimous stipulation as long as the Commission sets forth its reasoning and makes "its own independent conclusion" supported by substantial evidence on the record that the proposal is just and reasonable to all parties in light of all the evidence presented.

348 N.C. at 466, 500 S.E.2d at 703.

The fact that fewer than all of the parties have adopted a settlement does not permit the Court to subject the Commission's Order adopting the provisions of a nonunanimous stipulation to a "heightened standard" of review. 351 N.C. at 231, 524 S.E.2d at 16. Rather, Commission approval of the provisions of a nonunanimous stipulation "requires only that the Commission ma[k]e an independent determination supported by substantial evidence on the record [and] . . . satisf[y] the requirements of chapter 62 by independently considering and analyzing all the evidence and any other facts relevant to a determination that the proposal is just and reasonable to all parties." *Id.* at 231-32, 524 S.E.2d at 16.

The Commission has fully evaluated the provisions of the Stipulation in the present proceeding, and concludes, in the exercise of its independent judgment, that the Stipulation should be accepted, consistent with the specific discussion and resolution of the various issues discussed below. As more fully discussed below, the Stipulation with its Regulatory Conditions serves the public interest because, among other requirements, it:

- provides for robust reporting and oversight of affiliate transactions;
- holds ratepayers harmless from paying for the direct costs and expenses associated with the Transfer, regardless of whether the transfer is completed;
- prohibits recovery of an acquisition premium in any future rate case for ferry and tram services;
- allows continuation of the current reasonable parking and barge rates, with only annual inflation adjustments, for the next six years regardless of whether the Sub 21 Order is overturned on appeal;
- assures continuation of adequate parking regardless of whether the Sub 21 Order is overturned on appeal;
- requires financial protections for BHIFT with respect to its affiliates;
- provides for regular meetings between the Public Staff and utility management to address financial conditions and results, service quality, and other regulatory matters;
- provides for regular public meetings between utility management and stakeholders;
- sets a goal of 90% of ferry departures being on-time within 5 minutes, apart from force majeure events;
- requires plans to retain the current employees and senior management after closing of the transfer for a smooth transition, continuity of operations, and experience;
- bars any rate increase for one year after closing of the transfer, other than the parking and barge annual inflation adjustments;
- requires a ten-year plan for vessel maintenance, capital improvements, and replacement be developed and filed within a year; and
- seeks to maintain and improve the current level of integrated customer service for those using the parking facilities, ferries, and trams to travel to and from the island.

The Regulatory Conditions, the testimony and documents providing more context and explaining them in greater depth, and the Commission's conclusions as to their combined effect (considered along with all the evidence presented at the hearing) on future utility rates and services and, ultimately, the Commission's decision as to whether the transfer, considered in light of all of the evidence, satisfies the standards for approval are set forth in more detail below.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NO. 30-37

The evidence supporting these findings of fact is contained in the testimony of Applicants' witnesses Paul, Mayfield, Roberts, Stewart, and Taylor, Public Staff witnesses Boswell, Rajeev, and Hinton, Village witnesses Gardner, Perry, and Wright, the Regulatory Conditions, and the record as a whole.

Applicants' witnesses Roberts, Paul, Mayfield, and Stewart all confirmed that SharpVue has reached oral agreement with Mr. Paul, Ms. Mayfield, and Captain Stewart to stay on in their current roles post-closing to ensure a seamless

transition. (See, e.g., Tr. Vol. 2, 45, 129; Vol. 8, 108). Their testimony also confirmed that most employees of the current operations will also be maintained. (See, e.g., Tr. Vol. 2, 45).

The Regulatory Conditions detail the post-closing commitments described in the findings, among others.

In the Regulatory Conditions, the Applicant commits to limit future price increases to the rate of inflation for six years, and the Commission find this commitment to be a reasonable approach to protect consumers and to ensure the reasonableness of the parking and barge rates. (Condition 4). The Commission, in its Order in Docket No. A-41, Sub 21 allowed the current rates charged by BHIL to continue and finds that BHIFT should be allowed to maintain those rates following closing, with the opportunity to adjust them to accommodate for inflation. In rebuttal testimony, Applicants' expert witness Taylor prepared a table showing that BHIL's charges for parking are among the lowest of benchmarked parking operations in North Carolina. (Tr. Vol. 7, 102-05). Village witness Gardner agreed that the current parking and barge rates are reasonable. (Tr. Vol. 4, 151-52). The Applicants and the Public Staff have stipulated and agreed that current rates for parking and barge services should be allowed to continue (subject to annual inflation adjustments for six years). Therefore, the Commission concludes that (i) the existing rates are reasonable such that there is no need to "establish" new rates at this time pursuant to N.C. Gen. Stat. § 62-133, and (ii) a rate base determination is not necessary at this time since new rates are not being established.

The Village's witnesses Perry and Wright offered the opinion that the parking rates would be higher if SharpVue were allowed to recover an "acquisition premium" than they otherwise would be, and therefore the Commission should establish in this docket a rate base for parking and barge assets at their current net book value, based upon BHIL's initial purchase price. However, the Commission has decided instead to allow continuation of existing rates, subject to an annual inflation adjustment, for six years, rather than to establish new rates.

The Stipulation between the Applicants and Public Staff also states that it is reasonable for BHIFT to acquire rights to possess and utilize the real estate and infrastructure assets used and useful in providing Parking and Barge Operations via long-term leases. The leases will be filed in this docket and subject to advance approval by the Commission pursuant to N.C.G.S. § 62-153, which will occur prior to closing of the Transfer and before any rents are paid. Such filing and approval are conditions precedent for consummation of the Transfer.

Given the unique facts and circumstances of this utility as discussed in more detail earlier in this Order, and the Stipulation between the Applicants and Public Staff, the Commission concludes that there is no need, at this time, to determine rate base or a lease rental value for the Parking or Barge Operations.

In the Settlement Agreement and Stipulation reached by the Applicants and Public Staff, the parties have agreed that it is unnecessary to adjust the parking and barge rates at this time and have agreed that a six-year prohibition on rate increases above the annual rate of inflation sufficiently protects the public's interest and ensures reasonable rates. A six-year period of parking rates with increases at no more than the annual rate of inflation was also agreed upon by the parties in BHIT's last rate case in Docket No. A-41, Sub 7. While not precedent for future rate-setting, the Commission gives weight to the testimony of witnesses that the resulting level of rates has been reasonable (e.g., Tr. Vol. 4, 151-52) and to the fact that no party has taken the position that the current level of rates is unreasonable. Given that the rates are reasonable for the services provided and in light of the Applicants' obligation to request advance approval of affiliated leases prior to closing of the Transfer and the Applicants' need for certainty on the issue of rates to allow the closing of the Proposed Transaction, which is in the public interest, the Commission agrees.

