

1 PLACE: Dobbs Building, Raleigh, North Carolina  
2 DATE: Tuesday, October 11, 2022  
3 TIME: 2:00 p.m. - 5:30 p.m.  
4 DOCKET NO: A-41, Sub 21  
5 BEFORE: Commissioner ToNola D. Brown-Bland, Presiding  
6 Commissioner Daniel G. Clodfelter  
7 Commissioner Kimberly W. Duffley  
8 Commissioner Jeffrey A. Hughes  
9 Commissioner Floyd B. McKissick, Jr.

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IN THE MATTER OF:  
Village of Bald Head Island,  
Complainant  
V.  
Bald Head Island Transportation, Inc.,  
and Bald Head Island Limited, LLC,  
Respondents

Volume 3

NORTH CAROLINA UTILITIES COMMISSION

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Identified / Admitted

Exhibits JAW-1 through JAW-17 ..... 10/142

(Confidential filed under seal)

Club Wright Cross Exhibit 1 ..... 95/141

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Exhibits 1 and 2

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

2 COMMISSIONER BROWN-BLAND: Let's come back  
3 to order. The case is still with the Complainant.

4 MR. TRATHEN: Thank you, Madam Chair. The  
5 Village would call Doctor Julius A. Wright to the stand.

6 DR. JULIUS A. WRIGHT;  
7 having been duly sworn,  
8 testified as follows:

9 COMMISSIONER BROWN-BLAND: You may be  
10 seated.

11 DIRECT EXAMINATION BY MR. TRATHEN:

12 Q Dr. Wright, would you please state your name  
13 and address for the record.

14 A Julius A. Wright, 6 Overlook Drive,  
15 Cartersville, Georgia.

16 Q And did you cause to be filed in this  
17 proceeding direct testimony consisting of 49  
18 pages and 17 exhibits?

19 A Yes, I did.

20 Q And do you have any corrections to your  
21 testimony?

22 A Yes.

23 MR. TRATHEN: Madam Chair, there are four  
24 typographical issues that we would need correct, and



1 if I could just read those to you if it would be  
2 quicker to do that.

3 COMMISSIONER BROWN-BLAND: That's fine as  
4 long as the witness attests to them.

5 MR. TRATHEN: Okay.

6 Q So let's start on page 15 line 2, at the end of  
7 the line the word "the" should be deleted.

8 A Yes.

9 Q On page 22 line 17, the word "it" should be  
10 deleted.

11 A Yes.

12 Q On page 31 line 22, the next to last word in  
13 that line, "training" should be changed to  
14 "train."

15 A That's correct.

16 Q And on page 41 line 10, the third word in that  
17 line "whether" should be deleted.

18 A That's correct.

19 Q Dr. Wright, it's correct that if I asked you  
20 the questions in these prefiled submissions  
21 today, would your answers be the same?

22 A Yes, they would.

23 Q And did you cause to be filed in this  
24 proceeding the summary of your testimony?

1 A Yes, I did.

2 Q Is the summary true and accurate, to the best  
3 of your information and belief?

4 A Yes, it is.

5 MR. TRATHEN: Madam Chair, I'd ask that  
6 Dr. Wright's direct testimony be copied into the  
7 record as if orally given from the stand, that the  
8 corresponding exhibits be marked for identification  
9 as set out in his prefiled submission.

10 COMMISSIONER BROWN-BLAND: Without  
11 objection, that motion will be allowed.

12 (WHEREUPON, Exhibits JAW-1  
13 through JAW-17 is marked for  
14 identification as prefiled.  
15 Confidential filed under  
16 seal.)

17 (WHEREUPON, the prefiled  
18 direct testimony of DR.  
19 JULIUS A. WRIGHT is copied  
20 into the record as if given  
21 orally from the stand.)  
22  
23  
24

**STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH**

DOCKET NO. A-41, SUB 21

VILLAGE OF BALD HEAD ISLAND,	)	
Complainant,	)	
	)	
v.	)	DIRECT TESTIMONY OF
	)	DR. JULIUS A. WRIGHT
	)	ON BEHALF OF
BALD HEAD ISLAND TRANSPORTATION,	)	VILLAGE OF BALD HEAD
INC., BALD HEAD ISLAND LIMITED, LLC,	)	ISLAND
and SHARPVUE CAPITAL, LLC	)	
Respondents.	)	

## BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

## DOCKET NO. A-41, SUB 21

Direct Testimony of Dr. Julius A. Wright

On Behalf of the Village of Bald Head Island

August 9, 2022

OFFICIAL COPY

Aug 24 2022

1 **I. INTRODUCTION AND PURPOSE**

2

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

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

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

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

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

1     A.     I received an undergraduate degree from Valdosta State College (B.S. Chemistry),  
2           an MBA in Finance from Georgia State University, and a Master's and Ph.D. in  
3           Economics from North Carolina State University, where I focused on regulatory  
4           and environmental economics. Among other past experiences, I served as a  
5           Commissioner on the North Carolina Utilities Commission ("NCUC" or the  
6           "Commission") from 1985 to 1993. Prior to serving as a member of the  
7           Commission, I served three terms as a North Carolina State Senator and worked in  
8           process engineering for 12 years at three chemical plants, the last with Corning in  
9           Wilmington, NC.

10           Over the past 25 plus years in my consulting practice, I have dealt  
11           extensively with electric, natural gas, and other regulated utilities focusing on a  
12           number of issues. In this context, I have testified before regulatory commissions  
13           and legislative bodies, presented studies and authored reports on issues related to  
14           electric and gas regulation, and I have been a guest speaker at the Bonbright  
15           Conference, other seminars, and at the Georgia Institute of Technology. I have  
16           been a visiting professor teaching both microeconomics and macroeconomics  
17           courses at the University of The Virgin Islands, and I have an Adjunct Economics  
18           Professor appointment with the Emory University School of Nursing where I have  
19           also lectured and worked with graduate students on economic issues related to  
20           healthcare. I was also one of three economists engaged by the California State  
21           Auditor to examine the problems that led to that state's electric energy crisis in the  
22           summer and fall of 2000. I have worked for the last 25 plus years in the field of  
23           utility regulation. A copy of my resume is attached as Exhibit JAW-1.

1     **Q.     PLEASE PROVIDE A SUMMARY OF YOUR TESTIMONY.**

2     A.     The Village has filed a Complaint and Request for Determination of Public Utility  
3           Status (“Complaint”) seeking relief against Bald Head Island Transportation, Inc.  
4           (“BHIT”) and Bald Head Island Limited, LLC (and “Limited”). Limited, directly  
5           and through its ownership of BHIT, owns and operates the Bald Head Island  
6           transportation service that runs between Southport, NC, and Bald Head Island. The  
7           Complaint presents two questions. First, whether the mainland (i.e., Deep Point)  
8           parking facilities in Southport, which are owned and operated by Limited for use  
9           in connection with the ferry service, should be regulated by the Commission as  
10          (a) ancillary to the ferry service or, alternatively, (b) a parent company’s operations  
11          that have an effect on the public utility’s services and rates. Second, whether the  
12          barge, which is also owned and operated by Limited, should be regulated by the  
13          Commission as a common carrier service. My Direct Testimony provides a  
14          summary of the factual background relevant to these issues, my findings concerning  
15          Limited’s operation of the parking facilities and barge, and my conclusions on how  
16          those facts bear on the regulatory issues before the Commission.

17    **Q.     PLEASE EXPLAIN HOW YOUR TESTIMONY IS ORGANIZED.**

18    A.     First, I provide a brief overview of Bald Head Island and its unique characteristics,  
19           including the prohibition of the public’s use of automobiles on the Island.

20           Second, I summarize the critical facts relating to Limited’s operation of the  
21           parking facilities serving the Bald Head Island ferry and address the question of  
22           whether Limited’s parking facilities are so integral to the ferry service that they  
23           should be subject to regulation by the Commission. As explained below, there is

1 ample basis for the Commission to conclude that the parking facilities are an  
2 integral component of the ferry service and, therefore, should be regulated as an  
3 ancillary service and/or parent company utility service to protect the using and  
4 consuming public.

5 Third, I discuss the barge operated by Limited and whether it should be  
6 regulated as a common carrier. I address the factors set out in the statute addressing  
7 common carriers and note that there is evidence that each of the factors are met here  
8 because Limited holds the barge out as offering to transport people (i.e., drivers)  
9 and household goods to and from the Island. I also discuss how public policy would  
10 be served by the Commission declaring as such.

## 11 12 **II. OVERVIEW AND HISTORICAL CONTEXT**

13 **Q. PLEASE PROVIDE A BRIEF OVERVIEW OF BALD HEAD ISLAND AND**  
14 **ITS SIGNIFICANCE TO THE STATE OF NORTH CAROLINA AND ITS**  
15 **CITIZENS.**

16 **A.** Bald Head Island (the “Island”) is a unique island used and enjoyed by many North  
17 Carolinians and other visitors. The Island is the southernmost of North Carolina’s  
18 barrier islands located approximately three miles across the Cape Fear River from  
19 the city of Southport. Currently the Island has over 1,000 private residences, with  
20 approximately 295 full-time residents.<sup>1</sup> In addition to the full-time residents, there  
21 are many visitors to the Island as well as people who work on the Island. Given all

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<sup>1</sup> See Complaint ¶ 13; see also Bald Head Island Limited, LLC Project Pelican Confidential Memorandum, Draft – August 17, 2021, at 5 (stating that the Island has 1,350 residences with an ultimate build-out of 1,900 possible) (Exhibit JAW-6).

1 this activity, in peak season the daily population of the Island can exceed 7,000  
2 persons.<sup>2</sup>

3 The Island has both historical and ecological treasures enjoyed by both the  
4 Island's residents and visitors, including many youth-oriented educational  
5 programs. For example, the Island is comprised of some 12,000 acres of land, of  
6 which approximately 10,000 acres are untouched acres of beach, marsh and  
7 maritime forest preserves. The Island is also home to a historic lighthouse ("Old  
8 Baldy", completed in 1817), which is open for tours to the public; the Bald Head  
9 Island Conservancy which sponsors and facilitates scientific research and  
10 educational activities; and various restaurants and other outdoor activities (hiking,  
11 canoeing, paddle boarding, bird watching, boating).

12 **Q. HOW DOES THE PUBLIC REACH BALD HEAD ISLAND?**

13 A. While a few Island visitors and residents may own their own boat to get to and from  
14 the Island, for the large majority of Island visitors, residents, and workers, the Bald  
15 Head Island ferry service is the only means of access to the Island. This is part of  
16 the uniqueness of the island, along with the fact that that motor vehicles are  
17 generally prohibited on the Island, except for commercial uses, public works, and  
18 public safety purposes. Instead of motor vehicles, residents and visitors typically  
19 ride bicycles or drive golf carts to travel on the Island.

20 **Q. WHO RELIES ON THE FERRY TO REACH THE ISLAND?**

21 A. Almost everyone who goes to the Island relies on the ferry. Several subgroups of  
22 the general public regularly travel to and from Bald Head Island and must ride the

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<sup>2</sup> Complaint ¶ 13.



ferry to reach the island. The most obvious group would be the Island residents, who make the Island their permanent home. A second group would be vacationers who rent one of the hundreds of properties on the Island for vacation trips. In addition, regular passengers on the ferry include municipal and utility employees, commercial employees who work on the island, construction workers, and daily visitors.<sup>3</sup>

Although I am not aware of any records of the specific visitors to the Island, Limited and BHIT have provided a breakdown of ticket sales, which provides some insight into the annual traffic volume of the various subgroups that travel to and from the Island. In 2021, BHIT had the following ferry ticket sales:

[BEGIN CONFIDENTIAL]

**TABLE: FERRY TICKET SALES**

<b>Ticket Class</b>	<b>2021<sup>4</sup></b>	<b>Explanation</b>
<b>Employee</b>		Bona fide employees working on the Island. No tram or baggage. Board after other passengers.
<b>Contractor</b>		Bona fide contractors. Contractor ferry must be used. No tram or baggage.
<b>General Fare</b>		Applicable where other classes do not apply. Tram service provided. <i>Typically purchased by vacationers and day trippers.</i>
<b>Child Fare</b>		Age 3-12 traveling with adult.
<b>Bulk 40</b>		Bulk packages of 40 round trip tickets. Tram service provided. <i>Typically purchased by property owners.</i>
<b>Bulk 80</b>		Bulk packages of 80 round trip tickets. No tram service. <i>Typically purchased by property owners.</i>
<b>Annual Pass</b>		Available only to persons whose primary residence is on Island. No tram service. <i>Only purchased by property owners.</i>

<sup>3</sup> See Complaint ¶¶ 13, 23.

<sup>4</sup> Response to Village DR 2-10 (Exhibit JAW-11).

<b>No Frills</b>		Only purchased on Island. No baggage or tram. Roundtrip to Southport. <i>Typically purchased by property owners.</i>
<b>One Way</b>		Only available on Island where cannot present valid ticket for second leg of round trip.
<b>Oversize Baggage</b>		Extra fee for item too large to fit in baggage container (e.g., bicycle).
<b>Excess Baggage</b>		
<b>Total Tickets Sold</b>		
<b>No Cost Child Tickets</b>		
<b>Total Tickets</b>		

[END CONFIDENTIAL]

As is implied from this table, the majority of travelers to the Island are not residents—they are vacationers purchasing General Fare tickets or workers/contractors who purchase Employee or Contractor tickets at discounted rates. As these ticket sales suggest, a broad cross-section of the public rely on the Bald Head Island ferry service to get to and from the Island.

**Q. PLEASE PROVIDE A BRIEF OVERVIEW OF THE BALD HEAD ISLAND TRANSPORTATION SERVICE.**

A. The transportation service provided by Limited and BHIT is the sole means of public transportation for visitors, workers, and residents—and the related tangible personal property owned by or used by such persons—to access the Island. This service includes the following basic resources:

- (1) a passenger ferry (basically people and baggage only);
- (2) parking facilities on the mainland and on the Island;
- (3) a tram system for transporting people and baggage on the Island;
- (4) ferry terminals on both the mainland and Island; and

1 (5) a barge (and associated tugboat) used to transport commercial materials,  
2 goods, supplies and personnel, including large household goods that  
3 cannot be transported via the passenger ferry, to and from the Island.

4 These resources are owned, operated and managed through a web of  
5 relationships between related corporate entities, all ultimately owned by the estate  
6 of the Island's developer.<sup>5</sup> BHIT owns and operates the passenger ferries and  
7 Island trams and is a wholly-owned subsidiary of Limited. Limited owns and  
8 operates the barge, the parking facilities at Deep Point, the Deep Point and Island  
9 terminals, and other miscellaneous properties and assets used in connection with  
10 the utility operation. Among other things, Limited leases the Deep Point and Island  
11 terminal buildings to BHIT (for some \$1.2 million per year)<sup>6</sup> in addition to the  
12 employees that are assigned to these operations and certain management functions.<sup>7</sup>

13 Notwithstanding separate operation of the parking and barge services,  
14 recognizing the inter-related nature of these operations with BHIT's regulated  
15 services, BHIT's Chief Operating Officer and Assistant Transportation Manager  
16 have management responsibilities "related to the intersection of BHIT's regulated  
17 transportation assets with Deep Point parking to ensure they function cooperatively  
18 to provide seamless experiences for users."<sup>8</sup>

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<sup>5</sup> See Bald Head Island Limited, LLC Project Pelican Confidential Memorandum, Draft – August 17, 2021, at 12 (Exhibit JAW-6).

<sup>6</sup> See BHIT Quarterly Financial Report of Monthly Information, Docket No. A-41, Sub 7A (Feb. 17, 2022), at Income Statement page 2 (Exhibit JAW-13).

<sup>7</sup> See Application of Bald Head Island Transportation, Inc., Docket No. A-41, Sub 4 (Aug. 15, 2007) (seeking approval of affiliate agreements); Letter Transmitting Amendments to BHIT Affiliated Agreements, Docket No. A-41, Sub 7 (Jan. 14, 2011); Order Accepting Agreements, Docket No. A-41, Sub 7 (Feb. 9, 2011).

<sup>8</sup> See Responses to Village DR 1-13 (Exhibit JAW-10).

1   **Q.    WHEN WAS THE FERRY TERMINAL MOVED TO ITS CURRENT**  
2       **LOCATION?**

3    A.    The original transportation system on the mainland side was conducted from a dock  
4           on East Moore Street in Southport and later moved to the Indigo Plantation  
5           terminal, a facility located on the Intracoastal Waterway west of Southport. In  
6           2009, a new and larger ferry facility with substantially expanded parking was  
7           placed into operation east of Southport, at the current Deep Point location.

8   **Q.    UNDER THE EXISTING ARRANGEMENTS BETWEEN LIMITED AND**  
9       **BHIT, DOES THE REGULATED UTILITY HAVE AN ENFORCEABLE**  
10       **RIGHT TO USE THE PARKING FACILITIES?**

11   A.    Interestingly, based on the discovery responses in this proceeding, the answer is  
12           “no.” There are no agreements between BHIT and Limited related to the Deep  
13           Point parking facilities, including any management agreement or employee lease  
14           agreement.<sup>9</sup> In other words, under the current state of affairs, ratepayers have no  
15           protection with respect to their continued access to, and use of, the Deep Point  
16           parking facilities—despite having relied on this access making investments on the  
17           Island and otherwise enjoying the Island’s benefits.

18   **Q.    IS THERE ANY DISPUTE THAT THE PASSENGER FERRY IS A**  
19       **UTILITY SERVICE THAT SHOULD BE REGULATED BY THE**  
20       **COMMISSION?**

---

<sup>9</sup> See Responses to Village DR 1-6 (Exhibit JAW-10).

1 A. No. Limited and BHIT are not contesting the Commission's oversight of the  
2 passenger ferry.<sup>10</sup> The dispute between the parties is whether the parking facilities  
3 and the barge should be regulated by the Commission as well.

4 **Q. DO YOU PLACE ANY SIGNIFICANCE ON THE FACT THAT THE**  
5 **DEVELOPER'S ESTATE IS APPARENTLY SEEKING TO, BY AND**  
6 **LARGE, EXIT ITS INVOLVEMENT WITH THE ISLAND?**

7 A. Yes, I think this is a very important consideration. As the Commission is aware,  
8 BHIT has filed an Application seeking approval of the Commission to sell the  
9 regulated ferry assets to a private equity firm, SharpVue Capital, LLC.<sup>11</sup> This is  
10 part of a larger transaction involving all the transportation assets, in addition to  
11 some other assets relating to the Island. As explained by BHIT in its Application,  
12 the SharpVue transaction appears to be driven primarily by the desire of the  
13 developer's estate to liquidate remaining assets, including those relating to the  
14 Island.

15 The desire of an original developer, or in this case, their estate, to  
16 disentangle from the development is not unreasonable. However, here this dynamic  
17 has important implications for the Island given the manner which the parking and  
18 barge assets have been held separately from the other transportation assets. While  
19 commonly owned by the developer, ratepayers had some price and service  
20 protection due to the common interest held by the developer in promoting his island  
21 development business. Without this continuing common interest, ratepayers are

---

<sup>10</sup> See Response, Motion to Dismiss, and Answer of Limited and BHIT, Docket No. A-41, Sub 21 (March 30, 2022), at 26 (¶ 3).

<sup>11</sup> Application for Transfer of Common Carrier Certificate, Docket No. A-41, Sub 22 (Jul. 14, 2022).

1 now exposed to decisions by the new transportation asset owners that could be  
2 made based on different motivations. This dynamic is not dispositive of the  
3 Commission's underlying authority, but this context is relevant to the public  
4 interest questions at play.

5  
6 **III. THE FERRY PARKING FACILITIES**

7 **Q. CAN YOU DESCRIBE THE PARKING FACILITIES FOR THE FERRY**  
8 **SERVICE?**

9 A. The parking facilities are adjoined to the Deep Point Ferry Terminal, which is  
10 located at 1301 Ferry Road, Southport, North Carolina 28461. The facilities  
11 consist of 36 acres and 2,302 parking spaces.<sup>12</sup> The parking spaces are divided  
12 among four separate lots: the General Lot, the Premium Lot, the Contractor Lot,  
13 and the Employee Lot.<sup>13</sup> As shown in Exhibit JAW-2 and Exhibit JAW-3, the  
14 parking facilities are sprawling—dwarfing the ferry terminal itself. According to  
15 Limited's records, there are [BEGIN CONFIDENTIAL] [REDACTED]  
16 [END CONFIDENTIAL] that use the lot on an annual basis.<sup>14</sup>

17 **Q. HAS THIS COMMISSION ADDRESSED THE ISSUE OF WHETHER THE**  
18 **PARKING FACILITY IS A PART OF THE FERRY SERVICE THAT**  
19 **SUBJECT TO REGULATORY OVERSIGHT BY THIS COMMISSION?**

---

<sup>12</sup> See Deep Point Parking Facility (Parking Lot Space Allocation) (Exhibit JAW-14); SharpVue Project Pelican Investment Opportunity January 2022, at 14 (Exhibit JAW-7).

<sup>13</sup> IBID.

<sup>14</sup> See VBHI Complaint Data Response - Parking (Exhibit JAW-15); Parkers-by-Month (Exhibit JAW-16).

1 A. Not specifically. This issue was broached, in the 2010 Rate Case, by numerous  
2 citizen comments and by joint testimony of the intervening parties (the Village,  
3 Bald Head Island Association, and Bald Head Island Club).<sup>15</sup> In the end, the  
4 Commission adopted the parties' settlement stipulation resolving all disputed  
5 issues, thus alleviating the need to specifically address the question concerning the  
6 regulatory status of the parking facilities in its final ruling. I will address the  
7 significance of the parties' stipulation in the 2010 Rate Case later in my testimony.

8 **Q. BASED ON YOUR REGULATORY EXPERIENCE AND EXPERTISE, DO**  
9 **YOU BELIEVE THERE IS A BASIS FOR ASSERTING REGULATORY**  
10 **AUTHORITY OVER THE FERRY PARKING FACILITIES?**

11 A. Yes, there is ample basis for the assertion of regulatory authority under the facts  
12 presented in this proceeding. Under G.S. § 62-32 the Commission has "general  
13 supervision over . . . the services offered by all public utilities in this State," which  
14 includes the authority to require and compel "reasonable service."<sup>16</sup> While there  
15 may be other sources of authority in the General Statutes, based on my regulatory  
16 experience I believe it is reasonable for the Commission to conclude that the  
17 parking facilities fall under the Commission supervisory powers for at least two  
18 separate, but closely related, reasons.

19 First, the services offered by a regulated utility are defined under G.S. § 62-  
20 3(27) as "any service furnished by a public utility, including . . . any ancillary  
21 service or facility used in connection with such service."

---

<sup>15</sup> See, e.g., Direct Testimony of Julius A. Wright, Ph.D., Docket No. A-41, Sub 7 (Sept. 30, 2010), at 5-17; Complaint and Request for Determination of Public Utility Status, Docket A-41, Sub 21 (Feb. 16, 2022), at n.9.

<sup>16</sup> G.S. § 62-32(a) and (b).

1                   Second, under G.S. § 62-3(23)c, the term “public utility” includes “all  
2                   persons affiliated through stock ownership with a public utility doing business in  
3                   this State as a parent corporation . . . to such an extent that the Commission shall  
4                   find that such affiliation has an effect on the rates or service of such public utility.”<sup>17</sup>

5   **Q.   WHAT IS YOUR UNDERSTANDING OF HOW THE TERM**  
6   **“ANCILLARY” SHOULD BE INTERPRETED?**

7   A.   The term is not defined in Chapter 62, so one must resort to various principles of  
8           regulatory interpretation. The Commission is certainly well-versed in applying  
9           these principles, but in common parlance the term “ancillary” means “providing  
10          necessary support to the primary activities or operation of an organization,  
11          institution, industry, or system.”<sup>18</sup>

12   **Q.   HOW DOES THAT APPLY HERE TO THE FERRY OPERATION?**

13   A.   The parking operation is not merely an additional optional service supporting the  
14          utility service—rather it is an integral, necessary and irreplaceable ancillary  
15          component of the ferry service leaving me to conclude that the parking facilities  
16          easily meet the statutory requirement of being an “ancillary service or facility used  
17          in connection with such service.” Public parking is necessary for the public’s  
18          access to the ferry service, in the same manner that the terminal is necessary for the  
19          loading and unloading of passengers unto the ferry itself, and substitutable parking  
20          is not available from any other source. Stated another way, if the ferry ceased  
21          operations tomorrow, the property would have very little value as a parking lot but  
22          it could still be developed for other purposes. Conversely, if the parking lot ceased

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<sup>17</sup> G.S. § 62-3(23)c.

<sup>18</sup> Google search for “ancillary” (definition supplied by Oxford Languages).



1 operations tomorrow, the ferry would be crippled as passengers would have almost  
2 no means to access to the ferry. Therefore, there is an ample practical basis for the  
3 considering the parking operation to be a regulated “ancillary service” or “ancillary  
4 facility” to the ferry service.

5 **Q. WHAT FACTORS OR ISSUES MIGHT THE COMMISSION CONSIDER**  
6 **IN ITS EVALUATION OF WHETHER THE PARKING FACILITIES ARE**  
7 **AN ANCILLARY SERVICE OR FACILITY TO THE REGULATED**  
8 **FERRY SERVICE?**

9 A. There were four basic considerations that I used in my analysis of this question and  
10 that I believe respond affirmatively to this question. First, I studied how Limited’s  
11 parking facilities are integral to the regulated passenger ferry service provided by  
12 BHIT. Second, I looked at evidence of whether Limited’s ownership and control  
13 of the parking facilities provides it with monopolistic power over access to BHIT’s  
14 passenger ferry. Third, I looked at Limited’s statements and actions from past  
15 Commission dockets. Finally, I examined other Commission decisions that provide  
16 analogous precedents that corroborate my conclusion that the Commission should  
17 regulate the parking facilities for the Bald Head Island ferry service.

18 **Q. WITH REGARD TO THE FIRST FACTOR, WHAT IS THE BASIS FOR**  
19 **YOUR CONCLUSION THAT THE PARKING FACILITIES ARE**  
20 **INTEGRAL TO THE PASSENGER FERRY SERVICE?**

21 A. There are numerous sources for my conclusion, including a presentation provided  
22 by Limited in discovery, observations of a third-party consultant, and statements  
23 on the BHIT website.

1   **Q.     CAN YOU DESCRIBE THE PRESENTATION YOU REVIEWED AND**  
2       **EXPLAIN ITS RELEVANCE?**

3   A.     In a memorandum related to Limited's seeking a buyer for the transportation  
4       assets, Limited itself made the case that the parking facilities are an integral  
5       component of the transportation services. There, Limited stated:

6       **[BEGIN AEO CONFIDENTIAL]**

7       [REDACTED]  
8       [REDACTED]  
9       [REDACTED]  
10       [REDACTED]  
11       [REDACTED]  
12       [REDACTED]  
13       [REDACTED]  
14       [REDACTED]

15       [REDACTED]  
16       [REDACTED]  
17       [REDACTED]  
18       [REDACTED]  
19       [REDACTED]<sup>19</sup>

20       [REDACTED]  
21       [REDACTED]

22       [REDACTED]

23       [REDACTED]

24       [REDACTED]

25       [REDACTED]

26       [REDACTED]

27       [REDACTED]

28       **[END AEO CONFIDENTIAL]**

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<sup>19</sup> Bald Head Island Limited, LLC Project Pelican Confidential Memorandum, Draft – August 17, 2021, at 12 (Exhibit JAW-6).

1   **Q.   WHAT HAVE THIRD PARTIES SAID ABOUT THE ESSENTIAL**  
2       **NATURE OF THE PARKING FACILITIES?**

3   A.   A 2020 Bond Feasibility Study prepared for the Bald Head Island Transportation  
4       Authority supports the conclusion the parking is essential to the ferry operation. In  
5       the report, Mercator International, LLC—a transportation consulting firm—made  
6       the following observation about the ferry service’s parking facilities:

7                   Nearly all ferry passengers travel to and from the  
8                   Deep Point Terminal (at Southport, on the North  
9                   Carolina Mainland) by personal vehicle and park  
10                  their vehicles in the BHI Limited parking facility.  
11                  Therefore, the parking operation is tied to the ferry  
12                  operation, with demand for parking very closely  
13                  related to overall ferry traffic.<sup>20</sup>

14  
15               This observation has two notable components. First, it observes that nearly  
16       all ferry passengers reach the ferry by “personal vehicle.” This is because there is  
17       no form of public transportation to the Deep Point Ferry Terminal—ferry passenger  
18       must drive a personal vehicle to Deep Point Ferry Terminal and, once there, must  
19       park their vehicle at the parking facilities.

20               Second, Mercator observed that the parking facilities are “closely tied” to  
21       the ferry operation because demand for parking is “very closely related” to ferry  
22       traffic. This means that when ferry traffic is high, parking demand is high, and  
23       when ferry traffic is low, parking demand is low. This suggests that ferry  
24       passengers are the primary users of the parking facilities. This also suggests that  
25       ferry passengers do not have alternative parking operations: when ferry passenger  
26       traffic increases, those passengers fill up the spots in the parking facilities because

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<sup>20</sup> See Bond Feasibility Study for the Bald Head Island Transportation Authority, Mercator International, LLC Draft 4, Dec. 2020, at 26 (Exhibit JAW-9).

1           there is no other place to park; if there was an alternative, when ferry traffic  
2           increased, there would not necessarily be a correlative rise in parking demand  
3           because ferry passengers would have other places to park.

4   **Q.   HOW DOES BHIT'S WEBSITE ILLUSTRATE THAT THE PARKING**  
5       **FACILITIES ARE INTEGRAL AND NECESSARY TO THE PASSENGER**  
6       **FERRY?**

7   A.   BHIT hosts a website at [www.baldheadislandferry.com](http://www.baldheadislandferry.com) that provides information  
8       about the ferry services and parking. That website includes three separate menu  
9       options that all specifically reference the Deep Point Parking facilities: an  
10      instructional video, a General Information memo, and a 360 Tour with numbered  
11      instructions for ferry system usage. Each of these support my conclusion regarding  
12      parking being an integral and necessary part of the ferry transportation services.

13   **Q.   TELL US ABOUT THE INSTRUCTIONAL VIDEO.**

14   A.   The homepage of the website includes an instruction video on “traveling to and  
15      from Bald Head Island.” The video describes how to use the ferry service, including  
16      information related to buying tickets for the passenger ferry, baggage handling, and  
17      the on-island tram service. Importantly, the video also provides instruction on  
18      parking:

19                           After unloading your baggage *and parking your car*,  
20                           walk back to the lower level [of the terminal] and  
21                           enter the line for the gated waiting area . . . .  
22

23                           When you arrive back on the mainland, *simply*  
24                           *retrieve your car, pay for parking*, and drive to the  
25                           lower level, where you can pick up your checked  
26                           baggage.<sup>21</sup>  
27

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<sup>21</sup> Available at <https://baldheadislandferry.com/video> (emphases added).

1 Two important points are clear from these video statements. First, the Bald  
2 Head Island ferry service expects most passengers reach the terminal via a car that  
3 needs parking services. Second, most people will need a car to reach the terminal  
4 because they will be transporting a lot of baggage with them—so much so that they  
5 will want to unload baggage at the terminal and then park their car.

6 **Q. TELL US ABOUT THE GENERAL INFORMATION MENU.**

7 A. In addition to the instructional video, the website's homepage also provides a  
8 "General Information" dropdown menu that includes information on "Parking."<sup>22</sup>  
9 Under the "Parking" item, the website states that "[w]hen arriving at Deep Point  
10 you will need to first drop off your luggage/passengers at the ferry terminal *and*  
11 *then enter the general [parking] lot.* A parking ticket is issued from an electronic  
12 parking device when approaching the lot." (emphasis added)

13 The simple fact that this "General Information" tab has a link to parking  
14 information is more evidence that most ferry passengers will arrive at the terminal  
15 via a vehicle that will require parking. Equally important, the only parking option  
16 identified by the website is the parking facility at the Deep Point Terminal.

17 **Q. TELL US ABOUT THE 360 TOUR ON BHIT'S WEBSITE.**

18 A. On the same General Information menu is a "Deep Point Aerial / 360 Tour" icon.  
19 Clicking on this icon, the first thing one sees is an aerial view showing the terminal  
20 and the large parking facilities, all in one big picture. This is shown in Exhibit  
21 JAW-4, Figure 1.

22 The 360 Tour includes a "Quick Arriving Guide" icon, that when activated,

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<sup>22</sup> Available at <https://baldheadislandferry.com/parking> (emphases added).

provides the visual image shown in Exhibit JAW-4, Figure 2. This image provides stepwise instructions for arriving ferry terminal users which states the following:

- 1 – Find the Sign
- 2 – Follow the road to the intersection
- 3 – *Go straight to unload Passengers/Luggage*
- 4 – *Unload*
- 5 – *Park in General Lot*
- 6 – *Walk to the terminal facility*
- 7 – Purchase/Pickup Ferry Ticket & Check In
- 8 – Board the ferry . . .

Notably, the only parking option given to ferry passengers under these instructions is the Deep Point parking facilities labeled “General Lot” and it is only public parking facility from which a public ferry passenger could comfortably “walk to the terminal facility” as instructed by this BHIT video.

The 360 Tour also includes a “Quick Departing Guide” icon. When activated, the link provides the visual image shown in Exhibit JAW-4, Figure 3. This image provides instructions for returning to the mainland, including: “[a]fter disembarking from ferry, have one member of your party retrieve your vehicle” and “[w]alk to the General Lot and retrieve your vehicle.” Again, the only parking option given to ferry passengers under these instructions is the parking facilities labeled “General Lot.”

**Q. DOES THE DEEP POINT TERMINAL PARKING SERVICE ALSO MEET THE DEFINITION OF A MONOPOLY SERVICE?**

A. Yes. A monopoly is defined as an entity which has the exclusive possession or control of the supply of or trade in a commodity or service. In this case, Limited owns and operates the exclusive public parking facility with reasonable access to the facilities and the operations of the Deep Point Ferry Terminal.

1     **Q.     WHAT IS THE BASIS FOR YOUR CONCLUSION THAT THE PARKING**  
2     **FACILITIES ARE A MONOPOLY SERVICE?**

3     A.     My conclusion that the parking facilities are a monopoly service is based on (1)  
4     Respondents' admissions that there is no public transportation to the Deep Point  
5     ferry terminal and that there is no other public parking lot available near the ferry  
6     terminal, (2) Respondents' respective websites, (3) Southport's website, (4) an  
7     assessment prepared by the consulting firm, Mercator International, LLC, and (5)  
8     SharpVue Capital's assessment of the parking facilities.

9     **Q.     WHAT ADMISSIONS DID RESPONDENTS MAKE ABOUT PARKING?**

10    A.     First, Respondents admitted in their Answer to the Complaint that there is no public  
11    bus service that runs to the ferry terminal.<sup>23</sup> In addition, because the ferry terminal  
12    is located in Southport, North Carolina—with a population of only some 3,700  
13    persons<sup>24</sup>—there is likely limited, if any, taxi service or ride-share service (e.g.,  
14    Uber) available.

15           Even if there were public transportation, it would not be a suitable substitute  
16    for the parking facilities. As described repeatedly on the BHIT website, ferry  
17    passengers bring a lot of luggage with them, so much that BHIT describes the  
18    process for unloading luggage at the terminal. It is unlikely that transportation like  
19    a public bus—even if they existed in such a small community—would be able to  
20    readily accommodate the passengers and all of their luggage. And even then, there

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<sup>23</sup> See Response, Motion to Dismiss, and Answer of Limited and BHIT, Docket No. A-41, Sub 21 (March 30, 2022), at 30 (¶ 22) (“It is admitted that Respondents know of no other regular bus services from another public parking lot to and from the Deep Point Terminal operating at this time.”).

<sup>24</sup> See <https://datausa.io/profile/geo/southport-nc>.

1 is still the question where persons would park their vehicles before taking the bus  
2 or some other form of public transportation.

3 Second, Respondents admitted there is no alternative public parking  
4 available. In discovery, Respondents were asked to identify any “alternative  
5 options a ferry passenger has to parking in the Deep Point parking lot[.]”<sup>25</sup> The  
6 only options Respondents could identify were four parking lots located at the old  
7 Indigo Plantation site.<sup>26</sup> These are not a true parking alternative option for two  
8 basic reasons. First, these Indigo Plantation parking lots, as Respondent itself  
9 indicated, are four miles away from the ferry terminal.<sup>27</sup> Second, the parking lots  
10 are owned by Limited.<sup>28</sup> The fact that the only public available parking facility that  
11 Limited itself could identify as a potential substitute to its Deep Point parking was  
12 a parking lot four miles away that is owned by Limited itself should be conclusive  
13 evidence of Limited’s monopolistic control over the parking needed by the public  
14 in order to use the regulated ferry.

15 **Q. COULD SOMEBODY BUILD A NEW PARKING LOT TO COMPETE**  
16 **WITH THE PARKING FACILITIES AT DEEP POINT TERMINAL?**

17 A. Maybe, but that it seems highly unlikely. Exhibit JAW-2 provides an aerial view  
18 of the Deep Point ferry terminal and surrounding areas. The area surrounding the  
19 terminal is either residential, industrial, or undeveloped. Simply put, none of these  
20 neighboring areas currently provide any public parking.

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<sup>25</sup> Response to Village DR 1-15 (Exhibit JAW-10).

<sup>26</sup> IBID.

<sup>27</sup> IBID.

<sup>28</sup> IBID.



1 In addition, in its discovery responses, Limited pointed to an undeveloped  
2 106-acre adjacent to the Deep Point property as a potential site for a competitive  
3 parking facility, located at the intersection of Moore Street and Ferry Road, across  
4 the road from the current on-site parking.<sup>29</sup> However, at the time of my testimony,  
5 the lot is under contract to be sold.<sup>30</sup> Thus, the property is not available.

6 Even if one could purchase the lot, it would likely be uneconomic to turn it  
7 into a parking facility. The lot is listed for \$3.25 million and is currently  
8 undeveloped. Attached is Exhibit JAW-5 is a screenshot from the MLS listing for  
9 this property showing that it is completely overgrown with trees and vegetation.

10 Regardless of whether or not one could build a competing parking  
11 operation, such a possibility is irrelevant. The simple fact is that *at this time* there  
12 is no parking alternative or competitive parking facility for Deep Point Terminal  
13 passengers to use and the existing terminal parking has always been made available  
14 to the public as a component of the ferry service. Until alternative services exist,  
15 the only conclusion I can draw is that the parking facilities are a monopoly service  
16 which is integrally connected to the currently-regulated utility service. As utility  
17 commissions did with telephone service handsets, the yellow pages, and even  
18 natural gas and telephone deregulation, when a regulated utility service is “ripe”  
19 for deregulation is not based on “potential” for competitive options, but based on a  
20 finding that actual competition has developed and is challenging the once regulated  
21 industry or service. For example, while I was a Commissioner, the Commission  
22 continued to regulate essentially all aspects of local telephone service until there

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<sup>29</sup> Response to Village DR 1-14 (Exhibit JAW-10).

<sup>30</sup> MLS Listing for 00 Ferry Road, Southport, NC (Exhibit JAW-17).

1 was actual competition from cell phones. Similarly for yellow page services and  
2 natural gas pipeline services.

3 **Q. HOW DO BHIT'S AND LIMITED WEBSITES SHOW THE PARKING**  
4 **FACILITIES ARE A MONOPOLY SERVICE?**

5 A. The monopoly nature is reflected in several statements noted above about parking  
6 on BHIT's website. As explained already, BHIT's website repeatedly speaks of  
7 the need to park but only illustrates or speaks of one option: the "General Lot"  
8 owned and operated by Limited. Having only one option for a service is the basic  
9 economic definition of a monopoly.

10 Furthermore, Limited operates its own website at [www.baldheadisland.com](http://www.baldheadisland.com)  
11 that provides information about the ferry services, vacation rentals, and other events  
12 on Bald Head Island. Regarding the ferry services, Limited's website discusses the  
13 passenger ferry's schedule, what to pack, loading baggage, parking, barding and  
14 disembarkation. As to parking, the website says that, after dropping off your  
15 luggage, "[y]ou'll then proceed to a parking lot to secure your car. The Premium  
16 Parking Lot and the General Parking Lot, owned and operated by Bald Head Island  
17 Limited, are both conveniently located directly across the street from the ferry  
18 terminal."<sup>31</sup>

19 If there were other options for parking, one would expect BHIT or Limited  
20 to have described them, or at least referenced them in some way, on their websites.  
21 But Respondents did not, because there are none.

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<sup>31</sup> See <https://www.baldheadisland.com/island/ferry/>.

1     **Q.     WHAT DOES THE TOWN OF SOUTHPORT SAY ABOUT THE PARKING**  
2     **FACILITIES?**

3     A.     In addition, the Town of Southport hosts a website<sup>32</sup> and discusses, among other  
4     things, Bald Head Island and the ferry service to get to the Island. In describing the  
5     ferry service, the website states that “[u]pon arriving at the Deep Point Ferry on  
6     Ferry Road, visitors will be able to park at three separate parking lots, with rates  
7     that are determined by the length of stay.”<sup>33</sup> All three parking lots are at the Deep  
8     Point terminal. If Southport had other parking options available, surely the  
9     Southport website would have listed them.

10    **Q.     WHAT DOES THE MERCATOR REPORT SAY ABOUT THE PARKING**  
11    **FACILITIES?**

12    A.     As part of the report provided to the Bald Head Island Transportation Authority,  
13    Mercator evaluated the parking facilities and observed that “[n]early all ferry  
14    passengers . . . park their vehicles in the BHI Limited parking facility.”<sup>34</sup> Mercator  
15    further observed that “the parking operation is tied to the ferry operation, with  
16    demand for parking very closely related to overall ferry traffic.”<sup>35</sup> Thus, Mercator  
17    observed the essential nature of the parking services to the ferry service, and  
18    importantly, Mercator does not identify a single alternative to the Deep Point  
19    parking option.

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<sup>32</sup> See <https://www.southport-nc.com/bald-head-island-ferry.html>.

<sup>33</sup> See <https://www.southport-nc.com/bald-head-island-ferry.html>.

<sup>34</sup> Bond Feasibility Study for the Bald Head Island Transportation Authority, Mercator International, LLC Draft 4, Dec 2020, at 26 (Exhibit JAW-9).

<sup>35</sup> IBID.

1     **Q.     DOES SHARPVUE CAPITAL’S ASSESSMENT OF THE PARKING**  
2           **FACILITIES SUPPORT YOUR CONCLUSION THAT THE FACILITIES**  
3           **ARE A MONOPOLY SERVICE?**

4     A.    Yes. As part of SharpVue Capital’s pending acquisition of the ferry service’s  
5           assets, SharpVue evaluated the parking facilities. In doing so, SharpVue made the  
6           following observations. **[BEGIN AEO CONFIDENTIAL]** [REDACTED]

7           [REDACTED]

8           [REDACTED]

9           [REDACTED]<sup>36</sup> [REDACTED]

10          [REDACTED]

11          [REDACTED]

12          [REDACTED]

13          [REDACTED]<sup>37</sup> [REDACTED]

14          [REDACTED]

15          [REDACTED]

16          [REDACTED]

17                 [REDACTED]

18          [REDACTED]

19          [REDACTED]<sup>38</sup> [REDACTED]

20          [REDACTED]

---

<sup>36</sup> SharpVue Project Pelican Investment Opportunity January 2022, at 4 (emphasis added) (Exhibit JAW-7).

<sup>37</sup> IBID, at 22 (Exhibit JAW-7).

<sup>38</sup> IBID, at 24 (Exhibit JAW-7).

1 [REDACTED]  
2 [REDACTED]<sup>39</sup> [REDACTED]  
3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED] [END AEO  
8 CONFIDENTIAL]

9 **Q. WHAT DID YOU FIND IN PAST COMMISSION PROCEEDINGS THAT**  
10 **SUPPORTS YOUR CONCLUSION THAT THE PARKING FACILITIES**  
11 **ARE AN ANCILLARY SERVICE?**

12 A. In addition to reviewing evidence of the parking facilities being integral and  
13 exclusive, I reviewed past filings in Commission proceedings regarding BHIT. For  
14 over two decades, BHIT has been providing information and taking actions that are  
15 consistent with the parking facilities being an ancillary service to the Bald Head  
16 Island ferry service. In particular, I would like to call the Commissions attention  
17 to materials I reviewed in Docket Nos. A-41, Sub 1, Sub 6, and Sub 7.

18 **Q. WHAT DID YOU FIND IN DOCKET NO. A-41, SUB 1 RELATED TO THE**  
19 **PARKING FACILITIES?**

20 A. In 1998, BHIT opened a proceeding before the Commission to modify its tariff  
21 filings.<sup>40</sup> In in the hearing transcript, Mr. Kenneth Kirkman, the Chief Operating

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<sup>39</sup> SharpVue Project Pelican Investment Opportunity January 2022, at 24 (Exhibit JAW-7).  
*See also* SharpVue Pelican Initial Valuation, December 8, 2021, at 2 (JAW-8).

<sup>40</sup> *See* Order of Suspension and Notice of Hearing, Docket A-41, Sub 1 (Aug. 18, 1998).

1 Officer and Chief Legal Officer for Bald Head Island Management Company,  
2 stated, “We are beginning the development of a mainland ferry base which is under  
3 construction now that will be a \$5 million plus project. It is designed to help some  
4 of the problems like parking that you have heard about today.”<sup>41</sup> Mr. Kirkham was  
5 referencing the construction of the Deep Point terminal, the future home of the Bald  
6 Head Island ferry service that would open in 2009. In describing the construction  
7 of this “mainland ferry base,” Mr. Kirkman acknowledged that improved parking  
8 was one of the benefits of the new location. Thus, from the conception of the Deep  
9 Point terminal, the parking facilities were viewed by BHIT as integral to the new  
10 “mainland ferry base” and the Island’s ferry service.

11 **Q. WHAT DID YOU FIND IN DOCKET NO. A-41, SUB 6 RELATED TO THE**  
12 **PARKING FACILITIES?**

13 A. When the Bald Head Island ferry service moved its operations from Indigo  
14 Plantation to the Deep Point terminal, BHIT and Limited submitted filings related  
15 to the move. In those filings, there is evidence that specifically links the passenger  
16 ferry transportation to the parking facilities. In that filing, a document called “The  
17 Deep Point Dispatch, Issue No. 1” indicated the following: “Arriving by car you  
18 will turn off Ferry Road onto a well-marked entrance road that leads around the  
19 perimeter of the main parking lots.”<sup>42</sup> The next issue of the Deep Point Dispatch  
20 stated the following:

21 Many passengers will elect to retrieve their car from  
22 the parking lot prior to claiming their baggage. This  
23 will be a simple matter of walking the short distances

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<sup>41</sup> Docket A-41, Sub 1, transcript dated Sept. 3, 1998, at 111, lines 6-10.

<sup>42</sup> See Notice of Relocation of Ferry Terminal and Application for Approval of Schedule Revisions, Docket No. A-41, Sub 6 (April 30, 2009), at Appx. 2, p. 2.

1 to the Premium Parking lot or to the General Parking  
2 Lot, both conveniently located directly across the  
3 street from the ferry terminal. . . . We hope you are  
4 as excited as we are about the new Transportation  
5 Facility at Deep Point.<sup>43</sup>  
6

7 It is clear from these statements that Limited was including the parking facilities as  
8 a part of, or ancillary to, the “new Transportation Facility” and the ferry service  
9 experience. Even more telling, what is missing from the Deep Point Dispatch is  
10 any reference to any parking facilities available to ferry riders other than the Deep  
11 Point parking facility—because there are none.

12 **Q. WHAT DID YOU FIND IN DOCKET NO. A-41, SUB 7 RELATED TO THE**  
13 **PARKING FACILITIES?**

14 A. As I referenced earlier, the 2010 Rate Case is also relevant to the question at hand.  
15 In its order disposing of the proceeding, the Commission did not reach the issue of  
16 the regulatory status of the parking facilities because a settlement reached by all of  
17 the parties in the case alleviated the need for the Commission to resolve that issue.  
18 While the Commission did not resolve the legal issue, the Commission accepted  
19 and approved a stipulation of all parties—including both Limited and BHIT—that  
20 addressed the parking facilities in several respects.

21 First, the stipulation accepted by the Commission provided that \$523,097  
22 of revenues from the Deep Point Parking Facilities would be imputed to the  
23 regulated ferry operations for purposes of the rate case.<sup>44</sup> In other words,  
24 notwithstanding the separate ownership of the parking facilities, the Commission

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<sup>43</sup> See Notice of Relocation of Ferry Terminal and Application for Approval of Schedule Revisions, Docket No. A-41, Sub 6 (April 30, 2009), at Appx. 2, p. 6.

<sup>44</sup> See Order Granting Partial Rate Increase and Requiring Notice, Docket No. A-41, Sub 7 (Dec. 17, 2010), at 5-7.

1 effectively treated some portion of the parking revenues as regulated revenues to  
2 offset regulated expenses.

3 Second, as a signatory to the Revised Agreement and Stipulation of  
4 Settlement, Limited agreed to limit rate increases for terminal parking applicable  
5 to daily rates to the rates then in effect (\$10 seasonal; \$8 non-seasonal) plus the  
6 annual inflation rate in any 12-month period for a period of six years, ending  
7 December 31, 2016. Limited further agreed that an existing agreement regarding  
8 annual parking—that limited rate increases to annual inflation for annual parking  
9 rates at the Deep Point Parking Facilities between 2009 and 2014<sup>45</sup>—would be  
10 extended through December 31, 2016.<sup>46</sup>

11 Third, the parties agreed that Limited would provide prior notice to the  
12 Public Staff and the Commission of any sale or lease of the Deep Point parking  
13 facilities, or any portion of those facilities, at least ninety days prior to the closing  
14 of any such transaction.<sup>47</sup> Limited has now provided such notice in connection with  
15 its pending sale to Pelican Logistics, LLC, a subsidiary of Pelican Legacy Holdings,  
16 LLC, and an affiliate of SharpVue Capital, LLC.<sup>48</sup>

17 All of these stipulations were accepted by the Commission in its final order  
18 disposing of the proceeding. Although the parties agreed that the stipulation would  
19 not be binding on Limited or BHIT outside the context of that specific settlement,<sup>49</sup>

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<sup>45</sup> See Revised Agreement and Stipulation of Agreement, Docket No. A-41, Sub 7 (Oct. 21, 2010), at Ex. C (the “April 4, 2009 Letter Agreement”) (attached as Exhibit 2 to Complaint).

<sup>46</sup> Revised Agreement and Stipulation of Agreement, Docket No. A-41, Sub 7 (Oct. 21, 2010), at 3.

<sup>47</sup> Stipulation in Docket No. A-41, Sub 7, paragraph 2.C.i.c.

<sup>48</sup> See Notice of Pending Sale, Docket No. A-41, Sub 7 (July 14, 2022).

<sup>49</sup> Revised Agreement and Stipulation of Settlement, Docket No. A-41, Sub 7 (Oct. 21, 2010), at para. 11(B).



1 the stipulation is nonetheless a persuasive indication that all the parties to the  
2 stipulation, and the Commission, understood the integral connection between the  
3 parking and the ferry, consistent with the parking facilities being treated for  
4 regulatory purposes as an ancillary service to the passenger ferry.

5 Obviously the parties and the Commission recognized the connection  
6 between parking and ferry sufficient to justify the imputation of a significant  
7 amount of revenues from the parking operations to the ferry operations.  
8 Additionally, a legitimate question to consider is why would a stipulation that the  
9 Commission and Public Staff be notified of any sale or lease of the parking facilities  
10 if the parking facilities were not a vital and necessary service of the ferry service?  
11 In fact, if the parking operation were simply a competitively supplied service, then  
12 there would be no reason for this statement to be in this stipulation and no reason  
13 for the Commission and Public Staff to be notified in advance of a potential sale of  
14 the parking operations.

15 **Q. WHAT OTHER UTILITY PROCEEDINGS SUPPORT YOUR**  
16 **CONCLUSION THAT THE PARKING FACILITIES SHOULD BE**  
17 **CONSIDERED AN ANCILLARY SERVICES REGULATED BY THE**  
18 **COMMISSION?**

19 A. As part of my research, I investigated analogous situations in which utility  
20 commissions regulated services that were ancillary to a core utility service. I found  
21 similar situations with the Commission's regulation of telephone handsets and the  
22 yellow pages, plus the California commission's regulation of a training terminals'  
23 parking lot.

1     **Q.     HOW ARE TELEPHONE HANDSETS ANALOGOUS TO THE PARKING**  
2           **FACILITIES?**

3     A.     This first example deals with the provision of customer premise telephone  
4           equipment (such as telephone handsets) prior to the deregulation of the telephone  
5           industry. Prior to the deregulation of the telephone industry, most local telephone  
6           companies leased residential customers a basic telephone handset. The level of  
7           these lease payments was regulated by State utility commissions and the revenues  
8           and related expenses were a part of the regulated utility's regulated dollars.

9           It should be noted that the monopoly service the telephone utility was  
10          offering to the public was not the lease of a telephone handset, but rather the ability  
11          to use its wires and related back office infrastructure to make phone calls  
12          connecting telephone subscribers to one another. The basic telephone handset,  
13          while necessary to use the telephone utility's primary services, did not have to be  
14          regulated if there were alternative suppliers, but it was regulated for many years as  
15          there was no other place for customers to purchase a phone handset. Once  
16          competition was available from other hand set suppliers, such as Radio Shack or  
17          Sears, this type of customer premise equipment along with its price and revenues,  
18          became deregulated.

19    **Q.     HOW ARE YELLOW PAGES ANALOGOUS TO THE PARKING**  
20          **FACILITIES?**

21    A.     This second example from the telephone industry concerns yellow pages directory  
22          services which were deemed by regulators at the time as an integral part of the  
23          overall telecommunication service offered by the telephone utilities.

1 To explain, prior to 1984 the telephone directory and yellow pages were a  
2 regulated part of Southern Bell's telephone services. In 1984, the Commission  
3 approved Southern Bell transferring its directory operations and assets to an  
4 unregulated affiliate, BAPCO.<sup>50</sup>

5 In a subsequent rate case order, the Commission carefully evaluated the  
6 relationship between the parent and its affiliate to ensure that ratepayers were  
7 protected by allocating revenues from BAPCO to Southern Bell for ratemaking  
8 purposes. In so doing, the Commission relied on "the integral relationship of the  
9 directory to telephone service" (in fact, characterizing the relation as "integral"  
10 three times for emphasis) and expressed its concern that "these revenues should not  
11 be siphoned off in any manner or for any purpose ... to ensure that the profits of a  
12 nonregulated subsidiary are not maximized at the expense of ratepayers."<sup>51</sup>

13 Similarly, in a General Telephone Company rate proceeding the  
14 Commission carefully scrutinized the revenues of GTC's directory publishing  
15 affiliate and allocated some 58% of revenues to the utility, concluding that "the  
16 directory operations are an integral part of the local telephone operations of GTC  
17 and the company's ratepayers are entitled to receive the benefit of these  
18 operations."<sup>52</sup> In so holding, the Commission noted the Public Staff's position that:

19 [W]ere it not for the structural separation of the directory publishing  
20 function from the telephone operating company, the Company

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<sup>50</sup> See *Re: Southern Bell Tel. and Telegraph Co.*, Docket No. P-55, Sub 834, 1984 WL 1028455 (Nov. 9, 1984), at 2 (reciting entry of order approving transfer dated June 6, 1984, in Docket No. P-55, Sub 839).

<sup>51</sup> *IBID*, at 8-10.

<sup>52</sup> Order Granting Partial Increase in Rates and Requiring Service Improvements, Docket P-19, Sub 207, Sept. 16, 1986, page 11. The Commission had previously entered similar decisions in Docket Nos. P-19, Sub 158 and P-19, Sub 163.

1 would earn only the return on equity granted by the Commission on  
2 its investment in directory operations and the ratepayers would  
3 benefit directly from any cost savings or economies of scale  
4 generated.<sup>53</sup>

5 The NCUC's longstanding belief that telephone directory revenues were a  
6 service provided as an integral part of regulated telephone service was affirmed by  
7 the North Carolina Supreme Court. In *State of North Carolina ex rel. Utilities*  
8 *Commission v. Southern Bell Telephone and Telegraph Company*, 307 N.C. 541,  
9 299 S.E.2d 763 (1983), the court considered the Commission's ruling that it could  
10 take the investments, costs and the revenues relating to Southern Bell's directory  
11 advertising operation into account in rate making proceedings. The North Carolina  
12 Supreme Court affirmed that ruling on appeal, rejecting the utility's argument that  
13 "mere transmission of messages across telephone lines is adequate telephone  
14 service" as "ludicrous".<sup>54</sup>

15 A key to these examples is that the basic telephone service the utility's  
16 customers sought did not require that customers purchase the related telephone  
17 hand set or use the yellow pages provided by the utility. However, these services  
18 were considered integral to the provision of the telecommunications services. In  
19 order to protect ratepayers, until sufficient competition or substitute products  
20 became available, the allocation of revenues, and in some cases the rates and  
21 expenses, associated with those services continued to be regulated and treated as  
22 part of the public utility's regulated services and/or regulated revenue stream.

23 Here, the regulatory interests at stake appear to be directly analogous to

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<sup>53</sup> IBID, at 9.

<sup>54</sup> 307 N.C. at 544, 299 S.E.2d at 765.

1           these prior cases and provide the Commission a roadmap for evaluating the issues  
2           here.

3   **Q.   ARE YOU AWARE OF AUTHORITY FROM OTHER STATES WHERE A**  
4   **REGULATORY COMMISSION HAS EXERCISED JURISDICTION OVER**  
5   **PARKING FACILITIES AS NECESSARY TO THE PROVISION OF**  
6   **UTILITY SERVICES?**

7   A.   Yes. I am aware of a decision by the California Public Utilities Commission (PUC)  
8       addressing facilities at several railroad depots in California. Basically, the Southern  
9       Pacific Company was leasing or closing several of its former parking facilities at  
10      several train stations. Southern Pacific Company's position was that "parking is  
11      extraneous to the furnishing of transportation for persons and their baggage" and  
12      that the California PUC had no jurisdiction in the matter.<sup>55</sup> Intervening cities and  
13      other parties took the position that the parking facilities were an integral part of the  
14      regulated railroad transportation services and should therefore also be regulated. In  
15      ordering that the parking facilities be reopened, the PUC easily rejected the  
16      railroad's limited authority argument, stating: "We do not believe in the year 1967  
17      it can seriously be argued that customer parking facilities adjacent to a railroad  
18      station are not 'incidental to the safety, comfort, or convenience of the person being  
19      transported' . . . [and] cannot be reasonably necessary to accommodate  
20      passengers."<sup>56</sup>

21               This statement, that the parking is an incidental and necessary service for

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<sup>55</sup> *City of Mountain View v. S. Pac. Co.*, 70 P.U.R.3d 304, 1967 WL 164047 (Cal. P.U.C. June 20, 1967), at 7.

<sup>56</sup> *IBID*, at 10.

1 railroad passengers, is easily just as applicable to the Deep Point Ferry service. In  
2 both situations the parking of a vehicle at the transportation terminal is necessary  
3 to enable passengers to use the specific, either rail or water ferry, regulated  
4 transportation service. This rings even more true with the Bald Head Island ferry  
5 system based on the fact that railroad stations, being located usually near downtown  
6 areas, will likely have some public access parking relatively near the railroad  
7 terminal—no such parking option is currently available for Bald Head Island.

8 **Q. HAS THE NORTH CAROLINA UTILITIES COMMISSION PREVIOUSLY**  
9 **RECOGNIZED THAT PARKING FACILITIES ARE APPROPRIATELY**  
10 **TREATED AS REGULATED ASSETS OF THE UTILITY?**

11 A. Yes, and the treatment was affirmed by the North Carolina Supreme Court in *State*  
12 *ex rel. Utilities Commission v. Eddleman*.<sup>57</sup> There the Commission expressly  
13 permitted Duke Power to include “all common plant” associated with the Catawba  
14 Nuclear Station in rate base, including “[s]witching stations, waste treatment  
15 facilities, shops, laboratories, roads and parking lots—all of which are intended to  
16 serve both generating units at Catawba.”

17 **Q. IF THERE IS NO ALTERNATIVE TO THE DEEP POINT PARKING**  
18 **FACILITY, WHAT DOES THIS MEAN TO FERRY PASSENGERS?**

19 A. It means they are captive customers to a monopoly service. From an economist  
20 perspective, this means the monopoly service provider can often arbitrarily increase  
21 prices to earn what is termed “monopoly rents.” Monopoly rents are earned by  
22 firms that are able to restrict supply and/or increase prices without fear of attracting

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<sup>57</sup> 320 N.C. 344, 362-63, 358 S.E.2d 339, 352 (1987).

1 competitors. Said another way, from the customers perspective, a captive customer  
2 to a monopoly service generally means, over time, that prices will be higher and  
3 services of lesser quality than what that customer would find in a competitive  
4 market for the same goods and services. This is the basic economic fear for  
5 customers of the Bald Head Island Ferry terminal parking services.

6 **Q. IS THERE AN ALTERNATIVE STATUTORY BASIS FOR ASSERTION**  
7 **OF REGULATORY AUTHORITY?**

8 A. Yes, as I mentioned previously, Chapter 62 also permits regulation of a parent entity  
9 where “the Commission shall find that such affiliation has an effect on the rates or  
10 service of such public utility.” Here, Limited is the parent entity of BHIT, which  
11 is currently providing public utility services. Because Limited owns both the  
12 parking facilities for the regulated passenger ferry and BHIT, the operator of the  
13 passenger ferry, Limited’s affiliation with BHIT has an effect on the public utility  
14 service and rates.

15 **Q. WHAT FACTORS MIGHT THE COMMISSION LOOK TO IN**  
16 **EVALUATING WHETHER THE PARKING OPERATION HAS AN**  
17 **“EFFECT” ON THE FERRY SERVICE OR RATES?**

18 A. There are a few factors that the Commission could rely on making in such a  
19 determination. First, as stated previously, there is no ferry service without parking;  
20 thus, without question, Limited’s control of the parking has an impact on BHIT’s  
21 ferry services. The Commission need go no further.

22 Second, it is also evident that parking has an impact on rates. As discussed  
23 previously, in the 2010 Rate Case the Commission imputed over \$500,000 in

1 parking revenues in establishing the existing ferry rates. While this was endorsed  
2 by the Commission as a product of settlement by the parties (which settlement  
3 stipulated that the attribution would not be binding in future cases), it is nonetheless  
4 unassailable that the existing ferry rates are currently directly “affected” by parking  
5 revenues. [BEGIN AEO CONFIDENTIAL] [REDACTED]

6 [REDACTED]

7 [REDACTED]<sup>58</sup> [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED] [END AEO CONFIDENTIAL]

14 **Q. DO YOU HAVE ANY CONCLUDING THOUGHTS ABOUT THE**  
15 **PARKING FACILITIES?**

16 **A.** In summary, I would point that, in order to argue that the Deep Point parking  
17 facilities are not essential to the provision of the regulated passenger ferry, one has  
18 to conclude that ferry passengers arriving at the Deep Point terminal have either (1)  
19 a legitimate competitive parking service available, (2) some readily accessible  
20 alternate means of land transportation to the ferry terminal, or (3) some other ferry  
21 service to the Island. None of these options is available at this time. Moreover, the  
22 evidence demonstrates that Limited and BHIT have consistently held out to the

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<sup>58</sup> See O'Donnell Direct Testimony, at 6-7.



1 public that the parking operation is an integrated component of the overall ferry  
2 system's services and the public has relied on this perception created by Limited in  
3 making investments on and otherwise establishing ties to the Island.

4  
5 **IV. THE BARGE SERVICE**

6 **Q. PLEASE PROVIDE A BRIEF OVERVIEW OF THE BARGE SERVICE.**

7 A. The barge service consists of a flat floating barge onto which vehicles are driven  
8 which is pushed by a tugboat (for convenience, I collectively refer to this as the  
9 "barge" in my testimony). Contractors, suppliers, business and citizens are able to  
10 drive their vehicles onto the barge for transport to and from the Island.<sup>59</sup> The barge  
11 is used to transmit essentially all of the commercial goods and materials sold and  
12 used on the Island, including building materials, as well as items such as household  
13 furnishings that are too large to transport on the passenger ferry. In other words,  
14 most items used in the construction and furnishing of the approximately 1,000 plus  
15 residences on Bald Head Island would likely have been transported via the barge.

16 Barge travel is priced based on the amount of deck spaces utilized. Barge  
17 deck spaces are \$60.00 for each 6ft length by one lane wide. Each deck space  
18 authorizes the holder to utilize six feet in one of three lanes aboard the barge for  
19 one round trip.<sup>60</sup>

20 **Q. WHAT IS THE DISPUTE ABOUT THE BARGE?**

21 A. The basic issue is whether the barge, owned and operated by Limited, should be  
22 declared by the Commission as a common carrier and that Limited be declared a

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<sup>59</sup> See <https://bhibarge.com>.

<sup>60</sup> IBID.

1 public utility whose barge rates and services are regulated by the Commission under  
2 the provisions found in Chapter 62.

3 **Q. HAS THE COMMISSION PREVIOUSLY ADDRESSED THE ISSUE OF**  
4 **WHETHER THE BARGE IS SUBJECT TO REGULATORY OVERSIGHT**  
5 **BY THIS COMMISSION?**

6 A. No. As far as I can ascertain, the Commission has not been called upon previously  
7 to address the issue of whether the barge service is subject to regulation.

8 **Q. BASED ON YOUR REVIEW OF THE FACTS AND REGULATORY**  
9 **EXPERTISE, DO YOU BELIEVE THERE IS A BASIS FOR THE**  
10 **COMMISSION TO CONCLUDE THAT THE BARGE OPERATION IS A**  
11 **COMMON CARRIER SERVICE?**

12 A. Yes. Based on my review of the facts relating to the barge service, I find ample  
13 evidence and regulatory justification for a conclusion that the barge is subject to the  
14 regulatory authority of the Commission. Based on this I recommend that this  
15 Commission find that the barge service is performing the operations of a common  
16 carrier and thus subject to public utility laws and rules and under the jurisdiction of  
17 this Commission.

18 **Q. WHAT ELEMENTS WOULD THE COMMISSION EXAMINE TO**  
19 **DETERMINE WHETHER THE BARGE IS A COMMON CARRIER**  
20 **SERVICE?**

21 A. One should start with the governing statutes. Here, the public utility laws define  
22 “common carrier” to mean “any person, other than a carrier by rail, which holds  
23 itself out to the general public to engage in transportation of persons or household

1 goods for compensation, including transportation by bus, truck, boat or other  
2 conveyance, except as exempted in G.S. 62-260.”<sup>61</sup> Under this test, the barge  
3 service should be treated as a common carrier if it holds itself out as providing  
4 transportation services (a) to the general public (b) to transport persons or  
5 household goods (c) for compensation.

6 **Q. WITH RESPECT TO THE FIRST CRITERIA FOR BEING A COMMON**  
7 **CARRIER IN NORTH CAROLINA, IS LIMITED’S BARGE SERVICE**  
8 **PROMOTED AS A SERVICE TO THE GENERAL PUBLIC?**

9 A. Yes. Limited advertises its barge service to the general public, without any  
10 restrictions on whether usage of the barge.<sup>62</sup> In its responses to discovery requests,  
11 Limited admitted that there are no restrictions on usage of the barge so long as the  
12 passenger has an Internal Combustion Engine (“ICE”) permit that is required to use  
13 a vehicle on the Island.<sup>63</sup> Limited also conceded that it was not aware of a single  
14 instance in which it refused service to a member of the public who had paid the  
15 appropriate fare and had an ICE permit.<sup>64</sup>

16 **Q. WITH RESPECT TO THE SECOND CRITERIA FOR BEING A COMMON**  
17 **CARRIER IN NORTH CAROLINA, DOES LIMITED’S BARGE SERVICE**  
18 **TRANSPORT PEOPLE OR HOUSEHOLD GOODS?**

19 A. Yes. It transports both.

20 The primary utility of the barge is to transport all manner of supplies and

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<sup>61</sup> G.S. § 62-3(6); *see also* G.S. § 62-3(23)a.4.