Pursuant to its Order in Docket No. A-41, Sub 21, the Commission, however, will maintain regulatory oversight over the rates and operation of Parking and Barge Operations, and retains the authority to change the rates as circumstances may warrant. See N.C. Gen. Stat. § 62-130. After the six-year period of controlled parking and barge rates as provided in the Regulatory Conditions, and assuming the Sub 21 Order is upheld, those rates may be subject to review in a future rate case, based upon its cost of service, including any reasonable rent payments which will be established prior to and as part of this Transfer.

Furthermore, pursuant to the applicable statutory requirements, the Commission shall require any leases associated with the Parking Operations or Barge Operations to be filed with the Commission in this docket for approval prior to closing in order to confirm the contracts meet the statutory requirements of N.C.G.S. § 62-153 that, among other things, the charges and terms are fair to the utility and not an unwarranted dissipation of its funds by an affiliate. Again, any such approval of the leases does not prejudice or foreclose the right of an intervenor to object to the reasonableness of the rent under the leases in a future rate case.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 38-39

The evidence supporting these findings of fact is contained in the testimony of Applicants' witnesses Paul, Mayfield, Roberts, Stewart, and Taylor, Public Staff witnesses Boswell, Rajeev, and Hinton, Village witnesses Gardner, Perry, and Wright, the Regulatory Conditions, and the record as a whole.

BHIL currently provides 1,955 paved and striped parking spaces and 347 gravel spaces in surface lots for ferry passengers and other members of the public at the Deep Point terminal in Southport. (Tr. Vol. 2, 39; Vol. 9, 130). As part of the Regulatory Conditions, Holdings, BHIFT, SharpVue, and SharpVue Affiliates have

committed as a condition of the Transfer to continue to provide the same number of spaces, regardless of whether the Sub 21 Order is upheld or reversed on appeal. (Condition 5)

Pursuant to the Regulatory Condition 5, BHIFT and SharpVue may replace the existing parking spaces with parking decks or garages. To the extent such parking decks or garages are to be located further from the Deep Point Terminal than the current surface lots, the Regulatory Condition provides that BHIFT must first obtain Commission approval. The Regulatory Condition further provides that the capital cost of constructing any replacement decks or garages may not be recovered through increases in any rates subject to the Commission's jurisdiction. This condition ensures that ratepayers are protected from the expense of any changes in parking while enjoying the benefits of its close proximity to the terminal. For these reasons, the Commission concludes that the proposed Regulatory Condition 5 related to parking availability not only adequately protects the public's interest but that this commitment is, in fact, a benefit to customers (particularly in the event the Sub 21 Order is reversed).

Holdings', BHIFT's, SharpVue's, and SharpVue Affiliates' commitments regarding parking are also indicative of their commitment to maintain the current level of integrated service among the ferry, tram, and parking services provided to customers. (See Regulatory Condition 31). The customers' interest, as reflected by many of the comments made at the public hearing in this docket (*see, e.g.*, Tr. Vol. 1, 26-27), is in large part focused on the need to preserve the seamless experience when using these services in sequence—parking, then ferry, then tram—when traveling from the mainland to the island. The Applicants have repeatedly expressed their intent to ensure that the proposed transfer “will be seamless to BHIT's customers . . . as they will continue to receive the same high-quality services to which they are accustomed.” (Amended Application, ¶ 39; *see also* Tr. Vol. 2, 44; Tr. Vol. 3, 13).

In the Regulatory Conditions proposed by the Applicants and the Public Staff, BHIFT and SharpVue expressly agreed that they will work to maintain and improve the current level of integrated customer service for the ferry, parking, and tram customers. (Condition 31). This commitment is not contingent upon the outcome of their appeal of the Sub 21 Order. The Commission concludes that this Regulatory Condition No. 31 is reasonable and a necessary component to ensure the Transfer is in the public interest.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 40-47

The evidence supporting these findings of fact is contained in the Application, the testimony of Applicants' witnesses Paul, Mayfield, Roberts, Public Staff witnesses Boswell, Rajeev, and Hinton, Village witnesses Gardner, Perry, Lloyd, and Wright, various exhibits submitted by the parties, and the record as a whole.

Applicants' witnesses Paul and Mayfield explained the need for transfer of ownership of the operations. BHIL and BHIT are in the process of winding down to facilitate the closure of the Estate. (Tr. Vol. 2, 42, 130). As a result, BHIL has no plans to continue to make capital investments in the operations. (Tr. Vol. 2, 107-08). Village witness Gardner testified that the quality of the services has fallen in recent years, which he attributed to the focus on finding a new owner. (Tr. Vol. 4, 128-29).

Witness Paul testified that he was not aware of any other likely buyers to which BHIL could presently sell the transportation assets. (See, e.g., Tr. Vol. 9, 115-17). Applicants' witness Roberts testified that he has spoken with other private equity firms who manage similar operations and that all agree that the Bald Head Island ferry system is too small to attract interest from such managers. (Tr. Vol. 3, 63).

In contrast to the current plans of the Estate, which is trying to sell the assets, Applicants' witness Roberts testified that SharpVue intends for Holdings and BHIFT to hold the assets for the long term and is invested in the growth and economic well-being of the Island. In addition to the regulated assets, the Buyers are buying the majority of BHIL's other assets on the Island and around the Deep Point Terminal. The Commission agrees with witness Roberts' testimony that SharpVue will have similar incentives to what the Mitchells had, and its interests will be aligned with the interests of the Village and other Island stakeholders. (E.g., Tr. Vol. 3, 17-19, 153).

The Application and supporting testimony explain that SharpVue will establish a reliable financing mechanism that is a combination of debt financing and equity. The Commission concludes that SharpVue's proposed financing structure provides BHIFT flexibility in meeting the capital and other needs of the operations and is reasonable to provide long-term financial support and stability to the utility, which is a benefit to the utility and its customers.

As previously discussed, the planned transition of ownership from BHIL and BHIT to BHIFT should ensure continuity of staffing and management as well as rate stability. Parking and barge aggregate rates will not increase greater than the rate of inflation for at least six years (Condition 4), and BHIFT agrees not to seek an increase of ferry or tram rates for a least one year following the closing (Condition 28). This rate stability provided by BHIFT will benefit regular users of the ferry and barge services—e.g., retail establishments, service providers, contractors, the Club, and the Village itself—because they can more accurately budget their costs.