<sup>62</sup> *See, e.g.*, <https://bhibarge.com/default>.

<sup>63</sup> Response to Village DR 1-23 (Exhibit JAW-10).

<sup>64</sup> Response to Village DR 1-24 (Exhibit JAW-10).

1 equipment and vehicles to the Island. On its website, Limited states that “[t]he Bald  
2 Head Island Limited, LLC barge is available for carrying vehicles and equipment  
3 to and from Bald Head Island.”<sup>65</sup> Similarly, the Mercator report summarizes that,  
4 “[w]ith the exception of passenger baggage moving on the ferries, the freight barge  
5 service provides the only means to transport supplies and equipment to and from  
6 the Island”<sup>66</sup> and “[t]he freight barge delivers all the materials associated with  
7 residential and non-residential construction.”<sup>67</sup>

8 Regarding household goods, Limited publicly advertises that the barge is  
9 used to transport furniture. On its website, Limited provides an information  
10 document titled “How to Pack for Your Bald Head Island Trip.” The document  
11 states that “Furniture must be transported via Bald Head Island Limited’s barge and  
12 special arrangements must be made.”<sup>68</sup> Consequently, the barge service is held out  
13 to the public as engaging in the transportation of some types of household goods,  
14 like furniture.

15 Similarly, the BHIT public website, in its FAQs, explains that, “The barge  
16 is used to get large items to and from the island. If you need to schedule the barge  
17 or want general information please visit [www.bhibarge.com](http://www.bhibarge.com) or call (910) 457-  
18 5205.”<sup>69</sup>

19 Furthermore, in its discovery responses Respondents stated that “[Limited]

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<sup>65</sup> See <https://bhibarge.com>.

<sup>66</sup> Bond Feasibility Study for the Bald Head Island Transportation Authority, Mercator International, LLC Draft 4, Dec 2020, at 31 (Exhibit JAW-9).

<sup>67</sup> IBID, at 37 (Exhibit JAW-9).

<sup>68</sup> See <https://cms.scurtomarketing.com/data/1033/uploads/how-to-pack-for-bhi.pdf>.

<sup>69</sup> See <https://baldheadislandferry.com/faq>.

1 does not take, or require submission of, inventories of items contained in such  
2 vehicles. However, it is true that individuals or businesses who wish to transport  
3 furniture, materials, equipment or supplies to the island can do so as cargo in a  
4 vehicle that qualifies to rent space on the barge.”<sup>70</sup> Thus, Limited itself admits that  
5 the barge service has, and must be, used to transport household goods like furniture.  
6 In addition, in SharpVue Capital’s assessment of the Bald Head Island  
7 transportation service for its investors, SharpVue [BEGIN AEO  
8 CONFIDENTIAL] [REDACTED]  
9 [REDACTED]  
10 [REDACTED]<sup>71</sup> [END AEO CONFIDENTIAL]

11 **Q. DOES LIMITED HAVE KNOWLEDGE THAT IT IS TRANSPORTING**  
12 **HOUSEHOLD GOODS VIA THE BARGE?**

13 A. Yes. First, again with the caveat that I am not a lawyer, I would point out that the  
14 common carrier statute—as I have quoted it above—does not specifically state that  
15 the common carrier must have knowledge in connection with any specific  
16 transaction. Regardless, Limited has produced in discovery its log showing items  
17 transported by the barge since March 2015 that shows it is aware of the items it  
18 transports. [BEGIN CONFIDENTIAL] [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]

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<sup>70</sup> See Responses to Village DR 1-20 (Exhibit JAW-10).

<sup>71</sup> See SharpVue Project Pelican Investment Opportunity January 2022, at 10 (Exhibit JAW-7).

1 [REDACTED]  
 2 [REDACTED]<sup>72</sup> [END

3 CONFIDENTIAL]

4 [BEGIN AEO CONFIDENTIAL] [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]  
 9 [REDACTED]  
 10 [REDACTED]  
 11 [REDACTED]  
 12 [REDACTED]  
 13 [REDACTED]<sup>73</sup>

14 [REDACTED]  
 15 [END AEO CONFIDENTIAL]

16 Based on its own statements, I find Limited's claims of "no first-hand  
 17 knowledge of the types of materials and equipment" transported via the barge<sup>74</sup>  
 18 unconvincing and, in any event, of questionable relevance to the regulatory  
 19 question before the Commission.

20 **Q. DOES THE BARGE TRANSPORT PERSONS?**

21 A. Yes. Vehicles are driven on the barge for transport to the Island. The vehicles are  
 22 driven by people. Consequently, I have difficulty distinguishing this situation from  
 23 other ferry operations in the State that transport both vehicles and passengers from  
 24 one place to another and which are currently operated as regulated utilities in North

<sup>72</sup> See Exhibit JAW-12.

<sup>73</sup> Bald Head Island Limited, LLC Project Pelican Confidential Memorandum, Draft – August 17, 2021, at 49 (Exhibit JAW-6).

<sup>74</sup> See Response, Motion to Dismiss, and Answer of Limited and BHIT, Docket No. A-41, Sub 21 (March 30, 2022), at 31-32 (¶¶ 25-27).

1 Carolina. In the context of this barge monopoly service, the transport of persons  
2 via the barge is sufficient to trigger the Commission's regulatory authority.

3 **Q. FINALLY, WITH RESPECT TO THE COMMON CARRIER**  
4 **DEFINITION'S THIRD CRITERIA, DOES LIMITED RECEIVE**  
5 **COMPENSATION FOR THE PROVISION OF ITS BARGE SERVICES TO**  
6 **THE PUBLIC?**

7 A. Yes. Limited's barge travel is priced based on the amount of deck spaces  
8 utilized. Barge deck spaces are \$60.00 for each 6 foot length by one lane  
9 wide.<sup>75</sup> Each deck space authorizes the holder to utilize six feet in one of three  
10 lanes aboard the barge for one round trip.<sup>76</sup>

11 **Q. BECAUSE THE BARGE SERVICE MEETS ALL THREE CRITERIA**  
12 **ESTABLISHED FOR BEING A COMMON CARRIER UNDER NORTH**  
13 **CAROLINA LAW, WHAT DO YOU CONCLUDE THIS MEANS WITH**  
14 **RESPECT TO THE COMMISSION?**

15 A. This means several things. First, if the Commission agrees with me and concludes  
16 that the common carrier criteria are met, Limited should apply to the Commission  
17 for a Certificate of Service or Authorization to continue to conduct its barge  
18 operations. Second, that under G.S. § 62-32(a) the Commission has "general  
19 supervision over the rates and service rendered by all public utilities in this State."  
20 The potential regulated services offered by such a regulated utility is defined under  
21 G.S. § 62-3(27) as, "Service means any service furnished by a public utility,  
22 including . . . any ancillary service or facility used in connection with such service."

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<sup>75</sup> See <https://bhibarge.com/rates>.

<sup>76</sup> IBID.

1           Consequently, Limited should also make an appropriate filing to properly establish  
2           with the Commission the terms, services, and rates related to its regulated services  
3           and it should seek approval of the Commission prior to any sale of the barge  
4           business and related facilities.

5   **Q.   HOW SHOULD “HOUSEHOLD GOODS” BE UNDERSTOOD?**

6   A.   I do not believe that it is necessary for the Commission to engage in an extended  
7           analysis of the term “household goods” since, without question, goods intended for  
8           use and consumption in a person’s home are being transported on the barge. As I  
9           have previously testified—a paradigmatic example being the furniture, appliances  
10          and food listed on the barge logs referenced earlier.<sup>77</sup> This understanding is  
11          consistent with legal definitions I have seen.<sup>78</sup>

12   **Q.   ARE THERE OTHER REASONS THAT MIGHT SUPPORT THE**  
13          **COMMISSION’S EXERCISE OF REGULATORY AUTHORITY OVER**  
14          **THIS BARGE SERVICE?**

15   A.   Yes. I believe this service is exactly the sort of service that requires regulation in  
16          that it is a monopoly service with the common carrier attributes discussed above.  
17          There is, quite literally, no other way for the public to transport large household

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<sup>77</sup> See Exhibit JAW-12 for a representative sample of this log. References to the transport of furniture – in addition to appliances and food – is found on these pages. A complete copy of the log is filed separately due to its size.

<sup>78</sup> See, e.g., 11 U.S.C. § 522(f)(4) (defining “household goods” for purposes of the bankruptcy code to include items such as clothing, furniture, appliances, educational material, kitchenware, personal effects, works of art, electronic equipment, jewelry, vehicles, watercraft, and computers); G.S. § 25-7-209(d) (warehouse liens on household goods); N.C.U.C. Rule R2-37 (“The term “household goods”, as used in connection with transportation, means personal effects and property used or to be used in a dwelling, when a part of the equipment or supply of such dwelling, and similar property if the transportation of such effects or property is arranged and paid for by the householder or another party.”).



1 goods or for service vehicles and delivery vehicles to get to the Island. Respondents  
2 have admitted this.<sup>79</sup>

3 Finally, the passenger services and the barge service have been dependent  
4 on and support each other's use of the Island as components of the overall  
5 transportation services. Each provides essential services that complement one  
6 another.

7

8

## **V. CONCLUSION**

9 **Q. DO YOU HAVE ANY CONCLUDING THOUGHTS TO SHARE WITH THE**  
10 **COMMISSION?**

11 A. The questions presented in this proceeding are of great importance to the many  
12 residents, visitors and workers on Bald Head Island, particularly at this time. As I  
13 mentioned earlier, Limited has expressed its intention to divest itself of the ferry  
14 and related transportation assets, including the Deep Point Marina terminal, ferries,  
15 Barge, on-island tram and mainland Parking Facilities. Also the proposed  
16 SharpVue transaction apparently includes all the Transportation assets and Limited  
17 has stated publicly that the various assets could be sold to different parties,<sup>80</sup>  
18 meaning that the passenger ferry could be sold to one party while the barge ferry  
19 and parking facilities could be sold to and operated by other parties.

20 The Village, BHITA, and various individuals (such as Island residents and  
21 workers) have expressed a concern that the sale of the Deep Point Parking facility

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<sup>79</sup> Response, Motion to Dismiss, and Answer of Limited and BHIT, Docket No. A-41, Sub 21 (March 30, 2022) at ¶¶ 25, 47.

<sup>80</sup> See Complaint ¶ 44.

1 as an unregulated parking facility separate and apart from the still regulated ferry  
2 operations will result in an unregulated, monopoly ferry parking enterprise. Such  
3 an outcome would likely result in increased parking rates, potentially to  
4 unreasonable levels with ferry system riders having no alternative parking or other  
5 readily available option and thus being forced to either pay the exorbitant parking  
6 fees, or don't go to the Island—a rather daunting proposition for the residents of  
7 the Island.

8 Finally, I am aware that in its Response, Motion to Dismiss, and Answers  
9 filing in this proceeding<sup>81</sup> Limited and BHIT claim that, “Hypothetically, if the  
10 Commission were to consider parking and barge operations to be part of the  
11 regulated ferry service . . . , the appropriate time to revisit these issues is in the next  
12 rate case, so that the cost of service of the operations and rate of return on all  
13 associated assets could be considered in setting reasonable rates.” However, this  
14 claim is illogical and unfair given the current circumstances. Limited and BHIT  
15 are in the process of selling the parking facilities and barge. It would be unfair to  
16 a purchaser to proceed with said purchase without the purchaser knowing whether  
17 they are buying a competitive or regulated company. Also, it is illogical to proceed  
18 with the sale and assume that once the assets are no longer in possession of Limited  
19 that in some future BHIT (or BHIT's successor's) rate proceeding that the NCUC  
20 can unwind history and claim regulatory control over these long-sold assets. The  
21 only logical and fair time to determine whether the parking service is an ancillary  
22 service necessary to support the regulated ferry operations is prior to the disposal

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<sup>81</sup> This proceeding, filing dated March 30, 2022, p. 22-23.

- 1 of these parking assets. The same logic applies to the barge assets.
- 2 **Q. DOES THIS COMPLETE YOUR DIRECT TESTIMONY?**
- 3 **A. Yes.**

1 MR. TRATHEN: I also ask that his summary  
2 be entered into the record.

3 COMMISSIONER BROWN-BLAND: That motion is  
4 allowed as well and the summary's entered into  
5 evidence.

6 (WHEREUPON, the summary of  
7 DR. JULIUS A. WRIGHT is  
8 copied into the record as if  
9 given orally from the  
10 stand.)  
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**Summary of the Direct Testimony of Dr. Julius A. Wright  
On Behalf of the Village of Bald Head Island**

My direct testimony discusses the factual and policy basis supporting a conclusion that the parking services supporting the Deep Point ferry operations and the barge transport service between Deep Point and Bald Head Island are each subject to Commission oversight and regulation.

I first provide an overview of the relevant features of Bald Head Island. Bald Head Island is a unique, 12,000 acre island used and enjoyed by many North Carolinians. The Island is approximately three miles from the city of Southport on the Cape Fear River. Visitors and residents on the island use golf carts, bikes, or the island tram service for most transportation needs as private vehicles, other than work vehicles, are not allowed on the Island. Given this prohibition, the Bald Head Island ferry service is the only means of public access to the Island and the barge service is the only means of transporting commercial goods, supplies, and personnel to and from the Island. Although the Island's full-time resident population is small, it has over 1,000 private residences (which is increasing) and the population can swell to over 7,000 persons in peak summer days. In a year, nearly 400,000 persons are transported to the Island via the ferry.

**The Parking Facility**

My testimony provides a detailed review of the facts showing that the parking operation is an integral, necessary, and irreplaceable ancillary component of the utility passenger ferry service. I discuss the statements of Limited and its consultant, Mercator International, that support this finding, including Mercator's assessment that "the parking operation is tied to the ferry operation, with demand for parking very closely related to

overall ferry traffic.” I also review statements on BHIT’s website illustrating that parking is integral and necessary to the ferry operation.

My testimony further discusses how the parking services are a de facto monopoly, that there is no existing alternative service available to the public, and that there is no practicable prospect of competition for parking given the unique characteristics of the ferry operation and the surrounding community. I note the concern that, if left unchecked by regulation, the parking facility’s monopoly status could, in the future, leave Island visitors subject to unreasonable monopoly practices like high prices and poor service.

I also discuss how the Commission’s treatment of parking in the most recent rate case recognized a link between the parking operation and the ferry operation sufficient to impose price constraints and revenue imputation requirements on parking.

I further review analogous decisions of this Commission supporting the assertion of regulatory authority here.

### **The Barge Service**

I next address the factual and policy support for a determination that the barge service is subject to regulation by the Commission.

This barge service consists of a flat floating barge onto which vehicles are driven and then pushed by a tugboat to the receiving ferry terminal. Parties like contractors, suppliers, and service personnel drive their vehicles onto the barge for transport to and from the Island. This barge service is used to transmit essentially all of the commercial goods and materials sold and used on the Island, including building materials, and household furnishings too large to transport on the passenger ferry.

Based on my review of the facts relating to the barge service, I find ample evidence

to support a conclusion that this barge should be declared a common carrier subject to the Commission's regulatory authority. The regulatory statutes defining a "common carrier" set forth three criteria: the service must hold itself out as providing transportation services (a) to the general public (b) to transport persons or household goods, and (c) for compensation. This barge service meets all three criteria. There is no question the barge provides service to the general public for compensation, and Limited has indicated as much. Limited's own barge logs list household goods as items being transported by the barge service. And not only are vehicles driven onto the barge, but the drivers remain in their vehicles and ride the barge to their destination. The barge service thus meets all three statutory requirements for being declared a regulated common carrier.

Another reason for supporting the regulation of the barge service is because this is exactly the sort of service that requires regulation. The barge is used to support and augment the regulated passenger ferry service, and it is a monopoly service.

### **Conclusion**

I conclude by highlighting that the questions presented in this proceeding are of great importance to the many residents, visitors, and workers on Bald Head Island, particularly at this time because Limited has entered into an agreement to sell all of the Deep Point Ferry assets. Limited has also stated publicly that the various assets could be sold to different parties, meaning that the passenger ferry could be sold to one party while the barge ferry and parking facilities could be sold to other parties.

Limited has suggested that the issues raised in this proceeding should not be resolved now but rather should wait for some future date. I disagree, and believe this suggestion is illogical and unfair given the current circumstances. It would be unfair to a

purchaser to proceed in a purchase without knowing whether they are buying a competitive or regulated company. Further, once these assets are no longer in possession of Limited, it is not clear how or for what future reason the Commission might unwind history and at a later time claim regulatory control over these now-sold assets.

This concludes the summary of my Direct Testimony.



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

3 COMMISSIONER BROWN-BLAND: All right.

4 CROSS EXAMINATION BY MR. RISINGER:

5 Q Good afternoon, Dr. Wright.

6 A Good afternoon.

7 Q Good to see you again. I'll make you the same  
8 promise I made to Scott Gardner this morning.  
9 I'm going to spend a lot less time pressing you  
10 than I did at your deposition, but it probably  
11 matters a lot less for you for what you and I  
12 do for a living, so...

13 A Okay.

14 Q But I'm going to live up to it anyway. I  
15 notice that the binder you have in front of  
16 you, is that your direct and rebuttal with your  
17 exhibits?

18 A Yes, it is.

19 Q Okay. That's great. If you have -- I'm going  
20 to cite to a few portions of either of them.  
21 And my knowledge of you is you're generally  
22 pretty good at remembering, but I'll have the  
23 cites for them if you want to look at them, you  
24 know, in the lines and pages as we're talking

1 about them.

2 A Okay.

3 Q Good. Dr. Wright, do you have any view in this  
4 case that the transaction between Limited --  
5 the contracted transaction between Limited and  
6 SharpVue reflects something other than an arm's  
7 length transaction?

8 A I was not asked to study that and I have no  
9 opinion.

10 Q Do you have any opinion that Limited selling to  
11 any private buyer could not be consistent with  
12 ensuring the long-term success of the island?

13 A Could you repeat that question again?

14 Q Yeah, sure. I just want to make sure -- we  
15 talked a little bit about this in your  
16 deposition. I want to make sure. Do you have  
17 any opinion that if you don't sell -- if  
18 Limited doesn't sell the assets to the  
19 government or to a -- you know, a public  
20 entity, that there's not a fashion in which  
21 Limited could ensure the long-term success of  
22 the island?

23 A I was not asked to study that. I think -- as I  
24 say in my testimony, I think the best way to

1 move forward are for the assets to be  
2 regulated.

3 Q Do you have any view that Limited was itself  
4 under any obligation to identify another public  
5 buyer when the authority construct collapsed?

6 A I was not a party to any of those negotiations,  
7 so I can't answer that. I don't know that they  
8 had any obligation, but I don't know they  
9 didn't. I just -- I haven't studied that issue.

10 Q The -- witnesses and submissions by the Village  
11 in the case have suggested the proposition that  
12 property owners on the island are concerned  
13 that a third-party buying the assets doesn't  
14 have a vested interest in operating the system.  
15 Are you familiar with those concerns?

16 A Yes, somewhat.

17 Q And we talked a little bit about those at your  
18 deposition, as I recall.

19 A I don't recall that, but I'll take your  
20 representation.

21 Q From an economic standpoint, Dr. Wright, would  
22 there be any buyer that would have an interest  
23 in pricing the parking in a manner that would  
24 discourage folks from using the ferry?

1     A     From an economic standpoint, the ferry parking,  
2           as I discuss in my testimony, is a de facto  
3           monopoly. And, in fact, that's in -- I think  
4           in the Mercator report, they call it that, or  
5           one of the reports. When you have a monopoly  
6           situation from an economic standpoint, you have  
7           a situation where the owner of that monopoly  
8           can extract what we call monopoly rents,  
9           meaning they can price the services at a much  
10          higher price than they could otherwise get in a  
11          competitive market.

12                         To the extent a buyer or anyone  
13          came in and they had a monopoly system, they  
14          could do that. I think that the people on the  
15          island have a legitimate concern that absent  
16          regulation and regulatory oversight, that  
17          monopoly pricing could occur and monopoly rents  
18          be extracted.

19     Q     Does it seem logical to you, from an economic  
20           standpoint, that a buyer who acquired all the  
21           assets would engage in that kind of behavior in  
22           a way to discourage folks from using the ferry  
23           that they're required to operate by  
24           certificate?

1     A     Actually, what you're asking goes far deeper  
2           than that. In a situation we have with the  
3           ferry, the parking and the barge, they  
4           essentially all are monopolies. And when you  
5           have a monopoly situation, you have a very  
6           inelastic demand curve, meaning the price can  
7           be set higher and higher and higher until such  
8           time that people just literally cannot afford  
9           it. Now, if you have that situation, you could  
10          actually do studies and determine at what price  
11          do people really stop using the services or my  
12          profits begin to diminish, and that is what  
13          their concern is. They will continue to price  
14          at a little bit higher and a little bit higher  
15          and a little bit higher. That would not occur  
16          but for the monopoly status and that would not  
17          occur under the regulated regime, so that's the  
18          concern that you have.

19                     Now, would someone who bought  
20          the system have an incentive to use monopoly  
21          pricing? Absolutely, they would. They would  
22          have an incentive to look at the demand  
23          elasticity and say oh, it's a very inelastic  
24          demand. They have no other choice. They've

1 got to use it. The guy has a home on the  
2 island. He's got -- or they visited the island  
3 for years or he works on the island. So they  
4 know that those people are captive customers,  
5 and they can begin to extract what we call  
6 monopoly rents and charge a little bit higher  
7 and a little bit higher until such time that  
8 they see the demand start to fall off. Then  
9 they back off a little bit. That's what can  
10 happen with monopoly pricing.

11 Q Have you made any determinations in your  
12 analysis in this case that Limited has secured  
13 monopoly rents for the parking in this case?

14 A No, but Limited has -- had approved by this  
15 Commission pricings that was capped, so that  
16 was part of the last rate case.

17 Q Once again, you've answered the very question I  
18 asked. Do you have any evidence that Limited  
19 has secured monopoly rents with relation to the  
20 parking or the barge, the unregulated assets?

21 A No. I was not asked to study that.

22 Q A witness on behalf of SharpVue has rendered  
23 testimony in the action that SharpVue or any  
24 subsequent buyer of the assets would be best

1 served by a successful island and successful  
2 enterprise on the island because that would  
3 engender success in their operations. From an  
4 economic standpoint, do you have any criticism  
5 of that proposition?

6 A That proposition does not seem unreasonable,  
7 but I don't think it goes far enough in that it  
8 doesn't mean that SharpVue will not look at  
9 their opportunity and ask the question how do I  
10 make the most profits. Can I make the most  
11 profits if I continue to raise the prices a  
12 little bit? Maybe they say yes and they begin  
13 to raise those rates, be it -- you know, I know  
14 they've made some stipulations to that, but  
15 those stipulations run out after a few years,  
16 or maybe somebody comes along. If this  
17 transaction takes place a year from now,  
18 someone comes along and says, "You know, we  
19 want to buy that parking facility or we want to  
20 buy that barge service," and SharpVue no longer  
21 owns it and somebody else owns it. Maybe they  
22 have a different viewpoint. Maybe they want to  
23 do something else with the property. So I  
24 don't think it's fair just to say that

1       SharpVue's only interest is the interest of  
2       island. No. SharpVue's interest is profits.  
3       And I don't begrudge them that. That's fine.  
4       But those profits do not mean that they're  
5       going to never raise the rates or never collect  
6       monopoly rents or never not sell the parking  
7       lot. You just don't know.

8       Q     Dr. Wright, the market position that you  
9       ascribed to Limited in your testimony, are you  
10      of the opinion that that market position was  
11      secured or maintained through any improper  
12      conduct on behalf of Limited?

13      A     Can you describe what you mean by the "market  
14      position"?

15      Q     Yeah, yeah. I --

16      A     That I -- I --

17      Q     I was trying to do it in a way that didn't put  
18      words in your mouth, right? You've indicated  
19      that you believe that it's not a natural  
20      monopoly but that they're in a de facto  
21      monopoly position?

22      A     Correct.

23      Q     Does that fairly describe your testimony?

24      A     For the parking services and -- yes, that's



1 correct.

2 Q And my question is have you made any findings  
3 or drawn any conclusions that Limited obtained  
4 that position or -- obtained it or maintains  
5 it through any improper conduct?

6 A No, I have not made that analysis, nor do I  
7 think that's happened.

8 Q And the same question with regard to the market  
9 position that you ascribe to Limited. Has  
10 there been any type of exclusionary, you know,  
11 or predatory conduct on behalf of Limited with  
12 regard to that position?

13 A On first-hand knowledge, I don't know of that.  
14 I can tell you that the Mayor, I believe, told  
15 me this, and the last witness may have told me  
16 this, so you can ask -- I think he's coming up  
17 on rebuttal. You need to ask him that because  
18 I hate to provide hearsay, but they said there  
19 was a taxi service that was using the Bald Head  
20 Island terminal during the Covid restrictions  
21 and stuff, and that -- I don't know why, but  
22 that was cut out. The way it was put to me  
23 that it was Limited who stopped allowing them  
24 to use that terminal.

1 Q You don't have any direct knowledge about that  
2 issue?

3 A No. That's why I asked you to ask him because  
4 I don't know.

5 Q Fair. And no opinions or conclusions on that  
6 issue as well?

7 A I don't know if it's true. I don't know how it  
8 happened but if you want to know the answer to  
9 the question, ask them. They can tell you.

10 Q Have you formed any views as to whether the  
11 pricing structure that has been afforded to  
12 people who use the parking lot by Limited has  
13 provided benefits to the consuming public that  
14 use the lots?

15 A I haven't formed any -- I didn't do an  
16 analysis if the pricing structure was  
17 beneficial to the people, but I do know there  
18 was a settlement in 2010. The pricing  
19 structure was agreed upon by the stipulating  
20 parties and approved by this Commission, and to  
21 the extent the parties were reasonably  
22 satisfied on both sides. And certainly, the  
23 pricing structure was something everybody  
24 agreed to.

1 Q I want to make sure I'm not parsing your  
2 testimony incorrectly. Which of the assets are  
3 you describing?

4 A I'm describe --

5 Q Which terms too. I want to make sure we're on  
6 the same page of the handle.

7 A At that time, as I recall, both the parking and  
8 the -- there were stipulations that involved  
9 the parking, and there was pricing and  
10 information that concerned the barge service  
11 and the tram service.

12 Q So with respect to the Ferry & Tram, there's a  
13 regulated category. And with respect to the  
14 parking area, referring to the agreement for a  
15 certain amount of time in which rates would not  
16 be raised?

17 A Yes, but they also cut out a couple of the  
18 classes, I think, on the parking, so that there  
19 was several things on the parking I think that  
20 were adjusted, but the stipulating parties  
21 agreed to it, so...

22 Q Dr. Wright, on the topic of the rate base of  
23 assets and what value might be, you know,  
24 placed on assets if they were newly placed into

1 the ferry's rate base, blessedly for you, you  
2 didn't offer a lot of testimony on that, but I  
3 do have a couple questions for you on the  
4 comments that you did make about it, about the  
5 rate base issues, if that's okay.

6 With regard to the valuation of  
7 the parking either as an asset or as part of a  
8 use and useful asset in the rate base, you made  
9 a comment in your rebuttal testimony that that  
10 was essentially not right for consideration  
11 here, but that was a decision that the  
12 Commission would need to make after it makes a  
13 determination as to whether these assets are  
14 regulated. Am I understanding your position on  
15 that correctly?

16 A As far as the valuation of the asset?

17 Q Yes.

18 A Yes. That would be the nexus that would be  
19 after this.

20 Q And your rebuttal testimony, if I'm following  
21 it correctly, also said that at that time when  
22 the issues become right, Limited and others  
23 will have the opportunity to, you know,  
24 challenge one way or another what the valuation

1 of the asset should and should not be. True?

2 A That's the way I think the case should proceed,  
3 yes.

4 Q I want to ask you just a couple questions about  
5 a topic in your rebuttal statement. And I'm  
6 going to pull out one statement, but it's in  
7 several places where you say that there's  
8 simply no other parking available to riders of  
9 the ferry at Deep Point currently. Do you  
10 recall that testimony?

11 A Yes.

12 Q Does it fairly characterize it for you?

13 A Yes.

14 Q Okay. Has the -- have the availability or  
15 pricing metrics with regard to parking that  
16 Limited has put forward provided an opportunity  
17 and incentive for competition to emerge?

18 A I have no opinion on that. I haven't study it.

19 Q So the issue of whether the pricing of parking  
20 or barge is such that it's high enough that it  
21 should or should not attract competition or  
22 where those inflection points are. You've not  
23 analyzed that issue with regard to parking or  
24 the barge?

1 A No. As I say in my statement, at the current  
2 time, there is no option. And at such time in  
3 the future, if those options do pop up and  
4 exist, at that time, that's when you look at  
5 deregulating an affiliate service. But if it  
6 were regulated right now, you shouldn't -- you  
7 know, you wouldn't be looking at that issue  
8 right now.

9 Q Dr. Wright, you also make a statement, and I'm  
10 just going to read it directly so I don't mess  
11 it up. You say, "I don't know how this  
12 Commission could, short of regulation, require  
13 or ensure that parking is available to Deep  
14 Point Ferry passengers." I'll just represent  
15 that I read that, but does that fairly  
16 represent your position?

17 A That's correct.

18 Q And would including commitments of SharpVue to  
19 provide parking in any perspective certificate  
20 transfer in the Sub 22 docket accomplish that,  
21 short of full-blown regulation?

22 A That would be a nice promise to have, but I'm  
23 not sure what happens if -- if we were to think  
24 down the road, and that's what you're asking me

1 to do, this Commission certainly would continue  
2 to regulate the passenger Ferry and the Tram  
3 service. If something happened to the parking  
4 lot, at sometime in the future, then this  
5 Commission, I assume, would have the authority  
6 to tell, other than passenger service, you need  
7 to provide some alternative parking.

8 My question is you've  
9 already -- if you're going to do that in the  
10 future, why isn't current parking subject to  
11 the same regulation? I mean it doesn't make  
12 sense to think oh, well, we'll go ahead and  
13 provide something that says well, parking's  
14 always going to be necessary like I think the  
15 Public Staff, and their comment said, "ensure  
16 that parking is available." I think it was  
17 Mr. Leonard was one of the witnesses on your  
18 side that said the Commission can ensure that  
19 parking is available. Well, if you're going to  
20 ensure parking is available, you already have  
21 the parking lot.

22 There's no way to ensure it's  
23 available any cheaper or better than what  
24 you've already got, so I don't understand,

1 short of regulation, how you do that and why  
2 you would wait 5 or 10 or whatever years down  
3 the road to ensure parking is available when  
4 you shouldn't -- if that's how you feel, well,  
5 you've got the parking. Use what you've got  
6 right now.

7 Q Well, let me parse that for you in a slightly  
8 different way, if I could. The Public Staff  
9 has issued comments in the proceeding and has  
10 indicated an interest in assuring the  
11 availability of parking somewhat short of  
12 regulations. So just assume that that world  
13 exists and that the Commission in its wisdom  
14 decided not to regulate these assets in a full-  
15 blown way. What I'm trying to probe with you  
16 is whether, you know, commitments of the sort  
17 that SharpVue has made to, you know, provide  
18 parking and not go under a floor unless the  
19 Commission, you know, approves such a move and  
20 agreed to those as conditions of a transfer for  
21 instance in Sub 22, whether in your view that  
22 would accomplish, you know, the purpose in that  
23 world where someone wished to accomplish that  
24 purpose without full regulation?



1     A     I would not be satisfied if I were a  
2           Commissioner with that type of thing going  
3           forward. And as I go back to what I just  
4           stated, if it's so important that the Public  
5           Staff and your own witnesses say that this  
6           Commission should ensure that parking is  
7           available, well then why isn't it proper to  
8           ensure parking is available by using what they  
9           have right now? Because if you go down the  
10          road 7 or 8 years, maybe SharpVue sells the  
11          parking lot, I'm not sure where you're going to  
12          find any better parking facility, and it's  
13          going to cost a lot more than what it is now.

14                 So what's going to happen is  
15          the ratepayers, as it were, are going to be  
16          paying a lot more for services, probably not  
17          as good as what they have right now in the  
18          future. To me, it's illogical to make the  
19          statement this Commission should ensure parking  
20          is available but don't regulate the current  
21          parking. Let it go or let it do whatever they  
22          want to with it. To me, that's illogical. If  
23          it's so important that you need to ensure the  
24          parking is available, you've got the parking

1 right now, and that's the parking you should  
2 use.

3 Q In your experience sitting on multiple sides of  
4 the table in these settings, does the  
5 Commission use multiple tools at its disposal  
6 to accomplish purposes?

7 A Yes.

8 Q And some of those tools I take it would consist  
9 of what you would refer to as full regulation  
10 or, you know, comprehensive regulation, and  
11 some of them wouldn't. True?

12 A They have various alternatives and various ways  
13 to regulate, yes.

14 Q And in the -- in a transfer proceeding where a  
15 certificate is being requested to be  
16 transferred, in your experience, does the  
17 Commission on occasion impose conditions on the  
18 transfer to accomplish purposes that the  
19 Commission would like to see achieved?

20 A Yes, they can.

21 Q Dr. Wright, have you conducted any analysis in  
22 this case with regard -- any analysis at all  
23 with regard to the pricing, the pricing  
24 structure that is in place or the impacts that

1       representations by SharpVue would have on it  
2       going forward?

3     A     I have not looked at the pricing structure  
4       short of my comments about monopoly rents.

5     Q     And have you -- strike that. I'm sorry.  
6       Similarly, have you conducted any analysis of  
7       your own with regard to the earnings that  
8       Limited has achieved with regard to its parking  
9       department or its barge department?

10    A     No. I was not asked to look at that.

11    Q     I'm going to ask you a little bit, Dr. Wright,  
12       about your -- the testimony you rendered about  
13       impediments to competitors. And the phrasing  
14       that you used was that there are numerous  
15       serious impediments to competition developing  
16       for the parking. Do you recall that? Have I  
17       fairly characterized that?