In addition, Holdings, BHIFT, SharpVue, and SharpVue Affiliates have further agreed to other significant terms in the Regulatory Conditions that will provide transparency, promote communications, and protect the public interest. These conditions include developing and filing a ten-year plan for vessel maintenance, capital improvements, and replacement (Condition 26); meeting at

least semi-annually with stakeholders, in a noticed public meeting (Condition 22); and meeting annually with the Public Staff (Condition 14). These will be new obligations on BHIFT that are not currently imposed on BHIL and BHIT.

There was testimony at the public witness hearing in Bolivia on November 1 about on-time performance of the ferry, especially during the busiest times of the week and year. (*E.g.*, Tr. Vol 1, 28, 32-33, 40, 49-50). In his testimony before the Commission, Mr. Roberts acknowledged these concerns and expressed his desire to investigate further how service quality could be improved and to take steps to improve the customer experience. (Tr. Vol. 3, 16; Vol. 9, 42, 138-40). Currently, although BHIT maintains and reports its on-time performance, there are no standards or goals for this metric. BHIFT has agreed, for the first time, to have a goal of on-time ferry departures of 90%, within five minutes of scheduled departure time, excluding delays for reasons beyond its control and to report its progress toward this goal both to the Public Staff and at the public meetings with stakeholders. (See Condition 19). This metric and goal are new commitments not currently imposed on BHIT.

The Village raised various potential risks associated with the transaction. Village witness Lloyd raised concerns that SharpVue's economic incentives would encourage a near-term disposition and lead to a series of short-term owners seeking to flip assets solely for financial gain. (Tr. Vol. 5, 127-28). Applicants' witness Roberts, on the other hand, testified that the economic incentives are designed to encourage the Buyers to hold the assets for the long-term. (Tr. Vol. 3, 58). As Mr. Roberts explained, a near-term disposition would be akin to "killing the goose[,] as it were," because the performance fees are based on the returns being delivered to investors, and the analysis shows that a long-term hold would create a stable long-term investment that will continue to generate returns. (Tr. Vol. 9, 110). He further explained that the investors who have committed to invest in the transaction are attracted by the long-term, stable nature of the cash flows and that most investors interested in short-term investments would have more attractive options than a regulated ferry operation. (Tr. Vol. 9, 110). Furthermore, the Commission's regulatory oversight is sufficient to ensure that any subsequent transfer of ownership will not be detrimental to the public interest.

Village witness Lloyd also raised concerns about SharpVue's ability to hold the assets for the long term. (Tr. Vol. 5, 127-28). His concerns were primarily premised on his belief that the investors' return expectations and liquidity preferences cannot be met through a long-term hold strategy and that SharpVue would be unable to meet minimum debt service requirements in a long-term hold. (Tr. Vol. 5, 125). However, Applicants' witnesses testified that the proposed transfer would place the operations in a significantly improved financial situation versus the status quo. For example, Mr. Roberts testified that immediately following the transfer, BHIFT would have access to \$2 million in cash in addition to a \$2 million line of credit. (Tr. Vol. 9, 80-82). Mr. Paul explained that this amount is 200 percent more accessible capital than the operations currently have and will cover not only working capital but also capital expenditure needs. (Tr. Vol. 9, 83,

102, 105, 107-08). He also testified that the operations have rarely required more than \$500,000 in working capital over the last decade of operations. (Tr. Vol. 9, 83-84). In terms of investor expectations, Mr. Roberts testified repeatedly that his investors were attracted to the long-term stable nature of the investment. (E.g., Tr. Vol. 9, 20, 110, 125).

Village witness Lloyd was also concerned that the proposed finance structure would leave BHIFT without adequate capitalization or “dry powder” to ensure quality, safe, and reliable services. (Tr. Vol. 5, 121-22). However, in addition to the working capital and capital expenditure amounts discussed above, Mr. Roberts testified that BHIFT would have access to \$5.4 million in additional capital from several discretionary funds controlled by SharpVue that are investing in the transaction. (e.g., Tr. Vol. 9, 80-84). Mr. Roberts explained that two of the funds allow SharpVue to call capital to support existing investments after the investment period has expired while the third fund is fully funded. (Tr. Vol. 9, 88-90). Mr. Roberts testified that there is little risk of investors failing to fund when a call is made because the funds are only open to accredited investors and the funds have highly punitive measures in place for failing to fund a capital call. (Tr. Vol. 9, 90).

Mr. Roberts explained that these types of reserves are a common tool to protect investments by making capital available for follow-on investments supporting the initial investments. (Tr. Vol. 9, 82). These reserves are specifically provided for in the partnership agreements of each fund. (Tr. Vol. 9, 82). Furthermore, the \$5.4 million SharpVue has access to is only a portion of the reserves available to support all of the investments supported by those funds. (Tr. Vol. 9, 99). Mr. Roberts testified that the Commission could “absolutely” rely on the availability of those funds if they were needed, but he also added that SharpVue believed that the \$5.4 million would only be needed in the event of a crisis. (Tr. Vol. 9, pp. 82-83, 91-92).

In terms of the most significant capital expenditures anticipated—the purchase of new ferry vessels, SharpVue has already forecast to its investors that it intends to purchase new ferry vessels in the first ten years of operations. (Tr. Vol. 2, 110, 138). Mr. Roberts further explained that there are no concerns about funding these purchases because ferries are highly financeable assets that will likely be acquired through capital leases or asset-backed loans. (Tr. Vol. 9, 91).

Public Staff witness Hinton testified that, although the Public Staff had initial concerns about the amounts available for working capital, it concluded that the amount available seems reasonable relative to the operations’ revenues and expenses. (E.g., Tr. Vol. 6, 266). He noted that Mr. Roberts had offered a host of ways to ensure funding for capital expenditures, including retained earnings, short-term capital loans, and infusion of equity by SharpVue affiliates, Mr. Roberts himself, or other entities. (Tr. Vol. 6, 206). Mr. Hinton also testified that he spoke with SharpVue’s lender to ensure that the debt capital would actually be available and was “very overwhelmingly impressed” with the conversation. (Tr. Vol. 6, 209;

Vol. 7, 10). He further testified that the lender was aware of the Sub 21 Order and that it did not impact the lender's willingness to finance the transaction. (Tr. Vol. 7, 11-12). The Public Staff was also comfortable that an additional \$5.4 million would be available if needed and believed SharpVue was formulating plans to increase profitability without increasing rates. (Tr. Vol. 6, 266; Vol. 7, 17-18).

Various Village witnesses also raised concerns that SharpVue's status as a private equity firm could make the proposed transaction riskier for customers. However, Village witness Gardner acknowledged that like any investor-owned utility under Commission regulation, private equity companies have fiduciary obligations to their investors or shareholders to maximize profits; and that being subject to Commission oversight as well as being bound by regulatory conditions would protect customers. (Tr. Vol. 4, 162-64)

Under the Regulatory Conditions, Holdings and BHIFT are required to file pre- and post-Transfer closing balance sheets and the associated closing journal entries, including relevant descriptions and disclosures for the transactions. As will be reflected in the post-Transfer closing balance sheet (and thereafter until a final order is issued in BHIFT's first general rate case), BHIFT has committed in the Regulatory Conditions to maintain common equity capital at levels equal to or greater than 40% of total adjusted booked capital (including common equity, preferred stock, long-term debt, and long-term capital leases). (Condition 9). Moreover, the post-closing balance sheet must reflect that SharpVue, SharpVue Affiliates, Holdings, and BHIFT have disclaimed and are not obligated for any intercompany "loan" between BHIL and BHIT (see \$19,808,223 of Related Party Loan(s) as reported in BHIT's Financial Report of December 31, 2021). (Condition 12). Further, the Regulatory Conditions provide additional protections in that any such "loan" to BHIT—whether recorded as a liability or negative retained earnings—will not be binding upon Holdings and BHIFT nor ever be recovered from ratepayers. (Condition 12).

In viewing the totality of the evidence in the record, it is apparent that the benefits of the Proposed Transaction outweigh the potential risks, especially considering the protections of the Regulatory Conditions. The Commission acknowledges the concerns about adequate capitalization, but believes those concerns were rebutted and outweighed by the evidence presented by the Applicants. The Commission agrees with Public Staff witness Hinton that having an owner who is interested and willing to invest rather than one who is no longer interested in investing is in and of itself a benefit to the public. (Tr. Vol. 6, 188-89). Mr. Hinton testified that "the fact that the Mitchell family is not open to investing any more than probably the minimum amount of capital to sustain operations is a concern." (Tr. Vol. 6, 190). In contrast, SharpVue has committed to ensuring adequate funding and making major capital improvements when needed (such as ferry replacement), and it has provided for continuity of experienced management and staff so that the utility will retain the significant experience needed to ensure a smooth transition and to improve operations over time. Furthermore, the Commission's regulatory oversight should be sufficient to prevent a series of short-

term owners to the detriment of the public interest. The Public Staff has thoroughly reviewed SharpVue's plans, projections, and financial resources and has found them to be sufficient for the long-term viability of the utility. The Commission concludes that SharpVue's evidence regarding its financing capability is credible and sufficiently documented and that the Applicants have shown that the buyer is fit and capable to operate the utility operations in accordance with law and regulations, and that the resources committed constitute a benefit to customers.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NO. 48

The evidence supporting this finding of fact is contained in the Application, the testimony of witnesses Mayfield, Paul, and Roberts, the testimony of Public Staff witnesses Boswell, Rajeev, and Hinton, the Regulatory Conditions, and the record as a whole.

SharpVue anticipates that it may borrow funds or issue debt and pledge the utility assets to secure such debt financing. In the Amended Application and supporting testimony, SharpVue commits that any pledging of such assets will not in any manner deplete, reduce, conceal, abstract, or dissipate the earnings or assets thereof, or decrease or increase its liabilities or assets. (Amended Application, ¶ 19). SharpVue affirms that the debt will be held in the name of Holdings and will only be incurred for a lawful objective within the corporate purposes of the utility, to the extent it is compatible for the public interest and if necessary or appropriate for or consistent with the proper performance of the utility operations and will not impair these operations. (Amended Application, ¶ 19). The Commission concludes that SharpVue is aware of its obligations in this regard, understands the import of this commitment, and is capable of fulfilling this commitment.

The Regulatory Conditions apply to SharpVue's affiliates and contain requirements regarding affiliated agreements and transfer pricing, notice of BHIFT-related investments, and limitations on distributions. The Commission concludes that these conditions are appropriate and are in compliance with the statutory provisions and should sufficiently protect consumers in this context.

Therefore, within the limitations and requirements explained herein and contained in the Regulatory Conditions, the Commission finds it appropriate to grant authority for BHIFT (via its sole owner Holdings) to pledge assets and secure indebtedness in order to finance the purchase of the assets, and such financing is approved pursuant to NCGS §§ 62-160 and -161.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 49-51

The evidence supporting these findings of fact is contained throughout the record in this docket, including the Application, the testimony of Applicants' witnesses Paul and Roberts, the testimony of Public Staff witnesses Boswell,

Rajeev, and Hinton, the testimony of Village witnesses Gardner and Lloyd, and the record as a whole.

The Commission may approve transfers of public utilities when the Commission finds that the transfer is justified by the public convenience and necessity. N.C. Gen. Stat. § 62-111(a). In prior proceedings, the Commission has established a three-part test for determining whether a proposed utility merger or other transfer is justified by the public convenience and necessity. That three-part test is as follows: (1) whether the merger would have an adverse impact on the rates and services provided by the merging utilities; (2) whether ratepayers would be protected as much as possible from potential costs and risks of the merger; and (3) whether the merger would result in sufficient benefits to offset potential costs and risks. See, e.g., Order Approving Merger Subject to Regulatory Conditions and Code of Conduct (Duke/Piedmont Order), Docket Nos. E-2, Sub 1095, E-7, Sub 1100, and G-9, Sub 682 at p. 68 (Sept. 29, 2016).

However, applications for transfer of motor carrier franchises have been subject to a lesser standard, requiring only findings that the transfer is in the public interest, will not adversely affect the utility's or any other utility's service to the public, and that the acquiring party is fit, willing, and able. N.C. Gen. Stat. § 62-111(e). This Commission has applied this standard to ferry transfers in the past. See Order Approving Transfer (from Beach Bum, Inc., to Ferry Excursions, LLC), Docket Nos. A-52, Sub 7 and A-74, Sub 0 (June 6, 2013). A motor carrier is a common carrier by motor vehicle, and a motor vehicle is defined as any vehicle, machine, tractor, semi-trailer, or any combination therefor which is propelled or drawn by mechanical power and used upon the highways within the State. N.C. Gen. Stat. § 62-3(17)-(18). Our courts have repeatedly recognized that navigable waterways generally, and the Cape Fear River particularly, are public highways under North Carolina law. See, e.g., *Wallen v. Riverside Sports Center*, 173 N.C. App. 408, 413, 618 S.E.2d 858, 862 (2005). Therefore, there is precedent that this "fit, willing, and able" standard should apply to the Commission's evaluation of this transfer.