18    A     If you could refer me to the page.

19    Q     I sure could. 20, line 5 through 11 of your  
20       rebuttal.

21    A     Oh, in the rebuttal?

22    Q     Yes, sir.

23    A     You'll have to give me a minute because --

24       MR. TRATHEN: Madam Chair, if I could

1 interject here. Dr. Wright is here to testify with  
2 regards to his direct testimony. He will be coming  
3 back for his rebuttal. There's been a number of  
4 questions about his rebuttal testimony and I've let  
5 those go, but I guess I would inquire if we're going  
6 to do both -- I don't want to have him on rebuttal  
7 twice. If we're going to do rebuttal now, let's do  
8 rebuttal now, but --

9 COMMISSIONER BROWN-BLAND: He's coming  
10 back on rebuttal. I prefer that the rebuttal  
11 questions be saved for rebuttal. If you need to lay  
12 a little foundation, you want to ask him to comment  
13 to some limited extent, I'll allow that. Otherwise,  
14 limit your questions to his direct testimony at this  
15 time, Mr. Risinger.

16 MR. RISINGER: And from the Chair's  
17 perspective, would we have a full opportunity to  
18 question the witness with regard to his rebuttal  
19 testimony when he returns and --

20 COMMISSIONER BROWN-BLAND: Yes.

21 MR. RISINGER: And what if he doesn't  
22 return?

23 COMMISSIONER BROWN-BLAND: He is coming  
24 back on rebuttal is my understanding.

1 THE WITNESS: I'll be surprised too if I  
2 don't come back.

3 MR. RISINGER: I would too, right? Do you  
4 know something we don't. It'll be bad.

5 BY MR. RISINGER:

6 Q Let me ask you a general -- along those lines,  
7 let me ask you a general question about those  
8 propositions without questioning you on the  
9 direct propositions regarding the impediments.  
10 Fair enough?

11 A Okay.

12 Q The --

13 A As long as my counsel doesn't object.

14 Q With regard to competition emerging an  
15 established provider of a good or service,  
16 would a potential competitor likely have to  
17 consider the room that the existing provider  
18 left for it to make a profit, you know,  
19 whether -- here, whether the availability or  
20 the pricing or any other factors that you may  
21 wish to ascribe to, would the competitor have  
22 to evaluate that in assessing its opportunity  
23 to provide competition?

24 A Certainly it's -- I mean, it's only common

1 sense that before you go in and start a  
2 business, that you understand what the market  
3 is, what your pricing structure will look like,  
4 and what your costs are going to be. So all of  
5 those are considerations.

6 Q The remainder of my questions regard your  
7 rebuttal testimony.

8 A Okay.

9 Q I will save them.

10 COMMISSIONER BROWN-BLAND: All right.  
11 Since we started on this side, I'll go ahead and ask  
12 SharpVue.

13 MR. FERRELL: I just got one or two brief  
14 questions.

15 COMMISSIONER BROWN-BLAND: Go ahead.

16 CROSS EXAMINATION BY MR. FERRELL:

17 Q Dr. Wright, did I hear you correctly that you  
18 said that it is your opinion that these --  
19 this parking asset should be regulated now.  
20 And then if competition comes, it would then be  
21 deregulated?

22 A That's a potential thing. This is what -- what  
23 I read from SharpVue or from the comments from  
24 the other side, was that, you know, competition

1 can come. Well, when I became a regulator back  
2 in '85, it was right after Judge Green had  
3 broken up AT&T and the BellSouth companies. So  
4 we went through this whole series of hearings  
5 for years and years about implementing  
6 competition at the telephone industry. At the  
7 same time, we were implementing competition  
8 into the gas industry. And then at the end of  
9 my term on the Commission, they began to look  
10 at competition in the electric industry. And  
11 what I found out then, and what I will repeat  
12 now, is that while competition can come, until  
13 it's there, you don't deregulate.

14 I will give you an example, and  
15 I think I used this in my direct testimony.  
16 Telephone handsets, when I first came on the  
17 Commission, were regulated. Now, most young  
18 people can't even use a telephone hand set now,  
19 but we were charging a dollar a month on  
20 average for those handsets, and they were  
21 leased. People could not own them. They were  
22 leased. Then Radio Shack was the first people  
23 that we knew about who started trying to sell  
24 these telephone handsets. And eventually, it

1 became very competitive, so we took that dollar  
2 a month charge off and the telephone companies  
3 now they'll sell you a phone and you can go buy  
4 one at Kroger if you don't just use your cell  
5 phone.

6 So what I was talking about in  
7 that is that when you have a regulated  
8 industry, the time to deregulate is not oh,  
9 comp -- it's not when or if competition can  
10 come. It's the day you have significant  
11 competition. It's not whether or not  
12 competition can come, but is it here. So  
13 that's what I was referring to.

14 Q And just so the record is clear, your testimony  
15 is that you think they should be regulated now,  
16 and if there's competition later, they would  
17 then be deregulated?

18 A They could look at the deregulation at the  
19 time. I'm not saying they should be. I'm  
20 saying that that's the proper -- if I'm mis --  
21 if you misunderstood me, what I meant to say is  
22 that's the proper time to look at deregulation,  
23 is when you start to get the competition, not  
24 if there can be competition.



- 1 Q And I believe your testimony is also that you  
2 didn't look at the availability in the rates  
3 being charged for parking to determine whether  
4 or not they're reasonable in a way that there  
5 was no incentive for there to be competition  
6 with this parking. Is that correct?
- 7 A That's correct. I did not look at the rates  
8 and asked, you know, that question. I was not  
9 asked to look at that.
- 10 Q And were you in the room when Commissioner  
11 McKissick was asking a prior witness about the  
12 Indigo Plantation parking facilities?
- 13 A Yes.
- 14 Q Okay. And were you also in the room when  
15 Commissioner McKissick asked the witness about  
16 the property that's for sale across the street?
- 17 A Yes.
- 18 Q Is it correct that you've not investigated the  
19 property across the street and talked to the  
20 real estate broker, otherwise investigated how  
21 that property could be used?
- 22 A No, that's not quite correct.
- 23 Q So what investigation of that property have you  
24 done?

1     A     Well, I looked at the MLS service and I  
2           actually visited the Deep Point facility. And  
3           I, you know, drove over there and looked across  
4           the street and everything. The property across  
5           the street is now, as I understand it, under  
6           contract, and it was for sale for -- I believe  
7           it's 3.25 million. It's in my testimony. That  
8           property has a lot of trees on it. It would --  
9           I think just from my knowledge of clearing  
10          land, it would be expensive to clear. And  
11          could somebody build a parking lot there if  
12          they wanted to? I guess they could. Are they  
13          building a parking lot? I don't know, but it's  
14          not there.

15                         And with respect to Indigo  
16          Plantation, I heard Commissioner's questions.  
17          I actually Google Mapped it when I was down  
18          there at Deep Point. It's 3.6 miles according  
19          to Google Maps. Well, then, my friends and I  
20          left Deep Point and drove over to Indigo  
21          Plantation. I wanted to look at it. You drive  
22          a ferry -- it's not a straight route. There's  
23          no straight way to get there. You go through a  
24          couple of neighborhoods. You go through a

1        little bit of commercial area, a couple stop  
2        signs, a couple red lights. Then you go past a  
3        school, and then you get into Indigo  
4        Plantation. You wind around, and you get down  
5        to the Indigo Plantation parking lot and the  
6        old dock areas there. It took us between 12  
7        and 15 minutes to get over there, and that was  
8        not on a busy day. And thank goodness there  
9        was not school getting in or out because we  
10       would have waited on school buses. Because  
11       like I said, I passed a school.

12                        The Indigo Plantation, I don't  
13       see as a viable option. So when you asked was  
14       I in here for those discussions, yes. And I  
15       did actually go look at it, and I did go across  
16       the street and sort of looked at that property.

17    Q       And you agree, don't you, that the offering of  
18       parking is not a utility, correct, just in and  
19       of itself?

20    A       The real answer is yes and no. The Utility  
21       Commission, we don't realize it at the time,  
22       but every -- I'd say almost without exception,  
23       every single electric generating station in  
24       this state that's being regulated has parking

1           that's in the rate base. We don't know it at  
2           the time because you just -- it's not one of  
3           those major items that you look at and it's  
4           almost intuitive. Well, the employees need to  
5           park somewhere.

6                       When you build an electric  
7           generation station, you need a lot of land,  
8           especially for the nuclear. And so when you go  
9           to the electric generation station, when you  
10          enter through the front gate, you could drive  
11          anywhere from a half a mile to a mile or two  
12          just to get to the plant. So they have parking  
13          facilities for their employees. So while it's  
14          surprising, there is parking that is actually  
15          in rate base and thus regulated by this  
16          Commission.

17    Q     In your review of the Indigo Plantation parking  
18          facilities, did you undertake any study of how  
19          many parking places were there or how a tram  
20          service would work from Indigo Plantation to  
21          Deep Point? I recognize it's your testimony  
22          that, you know, it's a 10 to 12- minute drive  
23          and not something you think is appropriate, but  
24          did you analyze the details of how that would

1 work as a part of your analysis?

2 A Well, first off, I said 12 to 15 minutes. It  
3 was 3.6 miles and --

4 Q That's what I meant. Thank you for correcting  
5 me, 12 to 15 minutes.

6 A And yes, I got out and looked at the parking  
7 lot. I actually took pictures. There were two  
8 or three lots, and they were overgrown. They  
9 would have to be cleaned off. I doubt they  
10 were a third the size total of the Deep Point  
11 facility. So they would have to be expanded  
12 greatly, and there was a bunch of trash and  
13 stuff. It looked like somebody had been  
14 rebuilding docks, and they had a bunch of trash  
15 from floating docks that was -- in one of the  
16 parking areas. So could it be used as a  
17 substitute? I don't see how. It would be a  
18 lot of work to get it up to speed, so to speak.  
19 You would have to expand it, and then you would  
20 have to provide some sort of a shuttle service  
21 12 to 16 hours a day, so it just -- it's not to  
22 me a practical solution. Could it be a  
23 potential solution? Yes, but the service  
24 wouldn't be as good.

1 MR. FERRELL: No further questions, and I  
2 apologize for going over five minutes.

3 COMMISSIONER BROWN-BLAND: All right.  
4 Mr. Higgins.

5 MR. HIGGINS: Thank you.

6 CROSS EXAMINATION BY MR. HIGGINS:

7 Q Dr. Wright, did you file testimony on behalf of  
8 the Village and the BHI Club and the  
9 Association in the 2010 Rate Case?

10 A Yes.

11 Q And did your prefiled testimony in that docket  
12 advocate that the Commission, back in 2010,  
13 regulate parking operations at the Deep Point  
14 Ferry Landing?

15 A I believe I did, yes.

16 Q And was that on the basis that it was an  
17 integral ancillary part of the ferry service  
18 offered by BHI Transportation?

19 A Yes.

20 MR. HIGGINS: I'm going to ask, Madam  
21 Chair, that an exhibit be marked as Cross Wright  
22 Cross Number 1.

23 COMMISSIONER BROWN-BLAND: All right.  
24 This exhibit will be marked as Club Wright

1 Cross-Examination Exhibit 1.

2 (Whereupon, Club Wright  
3 Cross-Examination Exhibit 1  
4 was marked for  
5 identification.)

6 Q Mr. Wright, if you would turn to page 6 of page  
7 number 6 in this exhibit.

8 A I'm there.

9 Q Would you please read the section that starts  
10 at line 18 on page 6.

11 A "Parking for ferry passengers' vehicles at the  
12 Deep Point Ferry Terminal parking lot is an  
13 integral part of the ferry service offered to  
14 the public by BHIT and it should be treated as  
15 part of BHIT's regulated public utility  
16 service." Is that enough?

17 Q Well, next sentence, please, sir.

18 A "Consequently the revenues and expenses  
19 associated with the parking operations at Deep  
20 Point should be considered as part of the  
21 regulated business as opposed to the current  
22 situation where all parking lot revenues and  
23 expenses flow to be BHIT's unregulated parent."

24 Q And is it true, Dr. Wright, that the Rate Case

1 application in that docket was resolved by a  
2 settlement agreement among the various parties  
3 and the Public Staff?

4 A Yes.

5 Q And you've been in the room for the last day or  
6 so, and so you're aware that the settlement  
7 agreement -- in the settlement agreement,  
8 Limited agreed to the imputation of  
9 approximately \$523,000 of parking revenues to  
10 the ferry operation annually?

11 A That's correct.

12 Q And do you also understand that it's true that  
13 the settlement agreement left the issue of  
14 regulation of the parking operation unresolved?

15 A That's correct.

16 Q The regulation of the parking at Deep Point is  
17 not something that the Village or anyone else  
18 has raised for the first time in this docket,  
19 is it?

20 A Oh, no, this is not the first time.

21 MR. HIGGINS: All right, sir. I don't  
22 have any other questions for you.

23 COMMISSIONER BROWN-BLAND: All right.

24 Redirect?



1 REDIRECT EXAMINATION BY MR. TRATHEN:

2 Q Dr. Wright, Mr. Risinger asked you about  
3 monopoly pricing and monopoly rents. I want to  
4 follow up on that just briefly. Do you  
5 understand that the developer is currently the  
6 owner of parking in the barge?

7 A Yes.

8 Q In the instance with the developers, the owner  
9 of the parking facility, would you think that  
10 that might serve as a downward constraint with  
11 regards to pricing for that service?

12 A Are you asking me if the same owner of the  
13 barge and the passenger, and the parking  
14 facility is that passenger facility put in a  
15 downward constraint on the pricing?

16 Q Yes. So what I'm asking is the developer has  
17 an interest in developing the island, correct?

18 A Oh, yes, that's correct. Oh. Got it now.

19 Q Didn't mean to trip you up. I should have  
20 given you a -- walked you through this. And in  
21 that situation where the developer is also  
22 actively developing the island, do you believe  
23 that serves as some sort of constraint with  
24 respect to pricing?

1     A     Absolutely.  If a developer is developing the  
2           island or subdivision or whatever, then it is  
3           in their best interest to provide access to  
4           that island or the subdivision that is easy and  
5           reasonable in order to build out the  
6           subdivision or the island, as it were, and he  
7           has that vested interest.  Once these assets go  
8           to another entity, their interest is going to  
9           be slightly different.  If they are not  
10          involved in developing the island, their  
11          interest is in increasing their products.  Not  
12          that that's wrong.  That's just where their  
13          interest lies now, so it's not necessarily the  
14          same as the developer's interest in developing  
15          the island.  So they do have different  
16          interests or different things that they're  
17          looking at.

18     Q     If a private equity firm was to acquire the  
19           Parking and Barge operation, who does a private  
20           equity firm owe their obligations to?

21     A     They owe their obligations to their partners  
22           and/or their shareholders.

23     Q     And in the absence of regulation, they would  
24           know obligations to ratepayers.  Is that right?

1       A       They have no obligation to the ratepayers, to  
2               the residents, to the workers on the island.  
3               Their obligation primarily, I think, from a  
4               financial standpoint, is to their partners and  
5               their shareholders.

6       Q       Now, Mr. Risinger asked you about the  
7               Commission's ability to fashion relief in the  
8               context of the transfer proceeding. So I want  
9               to follow up on that. Can the Commission make  
10              a jurisdictional decision with respect to  
11              parking in the barge in the context of a  
12              transfer proceeding involving only the ferry  
13              and the tram?

14             MR. RISINGER: Objection. That calls for  
15             a legal conclusion beyond the witness' testimonial  
16             scope.

17             MR. TRATHEN: The witness is an  
18             experienced regulatory consultant, having served on  
19             the Commission. I'd ask him to the extent that he  
20             has an opinion on this topic.

21             MR. RISINGER: In fairness, the witness is  
22             being asked to pour himself into the seat of the  
23             Commission with regard to such decisions well beyond  
24             his capacity.

1           COMMISSIONER BROWN-BLAND: I'll overrule,  
2 and he can answer to the extent of his opinion and  
3 his experience.

4     A     The Commission certainly has a lot of  
5           authority. I don't know how they would claim  
6           such jurisdiction, but potentially, they could  
7           put some sort of pressure on the parties  
8           because the parties are affiliated. The  
9           parking and the barge is affiliated under the  
10          same holding company as the tram and the  
11          passenger ferry. Could they bring some sort of  
12          pressure potentially? But I'm not sure how  
13          they'd do that because the Commission has to  
14          operate within certain guidelines of openness  
15          and fairness, and I just don't know how they'd  
16          bring such pressure. Could the Commission  
17          Staff ask for it? Possibly. It's an  
18          interesting question that I'm not sure that  
19          they have the power to do so, though they may  
20          wish to do so. I guess that's the best way I  
21          can answer it.

22     Q     Mr. Ferrell asked you a question about whether  
23           parking is a utility service. And I guess my  
24           question is in the context of this case, you've

1        offered testimony about that. What facts, just  
2        to be clear, lead you to the belief that the  
3        parking facilities could be treated as utility  
4        assets?

5        A    Well, the first fact that I do this -- talk  
6        about this in my testimony is anything that's  
7        an ancillary service to a utility can be  
8        regulated by this Commission, so you've already  
9        got the utility being the passenger ferry. So  
10       they asked the question was the parking an  
11       ancillary service. An ancillary service  
12       generally means is it a necessary and integral  
13       part of providing the ferry service. And as I  
14       go through in my testimony, I think the  
15       question is undeniably yes. It is a necessary  
16       and integral part of providing the ferry  
17       service.

18                        Then I also addressed the fact  
19       that there is a second way that the Commission  
20       can claim regulatory jurisdiction, and that is  
21       under the -- in Chapter 62, there's a thing  
22       that talks about if any person -- and it  
23       talks -- basically refers to a holding company  
24       is -- has any affect on the rates for services

1 of a public utility of that affiliated holding  
2 company, then you have -- and that becomes a  
3 utility and you have jurisdiction. Well,  
4 there's no question that the parking has an  
5 affect on both the service and the rates  
6 passenger ferry. I mean, you're imputing  
7 \$523 million of revenues over there so you're  
8 affecting the rates. Does it affect the  
9 service? Yeah. You can't park anywhere else.  
10 I mean, so there's no question that it becomes  
11 a regulatory asset, or should be a regulatory  
12 regulated asset or regulated affiliate of the  
13 Deep Point passenger ferry.

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

16 COMMISSIONER BROWN-BLAND: All right.  
17 Questions from the Commission. Commissioner  
18 Clodfelter.

19 EXAMINATION BY COMMISSIONER CLODFELTER:

20 Q Dr. Wright, just a couple questions for you.  
21 The first questions are -- relate to some  
22 informational -- pages 43 and the top of page  
23 44 of your direct testimony. A lot of the  
24 information you've got there has be marked

1 confidential. I want to ask you some questions  
2 and I don't think it'll require disclosure of  
3 that confidential information, but it's going  
4 to be about what you did, essentially the  
5 analysis that you did.

6 You referred to the Mercator  
7 report in describing the business of the barge  
8 operation there. Mercator pointed out that not  
9 only do they provide the roll-on roll-off  
10 service, but they also -- the barge also  
11 carries what they call deck goods or loose  
12 household goods. Are you familiar with that?  
13 Is that consistent with your examination of the  
14 barge operations?

15 A Well, when I examined the barge operation, what  
16 I did is I drove over and looked at the  
17 service, and then I looked at the logs of the  
18 barge to see what they were carrying. And I  
19 saw the barge, the barge service pass this,  
20 actually, when I was on the ferry. So what I  
21 am -- my investigation said okay, are they  
22 performing an operation that's carrying  
23 household goods or passengers, and a  
24 passenger -- you got vehicle drivers, so those

1 are passengers. And there's no question when  
2 you look at the logs, what's carried on the  
3 barge, that they're carrying household goods.

4 Q Well, let me sharpen the question there.

5 A Okay. I'm sorry.

6 Q No, you're fine. You're giving me the context  
7 of what you did. What I'm really trying to  
8 find out is whether the analysis you did  
9 enabled you when you examined the logs and  
10 looked at the entries on the logs, did it  
11 enable you to determine which of those entries  
12 involved goods that were contained in a  
13 vehicle, and which of those involved goods that  
14 were what Mercator calls loose deck goods or  
15 deck freight?

16 A I'll have to refer to my --

17 Q Do you recall whether the entries enabled you  
18 to distinguish between the two of those?

19 A I don't think they did. I think they just said  
20 household goods or -- let me refer to that.

21 Q Again, I'm not asking you about the numbers  
22 that are listed as confidential. I'm just --  
23 the character of the information is what I'm  
24 interested in.



1 A Well, let me turn to my exhibit and I think I  
2 can answer best by -- if you refer to my  
3 Exhibit 12 --

4 Q Yes, sir.

5 A -- what I was looking at is the third column,  
6 the use, and you'll see that that first page of  
7 that exhibit, it's got furniture and appliances  
8 as a highlight, and then you keep going. I  
9 didn't look at the type, but if you look at the  
10 type, I guess you could determine if it was on  
11 a pick-up truck or if it was a golf cart or if  
12 it was a roll-off. So, I mean, you could, I  
13 guess, discern a little more information, but I  
14 was trying to find out were they carrying  
15 household goods. And --

16 Q You're analysis, though, didn't distinguish  
17 different types of carriage --

18 A No, I didn't.

19 Q -- or containerization?

20 A No, I didn't.

21 Q It did not. That's all I was trying to find  
22 out.

23 A That's correct. Okay.

24 Q All right.

1 A But if you wanted that information, it may be  
2 in that fourth column.

3 Q In the fourth column headed "type"?

4 A Yes. That may answer your question if you  
5 wanted to dig a little bit further about that,  
6 but --

7 Q I understand it's a fairly lengthy exhibit and  
8 I know what the task involved. I'm just trying  
9 to find out if you had done that task. That's  
10 all.

11 A Yes.

12 Q Okay. In your examination of the barge  
13 operations, I want to ask you a hypothetical  
14 and see whether this was something you looked  
15 at or considered. Suppose the barge operation  
16 did not have access to the marine maintenance  
17 facilities that are owned by Bald Head Island  
18 transportation but had to secure maintenance  
19 for the barge and the tugboats from some other  
20 source. Do you have any information or did you  
21 make any determination about whether they could  
22 secure maintenance services for the tugs and  
23 the barge anywhere else in the Southport area,  
24 either on a, you know, contract basis or an

1 alternative acquisition of a facility?  
2 A I was not asked to look at the question, but I  
3 believe I can answer you about whether that  
4 would be possible because I was -- I lived in  
5 Wilmington for about 12 years and was a state  
6 senator down there for three terms. Up the  
7 Cape Fear River, there's a significant number  
8 of maritime type of operations, and they have a  
9 lot of roll-on roll-off shipping that comes in  
10 and out of that port.

11 They have a lot of tugboats up  
12 in the Wilmington area. I'm sure that those  
13 tugboats don't come down and use the Deep  
14 Point, you know, facilities for repairs. There  
15 are repair facilities right there in  
16 Wilmington. Also, there's a lot of marine  
17 fishing and there used to be your shrimp boats  
18 down in the Southport area which are almost  
19 like tugs, but there's a lot of maritime or  
20 marine industry stuff in the Southport area.  
21 So depending on what type of maintenance, I'm  
22 sure they could probably get it over there in  
23 the Southport area if it was, you know, someone  
24 to work on a diesel engine or what have you.

1 I'm sure there's a lot of services there. So  
2 between the two, could they find services  
3 outside of just Deep Point? Probably, because  
4 that's a pretty big maritime area in that whole  
5 general facility.

6 Q Thank you, sir.

7 COMMISSIONER CLODFELTER: That's all I  
8 have.

9 COMMISSIONER BROWN-BLAND: Commissioner  
10 Duffley.

11 EXAMINATION BY COMMISSIONER DUFFLEY:

12 Q Good afternoon. So I just wanted to follow up  
13 on one of Commissioner Clodfelter's question  
14 and just clarify, for the record. In part of  
15 your testimony, you talked about the passengers  
16 as well as different type of rate go- over on  
17 the barge, but passengers do not pay for that  
18 ferry ride to the island, correct? It's just  
19 incidental. They sit in the cab of the truck  
20 that they bring on or roll on the boat or  
21 whatever incidentals that they pay for the  
22 space on the barge. Is that correct?

23 A They don't pay separately, but is that part of  
24 the fees? I just don't know, but they

1           certainly don't pay separately.

2       Q     Okay. Thank you. So I heard you testify when  
3           you were talking about jurisdiction over a  
4           parking entity and you entitled it jurisdiction  
5           over a regulated affiliate, and I just wanted  
6           to drill down a bit into that to see how you  
7           view -- what is the extent of that regulation.

8                         So if the Commission were to  
9           assert jurisdiction over a regulated affiliate,  
10          would you assume that they would -- it would be  
11          full rate regulation that they would need to  
12          come in for rate cases or is it something less?  
13          Would it just be regulation for specific use  
14          purposes or just for specific sale purposes?  
15          When you say regulation of a regulated  
16          affiliate, what do you mean?

17       A     Well, let me answer that by saying what I think  
18           you should do with the parking, and then also I  
19           can give you some examples of regulation of  
20           affiliates when I was a Commissioner. I think  
21           with the parking, the Commission should assert,  
22           and with the barge, that they should be part of  
23           the regulated utility. Now, do they need to go  
24           in and begin to regulate the rates immediately

1 or do they just accept the current rates and  
2 then sometime in the future, if there's a rate  
3 filing, they can look at the rate then? So you  
4 can assert jurisdiction of the facility without  
5 having a full-blown rate case at the current  
6 time. So you could do that or you could  
7 require them to file a rate case.

8 In terms of how the Commission  
9 has done other things, I can give you the  
10 example of the Yellow Pages. We actually --  
11 when I was a Commissioner, we were regulating  
12 the Yellow Pages, but then BellSouth came to us  
13 and said, "Well, other people are offering  
14 competitive Yellow Pages. Let us move this out  
15 of BellSouth and move it to BABCO. It would  
16 still be under BellSouth Holding Company, but  
17 it would be called BABCO." I forget what the  
18 acronym stands for, and it'll be unregulated.  
19 And when you said, "Well, that's fine. You can  
20 do that, but we're still going to assert  
21 jurisdiction and we're going to impute revenues  
22 from those Yellow Pages back over to the  
23 regulated telephone services. And we're going  
24 to still do that, and we're going to regulate

1 complaints," so it wound up with sort of a  
2 strange situation where we were not regulating  
3 the rates that BABCO set for the Yellow Pages  
4 adds. They could set those rates whenever they  
5 wanted to, but we did regulate -- we did hear  
6 complaints. Usually, it was the Public Staff  
7 listening to them, but we had some that reached  
8 the Commission. And we also imputed revenues  
9 for a number of years over to the regu -- to  
10 the still regulated service, so there are a  
11 number of ways you can move forward with this  
12 as opposed to immediately having a rate case  
13 and setting those rates, but that's -- those  
14 are the options that I see. And I think having  
15 regulatory authority over these assets or these  
16 two affiliates, I think, is very important.

17 Q Okay. I'm just going to ask a follow-up on  
18 that. So with respect to the BellSouth example  
19 that you gave with the unregulated affiliate,  
20 you're saying that the service quality was  
21 regulated as well as you imputed revenues, but  
22 that was the extent of the regulation?

23 A Yes, because at that time, there were  
24 competitive offerings out there. People were

1 beginning to print a non-BellSouth-owned Yellow  
2 Pages. Now a lot of cities didn't have it, but  
3 say Charlotte would or Raleigh would, but they  
4 were called competitive Yellow Pages. I don't  
5 know if you remember that. You look like  
6 you're probably too young to remember that, but  
7 I remember getting --

8 Q You're very kind. I remember it, but yes.

9 A But that's what was happening. If I could go  
10 -- if that answers your question, I'd like to  
11 go back to your first question about paying  
12 separately.

13 Q Yes. Go ahead.

14 A Right now, I don't know of them paying  
15 separately, but nor do I know of the other  
16 ferry services in this state. Some of which  
17 are regulated, some of which are owned by the  
18 DOT where the drivers of vehicles, including  
19 trucks, who get onto those ferries, I don't  
20 think they pay separately for those drivers  
21 either. And the same is true, I think, for  
22 other ferry services. The one I looked at  
23 their rates was in Rhode Island. The drivers  
24 did not pay separately. They paid for the



1 truck or the car, but they didn't pay  
2 separately for the driver riding.

3 Q Okay. Getting back to the Yellow Pages example  
4 of the unregulated affiliate, do you know if  
5 that unregulated affiliate wanted to sell the  
6 Yellow Page company, the Yellow Pages asset,  
7 what was the regulation over that? Would there  
8 be any regulation by the Commission over that  
9 unregulated affiliate to sell?

10 A Yes. They would not be allowed to sell a  
11 utility asset. The only thing that really  
12 wasn't regulated were the rates they were  
13 charging for the advertising in the Yellow  
14 Pages. That was really what was unregulated.  
15 It was moved into what we called and  
16 unregulated affiliate. But when I first became  
17 a Commissioner, this whole issue of  
18 deregulation of the telecommunications  
19 industry, it was blowing up in our face. And  
20 there were a lot of services that people began  
21 to say well, this should be unregulated. And  
22 we also had the natural gas industry being  
23 deregulated, and they were saying the same  
24 thing. And so you had these holding companies

1       where they were beginning to offer like the  
2       Yellow Pages, but they also offered engineering  
3       services, and they would be deregulated. And  
4       so we were looking at a lot of issues about  
5       these unregulated affiliates, but it was clear  
6       all that time you're still under this umbrella  
7       of this regulated company, and we can regulate  
8       your rates and services. With the Yellow  
9       Pages, because they had competitive options  
10      that were truly competitive, competitive Yellow  
11      Pages, we didn't regulate the advertising, but  
12      we did impute the rates.

13               COMMISSIONER DUFFLEY: Okay. Thank you.

14      I have nothing further.

15               COMMISSIONER BROWN-BLAND: Commissioner  
16      McKissick.

17      EXAMINATION BY COMMISSIONER MCKISSICK:

18      Q       Just a couple of questions. And I appreciate  
19               your testimony today, so thank you for being  
20               here. During your initial testimony, you  
21               talked about monopoly rents, and monopoly rents  
22               could be extracted, the monopoly ownership  
23               situation. Do you recall --

24      A       Yes.

1 Q -- giving a statement to that effect? Is there  
2 any evidence, based upon the present ownership  
3 situation, that there's been an effort made to  
4 maximize an opportunity to get monopoly rents?

5 A No, but understand that in the 2010 Rate Case,  
6 there was a stipulation.

7 Q Um-um.

8 A And I was involved. And to some extent because  
9 I was in one of the rooms, and there were  
10 negotiations going on in the other room. So  
11 the parking and all those issues were sort of  
12 thrown in the mix, and the parties came out  
13 with a stipulation which included a freeze on  
14 the price of the parking. You know, I don't  
15 know of anything where the parties have tried  
16 to extract monopoly rents, but that is not to  
17 say that that wouldn't happen in the future.  
18 And they've, you know, reached a stipulation.  
19 And at that time, the parties that owned the  
20 Ferry System, the passenger ferry and Deep  
21 Point, they were still developing the island.  
22 They had a real strong incentive to get as many  
23 people as they could to that island to want to  
24 buy something on that island, and to make it a

1 very easy, nice thing to do -- you know, to  
2 do, use the Ferry System, use the parking  
3 system. This makes the island very accessible  
4 and very desirable. Those things may change  
5 with new ownership because they no longer are  
6 developing -- those new owners may not be  
7 developing the island, so that's part of this  
8 whole concern.

9 Q I respect that and I understand that. At the  
10 same time, I mean, it's -- even under current  
11 owners situation, if it continued being  
12 developed as it has been in the past, at  
13 build-out under your hypothetical, more or  
14 less, the person who has those assets is under  
15 control and they can set the rates, would be  
16 free to set them where they wanted to or they  
17 might have subsidized them in the past. And  
18 would that not -- and would you see that being  
19 problematic?

20 A Well, I see it being problematic because of  
21 parking and the barge are both monopoly  
22 services. And if you're looking at how  
23 monopolies would price their service, both in  
24 real terms and theoretically, they price it up

1 to the point that they have that inelastic  
2 demand until that demand starts to diminish to  
3 the point that it begins to hurt their  
4 profitability. So could they raise their  
5 prices above what they would have in a  
6 competitive market? Yes. Could they raise  
7 their prices of what they would have in a  
8 regulated situation? Yes, they could.

9 And I'm not saying they have,  
10 I'm not saying they will. I'm just saying they  
11 certainly could, and they have an incentive to  
12 do so because it would increase their profits.

13 Q And let's take that a step further. Let's  
14 assume that were to theoretically occur. If  
15 you had a lot down there, that's a vacant lot  
16 that's across from where Deep Point terminal is  
17 or you still had the land out there that was  
18 formally part of Indigo, would you logically,  
19 reasonably assume if those rates reached that  
20 point, that someone would develop it and  
21 provide alternative parking? Would that not be  
22 a logical conclusion if they were pricing it  
23 too high?

24 A What you're suggesting is that there is a

1        substitute product possibility. The lot across  
2        the street is under contract to be sold. I  
3        don't know what it's going to be developed as.  
4        I can tell you that sort of right next door  
5        towards Southport, there's a subdivision that's  
6        been developed. I don't know what they're  
7        going to develop across the street. If they  
8        develop a subdivision that's no longer  
9        available as a potential substitute, is Deep  
10       Point, in that facility, a potential  
11       substitute? It could theoretically be, but I  
12       don't think that's practical because I've tried  
13       to go down there and look at it. I'm not sure  
14       they have enough land to be a substitute. And  
15       even if you built it, you're going to have to  
16       provide, you know, some sort of a shuttle  
17       service. So it's going to be quite expensive  
18       to go out and build out that Indigo Plantation  
19       and then provide that shuttle service,  
20       especially when -- you have a situation where  
21       this ferry and the operations are very  
22       seasonal.

23                        Now, I live in Atlanta. If you  
24       go to the Atlanta airport, there's about 10 or

1 12 off-site parking facilities. So you can  
2 park in the Atlanta airport parking lot where,  
3 you know, the rates are controlled by the  
4 Atlanta Airport Authority. They are regulated,  
5 or you could park offsite. The Atlanta  
6 airport's the busiest airport in the world or  
7 second busiest. 50- something million people a  
8 year go through that airport, so -- and its all  
9 -- I mean, it's from 5 o'clock in the morning  
10 til 2:00 a.m.

11 This is not the situation with  
12 this Bald Head Island Ferry. It's very  
13 seasonal. Therefore for somebody to think  
14 well, I'm going to go build a competitive  
15 service, it's going to be quite -- there's a  
16 lot of issues, including the seasonality and  
17 the expense and the shuttle service that make  
18 it quite difficult, which is one of the things  
19 monopolies like, is that there's not only just  
20 not a substitute, but it's hard to enter the  
21 service.

22 Q And let me ask you this. The track of land  
23 that's across the street, do you recall its  
24 approximate acreage?

1 A I was trying to recall that. I think it was  
2 about 106 acres and sold for 3.25 million, so  
3 that's about 30,000 an acre, which is -- from  
4 where I come from, for undeveloped land that's  
5 sort of out in the middle of no where, that's  
6 pretty expensive.

7 Q So it's about 106 acres.

8 A [Nods in the affirmative]

9 Q And do you know the acreage of the existing  
10 parking area that's --

11 A 36, as I recall.

12 Q That's what I recall too. So it's about three  
13 times the size.

14 A Yes.

15 Q And what's the size of the lot down there in  
16 Indigo?

17 A I didn't have any way to measure it.

18 Q Sure.

19 A But they have two or three different. I mean,  
20 they're like across the street from each other.  
21 There may have been four or five, but there  
22 were several. I think I went to two. There  
23 may have been one that we just drove by, but I  
24 can tell you it's probably not more than a



1           third as big. Now, how much other land they may  
2           have there, I do not know.

3    Q     You do not know. So you have no idea how many  
4           spaces could be provided and --

5    A     It would be much smaller than Deep Point right  
6           now.

7    Q     Much smaller than --

8    A     Unless they have other land that they can  
9           develop, it'd be much smaller.

10   Q     Okay.

11   A     By much, I'm saying at least 50 percent  
12           smaller. I mean, no more than half the size,  
13           probably no more than a third.

14           COMMISSIONER McKISSICK: Well, I  
15    appreciate your testimony. I have to get some sense  
16    of scales, scope, proximity, geographically having  
17    not traveled down there to observe the site, so I  
18    appreciate your testimony.

19           THE WITNESS: Thank you, sir.

20           COMMISSIONER McKISSICK: Thank you.

21           COMMISSIONER BROWN-BLAND: Commissioner  
22    Duffley.

23   EXAMINATION BY COMMISSIONER DUFFLEY:

24   Q     So you may not be the proper witness and I may

1 have to ask a different witness, but I wondered  
2 if you investigated water taxis. Throughout  
3 review of the testimony, several people  
4 mentioned the ability of water taxis or the  
5 inability of water taxis. I know that the  
6 employers, when their employees stay too late,  
7 they'll pay for -- and miss the last ferry.  
8 They pay for a water taxi back to the Mainland.  
9 Have you investigated water taxis? What's the  
10 availability of water taxis going to and from  
11 the island? So you may not be the proper witness  
12 and I may have to ask a different witness, but  
13 I wondered if you investigated water taxis.  
14 Throughout review of the testimony, several  
15 people mentioned the ability of water taxis or  
16 the inability of water taxis. I know that the  
17 employers, when their employees stay too late,  
18 they'll pay for a lot and miss the last ferry.  
19 They pay for a water taxi back to the Mainland.  
20 Have you investigated water taxis? What's the  
21 availability of water taxis going to and from  
22 the island?

23 A I can tell you what I've heard, but again, it's  
24 second hand a little bit. So Mr. Gardner, I

1 think, is coming back up and you can ask him.  
2 There was a water taxi that I understand was  
3 running some during the Covid season, and it  
4 was stopped or largely stopped I think, so you  
5 need to ask him about why.

6 COMMISSIONER DUFFLEY: Okay. I'll make a  
7 note of it. Thank you.

8 THE WITNESS: Okay. I'm sorry I don't  
9 have more information.

10 EXAMINATION BY COMMISSIONER BROWN-BLAND:

11 Q Dr. Wright, in your testimony, you've discussed  
12 the Commission's treatment of other car ferries  
13 in the state and also examined some other  
14 state's treatment of passenger or car ferries.  
15 In your investigation, did you find any  
16 evidence as to whether any of those other  
17 ferries typically charged -- how did they  
18 charge? Did they charge by size of vehicle,  
19 weight, type of cargo?

20 A I looked at their fares, but it was  
21 interesting. A lot of the fares were -- seem  
22 to be based on either the length or the  
23 tonnage. And so by that, I took it to mean  
24 that they were all using say one-lane service

1 similar to the service the barge offers. You  
2 drive up, and I think for every six feet, it's  
3 30 or \$60, so they're doing it by length.

4 These other services -- yeah, I  
5 think I have some examples in my exhibits where  
6 you can look -- like the Davis Ferry Service,  
7 I may have their rates in one of my exhibits,  
8 or the campground lookout, I think is what it's  
9 called. I may have their rates. You can look  
10 and it will tell you. But as I recall, they  
11 were either by tonnage or by length.

12 Now, it was interesting in  
13 other states, while they had some of that, I  
14 also found there were some height restrictions,  
15 so that, you know, you could have a 50- ton  
16 truck, but it can't be over eight feet tall. I  
17 don't know how many 50-ton trucks were less  
18 than eight feet tall, but it was interesting  
19 when I found that. And it was for a ferry that  
20 was a double-decker ferry, and it put the  
21 vehicles underneath and everything else on top,  
22 so you could have a large heavy truck but it  
23 just couldn't be too tall.

24 Q Did you see or able to have an opinion or make

1 a determination if one type of charge was the  
2 prevalent or predominant?

3 A I can't tell you because like I said, it was a  
4 mixture of both length and weight.

5 Q Are you able to speak with any specificity  
6 about other state's treatment of ferries or  
7 barges that specifically transport moving  
8 trucks or construction supplies to a  
9 residential island?

10 A Well, they certainly have those. Can I go to  
11 my --

12 Q Were they regulated?

13 A Yes, ma'am. Can I go to my rebuttal testimony?  
14 Or should I do that now or -- because I've got  
15 an exhibit that I think will specifically give  
16 you an example of what you're asking.

17 Q Well, I can -- we could come back to that on  
18 your rebuttal.

19 A Okay.

20 Q And not take up the time right now. So are you  
21 aware of any attempts by the Village -- and I  
22 might have to come back through Mr. Gardner, I  
23 guess, but if you know, are you aware of any  
24 attempts by the Village to appraise or secure

1 land nearby for purposes of serving or  
2 establishing a specific competitor to the  
3 parking services?

4 A No. You'd have to ask him that.

5 Q And do you know of any appraisal or evaluation  
6 that's been done of the parking lot area, the  
7 land that now serves as a parking area, its  
8 appraisal or evaluation without taking into  
9 account being nixed or to a ferry?

10 A I know of the appraisals in the SharpVue report  
11 and the Mercator report. I don't know that  
12 they segregated out the land. I was not asked  
13 to look at that issue, but, again, Mr. Gardner  
14 might know of something like that.

15 Q Do you agree -- as one witness has testified, I  
16 think it was Bald Head Club's witness Sawyer,  
17 but do you agree that there's no reasonable --  
18 not only is there no reasonable alternative to  
19 the barge service, but they're creating another  
20 alternative, would be prohibitively expensive?

21 A I agree there's no reasonable alternative, and  
22 I agree it's prohibitively expensive, and  
23 that's one thing about monopolies. Is that the  
24 entry fee, is what we call it when the cost to

1 get involved, is prohibitive. And that's one  
2 of the reasons you have natural monopolies.  
3 And we call it the electric utilities natural  
4 monopoly because it costs so much to build a  
5 generation plant and build all these  
6 transmission distribution wires.

7 Q So is it true or what would be your opinion  
8 with regard -- does that not offer some support  
9 that the market value of at least that barge  
10 asset has been fairly appraised?

11 A I haven't -- I don't know what it was  
12 appraised at or how. The valuing on a monopoly  
13 is totally different from valuing just a  
14 regular service. So a monopoly that should or  
15 is regulated is valued based on its original  
16 cost versus any increases due to, you know,  
17 things you've added to it or upgrades or  
18 whatever less depreciation.

19 Q And somewhat the same question as to the  
20 parking asset. Would buying land nearby be  
21 extremely costly to create a competitor?

22 A I can only speak to that land that was for sale  
23 across the street. To me, that was -- I'm  
24 pretty sure my math is right. If it was 30,000

1 an acre, that was pretty expensive for -- you  
2 know, for land. I mean, I live in -- outside  
3 of Atlanta in Cartersville, Georgia and I have  
4 a bunch of friends who buy land and sell it.  
5 And they're buying it, undeveloped land for  
6 10,000 to 15,000 an acre, so 30,000 an acre  
7 seems to be like a pretty pricey situation.

8 Then again, it's a desirable  
9 location. That's why the parking lot might be  
10 desirable for a developer down the road. It's  
11 right there on the river.

12 Q Would that offer, at least, some support in  
13 your mind that the Respondents have not  
14 overvalued the parking assets?

15 A It offers support that it's a valuable asset,  
16 and how much it would be worth would be, you  
17 know, based on I guess a market analysis of  
18 the -- if you're just looking at the land, what  
19 the land would cost.

20 COMMISSIONER BROWN-BLAND: All right.  
21 Thank you. Questions on Commission's questions?  
22 We'll start with BHIT.

23 MR. RISINGER: Thank you.

24 EXAMINATION BY MR. RISINGER:



- 1 Q The testimony you were just giving where you  
2 were offering comparisons to a natural  
3 monopoly, in your testimony in this case,  
4 you've conceded that no one's argued this is a  
5 natural monopoly, and you agree it's not a  
6 natural monopoly, correct?
- 7 A It's not natural monopoly, but even in any  
8 monopoly, one of the things that makes a  
9 monopoly different is the entry fee is very  
10 high. The reason I went to a natural monopoly  
11 is because the monopoly we normally think of in  
12 regulation is electric utilities, and that's  
13 considered a natural monopoly. But any  
14 monopoly, usually the cost to get involved is  
15 usually high. There's some, you know,  
16 restrictions there because of the cost.
- 17 Q In your experience, for instance to compete on  
18 parking, is the cost to buy a parcel and cover  
19 it and, you know, pave it and line it, and have  
20 software to operate it prohibitively expensive  
21 such that it would meet the significant barrier  
22 test in North Carolina, in your mind?
- 23 A In many cases, probably not, probably not in  
24 most cases. In this situation, you've got a

1 very unique geographical location and a  
2 limited -- it appears to be a somewhat limited  
3 amount of land. There's not a lot of roads  
4 going in and out, so I think it's a little bit  
5 different. You have to consider all of those  
6 issues.

7 Q On your -- just one more. On your testimony  
8 regarding the Yellow Pages cases and your, you  
9 know, recollections of involvement in them, is  
10 the parking situation here different because,  
11 you know, here there's been no change in  
12 technology, no change in the law. You know,  
13 the market has continued to operate, you know,  
14 with regard to parking the same for 30 years,  
15 and you had all these changes that you were  
16 describing. Doesn't that make the telecom and  
17 the parking situations of those two situations  
18 a little disparate for comparison purposes?

19 A I think the difference is the Yellow Pages,  
20 there were already competitive alternatives.  
21 That's why we allowed them to move over the  
22 Yellow Pages from the regulated services to the  
23 unregulated what we call BABCO. It was Bell  
24 Printing Operation. I don't know why it was

1 BABCO, but that's where they moved it. And we  
2 allowed them to set their advertising rates  
3 where ever they wanted to because there were  
4 competitive -- there was a competitive Yellow  
5 Pages, at least one, in some cases two. But we  
6 still kept them under the whole regulated  
7 umbrella, so to speak, and that we regulated  
8 the complaints. And BellSouth was still  
9 regulated, the telecommunications, and we still  
10 imputed revenues.

11 Q One more, please. I'd like to follow up on a  
12 point that Commissioner Clodfelter raised with  
13 regard to the passenger issue. Have you  
14 undertaken any inquiry into the federal  
15 regulatory regime of barges that classifies the  
16 barge here as a freight barge that doesn't  
17 carry passengers? Have you considered that in  
18 your analysis?

19 A No, but just because the federal authorities  
20 have one asset of the jurisdiction does not  
21 impede this Utility Commission from also  
22 regulating under their terms and conditions.  
23 The same thing holds true in many, many  
24 situations. There's not probably a business in

1           this state that doesn't have regulatory  
2           authority from both the federal and the state  
3           level. This Commission regulates, for example,  
4           Duke Energy. Duke Energy's also regulated by  
5           the Federal EPA and the FCC. So just because  
6           you have one federal regulation that reads one  
7           way does not impede this Commission from doing  
8           its job.

9           MR. RISINGER: That's all I have. Thank  
10          you.

11          COMMISSIONER BROWN-BLAND: Mr. Ferrell?

12          MR. FERRELL: No questions.

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

15          MR. HIGGINS: No, ma'am.

16          COMMISSIONER BROWN-BLAND: All right.  
17          Mr. Trathen.

18          MR. TRATHEN: Yes. Thank you.

19          EXAMINATION BY MR. TRATHEN:

20          Q       Following up on Commissioner Clodfelter's  
21                  questions and you referenced Exhibit JAW-12.  
22                  If you would turn to that. That's the barge  
23                  log excerpt, I believe.

24          A       I'm there.

1 Q Okay. If you would turn to page 6 of that  
2 exhibit, and Commissioner Clodfelter was  
3 inquiring about the mode of delivery of  
4 furniture and appliances, as I understood the  
5 question. If you will look at the yellow  
6 highlighted there, the second and third entries  
7 on page 6 in the typed column, what do you see  
8 there?

9 A Well, it says "box."

10 Q Well, the second and the third. Do you see  
11 "van" right underneath that?

12 A Yeah. There's -- oh, are you talking about the  
13 highlighted entry?

14 Q Yes.

15 A Oh, okay. Yes. One's a box and one's a van.

16 Q And immediately under that one, there's another  
17 van.

18 A And then there's two boxes.

19 Q Yeah. And then going to the next page, just --  
20 I'm not going to go through it all, just a  
21 couple examples here. The next page, you see  
22 two other van examples?

23 A Yes.

24 Q Okay. And so would your assumption be that

1           this was a roll-on roll-off type delivery of  
2           furniture via van?

3    A     Yes.

4    Q     Okay. And this might have been a homeowner.  
5           It just doesn't tell. It gives individual  
6           names in some cases.

7    A     Yes.

8    Q     And did you see the testimony of Village  
9           witnesses Corvin and Munroe where they  
10          testified about bringing household goods  
11          themselves via U-Haul?

12   A     Yes.

13   Q     Now, with respect to Commissioner Duffley's  
14          questions about the drivers of these vehicles,  
15          would you say that there is a basis for  
16          concluding that the drivers are persons for  
17          purposes of North Carolina law?

18   A     Absolutely.

19   Q     Okay. And could you speak to kind of the  
20          underlying question here which is the  
21          regulatory basis for the assertion of  
22          jurisdiction in the area of barges?

23   A     Well, as I say in my testimony, you can  
24          regulate the barge simply on the basis that

1       it's an integral service and a necessary  
2       service supporting the passenger ferry service.  
3       If you don't have the barge to take over the  
4       products, the food, the building supplies, the  
5       appliances, then you have no need for the  
6       passenger services. I mean, it becomes just  
7       somebody will go to Bald Head Island just for  
8       day trips, and they've got to bring their own  
9       food. And I don't know how they would repair  
10      any of the facilities over there.

11               So that's one way to look at  
12      the regulatory jurisdiction. But beyond that,  
13      and the first point I make in my testimony  
14      regarding regulatory jurisdiction, is the fact  
15      that it is a common carrier and when you ask  
16      yourself is it a common carrier subject to the  
17      regulation by this Commission.

18               There are like three, as I  
19      recall, three different reasons it's a common  
20      carrier of three criteria. Number one, is it  
21      held out to the public? Is it providing  
22      service? Yes, it is. There's no question it's  
23      held out to the public as providing this  
24      transportation service. Two, does it carry

1 persons or vehicles? Yes, it does. So there's  
2 no question that it's carrying either persons,  
3 an individual driving the truck, or it's  
4 carrying vehicles. And number three, are they  
5 getting paid for the service? Yes, they get  
6 paid for the service. Under those three  
7 conditions, they become a common carrier. And  
8 as I state -- I guess I'm going to my rebuttal  
9 testimony.

10 Q You can stop there. That's fine.

11 A I'll stop there.

12 Q Okay. So Dr. Wright, you mentioned vehicles  
13 but you also refer to household goods in your  
14 testimony, don't you?

15 A Yes.

16 Q And so -- shifting gears here --

17 A I'm sorry. I think maybe it's household goods  
18 that regulation says. I'm not looking at my  
19 testimony to read that, but it's probably  
20 household goods.

21 Q Okay. And assuming it's household goods, do  
22 you see a basis for concluding that household  
23 goods are being delivered on this, by the  
24 barge?



1 A There's no question it's delivering household  
2 goods there. They're delivering appliances,  
3 they're delivering food, they're delivering  
4 construction material to either build or repair  
5 homes. And, I mean, there's -- they're also  
6 providing services to go repair stuff or build  
7 stuff, so there's no question they're  
8 delivering household goods.

9 Q Okay. And with respect to the reference to  
10 vehicles, can you clarify the point that you're  
11 making there?

12 A Um, well, I'll have to go to my rebuttal  
13 testimony.

14 Q Okay. We can state that. We can state that.

15 A And read what the -- the Statute says there are  
16 three criteria, and I was thinking of one was  
17 vehicles, but maybe it's persons and household  
18 goods.

19 Q We'll save that for rebuttal. I didn't mean to  
20 get you into that. So let me ask you then  
21 about substitute services, and there's several  
22 questions about that. Commissioner McKissick  
23 asked about substitutes. With respect to the  
24 property across the street, have you done any

1 analysis with respect to that property? I  
2 think you mentioned that it was wooded, but  
3 have you done any analysis with respect to the  
4 extent to which that property is wetlands or  
5 otherwise not suitable for parking?

6 A Well, when I drove over there and got out of  
7 the car and looked at it, I can't tell you for  
8 sure they're marshlands and wetlands that  
9 doesn't become subject to various regulations  
10 under North Carolina law. I can tell you  
11 having lived in Wilmington and having been in  
12 office from down there, there are a lot of  
13 wetlands around there, almost in -- even if  
14 they're not, they're almost all subject to  
15 certain regulations under environmental laws  
16 and under wetland laws in North Carolina.

17 I would not be surprised at all  
18 if there were wetlands in there. And because  
19 of that, you're going to face additional  
20 hurdles in trying to develop the property  
21 because you've got to have certain certificates  
22 and do certain things. So Duke, can I say for  
23 certain it's there? No. Can I say for certain  
24 that I wouldn't want to walk through there

1           when I was -- when I got out and looked at it?  
2           No, I wouldn't want to walk through there right  
3           now because no telling what's in that wooded  
4           area and if you would get into a marshy area.

5   Q       And with respect to Indigo Plantation, do you  
6           know whether Indigo is currently planned for  
7           residential or commercial development?

8   A       I don't know, but there was -- there was --  
9           there were homes in Indigo Plantation before  
10          you got to the parking facility. So what  
11          they're going to do with the rest of Indigo in  
12          that docking area, I just don't know.

13   Q       Now, with respect to the ability -- let's  
14           assume that there is this hypothetical  
15           competitor that springs up, notwithstanding the  
16           impediments that you've talked to, that you've  
17           testified to, do you know who owns the access  
18           roads to get to the terminal facility?

19   A       Yes. Limited owns all the roads. Once you get  
20           off the main road, you're on Limited property,  
21           so they own all the roads.

22   Q       So the same party that owns the parking lot  
23           also owns the roads?

24   A       They own the parking lot; they own the roads;

1           they own the ditches; they own the terminal.

2       Q     Okay. And just to be clear, this is not -- to  
3           your knowledge, is this a public road or a  
4           private road?

5       A     It's a private road.

6       Q     Okay. And so could this potentially be another  
7           impediment to the establishment of a  
8           substitute?

9       A     Yes. As I discussed in my testimony, there's  
10          no guarantee that should a competitive service  
11          be developed, that the folks who own the land  
12          and the roads don't put up a gate and start  
13          charging just to get in the gate if you're not  
14          parking in their parking lot.

15      Q     Now, with respect to the barge and the  
16          potential for there being some competitive  
17          operation for the barge service, the barge  
18          would need access to the harbor on the island,  
19          would it not?

20      A     Yes, and there is no other harbor on the  
21          island.

22      Q     Okay. And do you know who controls access to  
23          the harbor?

24      A     The people who own the terminal, which is

1 Limited.

2 Q Okay.

3 A And let me make sure you understand. The  
4 passenger ferry does not even own the  
5 terminals. They're leasing those terminals  
6 from the parent company.

7 MR. TRATHEN: Thank you. That's all I  
8 have.

9 COMMISSIONER BROWN-BLAND: All right.  
10 I'll entertain your motions.

11 MR. HIGGINS: Commissioner Brown-Bland,  
12 I'd move the admission of Club Wright  
13 Cross-Examination Exhibit Number 1.

14 COMMISSIONER BROWN-BLAND: Without  
15 objection, that motion will be allowed.

16 (Whereupon, Club Wright  
17 Cross-Examination Exhibit  
18 Number 1 was admitted.)

19 COMMISSIONER BROWN-BLAND: Mr. Trathen.

20 MR. TRATHEN: Yes. We would move  
21 admission of -- I believe it's 17 -- the 17 exhibits  
22 attached to the direct testimony for Dr. Wright. I  
23 would note there are several exhibits which should  
24 have been marked as confidential.

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1 through JAW-17 are admitted  
2 into evidence. Confidential  
3 file under seal.)

4 MR. TRATHEN: Thank you. That concludes  
5 the Village's direct case.

6 COMMISSIONER BROWN-BLAND: Dr. Wright, you  
7 may step down, but you're not excused. And this a  
8 perfect time to take our afternoon break. Let's  
9 come back, just to round it out, at 3:20.

10 (Whereupon, a recess was taken)

11 COMMISSIONER BROWN-BLAND: All right.  
12 Let's come back on the record. So the direct case  
13 from the Village has ended, and I believe that  
14 brings us to Bald Head Association.

15 MR. FINLEY: Bald Head Association calls  
16 to the witness stand Mr. Alan Briggs.

17 MR. BRIGGS: Good afternoon.

18 COMMISSIONER BROWN-BLAND: Good afternoon.

19 ALAN BRIGGS;  
20 having been duly sworn,  
21 testified as follows:

22 COMMISSIONER BROWN-BLAND: All right. You  
23 may be seated.

24 DIRECT EXAMINATION BY MR. FINLEY:

1 Q Mr. Briggs, will you give us your name and  
2 business address, please, or residential  
3 address, whichever you prefer.

4 A Alan Briggs. I reside at 6 Dunedin Court, Bald  
5 Head Island, in North Carolina.

6 Q And you are a member of the Board of the Bald  
7 Head Association?

8 A Yes, sir, I am.

9 Q And what is your position on the Board?

10 A I'm a member of the Board and President of the  
11 Association.

12 Q And was there filed in this docket on your  
13 behalf, on September 8, 2022, direct testimony  
14 in question and answer form consisting of some  
15 11 pages?

16 A Yes, sir.

17 Q And do you have any corrections or  
18 modifications that you would like to make in  
19 that testimony, please?

20 A Yes, sir, I do. It's on page 10 and it's the  
21 first sentence. I guess it's the second  
22 sentence that says, "to be sure our members  
23 have spoken to us in the survey," and I should  
24 change 70 to 71.5 percent of our members. And



1           it's of our members and insert the words "who  
2           responded to the survey." So it's 71.5 percent  
3           of our members who responded to the survey.

4    Q     And with those changes, if the questions were  
5           asked of you today, would your answers be the  
6           same?

7    A     Yes, sir, they would.

8                   MR. FINLEY: With those corrections, Madam  
9    Chair, I would ask his prefiled testimony be copied  
10   into the record as though given orally from the  
11   stand.

12                   COMMISSIONER BROWN-BLAND: That motion  
13   will be allowed.

14                                   (WHEREUPON, the prefiled  
15                                   direct testimony of ALAN  
16                                   BRIGGS, is copied into the  
17                                   record as if given orally  
18                                   from the stand.)

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**STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH**

Docket No. A-41, Sub 21

VILLAGE OF BALD HEAD ISLAND	)	
Complainant	)	
	)	
v.	)	DIRECT TESTIMONY OF
	)	ALAN BRIGGS
	)	ON BEHALF OF
BALD HEAD ISLAND TRANSPORTATION,	)	BALD HEAD
INC., BALD HEAD ISLAND LIMITED, LLC,	)	ASSOCIATION
Respondents	)	

**BEFORE THE NORTH CAROLINA UTILITIES COMMISSION**

**DOCKET NO. A-41, SUB 21**

**Direct testimony of Alan Briggs**

**On Behalf of Bald Head Association**

**September 8, 2022**

**OFFICIAL COPY**

**SEP 24 2022**

Q. Please state your name and address.

A. My name is Alan Briggs. I reside at 6 Dunedin Ct., Bald Head Island, NC. 28461.

Q. In what capacity do you appear here today.

A. I am the President of Bald Head Association.

Q. Would you briefly summarize your educational experience.

A. I graduated from Miami University, Oxford, Ohio with a BA in 1964. I graduated from the Ohio State College of Law in 1967 with a Juris Doctorate. I graduated from George Washington University School of Law in 1998 with an LLM in Patent and Intellectual Property Law.

Q. Would you briefly describe your work experience.

A. From 1967-1970 I was in the United States Navy and served as a JAGC Corp. law officer. From 1970-2014 I was in the private practice of law. I was a trial lawyer and tried cases to judges, juries and administrative agencies in a wide variety of substantive areas and in about thirty-three states. I am a member of the Bar in Ohio, California, Florida, DC, Virginia, Maryland and North Carolina. I retired from the active practice of law in 2014 and am inactive in all the state bars except I have remained an active member of the Bar in DC.

Q. When and how did you first become involved with Bald Head Island?

A. In 2001 my wife and I purchased a lot on Bald Head Island. We hired an architect and designed a home and then hired a contractor and built our home at 6 Dunedin Ct., Bald Head Island.

Q. Generally describe your involvement with Bald Head Island thereafter.

A. My wife and our family lived in McLean, Va. My law office was in DC. Our home on Bald Head Island was, at that time for us, a second home. We rented it out in the summer, and we would visit when we could in other seasons. A few years before I retired in 2014, we stopped renting it and started spending significantly more time there.

In late 2014 my wife passed away. I sold our home in McLean, bought another home in Carrboro, NC and have been dividing my time since between Carrboro and Bald Head Island.

Q. When did you first become involved with Bald Head Association (BHA) and generally describe your involvement thereafter?

A. I had been a member of Bald Head Association Stage II from 2001 onward. In January of 2016 I was elected to the Board of Directors of Stage II and elected President. I served as President of Stage II from January of 2016 until January of 2018. At that time Stage II merged into BHA, and I was elected to the Board of BHA. In January of 2021 I was elected President and was re-elected President in 2022.

Q. What is the purpose of your testimony?

A. Rates and services for the essential ferry, tram, barge and parking amenities for Bald Head Island likely will be affected by the decision reached by the Commission in this docket. The BHA Board and its constituents have and continue to follow the developments in this docket with great interest. The purpose of my testimony is to apprise the Commission of this interest and to reserve the right at the appropriate time to convey any conclusions the Board would ask the Commission to reach.

Q. Can you generally describe Bald Head Association and its functions and responsibilities?

A. Bald Head Association is a non-profit corporation incorporated under the laws of North Carolina in 1982.

Its membership includes 1891 property owners on Bald Head Island. With the exception of approximately 100 properties in Middle Island, all property owners on Bald Head Island are Members of the Bald Head Association.

Q. As related to the issues in this docket what is the responsibility of BHA?

A. The Articles of Incorporation of BHA provide among other responsibilities it shall “promote the health, safety and welfare” of the residents” of Bald Head Island. In addition the covenants of Bald Head Association specifically direct BHA:

*{b) to communicate the actions, decisions and activities of the Association and Bald Head Island events (deemed by the Board to be of general interest) to its Members;*

[AMENDED AND RESTATED UNIFIED DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR BALD HEAD ASSOCIATION, Article 2.1 (b).

[Briggs Exhibits 1 and 2 attached hereto]

Q. In order to carry out these two duties as related to the issues in dispute in this docket could you tell the Commission what actions the Association has taken to date?

- A. After the petition by the Village was filed the Board concluded this dispute was of “general interest” to our members, and the Board immediately undertook the responsibility to communicate to our Members the actions taking place in connection with this matter. We did this by e-mailing to them all of the pleadings and other public documents that were filed with the Commission. We have a list of the e-mail addresses for all of our Members who have agreed to receive e-mail communications from us and have provided them our address. As each new pleading or other document was filed in this matter we would email to all Members on our list (over 1500) a general description of the document and a link to the document.
- Q. When and how did you first become aware of a business entity named SharpVue, Ltd.?
- A. We learned in May of 2022 that SharpVue had entered into an Asset Purchase Agreement with Bald Head Island, Ltd. (Limited) to purchase all or substantially all the remaining assets of Limited relating to Bald Head Island including the ferries, the ferry terminals, the trams, the parking lot and the barge.
- Q. What, if anything, did you do at that time to communicate to your Members this new information?
- A. On our Compass e-mail procedure we notified all regarding this new event. In addition we scheduled an Information Meeting for our Members and invited Charles Paul, the CEO of Limited, Lee Roberts, the CEO of SharpVue, Peter Quinn, the Mayor of Bald Head Island and Susan Rabon, the Chair of the Bald Head Island Transportation Authority to come to this meeting.
- Q. And did this Informational Meeting go forward as planned?

- A. Yes it did. It was held as scheduled on July 27, 2022 at the Bald Head Association in person and by Zoom for all our Members. Messrs. Paul and Roberts, the Honorable Peter Quinn and the Honorable Susan Rabon each were present and gave full and complete presentations and answered any and all questions for our members.
- Q. At that time did Mr. Roberts explain how the transition from Limited to SharpVue would take place?
- A. Yes he did. He explained how SharpVue had agreed to hire the existing management and staff employees of Limited and indicated that the plan was the ferry operation would continue on pretty much as usual. He indicated he contemplated no price change in any of the services for the first year (absent some action by the NCUC that in this docket that would impact this issue) and after the first year pricing increases for the parking and barge would be generally consistent with inflation.
- Q. At that time was Mr. Lee Roberts asked if SharpVue was prepared to make the approximately \$523,000 yearly contribution from the parking lot income to the asset base for the ferry and tram for pricing for tickets?
- A. Yes, and he said SharpVue was prepared to do that (again absent some action by the NCUC that in this docket that would impact this issue).
- Q. Do you know how many of your members saw the July 27 Informational Session?
- A. Over four hundred of our Members saw this session either because they were present or because they viewed the posting of the video recording of this session on our Website.



- Q. Do you use your Website as another way to communicate information to your Members?
- A. Yes we do. And specifically in connection with this litigation and other matters relating to the Ferry Transportation System we have a separate listing on the website and provide links to all the relevant filings with the NCUC and elsewhere to make it easy for our Members to access the information.
- Q. Did there come a time when the BHA decided to intervene in this lawsuit?
- A. Yes. On July 13, 2022 BHA moved to intervene in this lawsuit.
- Q. Why did you move to intervene?
- A. The Association, on behalf of its constituents, wants to be sure that the facts and law that the litigants in this docket present to the Commission fairly and accurately state the relevant facts and applicable law so that the Commission will be in the best position to apply the law of North Carolina to the relevant facts so it can make the best decision.
- Q. At the time you intervened had BHA made a decision as to what, if any, position the BHA would take in this litigation.
- A. No. At the time we intervened we stated in our Motion to Intervene: *While the Association at this point is not in a position to make a recommendation to the Commission on the ultimate issues in this docket, the Association requests permission to participate in order to stay abreast of the docket as an official participant as the docket proceeds, to participate as necessary, to formalize its position on the ultimate issues and to make its position known to the Commission upon apprising itself of the facts as developed over time.*

- Q. Did there come a time when you tried to obtain the opinions of your Members regarding the issues in this lawsuit?
- A. Yes. On August 17, 2022 we e-mailed a Compass to the e-mail list and told them we wanted their views and provided a three-question survey:

Ferry System: Parking and Barge

1. Are you a Bald Head Island property owner?  
☐ Yes  
☐ No
2. Do you want the North Carolina Utilities Commission (NCUC) to regulate the fares for the parking lot and the barge?  
☐ Yes  
☐ No  
☐ I don't have an opinion at this time  
☐ I don't have enough information at this time to form an opinion
3. Please provide any additional thoughts, questions, suggestions or ideas you have about this lawsuit by the Village that you think might be helpful to us in representing BHA in this case:

---

(Briggs Exhibit 3 attached hereto)

The Survey results were managed by the computer software program Survey Monkey, which we have used for over ten years. On August 23, 2022 the results of the survey were received and are attached hereto as Briggs Exhibit 4.

Again the purpose of this survey was to help the Board understand the views of its members so that it would be able to ultimately make a recommendation to the Commission after all the facts were developed in discovery and presented to the Commission and to the public.

- Q. What insight did the board seek to gain by conducting the survey and what conclusions do you wish the Commission to draw from the results of the survey?
- A. The Board conducted the survey in an effort to assess the interests of its constituents and to determine at least preliminarily the prevailing views of the constituents responding to the survey. We convey the responses to the survey to demonstrate to the Commission how significantly the constituents view the determination the Commission must make in this docket and, based on the information before the Commission at the filing of this testimony, the views of the constituents that responded.

Q. By the point in time of the filing of this “proposed direct examination testimony on September 8, 2022 does BHA have sufficient information to be able to make a recommendation to the Commission?

A. No not yet.

To be sure our Members have spoken to us in the survey and seventy percent (70%) of our Members want the NCUC to exercise jurisdiction over the parking lot and the barge. We represent our Members and are here to support our Members.