Regardless of which standard applies, the Proposed Transaction satisfies the requirements of the statute. Applying the motor carrier standard first, the Commission finds credible the ample evidence that the transfer is in the public interest. The utility is currently owned by entities in the process of winding down their operations in order to facilitate the closing of the Estate. BHIL and BHIT witnesses testified that the Estate has no plans to continue funding major capital improvements which will be needed in the future. (Tr. Vol. 2, 107-08). Village witness Gardner testified that he has seen a decline in operations, which he attributed to the current ownership's desire to sell the operations. (Tr. Vol. 4, 128-29). SharpVue and BHIFT not only have the resources, but they have the desire to assume operations. For the same reasons, the evidence shows that the Transfer will have a positive, not an adverse, impact on the utility's operations, and there is no evidence that the Transfer will impact any other utility's operations. Moreover, BHIFT, through SharpVue's management, has the financial means to

assume the operations, the willingness as expressed by Mr. Roberts, and the experience through its agreement with the current management to stay on for at least three years. In short, BHIFT is certainly fit, willing, and able to assume the operations in a manner that serves the public interest.

The transaction is also justified under the three-prong test for non-motor carriers. There is no anticipated adverse impact on North Carolina retail ratepayers. To the contrary, it is expected that the necessary infusion of available capital and an interested and willing owner will have a positive impact on operations and the customer experience. Moreover, there is no expected adverse impact on rates because the commitment to maintain continuation of existing parking and barge rates for six years, with only inflation adjustments, insulates consumers from the risk of major rate increases for a substantial period of time. The Buyer has committed to freeze Ferry and tram rates for at least one year to the advantage of consumers, and any subsequent requests for increases in rates will be then subject to cost justification thereafter the same as if there were no transfer pursuant to N.C.G.S. §62-133. Numerous other benefits are discussed previously in this Order.

Although the Village identified several risks it believes are associated with the transaction, the Commission concludes that ratepayers are reasonably protected from these risks and that they are outweighed by the benefits of the proposed Transfer.

The Commission finds that SharpVue's status as a private equity firm does not increase the risks to ratepayers in light of the Buyer's commitments under oath and in the Regulatory Conditions, and the Commission further notes that its oversight is a significant check on the risk that SharpVue would put profits and investor interests ahead of the public interest. Although Village witness Gardner, the Village mayor pro tem, testified that many Island citizens fear that a private equity firm running the transportation system will prioritize return on investment over the public interest, Mr. Gardner conceded that the Commission has the ability to provide regulatory oversight to minimize that concern. (Tr. Vol. 4, 118, 162-63). Status as a private equity firm does not disqualify a buyer from owning a utility, and in fact private equity firms have owned and operated much larger utilities in North Carolina. See, e.g. Docket No. G-40, Sub 136. Mr. Gardner acknowledged that he expects the service issues that he raised will continue to worsen until a buyer closes on the transaction (Tr. Vol. 4, 128, 130, 161-62).

While SharpVue itself does not have significant utility operating experience, it has obtained employment commitments from Mr. Paul, Ms. Mayfield, and Captain Stewart to continue in their current management positions, ensuring not only continuity but also acquiring an experienced and knowledgeable team to manage the utility. Notably, the Village hoped to do the same thing to address its own lack of transportation experience if it had been able to afford the assets (Tr. Vol. 4, 140-41), notwithstanding Captain Bion Stewart's testimony that he would not stay on if the Village owned the ferry operations and the Village's admission

that it had no indication from any of the current management that they would be willing to work for the Village. (Tr. Vol. 8, 97; Vol. 4, 151).

As to SharpVue's plans to upgrade services, Mr. Roberts testified that SharpVue intends to spend the first year of ownership evaluating current operations in more detail and communicating with stakeholders to determine what needs to be done to improve services. (Tr. Vol. 9, 43-44). Moreover, SharpVue already has plans to acquire new ferry vessels in its first ten years of ownership, plans that it has shared with its investors. (Tr. Vol. 3, 138-44, 154-55).

The Commission notes concerns expressed in the proceeding that BHIFT may seek to recover an acquisition premium if the transaction is approved. As discussed above, the Commission does not intend to fix rates in the present proceeding, but instead has allowed the current reasonable -parking and barge rates to continue, with annual inflationary adjustments. The Commission agrees with the Stipulating Parties that there is no need to establish a rate base for the Parking and Barge Operations in the present proceeding, and consequently no need to address the question of an acquisition premium. This is especially appropriate if BHIFT will have ownership or control of the parking assets and barge assets through a long-term lease, easement, or deed. Regarding the ferry or tram operations that have been historically regulated and which already have an established rate base, SharpVue has committed not to seek any acquisition premium on the purchase of those assets.

The costs and risks associated with the Proposed Transaction are adequately addressed by the Regulatory Conditions and this Commission's continuing oversight.

Accordingly, the Commission concludes that the Applicants' commitments in their Amended Application, testimony, and the Applicants' and Public Staff's Regulatory Conditions, which are adopted in this order, are sufficient to ensure that: (1) the transaction will have no adverse impact on the rates and service provided to the utility's ratepayers; (2) the utility's ratepayers are protected as much as reasonably possible from potential costs and risks resulting from the transaction; and (3) the known and potential benefits from the transaction are sufficient to offset the potential costs and risks.

Therefore, based on all of the evidence presented in this proceeding, the Commission finds that the approval of the Proposed Transaction is in the public interest, is justified by the public convenience and necessity, and should be granted subject to all of the terms, conditions, and provisions of this Order, including the Regulatory Conditions.

IT IS, THEREFORE, ORDERED as follows:

1. That the application of BHIT, BHIL, and BHIFT pursuant to G.S. 62-111(a) to transfer the Certificate and regulated assets is hereby approved subject

to compliance with the provisions of this Order and the Regulatory Conditions attached hereto as Appendix A and incorporated herein.

2. Pursuant to the requirements and limitations explained herein and contained in the Regulatory Conditions, SharpVue or its affiliates, including Holdings, may pledge assets and secure indebtedness in order to finance the purchase of the assets, and such financing is approved pursuant to NCGS §§ 62-160 and -161.

3. Prior to closing of the Transfer, the Applicants must receive Commission approval of all leases necessary for the operation of the Parking Operations and Barge Operations so that the Commission may determine their compliance with N.C.G.S. § 62-153.