However all the evidence is not yet in. The proposed evidence of the Village has been filed but the remainder of the proposed testimony was not filed until September 8, 2022 so we have not yet been able to review the new evidence. In addition depositions and document discovery are ongoing and rebuttal positions may be filed.

We will forward to our Members all the new information that is filed on September 8, 2022 and thereafter. We will listen to our Members as they speak to us as to any new evidence. We the Board of six directors will discuss and consider all.

To be sure we want to speak to the Commission for Bald Head Association but want to wait to do so until all the evidence is submitted.

We are also aware that the issues in this case are primarily questions of law for the Commission to decide. However, we want to submit the opinions of the Members of Bald Head Association and of the Board of Bald Head Association

when the submission of evidence to the North Carolina Utilities Commission is complete for whatever probative value the Commission gives it.

1 BY MR. FINLEY:

2 Q And at the time you filed this testimony on  
3 September 8, did you also submit four exhibits?

4 A Yes, sir, I did.

5 MR. FINLEY: Madam Chair, I would ask that  
6 the four exhibits be marked for identification as  
7 premarked in the filing.

8 COMMISSIONER BROWN-BLAND: The four  
9 exhibits will be identified as they were premarked  
10 when filed.

11 (WHEREUPON, Briggs Exhibits  
12 1-4, are marked for  
13 identification as prefiled.)

14 BY MR. FINLEY:

15 Q Also, Mr. Briggs, on September 28, 2022, did  
16 you have submitted on your behalf reply  
17 testimony consisting of four pages?

18 A Yes, sir, I did.

19 Q Are there additions or corrections you would  
20 like to make to your reply testimony?

21 A Yes, sir. The same correction, and it's on  
22 page 2. At the bottom paragraph on page 2,  
23 it's the same correction. "Members spoke in  
24 response to the survey and 71.5 percent of the

1 members who responded to the survey." And the  
2 sentence goes on, but the correction is  
3 changed, changing it to 70 to 71.5 and who  
4 respond -- inserting the words who responded  
5 to the survey, if it please the Commission.

6 Q With that correction, if the questions in the  
7 reply testimony were asked of you today, would  
8 your answers be the same?

9 A Yes, sir, they would.

10 Q All right.

11 MR. FINLEY: We would move that his reply  
12 testimony be copied into the record as if given  
13 orally from the stand.

14 COMMISSIONER BROWN-BLAND: That motion  
15 will be allowed and the reply testimony of witness  
16 Briggs will be received into evidence and treated as  
17 if given orally from the witness stand.

18 (WHEREUPON, the prefiled  
19 reply testimony of ALAN  
20 BRIGGS, is copied into the  
21 record as if given orally  
22 from the stand.)  
23  
24

**BEFORE THE NORTH CAROLINA UTILITIES COMMISSION**

**DOCKET NO. A-41, SUB 21**

**Reply Testimony of Alan Briggs**

**On Behalf of Bald Head Association**

**September 28, 2022**

**OFFICIAL COPY**

**SEP 28 2022**



1 Q. **Please summarize your testimony of September 8, 2022.**

2  
3 A. In my testimony of September 8, 2022 I informed the Commission that rates and  
4 services for the essential ferry, tram, barge and parking amenities for Bald Head  
5 Island will be affected by the decision reached by the Commission in this docket. I  
6 testified that the BHA Board and its constituents have and continue to follow the  
7 developments in the docket with great interest. I testified that the purpose of my  
8 testimony was to apprise the Commission of this interest and to reserve the right at  
9 the appropriate time to convey any conclusions the Board would ask the  
10 Commission to reach.

11  
12 I testified that after the Board concluded that this dispute was of general interest to  
13 its Members, the Board took steps to communicate to the Members the actions  
14 taking place in connection with this matter. I described the efforts to inform the  
15 Members. The Board informed the Members of the May 2022 SharpVue Asset  
16 Purchase Agreement with Bald Head Island Limited. I discussed the  
17 communications the Board had had with the SharpVue, the Village and Limited  
18 representatives.

19  
20 Q. **Please address the survey conducted by the Board of its Members.**

21  
22 A. I described to the Commission the efforts undertaken by the Board to obtain views  
23 of the Members. In particular I described the survey conducted by the Board and the  
24 results of the survey. The purpose of the survey was to inform the Board as to any  
25 recommendations it should make to the Commission.

26  
27 The Members spoke in response to the survey, and 70% of the Members want the  
28 NCUC to exercise jurisdiction over the parking lot and barge. I testified that we  
29 represent our Members and are here to support the Members. We believe this high  
30 percentage desiring regulation is significant. We want the Commission to be aware  
31 of the survey results.

1  
2  
3 Nevertheless, I testified that the Board remained open to monitoring and attempting  
4 to follow the positions taken in the docket by other parties in order to ensure that  
5 any recommendations that we make to the Commission are well founded. We have  
6 read and studied the testimony filed by participants on August 9, 2022 and  
7 September 8, 2022. We have been recipients of and have reviewed discovery  
8 conducted by others. We have followed and monitored the various pleadings filed  
9 with the Commission in this docket. We will review with interest testimony filed by  
10 others on September 28, 2022. We will follow the testimony presented at the public  
11 hearing beginning on October 10, 2022.  
12

13 In addition to asking our Members about whether or not they wanted the parking  
14 lot and barge regulated, we also asked our Members for their comments. They  
15 submitted their comments. These comments are part of the survey results. These  
16 comments will help the Commission understand the concern of our Members- those  
17 that wanted regulation, those that did not want regulation and those that did not yet  
18 have enough information.  
19

20 We think these comments are important and helpful in understanding how our  
21 Members feel and why. We think the answers of our Members speak for themselves  
22 as to what our Members want and why they want the Commission to regulate the  
23 parking lot and the barge.  
24

25 We do understand this Docket 21 is for the most part a matter of law to be decided  
26 by the Commission. But public opinion is something the Commission can consider  
27 to what extent it finds it relevant and probative consistent with the law and facts.  
28 We submit this testimony and the exhibits hereto to the Commission for its  
29 consideration.  
30

1 We are confident the legal issues will be fully briefed by the excellent lawyers for  
2 the Village, Limited, SharpVue and the Public Staff. Our Members are part of the  
3 public and citizens of the Village. We appreciate the work of all of these fine lawyers  
4 to get the facts and law before the Commission so the Commission will be in the best  
5 position to make the right decision.

6  
7 As an intervening party we are interested in hearing the actual evidence presented  
8 at the hearing and respectfully wish to reserve the right to submit any post-hearing  
9 brief and/or proposed order based on consideration of all the admitted evidence.

1 BY MR. FINLEY:

2 Q And on Monday October 10th, did you have filed  
3 in this case on your behalf a summary of your  
4 testimony?

5 A Yes, sir, I did.

6 Q And that summary is correct and accurate, to  
7 the best of your knowledge?

8 A Yes, sir, it is.

9 MR. FINLEY: We would ask, Madam Chair,  
10 that the summary be accepted into evidence.

11 COMMISSIONER BROWN-BLAND: That motion is  
12 also allowed and the summary's received into  
13 evidence at this time.

14 (WHEREUPON, the summary of  
15 ALAN BRIGGS is copied into  
16 the record as if given  
17 orally from the witness  
18 stand.)  
19  
20  
21  
22  
23  
24

Alan Briggs Summary  
Direct and Reply Testimony  
Docket No. A-41, Sub 21

I am President of Bald Head Association. I have been a resident of Bald Head Island since 2001.

I had been a member of Bald Head Association Stage II from 2001 onward. In January of 2016 I was elected to the Board of Directors of Stage II and elected President. I served as President of Stage II from January of 2016 until January of 2018. At that time Stage II merged with BHA, and I was elected to the Board of BHA. In January of 2021 I was elected President and was reelected President in 2022.

Rates and services for the essential ferry, tram, barge and parking amenities for Bald Head Island will be affected by the decision reached by the Commission in this docket. The Board and its constituents have continued to follow the developments in the docket with great interest. The purpose of my testimony is to apprise the Commission of this interest and to respectfully reserve the right at the conclusion of the proceeding to convey all conclusions the Board would like the Commission reach.

The Board has determined that this dispute is of general interest to Association Members. The Board took steps to communicate to the Members the actions taking place in connection with this matter. The Board informed the members in May 2022 of the SharpVue Asset Purchase Agreement with Bald Head Island Limited. In my testimony I discuss the communications the Board has had with SharpVue, the Village and Limited representatives. The Board has undertaken efforts to obtain the views of the Members. The Board conducted a survey, and my testimony conveys the results of the survey. The purpose of the survey was to inform the Board as to any recommendations it should make to the Commission.

Of the 533 property owners who responded to the survey, 381 support regulation of the parking/barge (71.5%). 83 do not support regulation of the barge parking (15.6%). 15 do not have an opinion at this time (2.8%), and 54 do not have enough information at this time to form an opinion (10%). We wish the Commission to be aware of the survey results.

Nevertheless, the Board remains open to monitoring and attempting to follow the positions taken in the docket by other parties in order to ensure that in our recommendations that we make to the Commission are well founded.

The Association has read and studied the testimony filed by the participants on August 9, 2022 and September 8, 2022. We have been recipients of and have reviewed discovery conducted by others. We have followed and monitored various pleadings filed with the Commission in this docket. Since filing my reply testimony we have reviewed the testimony filed by others on September 28, 2022. We hope to follow the testimony presented in this hearing beginning today.

A number of Members submitted comments in response to the survey. We hope these comments will help the Commission understand the concerns of our members - those that want regulations, those that do not want regulation and those that did not yet have enough information.

We understand that this docket is for the most part a matter of law to be decided by the Commission. Nevertheless, we appreciate that public opinion is something the Commission considers to the extent it finds it relevant and probative, consistent with the law and facts. We submit our testimony and exhibits to the Commission for its consideration

As I stated in my reply testimony, as an intervening party we are interested in hearing the actual evidence presented at the hearing and respectfully wish to reserve the right to submit any post hearing brief and/or proposed order based on our consideration of all the admitted evidence.

1 MR. FINLEY: All right. Mr. Briggs is  
2 available for cross-examination.

3 COMMISSIONER BROWN-BLAND: All right.  
4 We'll call on BHIT.

5 MR. STYERS: Pursuant to the agreement of  
6 the parties, I think that's the order that we agreed  
7 to for cross-examination.

8 CROSS EXAMINATION BY MR. STYERS:

9 Q Good afternoon, Mr. Briggs.

10 A Good afternoon.

11 Q You purchased property on Bald Head Island in  
12 2001 or thereabouts, correct?

13 A Yes, sir.

14 Q Tell us about your involvement in the Bald Head  
15 Island community since the time you purchased  
16 the property.

17 A My wife and I purchased the property lot in  
18 2001. And then we got an architect and we  
19 designed a home or the architect designed a  
20 home. And then we built the home, a contractor  
21 built the home for us, and then we essentially  
22 rented it in the summer season. We lived in  
23 the D.C. area, in McLean, Virginia, and we  
24 rented it in the summer seasons, and then we

1 would come down in the spring and fall, and  
2 sometimes at Christmas.

3 Our involvement at that point  
4 in time was mainly getting to know the people  
5 who were there. There's sort of a group of  
6 people who were there in the spring and fall,  
7 to my surprise, who did the same thing and rent  
8 their homes in the summer. And we continued  
9 that essentially until maybe for 9 or 10  
10 years. And then when I started slowing down at  
11 work, we started -- we stopped renting and  
12 started coming down. We came down one summer,  
13 and then in 19 -- I guess it was in '20 -- '20  
14 -- or 2012, I believe, and then I guess we  
15 stayed for a summer. And then my wife took ill  
16 and we spent a year in Durham. And she passed  
17 away and then I returned to the island and  
18 essentially divided my time between the island  
19 and Carrboro. I bought a home in Carrboro as  
20 well as sold the home in D.C.

21 Once I got back then to Bald  
22 Head Island, I got involved in the Bald Head  
23 Association. I spent a little time just kind  
24 of getting used to Bald Head and deciding I



1        wanted to stay, and I still wanted to stay, and  
2        then I got involved in the Association. Then  
3        it was Stage Two. There was a Stage One which  
4        was essentially a head of the association, Bald  
5        Head Association, and there was Stage Two, and  
6        we had an association. It was Bald Head Island  
7        Stage Two. And I became involved in that and  
8        was elected president I think in 2016 and spent  
9        two years sort of working with that  
10       association. That was sort of the east end of  
11       the island.

12                        We had about 550 members, and  
13       the rest of the association had like 1,200, in  
14       that range, maybe 1,300, maybe it's 1,400, but  
15       it was, you know, considerably more than us,  
16       and we then merged at the end of 2018. And we,  
17       Stage Two, merged into Stage One, and we just  
18       became Bald Head Association. I was elected to  
19       the Board then and had then served on the Board  
20       since then, and had been president. I was  
21       president last year and president this year.

22    Q     Thank you very much.

23    A     Yes, sir.

24    Q     So you've had a long industry with the island?

1 A Yes, a wonderful industry.

2 Q You have been a customer of parking services?

3 A Yes, sir.

4 Q Deep Point. Is that correct?

5 A Yes, sir.

6 Q Do you have a parking annual pass?

7 A Yes, sir.

8 Q What are your general impressions of the  
9 services provided at Deep Point?

10 A Fabulous.

11 Q Would you care to elaborate?

12 A I've had the parking from the beginning. We've  
13 parked at Indigo. We've parked at Deep Point  
14 and it had -- as it was described by  
15 Mr. Gardner, I thought he described it quite  
16 well. I'm in the priority parking. And, I  
17 mean, I pull up, and within, you know -- I can  
18 get there three minutes before the ferry leaves  
19 and I can make the ferry. It's just  
20 incredible. And so it's easy to get on, easy  
21 to get off. It just works wonderfully.

22 Q You've lived or traveled to a number of cities  
23 in your distinguished career I'd say it sounds  
24 like?

1 A I've traveled a lot.

2 Q And you worked in the D.C. area --

3 A Yes, sir.

4 Q -- if I'm not mistaken. So you've paid for  
5 parking in those other cities that you've been  
6 to, traveled over again?

7 A Yes, sir.

8 Q So you're familiar with parking rates and other  
9 locations, are you not, to some degree?

10 A I mean, I'm familiar. I pay what they are.  
11 And I can't tell you I'm familiar what the  
12 rates are. I don't have any protective memory  
13 of that, but I've done a lot of parking.

14 Q I'm not asking for any specifics, but do you  
15 have any general observations about the  
16 reasonableness of the prices for parking at  
17 Deep Point Terminal?

18 A I mean, I don't have any individual opinion. I  
19 heard the testimony earlier. I think that, you  
20 know, it's \$3 a day for the year. It's a good  
21 deal. We have a good deal there. There's no  
22 question in my mind. It's reasonable. But,  
23 you know, it's not like I've paid much  
24 attention to parking costs anywhere with the

1           exception of where it's outrageous, which will  
2           be New York and San Francisco and others, but  
3           we have a good deal.

4    Q     I've never been president of a homeowners  
5           association, but I would think that when  
6           members of an HOA, you know, aren't happy about  
7           something, they might complain to the HOA  
8           officers. Has that been your experience?

9    A     Did you say when they're happy or when they're  
10          unhappy?

11   Q     When they are not happy.

12   A     That would be true.

13   Q     Now, going back to 2016, I think when you were  
14          president of Stage Two Association I think you  
15          testified?

16   A     Yes.

17   Q     And since that time, you know, have you heard  
18          many complaints about the prices charged for  
19          parking at Deep Point?

20   A     I don't remember any complaints.

21   Q     Since that time, since say 2016, had you heard  
22          many complaints about the prices charged for  
23          the barge service to and from the island --

24   A     No, sir.

1 Q -- if you can remember. Okay. Now, the  
2 Association has monitored the efforts of Bald  
3 Head Island Limited to sell the Ferry Tram  
4 Parking & Barge assets over the years, have you  
5 not? The Association's monitored that?

6 A We've monitored it in the last several years,  
7 particularly since this was filed. In the last  
8 two years, we've paid particular attention to  
9 it.

10 Q And, in fact, you have a page on the  
11 Association's website or a section of the  
12 Association's website on which the Association  
13 has posted documents regarding these efforts  
14 and the sale of the Barge Parking, Tram & Ferry  
15 assets, have you not?

16 A We do.

17 Q Yeah. In fact, you update that website almost  
18 the day that the documents come out.

19 A We try to keep our members advised.

20 Q Okay. So you're very familiar with the saga of  
21 Bald Head Island Limited's efforts to sell the  
22 Mitchell's assets on the island?

23 A True.

24 Q Yeah. And specifically most recently, the sale

1 of those assets proposed to SharpVue Capital.

2 Is that fair to say?

3 A I first became aware of that in May of this  
4 year, so it wasn't as if I had any knowledge of  
5 that prior to that.

6 Q Of course not.

7 A At that time, I did become aware and paid  
8 particular attention to it.

9 Q And since then, you've paid particular  
10 attention to that?

11 A Yes, sir.

12 Q In addition to monitoring the progress and  
13 posting documents on your website, the  
14 Association hosted a community forum on the  
15 island, I believe, in July of this year, did it  
16 not?

17 A Yes, sir.

18 Q Okay. And the purpose of that was to learn  
19 more about Bald Head Island Limited's intent  
20 about SharpVue, about the transaction. Is that  
21 correct?

22 A Yes.

23 Q Well, tell us. Tell us about the intent,  
24 plans, preparation of that community forum that

1 the Association organized.

2 A The intent of the program was to educate our  
3 members. It was a hugely significant  
4 transaction that was contemplated. And I  
5 invited the gentlemen who are here to come and  
6 speak to us along with Island Chair (sic) Ms.  
7 Raven. I mean -- and the four of them came.  
8 That is Mr. Paul, Mr. Roberts, Mayor Quinn, all  
9 wonderfully cooperative people. And Ms. Raven  
10 as well. And all came and spent like three  
11 hours in an effort to educate us, educate our  
12 members.

13 We had people present, and we  
14 had it on Zoom for our members to give them an  
15 opportunity to learn about it. I'm not sure  
16 everybody was anxious, but people are anxious.  
17 People want to know what's going on. And so we  
18 tried to educate them, and these folks were  
19 kind enough to come and do that.

20 Q In addition to Mayor Quinn who participated,  
21 were there other members of the Village council  
22 who also attended or were in attendance at that  
23 forum?

24 A I believe there were, but I didn't pay

1 particular attention. I don't seem to have a  
2 recollection of that, but I don't think  
3 anyone -- well, maybe Mayor Quinn called on  
4 Scott, but that's just a wild guess. That's  
5 not a wild guess. I think I remember it.

6 Q So you said Mr. Paul, Mr. Roberts came to the  
7 forum?

8 A Yes, sir.

9 Q And they spoke and made a presentation at that  
10 forum?

11 A Yes, sir. All four of them did. Each had  
12 their individual, and then they answered  
13 questions for our members.

14 Q You anticipated my very next question. I can  
15 check that off that they answered questions.  
16 You took questions for all those in attendance?

17 A Everybody in attendance. Everybody, but assume  
18 they -- the people, they're all very  
19 cooperative.

20 Q And ballpark, approximately, not precise, but  
21 how many people do you think either attended in  
22 person or watched it on the online, if you  
23 know?

24 A Well, between the people present, the people



1 online, and then the people who later watched  
2 it, because we then posted the video, because  
3 not everybody could come that day. It was  
4 during working hours, and it seems like it's  
5 over 4 or 500. I forget how many total it was.

6 Q And you said the forum lasted three hours?

7 A Yeah. Somewhere between two and a half and  
8 three is my best recollection.

9 Q Of that, was half of it, more than half,  
10 question and answer from the audience? What  
11 percentage or how long did the question and  
12 answer part go, approximately?

13 A Probably a third.

14 Q Okay. Were there any questions during that  
15 forum that were asked of Mr. Roberts, Mr. Paul  
16 that they didn't answer or refused to answer  
17 during that forum?

18 A No, sir.

19 Q Okay. What were your impressions about the  
20 transparency, candor of the information  
21 provided to the Association and those in  
22 attendance at that forum by Mr. Roberts and  
23 Mr. Paul?

24 A It was excellent. They were very cooperative.

1 Always discussed. They answered all questions.  
2 I've got nothing but good comments from our  
3 members with regard to the meeting and the  
4 information that these two gentlemen answered,  
5 and Mayor Quinn provided.

6 Q Now Mr. Roberts -- to your knowledge, if you  
7 know, has Mr. Roberts been on the island  
8 meeting with stakeholders and with folks on the  
9 island in addition to this one time at the  
10 forum?

11 A I do not know.

12 Q But you've had an opportunity to talk with  
13 Mr. Roberts about his plans during the --  
14 since the transaction was announced, have you  
15 not?

16 A Oh, yes. Yes.

17 Q So you've read the rebuttal in this docket by  
18 Mr. Roberts, have you?

19 A I read his testimony.

20 Q His testimony, yes.

21 A Yes, September 28th testimony. I did read  
22 that, yes, sir.

23 Q Yes. Okay. So in that testimony prefiled by  
24 Mr. Roberts that you've read, on behalf of

1       SharpVue and its affiliates, certain  
2       commitments regarding the continued  
3       availability of parking, does he not?

4     A    He did, yes. I don't mean did, and then he  
5       past tense, like it's not now as well. I'm  
6       just saying yes, it was in there. I can't tell  
7       you I specifically remember that testimony, but  
8       I remember those commitments. He's made  
9       commitments all along and stuff with it.

10    Q    Those commitments consistent with what he said  
11       at the forum that the Association sponsored?

12    A    Oh, yes, very much so.

13    Q    And he's also made commitments, and I'm not  
14       asking for specifics, but do you remember what  
15       commitments he's made about pricing for parking  
16       in his testimony? And that's okay if you don't  
17       remember precisely because he'll be on the  
18       witness stand maybe this afternoon, maybe  
19       tomorrow.

20    A    I guess I don't remember. I mean, I remember  
21       him in making commitments with regard to  
22       maintaining prices and consistent with  
23       keeping -- I think at keeping at the same --  
24       putting aside the parenthetical notation about

1           which these fine Commissioners do. Keeping it  
2           the same and that inflation, planning for the  
3           future for inflation and only raising  
4           consistent with inflation for some period of  
5           time. that I remember. I don't remember  
6           anything, specific discussion as to amount of  
7           parking.

8       Q     No. Exactly. Keeping track with inflation  
9           over time?

10      A     Yes.

11                   COMMISSIONER BROWN-BLAND: Mr. Briggs,  
12           could you be sure to stay in the mic just to make it  
13           easier on our court reporter.

14                   THE WITNESS: Yes. Yes, ma'am.

15      BY MR. STYERS:

16      Q     And it was also consistent with the discussion  
17           he had on the island when he was there at the  
18           forum, if it's your recollection?

19      A     Yes. Exactly.

20      Q     Now, also in this docket, the Public Staff has  
21           filed comments. Do you remember the Public  
22           Staff Utilities Commission?

23      A     Yes, sir, I do.

24                   MR. STYERS: May I approach the witness?

1 I would like to have marked and identified as Briggs  
2 Cross-Examination Exhibit 1 --

3 BY MR. STYERS:

4 Q What's your initials, Mr. Briggs?

5 A ALB.

6 Q ALB?

7 A Yes, sir.

8 MR. STYERS: -- Cross-Examination Exhibit  
9 1, and entitled "Initial Comments by Public Staff"?

10 THE WITNESS: Yes, sir.

11 COMMISSIONER BROWN-BLAND: Mr. Styers, I'm  
12 actually going to let this one be marked Briggs  
13 Cross-Examination Exhibit 1.

14 MR. STYERS: Okay, all right, Briggs  
15 Cross-Examination Exhibit 1.

16 COMMISSIONER BROWN-BLAND: Primarily  
17 because ALB is not in the record, so we'll go with  
18 Briggs.

19 MR. STYERS: All right.

20 (Whereupon, Briggs  
21 Cross-Examination Exhibit 1  
22 was marked for  
23 identification.)

24 BY MR. STYERS:

1 Q And I'd like to direct your attention, Mr.  
2 Briggs, to the highlighted text on page 8, if  
3 you'll follow with me. And I think you've read  
4 this testimony?

5 A Yes, I've read the testimony. Let me --

6 Q Comments. Excuse me, comments.

7 A Yes. Let me read this paragraph, if I may, to  
8 refresh my recollection.

9 Q Yes. Read that paragraph just to refresh your  
10 recollection. Certainly.

11 A I've read it.

12 Q Great. So in that -- in the comments in that  
13 paragraph, specifically this is following a  
14 discussion, I think, of the BellSouth cases  
15 which you've been -- referenced earlier that  
16 the Commission had found, nonetheless, has  
17 deemed some level, some level of oversight  
18 short of regulation by the Commission to be  
19 appropriate. And it concludes: "While the  
20 parking operation is not a regulated service,  
21 the Commission should exercise its oversight to  
22 ensure BHIT provides adequate parking at a  
23 reasonable rate to provide adequate service to  
24 its customers." Is that your understanding of

1 the Public Staff's position in this case?

2 A That's my understanding of what they filed in  
3 their initial comments.

4 Q Okay. Now, the Association Board has -- my  
5 understanding, and correct me if I'm wrong --  
6 have they met to refine its position and passed  
7 a resolution regarding its preferences and  
8 outcome of this docket, Mr. Briggs?

9 A Yes.

10 Q Okay. To summarize this resolution that the  
11 Board has recently approved, you know, what is  
12 the general preference the Association Board  
13 expressed in that recent resolution that it's  
14 passed?

15 A It's a lengthy resolution. There are a number  
16 of preferences and statements in there. And I  
17 have it with me, but if you're asking about  
18 this specific question --

19 Q So let me rephrase it. It is a poor question.  
20 Let me ask. Is it fair to say that generally,  
21 the position of the Bald Head Island  
22 Association is similar to or generally the same  
23 as the Public Staff position that's articulated  
24 in that paragraph that we just reviewed or very

1 similar?

2 A The position of Bald Head Association is that  
3 we support our members. Our members had a  
4 significant survey and response indicating they  
5 wanted some level of regulation. We support  
6 our members. And with regard to the response,  
7 as I say, it was 71.5 percent of the members  
8 who responded. Overall, it was about 38 or 9  
9 percent of the total members because it's only  
10 like a third of the members respond. But  
11 nonetheless, that was a significant response,  
12 and our members also responded by 40 pages of  
13 comments. We also thought it were significant  
14 and we do hope that the Commission reads. And  
15 so we support our members, and that's their  
16 position. They want some level of -- they  
17 want regulation. And those were the questions,  
18 and Mr. Gardner accurately stated what our  
19 survey was. Our members told us they wanted  
20 some level of regulation.

21 On last week, in preparation  
22 for this hearing, I asked our Board to meet so  
23 that if I were asked what is our opinion --  
24 because our opinion, as we've stated earlier in



1 the documents that I filed, in the testimony,  
2 is that essentially, we would want to hear all  
3 of the evidence and then ultimately. And  
4 whatever the final document we wind up filing  
5 is, say where we come out, we're supposed to  
6 give our opinions. We want to hear all the  
7 evidence. But nonetheless, along the way, we  
8 formed some level of opinions. And in the  
9 event I were asked here on my opinions, I did  
10 want to be sure I understood what the views of  
11 our members were. By "our members," I mean our  
12 members of our Board.

13 Q Right.

14 A We have six members on the Board, and we have  
15 six different views and six different opinions,  
16 and we wanted to talk it through. And we --

17 MR. FINLEY: It sounds like the Utilities  
18 Commission, Mr. Briggs.

19 COMMISSIONER BROWN-BLAND: I knew that was  
20 coming.

21 A But we talked about it, we discussed it. And  
22 then I really put the views in writing, and we  
23 then talked about it and talked about it. And  
24 with regard to what we want for our members, it

1 really is -- we want what our members want,  
2 and that is we want some level of regulation.  
3 And they really want the rates -- and I say  
4 regulation, I mean by you- all, the Commission.  
5 They're delighted you're in this, and so  
6 regulation as to rates, regulation as to -- we  
7 had concerns. Seems like there was another  
8 area I had in there, but we had concern as well  
9 with not being able to sell. That is on the --  
10 that is one of the things like we see in Docket  
11 22, is before a regulated asset can be sold, it  
12 has to -- you- all have to approve it. We  
13 believe that to be a good thing. And so that  
14 is important to us.

15 With regard to the extent of  
16 regulation, we were quite -- I was quite  
17 pleased when I saw the initial comments of the  
18 Public Staff because it provided some level of,  
19 I guess what I call, a range of involvement by  
20 the Commission as to regulation. It's not like  
21 I had any prior knowledge of what you-all do.  
22 Mr. Gardner's had a lot of experience. I  
23 really haven't had the experience with your  
24 area of the world, and so I had in my mind

1 regulations, regulation. Well, there's  
2 variations of involvement. And it appears to  
3 me with regard to the regulation of what is  
4 helpful for our members is that at one, there'd  
5 be parking provided. Two, by parking -- and I  
6 put Parking and Barge together. They want  
7 Parking and Barge, and we need them both, but  
8 they want that assurance. And then it's the  
9 assurance of it being at reasonable rates. And  
10 that is what I believe came out of this  
11 paragraph of the oversight level of regulation.  
12 And so then from that point on, I thought of  
13 the regulation that you- all do as being on a  
14 spectrum, and with something with a little or a  
15 lot. And without any particular names, I don't  
16 know what it is, but I don't really don't know,  
17 but oversight to -- maybe oversight's in the  
18 middle. I don't know. But nonetheless, I  
19 thought about the question of how much do we  
20 want. We want what protects the interest of  
21 our members, and our members, as I say, they  
22 want to know there's parking in a barge, they  
23 want to know that there's a -- it's a  
24 reasonable rate, and they don't want it to

1 be -- they don't want the owners to be -- have  
2 it to be sold out from under them. As I say,  
3 whatever that's called in Docket 22, some  
4 decision as whether somebody can buy, whether  
5 there could be a transfer of ownership of a  
6 regulated activity. So it's probably a long  
7 answer to your question, sir, but that's --

8 Q It's very helpful. Thank you for offering a  
9 better answer than the question deserved. So I  
10 think we said earlier that you've read and  
11 understand the commitments by Mr. Roberts that  
12 he's made in his prefiled testimony?

13 A Yes, sir.

14 Q And you heard that in the Association. Does  
15 the start to address some of the concerns that  
16 you've identified here and some of the desires  
17 of your members, in your opinion?

18 A Oh, yeah. What Mr. Roberts said from the  
19 beginning did, and he continues to. That  
20 clearly fits well within that oversight range  
21 and -- but as I say, at least what I believe is  
22 this is sort of well outside of my scope of  
23 knowledge and expertise. And we had met with  
24 the Public Staff. And when I say me -- I say

1 "we," I mean me and another member of the  
2 Board, and our executive director, they were  
3 kind enough to spend two, three hours with us,  
4 and we were exceptionally impressed with them.

5 I had not been familiar with  
6 this, with this Public Staff aspect before.  
7 And it's like that's a whole group out there  
8 watching out for our people, and I was  
9 delighted with that, and was our Board. And  
10 when I saw this paragraph in this whole  
11 opinion, I felt a high level of comfort that  
12 our members' interests were being protected.  
13 By the same token, I do and I know our members  
14 do, we are all appreciative of the Mitchell  
15 family. We would not be there without the  
16 Mitchell family. And we don't want to -- at  
17 least maybe I'm speaking for myself. And I  
18 guess I shouldn't do that, so maybe I ought to  
19 stop, but at least it's overall a level of  
20 regulation that is appropriate because I view  
21 this as a taking of property from them and  
22 taking, as appropriate, when it's justified.  
23 But taking it to the level that is appropriate  
24 to take seems to make sense. And when I saw

1       this level of oversight, that word oversight,  
2       and we as a Board talked about it. It just  
3       sounded like that -- there was a level of  
4       regulation that makes sense, that has some  
5       level of fairness to all involved. So again,  
6       probably too long of an answer, but that's my  
7       answer.

8               MR. STYERS: Thank you. I really don't  
9       have anything else to cover that you haven't already  
10      said. Thank you, Mr. Briggs, and I have no further  
11      questions.

12             COMMISSIONER BROWN-BLAND: Mr. Ferrell?

13             MR. FERRELL: No questions.

14             COMMISSIONER BROWN-BLAND: All right.  
15      Mr. Higgins.

16      CROSS EXAMINATION BY MR. HIGGINS:

17      Q     Mr. Briggs, good afternoon. Dan Higgins for  
18             the Bald Head Island Club. Just one question  
19             about Mr. Styers' questions to you about your  
20             level of comfort with the SharpVue commitments  
21             that had been made in these meetings and  
22             whatnot. Would you agree that commitments by  
23             SharpVue isn't the exercise of oversight by the  
24             Commission, which is what the Public Staff

1 recommended in its comments?

2 MR. FINLEY: Talk into the microphone  
3 there, Mr. Briggs, if you don't mind.

4 A Yes.

5 Q You would agree?

6 A I do agree, yes.

7 MR. HIGGINS: All right, sir. Thank you.

8 CROSS EXAMINATION BY MR. SCHAUER:

9 Q Thank you. Craig Schauer on behalf of the  
10 Village. Good afternoon, Mr. Briggs.

11 A Good afternoon.

12 Q Earlier in your answers to Mr. Styers, you  
13 discussed the resolution, and I want to see if  
14 I understand some components of the resolution  
15 that the Board passed. Please correct me if  
16 I'm wrong. My understanding is one component  
17 of the resolution was that the Board did not  
18 want the owner of the Parking and Barge assets  
19 to sell them without Commission approval. Did  
20 I hear that correct?

21 A You did hear it correctly.

22 Q Thank you. And then I believe a second  
23 component was that the Board resolution  
24 included some requirement that Parking and

1 Barge services be provided?

2 A Yes, sir.

3 Q Okay. And then I believe the third component  
4 that I heard was that the parking and barge  
5 services be provided at reasonable rates. Is  
6 that correct?

7 A Yes, sir.

8 Q Okay. In terms of the interests that the  
9 Association is seeking to protect, if  
10 SharpVue's commitments were to last only a few  
11 years, do you believe the interest of  
12 Association and the members it represents would  
13 be adequately protected?