4. That direct costs and expenses associated with closing the transaction will be excluded from the regulated expenses of BHIFT for Commission financial reporting and ratemaking purposes.

5. That Applicants are precluded from recovering an acquisition adjustment in any future rate case for ferry or tram services that have historically been regulated.

6. That within 30 days prior to the Proposed Transaction closing date, BHIFT shall file all affiliated service agreements, as provided by G.S. 62-153 and the Regulatory Conditions.

7. That the Applicants are authorized to take such other and further actions as are reasonable and necessary to consummate the Proposed Transaction set forth in the Application subject to the terms hereof.

8. That the Applicants shall file written notice in this docket informing the Commission of the closing of the Proposed Transaction within ten (10) days of the consummation of the Proposed Transaction.

9. That this docket shall remain open pending the filing of such notice, and such other actions by the Commission that may be required.

ISSUED BY ORDER OF THE COMMISSION.

This the ____ day of _____, 2023.

NORTH CAROLINA UTILITIES COMMISSION

Erica N. Green, Deputy Clerk

REGULATORY CONDITIONS – DOCKET NO. A-41, SUB 22

These Regulatory Conditions set forth requirements imposed upon Pelican Legacy Holdings, LLC (Holdings), Bald Head Island Ferry Transportation, LLC (BHIFT), a wholly owned subsidiary of Holdings, SharpVue Capital, LLC (SharpVue), and other entities that invest in Holdings that are owned or controlled by SharpVue or its principals, Lee H. Roberts and Douglas Vaughn, being "SharpVue Affiliates" comprised of SVC Pelican Partners, LLC (Partners), SharpVue Real Estate Partners II, LP, Pelican Co-Invest, LLC, and SharpVue Real Estate Partners II AI, LP (as well as any successor entities) as a condition of approval of the application by BHIL, BHIT, and BHIFT pursuant to N.C. Gen. Stat. § 62-111 and Commission Rule R2-8.1 for authority (1) to transfer BHIT's Common Carrier Certificate to BHIFT to operate the passenger ferry transportation services to and from Bald Head Island, the tram services on the island, and, the parking, barge, and tug operations (collectively, the Transportation Assets) (the Transfer), and for BHIFT or SharpVue to pledge assets and borrow or issue debt pursuant to N.C.G.S. §§ 62-160 and 62-161 secured by the Transportation Assets as may be necessary to finance the Transfer (the Pledging of Assets, and collectively with the Transfer, the Proposed Transaction).

These Regulatory Conditions, which become effective only after approval by the Commission and upon closing of the Transfer, shall apply jointly and severally to Holdings, BHIFT, SharpVue, and SharpVue Affiliates, and shall be interpreted in the manner that ensures BHIFT's customers (a) are protected from any known adverse effects from the Transfer, (b) are protected as much as possible from potential costs and risks resulting from the Transfer, and (c) receive sufficient known and expected benefits to offset any potential costs and risks resulting from the Transfer. These Regulatory Conditions do not apply, however, to how the SharpVue Affiliates operate or manage cash for other investments separate from and unrelated to their investment in Holdings and that have no effect on the rates and services provided by BHIFT.

For purposes of these Regulatory Conditions, the North Carolina Utilities Commission is referred to as "the Commission," and the Public Staff – North Carolina Utilities Commission is referred to as "the Public Staff." For purposes of these Regulatory Conditions, the term "affiliated" or "Affiliate" (other than previously defined SharpVue Affiliate) shall mean Holdings, BHIFT, and any business entity of which 10% or more is owned or controlled, directly or indirectly, by Holdings or BHIFT, including but not limited to Pelican Real Property, LLC, Pelican Logistics, LLC, and Pelican IP, LLC.

Each entity bound by these Regulatory Conditions must acknowledge and consent to these Regulatory Conditions and is further required not to cause any subsidiary entities to violate such Regulatory Conditions, nor to prevent any bound entity from taking action to comply with the Regulatory Conditions, as long as the Regulatory Conditions remain in effect. The consent and acknowledgment as set forth above does not constitute a general consent to expansion of the Commission's

jurisdiction over such entity (entities) beyond that established by Chapter 62 of the North Carolina General Statutes. Further, as long as SharpVue and its affiliates own or operate ferry, tram, parking, barge, and tug operations, SharpVue and the SharpVue Affiliates agree to submit to the Commission's regulation and oversight of those operations as set forth in the Regulatory Conditions herein and the Commission's December 30, 2022, Order in Docket No. A-41, Sub 21, to the extent it is upheld on appeal.

The Commission retains the right to impose future limitations on BHIFT that the public interest requires.

1. Transfer-related Direct Costs and Expenses. Direct costs and expenses associated with the Transfer will be excluded from the regulated expenses of BHIFT for Commission financial reporting and ratemaking purposes. Direct Transfer expenses are change-in-control payments made to terminated executives, Transfer-related bonuses, severance payments, regulatory process costs, and transaction fees (such as, but not limited to, acquisition, architectural, broker, environmental, financing, investment banker, and legal fees for due diligence, transaction structuring, financial market analysis, and fairness opinions based on formal agreements with investment bankers). BHIFT will file a summary report of its final accounting for direct Transfer and Transfer-related -expenses within 120 days after the close of the Transfer, and supplemental reports within 60 days after each quarter until such expenses cease.

2. Non-Consummation of Transfer. If the Transfer is not consummated, neither the costs associated with the Transfer nor the receipt of any termination payment shall be allocated to BHIL or BHIT or included in regulated expenses of BHIL or BHIT for Commission financial reporting and ratemaking purposes. BHIL's and BHIT's customers shall not otherwise bear any direct expenses or costs associated with a non-consummated Transfer.

3. Acquisition Adjustments. SharpVue, SharpVue Affiliates, Holdings, and BHIFT shall neither pursue nor recover an acquisition adjustment in any future rate case for ferry or tram services that have historically been regulated. Because no change in current rates for parking and barge services will be sought (beyond inflation-based increases allowed pursuant to Regulatory Condition 4), a rate base determination is not necessary at this time.

4. Parking and Barge/Tug Operations Rates. The current parking and barge/tug rates and operation schedules are attached as an Addendum to the Applicants' rebuttal testimony. Regardless of whether the Commission's December 30, 2022, Order in Docket No. A-41, Sub 21 is overturned or not, Holdings and BHIFT will continue to provide reasonably priced parking and barge/tug operations, with aggregate rates allowed to increase by no more than the overall rate of inflation based on the CPI-U for a period of six (6) years following closing of the Transfer.

5. Parking Availability. Regardless of whether the Commission's December 30, 2022 Order in Docket No. A-41, Sub 21 is overturned or not, Holdings and BHIFT will continue to provide adequate parking for ferry passengers. For purposes of this Regulatory Condition, "adequate parking" is what is currently provided, i.e., 1,955 paved, lined spaces and 347 unpaved overflow parking spaces adjacent to the Deep Point Terminal (regardless of whether in the current surface lots or in new parking decks or garages, so long as the capital cost of constructing any replacement decks or garages are not recovered through increases in rates that are subject to the Commission's jurisdiction). Any provision of "adequate parking" as defined herein at any location further from the Deep Point Terminal than the furthest currently available space (other than for temporary <12 months for accommodation of on-site construction) must be approved by the Commission.

6. Hold Harmless Commitment. The Transfer shall be effectuated in a manner designed to prevent harm to BHIFT's ratepayers. Notwithstanding this, SharpVue, SharpVue Affiliates, Holdings, and BHIFT (as well as any successor entities directly or indirectly owning or controlling BHIFT assets, operations, or its employees) shall take all such actions as may be reasonably necessary and appropriate to hold BHIFT's customers harmless from the effects of the Transfer.

7. Imputed Parking Revenue. Regardless of whether the Commission's December 30, 2022 Order in Docket No. A-41, Sub 21, is overturned, \$523,725 of annual revenues (including regulatory fee impact) from the parking will continue to be imputed to the revenue requirement of the ferry and tram utility with respect to the existing Commission-approved rates.

8. Distributions to SharpVue, SharpVue Affiliates, and Holdings. BHIFT shall not pay to SharpVue, SharpVue Affiliates, Holdings, or their members or managers any distribution exceeding 100% of BHIFT's net income calculated on a two-year rolling average basis. In addition, BHIFT shall limit cumulative distributions paid to SharpVue, SharpVue Affiliates, and Holdings subsequent to closure of the Transfer to (i) the amount of its retained earnings on the day prior to the closure of the Transfer, plus (ii) any future earnings recorded by BHIFT subsequent to closure of the Transfer.

9. Common Equity Capital. Until a final order is issued in BHIFT's first general rate case, BHIFT shall maintain common equity capital at levels equal to or greater than 40% of total adjusted booked capital (including common equity, preferred stock, long-term debt, and long-term capital leases). On Day 1 after closing of the Transfer, booked capital will be regarded as invested common equity. No equity distributions, whether by dividend or other form, such as the management fees of SharpVue, may be made that would result in invested equity capital of BHIFT falling below this minimum 40% level without prior approval of the Commission. Notwithstanding the foregoing, BHIFT may petition the Commission for an exception to this Regulatory Condition.

10. Notice of BHIFT-related Investments. Whenever SharpVue, SharpVue Affiliates, or Holdings makes any new or increased direct or indirect investment in a business entity other than Holdings and/or BHIFT where: (a) such investment appears or will appear on the books of BHIFT, or will otherwise have a direct effect on the books, costs, rates, revenues, charges, obligations, services, capitalization, or indebtedness of BHIFT, and (b) the amount of such investment is equal to 10% or more of BHIFT's book capitalization, then BHIFT shall file or cause to be filed, as soon as practicable following Board or other approval of the subject transaction and any public announcement thereof if any, a notice of the investment with the Commission. The notice shall include a full description of the investment and an explanation of how it will appear on the books of BHIFT, or will otherwise have an effect on the rates, revenues, charges, obligations, services, capitalization, or indebtedness of BHIFT.

11. Notice of Default or Bankruptcy. If SharpVue or SharpVue Affiliates experiences a material default on a Holdings or BHIFT-related obligation or files for bankruptcy, Holdings and BHIFT shall notify the Commission of the event in advance, if possible, or, if not, as soon as possible but not later than ten days after such event.

12. Non-attribution or Forgiveness of Intercompany "Loan." To the extent that closing of the Transfer memorializes any intercompany "loan" between BHIL and BHIT (see \$19,808,223 of Related Party Loan(s) as reported in BHIT's Financial Report of December 31, 2021), SharpVue, SharpVue Affiliates, Holdings, and BHIFT must disclaim any such "loan" and any such "loan" or indebtedness shall not be binding upon Holdings and BHIFT and shall not be presented for Commission consideration whatsoever, whether for rate base purposes or otherwise. This requirement applies to all existing or subsequent indebtedness of BHIL or BHIT through closing, including any cumulative negative retained earnings as shown on BHIT's balance sheet prior to closing, for which there is no attribution to any party post-closing.

13. Post-Closing Financial Information. Holdings and BHIFT shall file pre-and post-Transfer closing balance sheets and the associated closing journal entries, including relevant descriptions and disclosures for the transactions recorded as soon as practicable but not later than the end of the second full quarter following the close of the Transfer, and shall provide to the Public Staff closing documents for the consummation of the Proposed Transaction, including closing statements for Holdings and BHIFT.

14. Meetings with Public Staff. Holdings and BHIFT management shall meet annually with the Public Staff to discuss Holdings' financial condition, BHIFT's financial condition and results, service quality metrics and maintenance initiatives and results, any changes and potential improvements, new tariffs, and other issues related to compliance with these conditions and/or regulated utility services in general.

15. Access to Books and Records. In accordance with and to the extent provided by North Carolina law, the Commission and the Public Staff shall have access to the books and records of Holdings and BHIFT.

16. Management. SharpVue, Holdings, and BHIFT have indicated that they intend to maintain current management comprised of existing key BHIL and BHIT employees Charles A. Paul, Shirley A. Mayfield, and Captain Bion Stewart. Holdings and BHIFT shall notify the Commission at least 30 days prior to any termination of agreements (except for termination for cause) with or resignation by these key personnel or as soon as practicable following any such termination for cause or their knowledge of any such resignation.

17. Regulatory Reporting Requirements. BHIFT shall comply with all regulatory reporting requirements for its regulated utility operations, including Annual Report, Quarterly Report, and Quarterly Financial Report of monthly information.

18. Regulatory Staffing. Holdings and BHIFT shall maintain sufficient, adequately trained personnel to ensure that regulatory reporting requirements are complied with in a timely and accurate manner. BHIFT shall notify the Public Staff when there is any change in regulatory or compliance personnel at the management level.