14 A No.

15 Q If the commitments that SharpVue made only  
16 applied to SharpVue and not to subsequent  
17 owners, do you believe the interests of the  
18 members that the Association seeks to protect  
19 would be protected?

20 A Could you repeat that?

21 Q Sure. If the commitments that SharpVue makes  
22 only apply to SharpVue's ownership of the  
23 assets and would not apply to a potential  
24 subsequent owner of the assets, in other words,



1 a subsequent owner would not be bound by the  
2 same commitments, would that commitment by  
3 SharpVue adequately protect the interests of  
4 the Association's members?

5 A No.

6 Q Lastly, if the commitments that SharpVue offers  
7 are conditioned on the assets otherwise not  
8 being regulated, would that satisfy the  
9 protection that the Association seeks to  
10 further the interests of its members?

11 A Maybe.

12 Q Maybe. Okay. I want to understand a comment  
13 you made at the very beginning of your  
14 testimony. When you were discussing the  
15 parking services, I believe you described them  
16 as fabulous? Is that correct?

17 A Yes, I do.

18 Q And you're familiar with the Indigo Plantation?

19 A Yes, sir.

20 Q Did you park there?

21 A Yes, sir.

22 Q If parking was moved to Indigo and you had to  
23 take a shuttle to the terminal, would be able  
24 to go from your car to the ferry in three

1 minutes?

2 A Not on my best point in life.

3 Q Would you consider those parking services, if  
4 they were moved to Indigo, to be fabulous as  
5 well?

6 A Probably not.

7 MR. SCHAUER: Okay. No further questions.

8 COMMISSIONER BROWN-BLAND: All right.

9 Questions from the Commission. Commissioner  
10 Clodfelter.

11 EXAMINATION BY COMMISSIONER CLODFELTER:

12 Q Mr. Briggs, when you're on the island, how do  
13 you get around?

14 A My golf cart, a bike, walk.

15 Q Bike, walk, and you got a golf cart?

16 A I do, yes, sir.

17 Q So when you want to go over to the Mainland,  
18 how do you get to the island terminal?

19 A Well, either someone takes me from my house or  
20 the Tram takes me.

21 Q You take the Tram sometimes?

22 A Yes, I do.

23 Q When someone else takes you, how -- what's the  
24 vehicle they're using?

1 A The golf cart.

2 Q So someone may take you in the golf cart. You  
3 ever take your own golf cart to the terminal?

4 A Yes, sir, if it's led.

5 Q Pardon me. I didn't mean to interrupt. You  
6 sometimes take it to the island terminal?

7 A Yes, sir. If it's less than a day, I can park  
8 there. If it's going to be more than a day, I  
9 cannot park there.

10 Q Do you ever take your golf cart to the island  
11 terminal and then roll it onto the barge and  
12 ride it over to the Mainland and then get off  
13 on the Mainland, leave your cart there?

14 A No, sir.

15 Q Never have done that?

16 A No.

17 Q Did you hear Mr. Gardner testify earlier that  
18 he'd done that at least once or twice, maybe?

19 A I heard the testimony generally relating to him  
20 doing something. I hadn't -- in my mind, I  
21 didn't conn -- I thought you were talking  
22 about -- he was talking about the barge. I  
23 didn't know that was talking about the ferry,  
24 although I guess -- but I guess the answer is I

1           didn't pay enough attention to his testimony.

2       Q     That's fair, but that's just not something  
3           you've done yourself?

4       A     That's true.

5       Q     Are you familiar with a company that operates  
6           in the area called Cary Cart Company?

7       A     Yes, sir.

8       Q     Well, what do they do?

9       A     I've never dealt with them, but, you know, I've  
10          never had any personal experience with them,  
11          but I do know what they do is they sell,  
12          maintain golf carts. They're on the island.  
13          There's a location they have on the island, and  
14          a lot of people use them. I hear nothing but  
15          good things about them.

16      Q     Do people ever use their carts to go across to  
17          the Mainland or come across to the Mainland on  
18          the barge?

19      A     Not to my knowledge.

20      Q     Okay, not to your knowledge. A company called  
21          Always Ready. You ever heard of them?

22      A     Yes, sir, I've heard of Always Ready.

23      A     Yes, I've heard of Always Ready.

24      Q     What do they do?

1 A I believe they're a maintenance group.

2 Q Maintenance group?

3 A Yes, sir. They'll come to our homes and repair  
4 things that are broken, and -- Always Ready.

5 I was thinking of a different one. I think I  
6 was thinking of someone will come. Always  
7 Ready. I guess I'm not sure what Always Ready  
8 is. Wait a minute. That's part of a name of  
9 the golf cart company I have, I think, but that  
10 is a golf cart company that has that name, I  
11 believe. I think it's mine. In fact, I've  
12 been with them for 20 years. But I think their  
13 names change, but Always Ready.

14 Q Always ready?

15 A Yes, I think that's right.

16 Q Yeah. They have an office or an operation on  
17 the island?

18 A Yes, they do. And they repair and they sell.

19 Q They have one on the Mainland too?

20 A Not to my knowledge.

21 Q You're not aware of it, if they do?

22 A That's true. I'm not aware.

23 COMMISSIONER CLODFELTER: Thank you for  
24 your time, sir. Appreciate it.

1 COMMISSIONER BROWN-BLAND: Commissioner  
2 Duffley.

3 COMMISSIONER DUFFLEY: Just one follow-up.  
4 EXAMINATION BY COMMISSIONER DUFFLEY:

5 Q Does the Deep Point facility on the Mainland  
6 have an area for island residents to park their  
7 golf carts? Is there a golf cart parking area  
8 on the Mainland?

9 A Not to my knowledge.

10 Q Thank you.

11 A I mean, if someone drove up there in a golf  
12 cart, I presume they could park their golf cart  
13 where we park our cars. But I can't say I've  
14 ever seen it, but I don't know that I ever  
15 thought about it.

16 COMMISSIONER DUFFLEY: Okay. Thank you.

17 COMMISSIONER BROWN-BLAND: Questions on  
18 Commission's questions?

19 MR. STYERS: No.

20 MR. FINLEY: I have a question.

21 COMMISSIONER BROWN-BLAND: I'm sorry  
22 Redirect?

23 MR. FINLEY: Yeah.

24 EXAMINATION BY MR. FINLEY:

1 Q Well, Mr. Clodfelter asked about how you got  
2 around on the island. And one of the ways you  
3 get around is by a bicycle?

4 A Yes, sir.

5 Q You don't have any passenger cars you have to  
6 worry about on the island, do you? I hope not.

7 A You're talking about your bicycle.

8 Q That's right.

9 A No.

10 Q No.

11 MR. FINLEY: Thank you very much.

12 THE WITNESS: Yes, sir.

13 COMMISSIONER CLODFELTER: Chair, may I?

14 Let me follow up with that.

15 EXAMINATION BY COMMISSIONER CLODFELTER:

16 Q Mr. Briggs, have you ever taken your bicycle  
17 over to the Mainland?

18 A Sometimes, yes.

19 Q How do you get it over there?

20 A Some of my -- some of guests. I mean, I have  
21 guests all summer long, and they'll bring their  
22 bikes. They come over on the ferry.

23 Q They bring their bike on the ferry?

24 A Yes. There's a special charge the ferry has

1       for bicycle transportation. So people get off  
2       and then they ride their bike from the Deep  
3       Point or from when they land on the island to  
4       my house.

5 COMMISSIONER CLODFELTER: That's good.  
6 Thank you for answering.

7 COMMISSIONER BROWN-BLAND: Mr. Finley, did  
8 you have follow-up?

9 MR. FINLEY: No.

10 COMMISSIONER BROWN-BLAND: I apologize. I  
11 skipped you on redirect.

12 MR. FINLEY: That's all right. I move the  
13 exhibits.

14 COMMISSIONER BROWN-BLAND: All right.  
15 Without objection, that motion will be allowed and  
16 the four exhibits attached to the direct testimony  
17 of witness Briggs will be received into evidence at  
18 this time.

19 (WHEREUPON, Briggs Exhibits  
20 1-4 are admitted into  
21 evidence.)

22 MR. STYERS: And I would move into  
23 evidence the Briggs redirect -- Briggs  
24 Cross-Examination Exhibit 1.



1 COMMISSIONER BROWN-BLAND: And that motion  
2 is also allowed.

3 (WHEREUPON, Briggs  
4 Cross-Examination Exhibit 1  
5 is admitted into evidence.)

6 COMMISSIONER BROWN-BLAND: Mr. Briggs, I  
7 think you are excused. Now, we'll hear from Bald  
8 Head Club.

9 MR. HIGGINS: Yes, ma'am. The Bald Head  
10 Island Club calls David Sawyer.

11 DAVID SAWYER;  
12 having been duly sworn,  
13 testified as follows:

14 COMMISSIONER BROWN-BLAND: Please be  
15 seated.

16 DIRECT EXAMINATION BY MR. HIGGINS:

17 Q Would you please state your name for the  
18 record, sir.

19 A David Sawyer.

20 Q And how are you employed?

21 A I am the CEO of the clubs on Bald Head Island.

22 Q And did you cause to be prepared and filed  
23 testimony consistent of 11 pages of written  
24 questions and answers in this docket?

1 A Yes.

2 Q Do you have any changes or corrections to your  
3 prefiled testimony?

4 A No.

5 Q Did you also cause to be prepared and filed a  
6 summary of your testimony consisting of two  
7 pages?

8 A Yes.

9 Q Any changes or corrections to your summary?

10 A No.

11 MR. HIGGINS: At this time, Commissioner,  
12 I'd move the admission of the prefiled direct  
13 testimony of Mr. Sawyer, as well as his summary, as  
14 though it was given orally from the stand.

15 COMMISSIONER BROWN-BLAND: That motion is  
16 allowed. And the prefiled direct testimony of  
17 witness Sawyer is received into evidence and will be  
18 treated as if given orally from the stand, as well  
19 as his summary of his direct testimony.

20 (WHEREUPON, the prefiled  
21 direct testimony and summary  
22 of DAVID SAWYER is copied  
23 into the record as if given  
24 orally from the stand.)

**UTILITIES COMMISSION  
RALEIGH**

Docket No. A-41, Sub 21

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of )  
Village of Bald Head Island, )  
Complainant, )

v. )

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

**DIRECT TESTIMONY OF  
DAVID SAWYER ON BEHALF  
OF BALD HEAD ISLAND CLUB**



1 **Q. PLEASE STATE YOUR NAME, TITLE, AND ADDRESS.**

2 A. My name is David Sawyer. I am the Chief Executive Officer of the Bald Head Island  
3 Club, Inc. My business address is 301 South Bald Head Wynd, Bald Head Island, North  
4 Carolina.

5 **Q. ON WHOSE BEHALF ARE YOU SUBMITTING THIS TESTIMONY?**

6 A. I submit this testimony on behalf of the Bald Head Island Club and its wholly-owned  
7 subsidiary, the Shoals Club (collectively “BHI Club”), in support of the Village of Bald  
8 Head Island’s petition requesting that the Commission regulate the public parking  
9 operations of Bald Head Island Limited (“Limited”) at the Deep Point Marina ferry  
10 landing, as well as Limited’s barge operations. Limited recently announced that it intends  
11 to sell the Bald Head Island Transportation, Inc. (“BHIT”) ferry transportation assets and  
12 franchise to a newly created subsidiary of SharpVue Capital, a private equity investor. The  
13 BHI Club’s Board of Governors believes the regulatory status of the parking facility at the  
14 Deep Point ferry landing and the barge operation must be resolved before ownership of  
15 BHIT’s transportation assets are allowed to change hands.

1 **Q. PLEASE DESCRIBE YOUR EDUCATIONAL AND PROFESSIONAL**  
2 **EXPERIENCE.**

3 A. I have been the CEO of the Bald Head Island Club and the Shoals Club for three years.  
4 Prior to coming to BHI, I was the President of the Cliffs Clubs located in western North  
5 Carolina and upstate South Carolina, where I worked for thirteen years. I have held  
6 progressive management positions in the private club industry for thirty years in  
7 Pennsylvania, Connecticut, Ohio, and Texas. I attended Penn State University, majoring in  
8 Public Relations and Tourism.

9 **Q. AS ITS CHIEF EXECUTIVE OFFICER, PLEASE EXPLAIN THE BALD**  
10 **HEAD ISLAND CLUB'S INTEREST IN THIS PROCEEDING?**

11 A. It is my understanding that this proceeding will determine whether Limited's parking  
12 operations at the Deep Point ferry landing and the barge service that transports goods and  
13 people to the island will be regulated by the Commission along with BHIT's passenger  
14 ferry service. The parking operation at the Deep Point ferry landing is indispensable to the  
15 use of BHIT's ferry service operations – it would be nearly impossible to ride the ferry to  
16 the island if you can't park your car. Together with BHIT's ferry operations, Limited's  
17 parking operation at the Deep Point ferry landing, and Limited's barge operation, comprise  
18 an integrated transportation system that I will refer to as the "BHI Transportation System."  
19 Together the Bald Head Island Club and Shoals Club are the single largest user of the BHI  
20 Transportation System. As such, the BHI Club has a major stake in how the entire  
21 transportation system is operated going forward. The BHI Club's interests not only include  
22 the cost to use the system, but also how reliably the parking, barge, and ferry/tram facilities  
23 are maintained and operated on a day-to-day basis -- regardless of who owns them.

1 **Q. COULD YOU PROVIDE AN OVERVIEW OF BALD HEAD ISLAND CLUB**  
2 **AND THE SIGNIFICANCE OF ITS TRANSPORTATION COSTS?**

3 **A.** Yes, the Bald Head Island Club and Shoals Club are North Carolina non-profit  
4 corporations recognized under Section 501(c)7 of the Internal Revenue Code. These Clubs  
5 are owned by their members and managed by a Board of Governors elected by the  
6 membership. The BHI Club currently has 1,261 member families. As previously noted, the  
7 BHI Club also owns and operates the Shoals Club, a stand-alone beach club which  
8 currently has 816 member families, many of whom are also members of the BHI Club. As  
9 a non-profit corporation, annual membership dues and fees for various services provided  
10 by the BHI Club (e.g., greens fees for using the golf course) are set to recoup the cost of  
11 operating the Club, year over year.

12 **Q. PLEASE PROVIDE A BREAKDOWN OF THE BHI CLUB'S**  
13 **TRANSPORTATION COSTS.**

14 **A.** The BHI Club currently employs 285 persons, virtually all of whom, myself included,  
15 live off the island in Brunswick or New Hanover County, and use the BHI Transportation  
16 System to get to work. The Club pays all employee parking and passenger ferry fees. The  
17 Club also leases warehouse space at the Deep Point barge terminal from Limited and  
18 regularly uses the barge service to transport materials, supplies and equipment needed to  
19 support the Club's operations, including its golf course, beach club, tennis and croquet  
20 facilities, two swimming complexes and six restaurants.

21 In 2021 the two Clubs spent \$956,799 directly on ferry tickets, parking charges, barge fees,  
22 and storage charges for facilities provided by or leased from Limited. This included  
23 expenditures of \$641,127 for employee transport on the passenger ferry, \$179,729 in

- 1 parking fees, \$101,743 in barge fees, and \$31,200 for leasing warehouse space at Limited's  
2 Deep Point barge terminal.

3 **Q. ARE THE PARKING FACILITIES AND PARKING OPERATION AT THE**  
4 **DEEP POINT MARINA FERRY LANDING AN INTEGRAL AND**  
5 **INDISPENSIBLE PART OF THE FERRY SERVICE OFFERED TO THE**  
6 **PUBLIC BY BHIT?**

7 **A.** Yes. BHIT's passenger ferry operations are essential because there is no bridge  
8 connecting Bald Head Island to the mainland, and with a few minor exceptions (e.g.,  
9 private boat ownership), the island is only accessible to the public by using BHIT's ferry  
10 service. The ferry does not transport automobiles, so ferry passengers must leave their  
11 automobiles at the Deep Point ferry landing, in parking lots owned and operated by  
12 Limited. The parking facilities at the Deep Point ferry landing are thus an indispensable,  
13 integral, and essential part of BHIT's ferry operation.

14 **Q. DOES LIMITED'S BARGE OPERATION TRANSPORT PEOPLE AND**  
15 **GOODS TO AND FROM BALD HEAD ISLAND?**

16 **A.** Yes, the barge is the exclusive means available for transporting all operating supplies  
17 for the BHI Club and the Shoals Club, including food and beverage, golf course supplies,  
18 pool, fitness, tennis, croquet, maintenance, housekeeping, technology, and administrative  
19 support supplies, as well as household goods, to the island. The goods transported for the  
20 BHI Club include furniture, appliances and furnishings required for operating the Bald  
21 Head Island Club and the Shoals Club. The barge also transports furniture, appliances,  
22 supplies, and other household good to the island for Club members owning homes on the  
23 island. All of these goods typically travel in trucks that have drivers that ride over on the  
24 barge.

1 Limited now proposes to sell the parking and barge operations to the newly created  
2 subsidiary of an investment fund. The parking facilities and operation are indispensable to  
3 use of the ferry service. The barge operation carries people and goods to and from the island  
4 that are of vital importance to every house and business on the island. Transfer of these  
5 assets to an unregulated entity with a total monopoly on the parking and barge services,  
6 without the economic development motivations that moderated Limited's use of its ferry  
7 parking and barge monopoly in the past, is a very troubling prospect for all interests  
8 associated with the island, other than BHIT and Limited.

9 **Q. WHY DID THE BHI CLUB INTERVENE IN THIS PROCEEDING?**

10 **A.** The BHI Club's Board of Governors chose to intervene in this proceeding because the  
11 Club has an obvious interest in the future the BHI Transportation System and its vitally  
12 important constituent parts. The island needs dependable service at reasonable prices, and  
13 the prospect of being held hostage through pricing set by an unregulated monopolist that  
14 is the only source for these indispensable services, would not bode well for the Club,  
15 homeowners, or other island interests. It is not difficult to imagine that at some point  
16 monopoly price increases for these essential services could adversely impact Club member  
17 and tourist spending which, in turn, would force the BHI Club to increase prices and could  
18 result in reducing our workforce. The latter adverse income would not only negatively  
19 impact the island but also the entire region, as the BHI Club is one of the largest employers  
20 in the area.

21 **Q. DOES THE BHI CLUB SHARE THE VILLAGE OF BALD HEAD ISLAND'S**  
22 **VIEW THAT THE DEEP POINT PARKING FACILITY AND THE BARGE**  
23 **SHOULD BE REGULATED ALONG WITH THE BHI PASSANGER FERRY?**

1 A. Yes, the parking facilities at the Deep Point ferry landing, barge and passenger ferry are  
2 essential and indispensable components of a commercially owned transportation system  
3 that serves one market: Bald Head Island. The ferry system, parking, and barge operations  
4 are a commercially owned local monopoly relied upon by the public that, in the Club's  
5 view, should be regulated as such. The parking operations at the Deep Point ferry landing,  
6 where anyone planning to use the ferry must park their vehicle, is an inseparable and  
7 indispensable part of the ferry operation. It would practically be impossible for people to  
8 use the BHI ferry or for the ferry to operate without the parking facilities at the Deep Point  
9 ferry landing. The Club believes that the Deep Point parking facilities are integral to  
10 BHIT's provision of ferry service to the public. We know that Limited's barge service  
11 carries operating supplies, construction materials and household goods for the Clubs and  
12 all other businesses on the island, such that the Commission should exercise its statutory  
13 authority to appropriately regulate the parking facilities and the barge operation.

14 **Q. WHY DID THE BHI CLUB ENTER INTO A SETTLEMENT AGREEMENT**  
15 **WITH BHI LIMITED THAT STOPPED SHORT OF REGULATING THE**  
16 **DEEP POINT PARKING FACILITY AND THE BARGE WHEN BALD HEAD**  
17 **LIMITED FILED ITS LAST MAJOR RATE CASE IN 2010?**

18 A. I did not become the CEO of the Bald Head Island Club until 2019 so I was not involved  
19 in the negotiated settlement that was struck in 2010. That being said, I am familiar with its  
20 terms and would think they reflect the give and take realities of a negotiated settlement. I  
21 am not a lawyer, but I understand that the legal significance of that agreement is that the  
22 question of whether the parking operation at the Deep Point ferry landing should be  
23 regulated as an essential component of the ferry service was explicitly left unresolved.



1 **Q. COULD YOU EXPLAIN WHY THE COMMISSION SHOULD TREAT THE**  
2 **BHI TRANSPORTATION SYSTEM AS A SINGLE REGULATED ENTITY?**

3 **A.** Yes, as a practical matter, very few if any of our employees would likely take a job at  
4 the BHI Club if they could not park at the Deep Point ferry landing and catch the ferry to  
5 the island or catch the ferry from the island back to Deep Point and get in their car to drive  
6 home. Assuming the ferry is running on time, which is often not the case during the busy  
7 summer months, the process of parking at the Deep Point ferry landing, walking to the  
8 ferry terminal, riding the ferry to the island, and taking a golf cart from the BHI ferry  
9 landing to the Clubs typically takes about 60 minutes. The same is true of the return trip.  
10 That's more than a two-hour commute each day, not including the time required for an  
11 employee to drive from his/her home to Deep Point and back. Were BHI employees asked  
12 to park somewhere other than the Deep Point ferry landing, assuming an alternative parking  
13 lot was available, which it currently isn't, and take public transportation, which is non-  
14 existent in Southport, from a remote parking lot to the Deep Point ferry terminal and back,  
15 would add considerably to an already long commute. Under such circumstances, working  
16 at the BHI Club and Shoals Club would become significantly less attractive.  
17 The problem is further compounded by the fact that the work schedules of many of the  
18 Club's employees can vary with the number of people using the Club's facilities. Some  
19 employees occasionally have to stay late enough in the evening that they miss the last ferry  
20 going from the island to Deep Point. In those instances, the Club usually arranges for a  
21 water taxi to take employees from the island to Deep Point. The future use of water taxis  
22 to transport people when the last boat has run for the evening, including Club employees,  
23 to and from the Island and Deep Point is uncertain.

1 I mention these examples because they illustrate the harsh reality that BHI Club employees,  
2 like nearly all people who travel to Bald Head Island, are captive customers of BHIT's  
3 passenger ferry and Limited's parking operations at the ferry landing. Nearly all who ride  
4 the regulated ferry to BHI have no choice but to park in the unregulated parking facilities  
5 at the Deep Point ferry landing. Similarly, the BHI Club has no other alternative but to use  
6 Limited's unregulated barge operations to get food, beverage, supplies, appliances,  
7 materials, and furniture that the Clubs needs to operate from the mainland to the island.  
8 There simply is no alternative to using the barge service and the cost of creating some sort  
9 of alternative would very likely prove to be prohibitively expensive. In my view, it would  
10 also be wasteful in that the existing BHI Transportation System is perfectly capable of  
11 accommodating demand now and in the foreseeable future.

12 As long as Limited had a stake in growing its development activities and real estate sales  
13 on the island, it had a practical commercial incentive to keep the BHI Transportation  
14 System widely available and the services reasonably affordable. A new commercial  
15 operator of the parking and/or barge operations, constrained by no such economic self-  
16 interest in the success of its real estate sales on the island and interested only in maximizing  
17 the profitability of the unregulated Deep Point ferry landing parking and barge operations,  
18 is unlikely to be as accommodating to users of the BHI Transportation System. As the  
19 largest user of that system, the BHI Club believes the entire system should be regulated as  
20 a public utility operation by the Utilities Commission so as to provide a reasonable profit  
21 to the system owner, and ensure that dependable services are provided to businesses,  
22 employees, vendors, and island stakeholders at reasonable rates.

1 **Q. FROM THE BHI CLUB'S POINT OF VIEW, DOES THE NEED TO**  
2 **REGULATE THE DEEP POINT PARKING AND BARGE FACILITIES DEPEND**  
3 **ON WHO ENDS UP OWNING THE BHI TRANSPORTATION SYSTEM?**

4 **A.** No, the BHI Club's sole interest in this proceeding is ensuring that regardless of who  
5 owns the BHI Transportation System, user fees for the passenger ferry, parking and barge  
6 services will be at reasonable levels, and that the entire system is operated in a safe and  
7 reliable manner.

8 **Q. COULD YOU DESCRIBE THE SIGNIFICANCE OF THE BALD HEAD**  
9 **ISLAND CLUB TO THE COMMUNITY OF BALD HEAD ISLAND AND ITS**  
10 **ECONOMY, AND THE SIGNIFICANCE OF THE BHI TRANSPORTATION**  
11 **SYSTEM TO BOTH THE BHI CLUB AND THE BALD HEAD ISLAND**  
12 **COMMUNITY?**

13 **A.** Yes, it is important to understand that Bald Head Island is a resort community that  
14 HEAVILY depends on providing a resort lifestyle for residents/members, as well as  
15 tourism and tourist spending to prosper. I like to think of the BHI Club as the community's  
16 anchor tenant. In my view, the Clubs could not exist without the BHI community, just as  
17 the BHI community could not exist without the Clubs and the amenities they offer, which  
18 enhances value for all stakeholders, and also has a tourism factor that the Club attracts. The  
19 symbiotic relationship between the island community, the Clubs and vacationer tourism  
20 could not exist without a reliable, safe, and affordable transportation system.

21 As I alluded to earlier, much of this co-dependance has to do with the economics of  
22 sustaining a resort community with roughly 1,200 homes, of which almost half are rented  
23 out to vacationers, and the remainder mostly occupied periodically by part-time residents,  
24 on an island that is accessible only by watercraft. The latter fact obviously adds to the total  
25 cost of providing services on BHI, whether they be essential municipal services provided  
26 by the Village government (e.g., sewer and water, public safety, etc.), leisure and

1 recreational services provided by the Clubs (e.g., golf, tennis, swimming, dining, etc.), or  
2 a host of other services (e.g., construction, food services, etc.) provided by other  
3 businesses.

4 A very important factor for ensuring the viability or financial health of the BHI community  
5 as well as the BHI Club, therefore, has to do with attracting enough users (i.e., property  
6 owner residents/club members, and vacationers) to keep the average cost of coming to and  
7 enjoying the many amenities of Bald Head Island at reasonably affordable levels.

8 **Q. ARE THERE OTHER TRANSPORTATION ISSUES RAISED BY THE**  
9 **VILLAGE'S PETITION TO REGULATE THE DEEP POINT PARKING AND**  
10 **BARGE OPERATIONS THAT YOU BELIEVE THE COMMISSION SHOULD**  
11 **CONSIDER?**

12 **A.** Yes, I urge the Commission to carefully consider not only the need to regulate user fees  
13 for parking at the Deep Point ferry landing and barge operations, but also how regulating  
14 the entire system would affect service quality. I use the BHI Transportation System 5 to 6  
15 times a week and have done so since becoming the BHI Club's CEO in July 2019. During  
16 that time, the BHI Transportation System has experienced its fair share of stress, initially  
17 due to disruptions brought about by Covid-19, and more recently by an uptick in traffic  
18 volumes and understandable difficulties in hiring a requisite number of employees.

19 In my view, Limited has done a good job of managing the BHI Transportation System in  
20 the face of these problems. It is also apparent that the capacity of the system, particularly  
21 during peak use summer months, will need to be expanded to accommodate growth from  
22 the number of homes being built on the island. Expanding the system, and making needed  
23 improvements, also will require added capital investment (e.g., for new boats and updated  
24 ferry terminal facilities). In the face of these future capital spending requirements and how  
25 much a new owner/operators might be willing to pay Limited for its existing transportation

1 assets, I would think that owner/operator would needs to know whether the Deep Point  
2 parking and barge operations will be regulated in the same manner as the passenger ferry.  
3 The BHI Club believes that those aspects of the BHI Transportation System should be  
4 regulated for precisely the same reasons the BHI passenger ferry is currently regulated.  
5 The ferry, parking and barge are essential and highly inter-dependent components of a  
6 single transportation system that operates as a commercially owned monopoly.

7 **Q. DOES THIS CONCLUDE YOUR TESTIMONY AT THIS TIME?**

8 **A. Yes.**

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**SUMMARY OF DIRECT TESTIMONY OF DAVID SAWYER ON BEHALF OF THE  
BALD HEAD ISLAND CLUB, INC.**

My name is David Sawyer and I am Chief Executive Officer of the Bald Head Island Club, Inc.

My testimony is submitted on behalf of the Bald Head Island Club and its wholly owned subsidiary, the Shoals Club, which I will collectively refer to as the "BHI Club".

The BHI Club supports the Village of Bald Head Island's request that the Commission regulate the parking operations of Bald Head Island, Ltd. ("Limited") at the Deep Point Marina ferry landing on the mainland as an integral part of BHI Transportation's public utility ferry service.

The BHI Club also supports the Village's request for regulation of Limited's barge operation as a common carrier service.

The BHI Club and the Shoals Club are owned by their members. The BHI Club currently has 1,261 member families and the Shoals Club currently has 816 member families.

At the time my testimony was filed the BHI Club employed 285 people. Virtually all of the Club's employees, including myself, live off the island in Brunswick or New Hanover County and use Limited's parking facilities and BHIT's ferry system to get to work.

I believe that the BHI Club is the largest customer of what I consider to be an integrated transportation system serving Bald Head Island, consisting of parking at the mainland ferry landing, the ferry service, and the barge service.

In 2021 the two clubs spent nearly one million dollars on parking fees, ferry tickets, barge fees, and storage charges for facilities provided by or leased from Limited. This included \$641,127 for employee transportation on the passenger ferry, \$179,720 in parking fees, \$101,743 in barge fees and \$31,200 for leasing warehouse space at Limited's Deep Point Barge Terminal.

BHI Transportation's passenger ferry operation is an essential service that is critical to the existence of Bald Head Island. The island is only assessable to the vast majority of the public by using the ferry service. Because the ferry doesn't transport automobiles, ferry passengers must leave their automobiles at the Deep Point ferry landing, in parking lots owned and operated by Limited.

The parking facilities at the Deep Point ferry landing are an indispensable, integral and essential part of Transportation's ferry operation – as a practical matter you cannot ride the ferry if you don't park your car at the Deep Point ferry landing.

Likewise, Limited's barge service is the exclusive means for transporting all operating supplies and equipment required for operation of the BHI Club, including food and beverage supplies, other supplies and equipment, as well as household goods to the island. The goods transported for the BHI Club include furniture, appliances, and furnishings required for operating club facilities.

Limited's barge also transports furniture, appliances, supplies and other household goods to the island for club members owning homes on the island. These goods typically travel in trucks with drivers that ride over on the barge.

The parking operation at the mainland ferry terminal is indispensable to use of the ferry service. Transfer of the parking and/or the barge operations to an unregulated entity with a monopoly on the charges to be imposed for parking and barge services, without the economic development motivations and interests that moderated Limited's use of its parking and barge monopoly in the past, is a terribly troubling prospect for all island interests.

Bald Head Island needs dependable ferry and barge service at reasonable prices, and the prospect of being held hostage through the pricing set by an unregulated monopolist that is the only source for these indispensable services does not bode well for the BHI Club, homeowners or other island businesses and interests.

BHI Club employees, like nearly all people who travel to Bald Head Island, are captive customers of the passenger ferry and Limited's parking operations at the mainland ferry landing.

Likewise, BHI Club has no option other than to use Limited's barge operation to get supplies, materials, and other household good that we need to operate from the mainland to Bald Head Island. As the largest user of these various parts of this transportation system, BHI Club believes the entire system should be regulated as a public utility operation in a fashion that provides a reasonable profit to the system owner and ensures that adequate and dependable services are provided to businesses, employers and vendors and island stakeholders at reasonable rates.

1 MR. HIGGINS: The witness is available for  
2 cross.

3 COMMISSIONER BROWN-BLAND: All right. And  
4 on my information, it says the Village has agreed to  
5 go first.

6 CROSS EXAMINATION BY MS. HAWKINS:

7 Q Good afternoon, Mr. Sawyer. I just have a  
8 couple questions. Do you recall stating in  
9 your direct testimony that when employees of  
10 the Club have to stay late such that they miss  
11 the ferry, the Club usually arranges for a  
12 water taxi for those employees? But you said  
13 the future of water taxis is uncertain?

14 A Yes. We've had great success with the current  
15 owner, Bald Head Island Transportation in  
16 allowing us to use water taxis whenever needed,  
17 but with the change of ownership, we know that  
18 that could be uncertain.

19 Q And just so we all understand what we're  
20 talking about, a water taxi, it's a smaller  
21 boat that transports passengers to and from  
22 Bald Head Island. Is that right?

23 A Correct. It's a six-passenger boat.

24 Q And who operates those water taxis? Is it Bald



1 Head Island Transportation, Limited, or some  
2 other company?

3 A There are a couple other companies that provide  
4 that service. One is Sea Tow. They  
5 recommission Coastguard vehicles. And their  
6 primary purpose is emergency towing services to  
7 boats that are in distress, but they can hold  
8 six passengers, and so they'll accommodate our  
9 staff if they ever get bumped or if we have a  
10 late night meet.

11 Q And are the water taxi services available to  
12 the public?

13 A Yes.

14 Q And they're more expensive than taking the  
15 ferry. Is that right?

16 A Correct. For our employees, it is. It's about  
17 \$150 perfect run, for a Sea Tow run, and so  
18 that works out to be about \$25.00 per person.

19 Q And when the water taxi is coming from Bald  
20 Head to the Mainland, it uses Limited's Deep  
21 Point terminal. Is that right?

22 A Correct.

23 Q And so Limited has control over the water  
24 taxis' ability to bring passengers to the

1 Mainland because it controls the terminal. Is  
2 that correct?

3 A Correct.

4 Q And is it true that Limited has indicated that  
5 it will stop allowing the water taxis to  
6 operate at some point?

7 A That is not correct. That was something that  
8 we heard earlier this summer. And when I  
9 reached out to the CEO of Bald Head Island  
10 Limited, he corrected the misunderstanding at  
11 the time. He let me know what the concern was,  
12 which was that the independent operators were  
13 starting to try to use it as a ferry service,  
14 dropping their luggage off with Bald Head  
15 Island Transportation and then taking Sea Tow  
16 over to the island. We understood that. Our  
17 Board and our Club respected that, and so we  
18 only use it for emergency employee  
19 transportation.