19. Overall Service Quality and On-Time Performance. Upon consummation of the Transfer, SharpVue, SharpVue Affiliates, Holdings, and BHIFT shall continue to provide safe and reliable parking, ferry, barge, tug, and tram services consistent with current practices. Holdings and BHIFT shall have a goal of on-time ferry departures of 90%, within five minutes of scheduled departure time, excluding delays caused by force majeure events beyond their control including, but not limited to, adverse weather conditions, consecutive container vessels or military river and port traffic, requested emergency response and evacuation services, and dredging by third-parties that affect transit to and from Bald Head Island. BHIFT shall evaluate service delivery and related components and make needed changes to improve overall ridership experience. BHIFT shall report findings of its evaluation to the Public Staff at meetings pursuant to Regulatory Condition #14 and at public meetings conducted pursuant to Regulatory Condition #22.

20. Affiliated Agreements. Holdings and BHIFT shall file with the Commission agreements pursuant to N.C.G.S. § 62-153. All such agreements that involve payment of fees or other compensation by Holdings or BHIFT shall require acceptance and authorization by the Commission and shall be subject to any other Commission action required or authorized by North Carolina law and the Rules and orders of the Commission. Holdings, and BHIFT shall file with the Commission any proposed amendments to, assignment of, or transfer of management rights under the Management Agreement (referred to by BHIFT as

an "Investment Management Agreement") among SharpVue, Partners, and Holdings as well as any event in which SharpVue Managing Partners Lee Roberts and Douglas Vaughn will no longer be leading the provision of management services under the Management Agreement.

21. Intellectual Property. All intellectual property currently used in parking, ferry, barge, tug, and tram operations shall continue to be available for use by BHIFT at no additional charge. To the extent that intellectual property of BHIL conveyed to Pelican IP, LLC, at closing is currently used in parking, ferry, barge, tug, or tram operations, BHIFT shall have the continued right to utilize such intellectual property and shall not be charged a licensing fee or any other sum associated with such use.

22. Public meetings with Stakeholders. Management of Holdings and BHIFT shall meet at least semi-annually in a noticed public meeting (one of which must be on Bald Head Island) with ferry, barge, tug, and tram service constituents to receive input on all aspects of such services.

23. Ferry Terminals, Barge, and Parking Access. Unless and until such time as BHIFT owns such real property and facilities, BHIFT shall continue to maintain the long-term lease for ferry terminal facilities on the mainland and island (Terminal Lease) and the right to secure and maintain a perpetual easement(s) or long-term lease(s) or otherwise ensure ownership or control of all property necessary for regulated parking and barge and tug operations at reasonable rates, with escalations not to exceed the greater of 3% or the annual increase in the Consumer Price Index for Urban Consumers, CPI-U, as published by the U.S. Bureau of Labor Statistics, unless any such rent escalation at a different rate is approved by the Commission. In the event that any such easement or lease is terminated, expires, or is rendered inoperable, the grantor/lessor shall file written notice in this docket at least 90 days in advance and BHIFT shall be granted access (for example, by new easement or lease) to such facilities necessary for regulated operations at reasonable rates.

24. Supplemental Assets. The subsequent sale, assignment, lease, easement, or other transfer of any right or interest in and to supplemental assets (assets other than regulated assets) under the Asset Purchase Agreement (APA) for the Transfer shall not materially impact customers of regulated operations for the ferry, tram, parking, barge, or tug.

25. Mergers and Acquisitions. For any proposed merger or other business combination that would affect BHIFT, Holdings, or SharpVue, BHIFT shall file an application for approval pursuant to N.C.G.S. § 62-111(a) at least 90 days before the proposed closing date for such merger or other business combination.

26. Vessel Maintenance, Capital Improvements, and Replacement. Within one year of the closing of the Transfer, Holdings and BHIFT shall file a ten-year

plan for the maintenance and capital improvements to or replacement of any of BHIT's current ferry vessels, including the proposed financing of any capital expenditures related to the vessels.

27. Transfer Pricing Between Affiliates. For untariffed goods and services provided by Holdings, BHIFT, SharpVue, or SharpVue Affiliates to a non-utility Affiliate, the transfer price paid shall be set at the higher of market value or Holdings', BHIFT's, SharpVue's, or SharpVue Affiliates' cost. For untariffed goods and services provided to Holdings, BHIFT, SharpVue, or SharpVue Affiliates by a non-utility Affiliate, the transfer price charged by a non-utility Affiliate to Holdings, BHIFT, SharpVue, or SharpVue Affiliates shall be set at the lower of market value or the non-utility Affiliate's cost. Services provided by Holdings, BHIFT, SharpVue, or SharpVue Affiliates to utility Affiliates or by utility Affiliates to Holdings, BHIFT, SharpVue, or SharpVue Affiliates shall be transferred at the supplier's cost, unless otherwise directed by order of the Commission.

28. Rate Increases. BHIFT agrees not to seek an increase in rates for at least one year following the closing of the Transfer, except as allowed under Condition 4 above.

29. Existing Affiliate Agreements. BHIFT shall continue to have the right to maintain the existing affiliate contracts filed in Docket No. A-41, Sub 4 (filed August 15, 2007), and Docket No. A-41, Sub 7 (filed January 14, 2011). Copies of assignments for any such leases shall be filed with the Commission within 30 days of the consummation of the transaction. BHIFT, Holdings, SharpVue, or any SharpVue Affiliates acknowledge that (1) any proposed change to the regulated utility rates could trigger an investigation of and report related to justification for current affiliate costs, (2) any order approving the transfer of the certificate in this proceeding does not constitute approval of the current level of cost, and (3) these costs will be examined and adjudicated in the next filed rate case. Any new affiliate agreements, or amendments to existing affiliate agreements, shall be filed with the Commission in accordance with the "Affiliated Agreements" condition above and N.C.G.S. § 62-153.

30. Successors, Other. The respective successors and assigns of Holdings, BHIFT, SharpVue, and SharpVue Affiliates shall be bound by these regulatory conditions, Commission rules, and Commission jurisdiction established by Chapter 62 of the North Carolina General Statutes. Any successor or assign shall file in this docket consent to submit to the Commission's jurisdiction for the limited purpose of allowing the Commission to oversee and enforce these regulatory conditions. Entities bound by these regulatory conditions may seek confidential treatment of filings with the Commission in accordance with N.C. Gen. Stat. Chapter 132.

31. Customer Experience. Regardless of whether the Commission's December 30, 2022 Order in Docket No. A-41, Sub 21, is overturned, SharpVue, SharpVue Affiliates, Holdings, and BHIFT shall seek to maintain and improve the current level of integrated customer service for ferry, parking, and tram customers.