20 Q So Limited restricted the Club's use of the  
21 water taxis. Is that right?

22 A No. Limited never restricted the Club's use.  
23 We were given notice that it could be  
24 restricted, and Limited was very cooperative in

1           working with us to make sure that it would not  
2           be restricted for our purpose.

3       Q     Okay. But there's no guarantee that a future  
4           owner would have that kind of flexibility. Is  
5           that right?

6       A     Correct.

7       Q     And so what would the Club do for employees  
8           who'd have to stay late if water taxis weren't  
9           available?

10      A     We would end up appealing to some of our  
11           generous members who have boats on the island,  
12           and we would hope that they would help us to  
13           get some of our staff back and forth.

14               MS. HAWKINS: Thank you. Nothing further.

15               COMMISSIONER BROWN-BLAND: Okay. BHIT.

16      CROSS EXAMINATION BY MR. RISINGER:

17      Q     Good afternoon, Mr. Sawyer.

18      A     Good afternoon.

19      Q     My name is Brad Risinger. I'm one of the  
20           counsel for the Respondents. I just got a  
21           couple questions for you. I appreciate your  
22           time. You've waited a long time to take the  
23           stand. In your testimony, in the portion where  
24           you discuss your employees, you say you have

1 285 employees?

2 A Yes.

3 Q And you indicate that the Club pays for their  
4 parking and their passenger ferry fees?

5 A Yes.

6 Q Does the Club pay for the parking through  
7 passes or individual payments?

8 A Both. We have annual passes for employee lots,  
9 a contractor lot, and then we also pay daily  
10 passes.

11 Q Does which one you use for a particular  
12 employee depend on what that employee does?

13 A Yes. We reserve the annual passes for  
14 year-round full-time staff, and the day passes  
15 we use for part-time staff.

16 Q Do you have a similar division by employee  
17 class for the ferry fees?

18 A No, we do not.

19 Q Do you buy any annual passes for the ferry?

20 A We do. They're not -- they're Icard passes.  
21 It's charged per use.

22 Q In your testimony, Mr. Sawyer, you also  
23 mentioned that the Club regularly uses the  
24 barge to transport materials and supplies to

1 the Club?

2 A Yes.

3 Q And does the Club load them on a truck?

4 A Yes.

5 Q Do Club employees -- is it Club personnel or  
6 Club contractors that place this stuff on the  
7 truck?

8 A Club personnel.

9 Q And the barge serves the function of moving the  
10 truck over to the island?

11 A Yes.

12 Q And when the truck -- I take it the truck has  
13 an ICE permit to drive on the island?

14 A I'm sorry. Can you repeat --

15 Q I'm sorry. Does the truck have an ICE permit  
16 to drive on the island?

17 A Yes.

18 Q And does it deliver whatever you're shipping  
19 essentially to yourself, to the door of the  
20 Club?

21 A Yes.

22 Q And does Club personnel unload the items that  
23 are in the truck?

24 A Yes.

1 Q Part of your direct testimony, Mr. Sawyer,  
2 discusses what you feel is the need for a  
3 symbiotic relationship between the Club and the  
4 concerns and businesses on the island, and the  
5 transportation elements. Do you recall that  
6 testimony?

7 A Yes.

8 Q All right. Have you had an opportunity to read  
9 the testimony of SharpVue regarding their views  
10 as to that kind of symbiotic relationship?

11 A Yes, I have.

12 Q Do you find their take or their view on that  
13 issue to be appropriate or in accord with the  
14 Club's view?

15 A Appropriate, yes. And we were very happy to  
16 see the intent that was expressed in those  
17 documents.

18 Q Your testimony also mentions the possible  
19 future need to pay for improvements or needed  
20 capital expenditures for, you know, major items  
21 for the transportation system. Have you also  
22 had an opportunity to review Mr. Robert's  
23 testimony regarding the capital available to  
24 his investor fund to do that?

1 A Yes, I have.

2 Q And do you view those representations to be in  
3 accord with the kind of partnership you're  
4 looking for from an operator?

5 A So far, without understanding the full capital  
6 needs but just from reading the testimony, it  
7 sounds favorable.

8 MR. RISINGER: We have no further  
9 questions. Thank you.

10 COMMISSIONER BROWN-BLAND: SharpVue?

11 MR. FERRELL: No questions.

12 COMMISSIONER BROWN-BLAND: All right.

13 Questions from the Commission? I'm sorry.  
14 Redirect.

15 MR. HIGGINS: No, ma'am.

16 COMMISSIONER BROWN-BLAND: All right.

17 Questions from the Commission?

18 (No response)

19 COMMISSIONER BROWN-BLAND: Just a couple,  
20 Mr. Sawyer.

21 EXAMINATION BY COMMISSIONER BROWN-BLAND:

22 Q So when you were being questioned by your  
23 counsel, did I understand you to say there were  
24 two types of water taxis?

1 A One type of water taxi, but there were two  
2 different vendors that we document  
3 predominantly use.

4 Q And were they both what you call Sea Tow?

5 A No. Another one is Towboat USA.

6 Q And was Sea Tow used just for emergencies prior  
7 to any discussion of the sale?

8 A Yes. We used Sea Tow quite often during Covid  
9 when there were restrictions on passenger  
10 limits on the ferries in order to get employees  
11 back and forth to the island. We use Sea Tow  
12 regularly.

13 Q But Sea Tow is always designated for just  
14 emergency use?

15 A Right now, we use it if our employees get  
16 bumped. If they've been waiting for a ferry  
17 for an hour or more, we'll help them to get off  
18 the island faster with the Sea Tow, and then  
19 the late night service.

20 Q All right. Then you gave a description of  
21 communications with Limited about ending the  
22 water taxi service, and I kind of got lost in  
23 what you were saying. So how was Sea Tow being  
24 used in a manner that was going around the



1           ferry?

2       A     The Club's used it inconsistent with  
3           understanding that we have with Limited for the  
4           purpose of Sea Tow. My understanding is that  
5           there were residents of the island who were  
6           booking Sea Tow directly, dropping off their  
7           luggage with BHI Transportation. So the ferry  
8           service was transporting their luggage, and  
9           then they were paying for Sea Tow to bring them  
10          over to the island and not paying for BHI  
11          Transportation to bring them to the island. So  
12          they were avoiding the ferry fees, but using  
13          the Ferry's luggage service.

14       Q     And I'm assuming from what you say, that that  
15           costs them less than using Sea Tow?

16       A     No. Well, the ferry --

17       Q     What was the advantage?

18       A     It's a timing advantage, I would guess. They  
19           would not have to wait in line for a ferry.  
20           They wouldn't have to take -- there would be  
21           no risk of being bumped. There would be no  
22           delays. So I'm guessing that most of the  
23           customers that elected that option were doing  
24           it purely for timing.

- 1 Q And was there a change or an agreed upon  
2 resolution between the clubs and Limited after  
3 those conversations?
- 4 A Yes.
- 5 Q And what was the change?
- 6 A When I reached out to Chad Paul with the  
7 concern when we were given notice that Sea Tow  
8 service would not be allowed on the island and  
9 to use as a transport option, he cleared it up  
10 immediately and let me know that the Club would  
11 be able to continue to use the Sea Tow service  
12 for our employees, and he explained what was  
13 happening with some folks getting around paying  
14 for ferry service and what his concern was.  
15 When our Board understood the reason why the  
16 limitation had been communicated, we agreed  
17 that that was a unfair situation, but  
18 fortunately we were able to clear it up for the  
19 Club.
- 20 Q All right. And then how is the other vendor  
21 water taxi? How does it come into play and  
22 when is it used?
- 23 A They have the same fee structure. It's a  
24 little bit less professional, less comfortable

1 transport boat. So it's not our go- to, but it  
2 does provide the same service for the same fee.

3 Q And the agreement with Limited include the way  
4 that that vendor water taxi would be used as  
5 well?

6 A I would imagine so. We didn't have that  
7 conversation. And I think one of the areas  
8 that Sea Tow crossed the line is they were  
9 aggressively marketing themselves as a  
10 passenger ferry limited option, and that was a  
11 concern for BHI Transportation.

12 COMMISSIONER BROWN-BLAND: All right.  
13 Thank you. Questions on Commission's questions?

14 MR. STYERS: No.

15 EXAMINATION BY MR. HIGGINS:

16 Q Mr. Sawyer, just to clarify with regard to  
17 Commissioner Brown- Bland's questions. The  
18 scenario you depict where people were dropping  
19 their luggage off but electing to take Sea Tow,  
20 that scenario doesn't involve the Club,  
21 correct?

22 A Correct.

23 Q The Club is only using Sea Tow or perhaps in  
24 some circumstances USA Towboat to transport

1 employees back to the Mainland when they've  
2 either been held up later, can't get on a ferry  
3 or they've been bumped off of a ferry. Is that  
4 correct?

5 A That's correct.

6 MR. HIGGINS: All right. No further  
7 questions.

8 COMMISSIONER BROWN-BLAND: All right.

9 MR. HIGGINS: If Mr. Sawyer could be  
10 excused, that's the evidence for the Club.

11 COMMISSIONER BROWN-BLAND: All right.  
12 Mr. Sawyer, you may be excused.

13 THE WITNESS: Thank you.

14 MR. STYERS: Just for planning purposes,  
15 are we going to 5:00 or 5:30 today?

16 COMMISSIONER BROWN-BLAND: 5:30.

17 MR. STYERS: Thank you.

18 COMMISSIONER BROWN-BLAND: All right.  
19 SharpVue.

20 MR. FERRELL: We call Mr. Roberts to the  
21 stand.

22 COMMISSIONER BROWN-BLAND: Mr. Roberts,  
23 I'm going to swear you in to be sure. I know you  
24 were sworn in yesterday for the other -- hearing on

1 the motion, but let's make sure we do it for the  
2 evidentiary hearing.

3 LEE ROBERTS;  
4 having been duly sworn,  
5 testified as follows:

6 COMMISSIONER BROWN-BLAND: You may be  
7 seated.

8 DIRECT EXAMINATION BY MR. FERRELL:

9 Q Mr. Roberts, if you can please state your full  
10 name and address for the record?

11 A Yes. I'm Lee Roberts, and my address is 3700  
12 Glenwood Avenue, here in Raleigh. That's my  
13 business address.

14 Q Okay. And please state your position of  
15 employment for the record.

16 A I'm managing partner of SharpVue Capital.

17 Q Have you caused to be filed prefiled testimony  
18 in this docket consisting of 13 pages in a  
19 question and answer format?

20 A Yes, I have.

21 Q Was that testimony prepared by you or under  
22 your direction?

23 A Yes.

24 Q If you were asked those same questions today,

1           now that you're under oath, would you provide  
2           the same answers in your prefiled testimony?

3    A     Yes, I would.

4    Q     Do you have any corrections or additions to  
5           make to your testimony?

6    A     No, I don't.

7    Q     Was there an exhibit attached to your rebuttal  
8           testimony?

9    A     Yes.

10   Q     Okay. Was that labeled Exhibit A?

11   A     I believe so.

12   Q     Okay. Is that exhibit true and accurate in  
13           representing what it purports to represent, to  
14           the best of your knowledge?

15   A     Yes.

16                 MR. FERRELL: At this time, I'd like to  
17           move into evidence his prefiled testimony in this  
18           matter.

19                 COMMISSIONER BROWN-BLAND: That motion  
20           will be allowed that Mr. Sawyer's (sic) direct  
21           prefiled testimony will be treated as if given  
22           orally from the witness stand.

23                                 (WHEREUPON, the prefiled  
24                                 rebuttal testimony of LEE

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ROBERTS is copied into the  
record as if given orally  
from the stand.)

**STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH**

DOCKET NO. A-41, SUB 21

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of

VILLAGE OF BALD HEAD ISLAND,	)	
Complainant,	)	
v.	)	
	)	
BALD HEAD ISLAND	)	
TRANSPORTATION, INC. and	)	
BALD HEAD ISLAND LIMITED,	)	
LLC,	)	
Respondents.	)	

**REBUTTAL TESTIMONY OF  
LEE H. ROBERTS**

September 28, 2022



1 **Q. Please state your name, occupation, and business address.**

2 A. My name is Lee Roberts. I am Managing Partner of SharpVue Capital, LLC  
3 (“SharpVue”). My business address is 3700 Glenwood Avenue, Suite 530,  
4 Raleigh, North Carolina 27612.

5 **Q. Please describe your educational and professional background.**

6 A. I have a B.A. degree in political science from Duke University and a law degree  
7 from Georgetown University Law Center. I have worked in real estate investment  
8 and finance for more than 25 years, including positions in private equity,  
9 investment banking, and commercial banking for companies. My former  
10 employers include the State of North Carolina, Piedmont Community Bank  
11 Holdings and Cherokee Investment Partners in Raleigh, as well as Morgan Stanley  
12 in London and New York.

13 **Q. Why is this rebuttal testimony your first prefiled testimony in this proceeding?**

14 A. At the time of the June 17, 2022, scheduling order that set testimony-filing dates,  
15 SharpVue was not a party. On August 1, 2022, the Commission issued an order  
16 naming SharpVue as a necessary party. SharpVue is not specified as a complainant,  
17 respondent or intervenor, and thus the dates for those parties to file testimony  
18 seemed inapplicable. However, as a necessary party by Commission order, the  
19 June 17, 2022, scheduling order provision for “parties” to file rebuttal testimony or  
20 reply comments by September 28, 2022, is inclusive of SharpVue. Most  
21 importantly, SharpVue wishes specifically to respond to certain issues raised by

1 testimony filed on September 8 that it is uniquely positioned to address in order to  
2 provide a full and complete record for this proceeding.

3 **Q. What is the purpose of your testimony in this proceeding?**

4 A. The purpose of my testimony is to describe SharpVue's plans for the unregulated  
5 parking operations it has contracted to purchase. SharpVue has reviewed the  
6 Comments filed by Public Staff, and seeks to provide information to the  
7 Commission about its perspective, as a potential purchaser, of the parking  
8 operations and, upon approval of the Commission in A-41, Sub 22 to purchase the  
9 ferry and tram systems, its plans to provide adequate supply of reasonably priced  
10 parking that can be used by ferry passengers.

11 **Q. When and why was SharpVue formed?**

12 A. I co-founded SharpVue in 2016 in Raleigh, North Carolina. SharpVue was  
13 previously an arm of Curi, formerly known as Medical Mutual Holdings, Inc.  
14 Seeing the tremendous opportunity for continuing growth in North Carolina, my  
15 partner, Doug Vaughn, and I spun SharpVue off into its own investment  
16 management firm in 2019. One of SharpVue's primary missions is economic  
17 growth in North Carolina.

18 **Q. The testimony of Mr. Sawyer references a "transfer of these assets to an  
19 unregulated entity . . . without economic development motivations"; is that an  
20 accurate characterization of SharpVue?**

21 A. No. First, Mr. Vaughn and I have lived in this great state for many years and raised  
22 our families here. We are proud to call it home and don't plan to live anywhere

1 else. We know it well – its needs and its opportunities. Immediately prior to joining  
2 SharpVue, I had the honor of serving as budget director to Governor Pat McCrory.  
3 I am currently a member of the Board of Governors for the University of North  
4 Carolina system. I have served on the board of directors for the Golden LEAF  
5 Foundation, which distributes grants intended to make meaningful economic  
6 transformation across the State. I have also served on the State Board of  
7 Community Colleges and the North Carolina Banking Commission. With all due  
8 respect to BHIL/BHIT, as explained in detail below, I believe SharpVue has an  
9 even greater interest in the success of Bald Head Island, than the sellers who have  
10 been extraordinary stewards of these regulated and unregulated assets for decades.

11 **Q. How will the parking operation fit into the SharpVue corporate and**  
12 **organizational structure?**

13 A. SharpVue will enter an agreement for management services with Pelican Legacy  
14 Holdings, LLC, which is the sole member of Pelican Logistics, LLC, a North  
15 Carolina limited liability company that will manage the parking and tug and barge  
16 operations being purchased from Bald Head Island Limited, LLC (“BHIL”).

17 A chart reflecting the proposed management organization of the non-regulated  
18 assets, to include the parking operations, is attached as Exhibit A. SharpVue is  
19 merely stepping into the shoes of the seller from a corporate organization  
20 standpoint. Further, this investment will not be held in a limited life fund, but in an  
21 LLC with a perpetual life.

1 **Q. Testimony has been filed regarding the importance of the parking and barge**  
2 **operations to the functioning of the island; what relevant experience does**  
3 **SharpVue have as it relates to the operation of infrastructure assets?**

4 A. SharpVue has a history of participating in infrastructure projects. For example, in  
5 2017, SharpVue invested in the acquisition of a Raleigh-based sanitary solid waste  
6 company by a private group of investors. This investment was made as a minority  
7 equity investor, and after owning the investment for approximately five years,  
8 SharpVue's shares were acquired and SharpVue no longer owns this minority  
9 interest. In 2020, SharpVue invested in a reclaimed wastewater treatment facility  
10 in a Piedmont-located municipality. The waste water treatment investment was  
11 made in 2020 as a lender and SharpVue still holds this loan.

12 Further, in previous roles I have been involved with the following selected  
13 infrastructure transactions, among others: financing of the \$1.6 billion Africa  
14 ONE fiber network connecting locations on the African continent; financing of  
15 the \$2.2 billion Mumbai Trans Harbour Link, India's longest bridge;  
16 establishment of the Triangle Transit Authority's master developer program for  
17 "Transit-Oriented Development" around light rail; the \$5 billion redevelopment of  
18 the World Trade Center site in lower Manhattan; the \$300 million IPO and  
19 recapitalization of Golar LNG, the world's largest maritime shipper of liquefied  
20 natural gas; acquisition of one of the largest privately owned waste services  
21 companies in the United States; and financing to support the wastewater treatment  
22 infrastructure for one of the largest master-planned communities in the Southeast.

1 Financing these transactions brings with it a developed knowledge of the  
2 businesses being financed. This knowledge and experience does not replace, but  
3 supplements, the experience of those who have operated and managed these  
4 businesses being acquired.

5 Moreover, SharpVue has secured an understanding with the operations' current  
6 management to continue in their current roles and duties, to include (but not limited  
7 to): Charles A. "Chad" Paul, III, Chief Executive Officer and a Manager of Bald  
8 Head Island Limited LLC, Shirley Mayfield, Chief Financial Officer of Bald Head  
9 Island Limited LLC, and Captain Bion Stewart, the current Chief Operating Officer  
10 of Bald Head Island Transportation, Inc.

11 Further, SharpVue has committed to hire almost all of the current employees. In  
12 the process of negotiating the transaction and conducting our due diligence, we  
13 have been impressed with the knowledge and expertise this team brings with it and  
14 are confident that the transition will be seamless and operations will continue  
15 without noticeable impact to consumers as a result of the transaction.

16 **Q. Mr. Sawyer's testimony expresses concern about parking being eliminated;**  
17 **does SharpVue plan to make any significant changes to the parking operation?**

18 A. No, we have no such plans. Sometimes an equity investor will purchase an  
19 underperforming company with the intent of making changes to make it more  
20 profitable, but that is absolutely not the situation here. Instead, we see BHIL as an  
21 unusual situation in which an extremely well-run company needs to be sold for  
22 external reasons (i.e., the death of Mr. George Mitchell), and it is our intent to

1 continue that track record of success. We intend to spend the first year after the  
2 purchase communicating with stakeholders and evaluating the current operations  
3 in more detail and, of course, looking for opportunities to improve service and make  
4 any needed investments over time. Further, SharpVue believes the parking assets  
5 can be operated and achieve a strong cash flow using conservative operating and  
6 capex assumptions all while maintaining a reasonable debt service coverage ratio  
7 (DSCR). As you can see from my comments below about our plans for continuing  
8 to provide adequate parking at reasonable prices, we plan to own and operate the  
9 parking asset for the foreseeable future. Finally, let me repeat and re-emphasize:  
10 there is no scenario under which SharpVue would eliminate parking for ferry  
11 passengers.

12 **Q. Intervenor testimony has expressed fears about adverse impacts to the island**  
13 **operations and tourist spending because of the sale of the assets by**  
14 **BHIL/BHIT; from your perspective, what benefits will there be to the public**  
15 **by SharpVue's operation of the parking and barge businesses?**

16 **A.** In the short term, SharpVue will ensure that these operations continue uninterrupted  
17 in the same cost-effective, safe, and reliable manner that the public has come to  
18 historically enjoy. Going forward, SharpVue is willing and able to provide the  
19 operations with the capital they need to accommodate growth and enhance the  
20 consumer experience while maintaining efficient operations. As a North Carolina  
21 company, with North Carolina management, SharpVue is committed to the success  
22 of the island. Moreover, we owe a duty to our investors to increase – not decrease

1 – the utilization of our assets. As tourism grows, ridership on the ferry increases,  
2 barge usage increases, and parking facilities are utilized. Our financial success  
3 providing this infrastructure is very much tied to the overall continued success of  
4 the island. The doomsday scenarios imagined in Mr. Sawyer’s testimony and  
5 possibly from some intervenors are inconsistent with our motivations as  
6 prospective owners/operators of the barge and parking assets, or with sound  
7 economic and investment principles. This was true for BHIL/BHIT in the past, and  
8 it will be equally true for us or for any entity owning and operating the parking  
9 facilities or barge in the future.

10 **Q. Will the customers who use the parking and barge businesses be harmed in**  
11 **any way as a result of the SharpVue transaction?**

12 A. No. We’re simply stepping into the shoes of BHIL and BHIT as their successors.  
13 SharpVue is committed to continue to operate the parking and barge operations in  
14 the same efficient manner they have been under BHIL’s ownership. Between the  
15 expertise of the current management team, the wealth of knowledge of the existing  
16 employee base, and the resources and experience of SharpVue, we are well situated  
17 to make that happen. Moreover, let me emphasize that it is in our (or any  
18 prospective owner’s) own best interest for the BHI Club to succeed, for the  
19 commercial businesses on the island to succeed, and for the island as a whole to  
20 succeed.

21 **Q. Does the cost structure of operating infrastructure assets also align your**  
22 **interests?**

1    **A.**     Yes. The parking, barge (and ferry) operations require a large amount of capital  
2           investment and therefore have high fixed costs. In other words, it costs  
3           approximately the same to make a ferry run with 1 passenger as it does with 150  
4           passengers; to utilize staff and technology to park 1 car in the existing parking lots,  
5           as it does 2,000; to operate a barge full of construction vehicles as it does with one  
6           golf cart. Our economic incentives are to maximize our asset utilization, which can  
7           only be accomplished if the island is successful and is an attractive destination for  
8           primary and second-home owners as well as vacationer tourism. Mr. Sawyer is  
9           correct about the “symbiotic relationship between the island community, the Clubs  
10          and vacationer tourism” and a “reliable, safe, and affordable transportation system”,  
11          but “symbiosis,” by definition, is a mutually beneficial relationship that runs both  
12          ways: a successful island community, the Clubs, and vacationer tourism is essential  
13          for a commercially successful transportation system. Neither BHIL/BHIT,  
14          SharpVue, nor any other owner would institute a pricing structure that would harm  
15          the island. It is in all of our mutual interests to view each other as cooperative  
16          partners, working together toward common goals. That is one reason that the  
17          adversarial nature of these proceedings has been, in my opinion, unnecessary and  
18          counter-productive.

19    **Q.**     **Are these observations consistent with the experiences of other parking and**  
20           **ferry operations around the country?**

21    **A.**     Yes. Prior to offering to purchase the assets of BHIL and BHIT, we, of course,  
22           performed our own due diligence, which included looking at similar small, island-



1 based transportation operations. Mr. Leonard's prefiled testimony summarizes  
2 various parking and ferry operations around the country and is consistent with our  
3 own due diligence. To my knowledge, nowhere in the country are rates for parking  
4 available for ferry passengers regulated by a state Utilities Commission, and  
5 nowhere in the country have parking rates been increased to a point that has  
6 depressed ferry ridership. Basic economic principles and rational economic  
7 behavior don't support that feared scenario.

8 **Q. Given that SharpVue intends to continue providing parking services at**  
9 **reasonable rates anyway, and in response to the Public Staff's comments filed**  
10 **on September 8, what specific steps will SharpVue take to ensure the continued**  
11 **availability of adequate parking?**

12 **A.** For the reasons explained above, market forces and basic economics dictate that we  
13 will provide adequate parking, but, in addition, if the transfer of the Certificate of  
14 Public Convenience and Necessity ("CPCN") is approved in Docket A-41, Sub 22,  
15 SharpVue commits, as a condition of that transfer, that during all times that it owns  
16 or controls the parking business currently operated by BHIL, it will provide *no less*  
17 spaces for parking than the aggregate of: (i) the current number of paved, lined  
18 spaces at the Deep Point lots (1,955) and (ii) the number of overflow cars that it  
19 can currently accommodate on the unpaved, gravel lots at Deep Point (347).  
20 SharpVue also commits that during all times that it owns or controls the parking  
21 operations currently owned by BHIL, it will meet the parking space commitments  
22 of this paragraph in one, or a combination of, the following ways: (i) at the Deep

1 Point parking lots currently used by BHIL; (ii) through the acquisition and  
2 development of other conveniently located parking lots with regular shuttle service  
3 to convey passengers and their baggage to and from the Deep Point terminal; or  
4 (iii) through the construction of parking decks or garages in lieu of surface lots.  
5 SharpVue proposes that this obligation would continue until such time as the  
6 Commission were to allow a waiver or modification of this condition of the transfer  
7 upon a showing of a demonstrable decline in demand for parking at Deep Point or  
8 the availability of equivalent parking by a third-party provider. Again, SharpVue  
9 has no intention to eliminate parking for ferry passengers.

10 **Q. What specific steps will SharpVue take to ensure that available parking is**  
11 **reasonably priced?**

12 **A.** For the reasons explained above, market forces and basic economics dictate that  
13 available parking will be reasonably priced, but, in addition, if the transfer of the  
14 CPCN is approved in Docket A-41, Sub 22, SharpVue commits, as a condition of  
15 that transfer, that it will not increase the aggregate rates for parking ticket classes  
16 or levels in the foreseeable future more than the then-applicable Consumer Price  
17 Index for All Urban Consumers (CPI-U) as reported by the United States Bureau  
18 of Labor Statistics. SharpVue will attempt in good faith to reach an agreement with  
19 the Public Staff and other intervenors in the CPCN transfer proceeding, Sub 22, on  
20 a time period for this commitment of not less than four (4) years, but has not yet  
21 engaged in those discussions. Again, SharpVue has no intention to substantially  
22 raise parking rates for ferry passengers.

1 **Q. Has SharpVue made other commitments in the transfer Docket, A-41, Sub 22,**  
2 **about its operation of businesses and assets acquired from BHIL and BHIT**  
3 **that address the concerns of the intervenor testimony in this docket?**

4 **A.** Yes. SharpVue commits that it will not seek a rate change in rates for at least one  
5 (1) year following a prospective transfer of the CPCN under which BHIT's ferry  
6 and tram services operate. SharpVue has concluded that it can continue to operate  
7 the ferry and tram services at the approved rates at this time,<sup>1</sup> assuming that there  
8 are no significant changes to its regulated status or to the rate base. SharpVue  
9 would consider a decision in this docket or any future docket to include the assets  
10 of the parking and barge businesses in the ferry/tram rate base, or to otherwise  
11 regulate those assets, as a "significant change."

12 SharpVue further commits that Bald Head Island Ferry Transportation, LLC is  
13 "stepping into the shoes" of BHIT such that it assumes responsibility for all rights  
14 and obligations of BHIT that flow from the Commission's order approving a  
15 settlement of the 2010 Rate Case for the ferry and tram services in Docket A-41,  
16 Sub 7. Specifically, this includes but is not limited to, the element of that order that  
17 \$523,725 of annual revenues (including regulatory fee impact) from the parking  
18 business that SharpVue seeks to acquire from BHIL will continue to be imputed to  
19 the revenue requirement of the utility with respect to the existing Commission-

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<sup>1</sup> Depending upon the price of fuel, SharpVue may find it necessary to avail itself to the fuel surcharge mechanism as authorized by the Commission in Docket A-100, Sub 0 and set forth in Commission Rule R4-13 in order to avoid having to initiate a rate case solely because of fuel increases.

1 ordered rates until such time as the Commission may approve an adjustment to  
2 rates. SharpVue agrees with the Public Staff's comment that this imputation "does  
3 not indicate operation of the parking lot should be a regulated function."

4 SharpVue also affirms it will adhere to the 2012 and 2022 Commission orders  
5 regarding baggage entered in Docket A-41, Sub 9 and 20, as well as abiding by the  
6 terms of the lease agreement between BHIT and BHIL (included in the current ferry  
7 rate base under the terms of Docket A-41, Sub 7) to lease real property in Southport,  
8 North Carolina and on Bald Head Island (upon which services involving the assets  
9 at issue in this docket are performed).

10 SharpVue believes these items can be made conditions of the approval of a transfer  
11 of the CPCN in Docket A-41, Sub 22. Further, SharpVue's agreements on parking  
12 availability and pricing can also be made conditions of the approval of a transfer of  
13 the CPCN in Docket A-41, Sub 22. This could accomplish the "oversight" of  
14 parking the Public Staff references in their Initial Comments.

15 **Q. The Bald Head Island Club provided testimony as an intervenor that stated**  
16 **BHIL's tug and freight barge transports "people and goods to and from Bald**  
17 **Head Island." How does SharpVue view that statement?**

18 **A.** SharpVue has closely studied the tug and freight barge operations and, after  
19 consultation with counsel, agrees with the comments of the Public Staff that the  
20 barge's transport of vehicles to and from the Island "does not involve the  
21 specialized functions associated with a household goods mover" that the  
22 Commission regulates under Chapter 62. We believe that regulatory regime targets

1 those entities that are in the business of end-to-end movement of household goods  
2 (HHG). The barge, on the other hand, is an intermodal transportation service that  
3 might move a truck operated by an HHG mover from port to port but should not be  
4 subject to the same regulations that apply to companies that contract to provide the  
5 consumer service of HHG packing, transportation, and delivery.

6 Moreover, our evaluation of BHIL's barge operations indicates that it does not  
7 transport passengers and is not regulated as a passenger vessel under federal law.  
8 Instead, a driver or vehicle operator is permitted to remain with a vehicle – in its  
9 cab – during the barge trip and is not charged a fee as a passenger or required to  
10 purchase a ticket to stay with the vehicle. This is consistent with the roll-on/roll-  
11 off nature of the barge, and its role as a link in the journey of the vehicle or truck  
12 from its origin to its ultimate destination.

13 We agree with the Public Staff's comments that the barge provides a transport  
14 service that is not regulated by Maximum Rate Tariff No. 1 and that its services are  
15 “not related to the provision of regulated passenger ferry service.” SharpVue,  
16 through its management agreement with Pelican Logistics, is committed to  
17 continuing the excellent and fairly priced services that BHIL has afforded for many  
18 years and in the same manner as BHIL has provided them.

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

20 **A.** Yes, at this time.

1 BY MR. FERRELL:

2 Q Have you also prepared a summary of your  
3 prefiled testimony in this matter?

4 A Yes.

5 Q Does it consist of approximately six pages and  
6 was filed on October 10th?

7 A Yes.

8 MR. FERRELL: May I also have the witness  
9 proffer his summary into the record as well.

10 COMMISSIONER BROWN-BLAND: Yes. That  
11 motion will be allowed, and his summary of the  
12 direct testimony will be received into evidence, at  
13 this time. The exhibit that was attached to direct  
14 will be identified as Exhibit A as it was when  
15 prefiled.

16 (WHEREUPON, Roberts Rebuttal  
17 Exhibit A is marked for  
18 identification as prefiled.)

19 (WHEREUPON, the summary of  
20 LEE ROBERTS is copied into  
21 the record as if given  
22 orally from the stand.)

23

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**STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH**

DOCKET NO. A-41, SUB 21

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of:

Village of Bald Head Island, )  
)  
Complainant, )  
)  
v. )  
)  
Bald Head Island Transportation, Inc. )  
and Bald Head Island Limited, LLC, )  
)  
Respondents. )

**TESTIMONY SUMMARY  
OF  
LEE H. ROBERTS  
ON BEHALF OF  
RESPONDENTS**

**Lee H. Roberts Testimony Summary****Docket No. A-41, Sub 21**

My name is Lee Roberts, and I am Managing Partner of SharpVue Capital, LLC (“SharpVue”).

Because this is my first time testifying before the Utilities Commission, I would like to respectfully ask your indulgence to allow me to spend a minute or two introducing myself.

I co-founded SharpVue in 2016 in Raleigh. SharpVue was previously an arm of Curi, formerly known as Medical Mutual Holdings, Inc. Seeing the tremendous opportunity for continuing growth in North Carolina, my partner, Doug Vaughn, and I spun SharpVue off into its own investment management firm in 2019.

One of SharpVue’s primary missions is economic growth in North Carolina. Mr. Vaughn and I have lived here for many years. We are proud to call it home and don’t plan to live anywhere else. Immediately prior to joining SharpVue, I served as budget director to Governor Pat McCrory. I am currently a member of the Board of Governors for the University of North Carolina system. I have served on the board of directors for the Golden LEAF Foundation, which distributes grants intended to make meaningful economic transformation across the State. I have also served on the State Board of Community Colleges and the North Carolina Banking Commission. With this experience and orientation, I would like to emphasize that – for so many reasons -- SharpVue and I have a great interest in the continuing long-term success of Bald Head Island.

With that introduction, let me cut straight to the heart of my rebuttal testimony: Some testimony you have previously heard has expressed fears about adverse impacts to the island operations and tourist spending because of the sale of the assets by BHIL/BHIT to SharpVue. Those fears are unfounded for a number of reasons:



First, we're simply stepping into the shoes of BHIL and BHIT as their successors. SharpVue is committed to continue to operate the parking and barge operations in the same efficient manner as they have been under BHIL's ownership. Between the expertise of the current management team (which we're committed to retain), the wealth of knowledge of the existing employee base (which we're committed to hiring), and the resources and experience of SharpVue, we are well situated to make that happen. The Mitchell heirs have sold almost all of their holdings on the island except the ferry; they have very little remaining interest left on the island. In the short term, SharpVue will ensure that these operations continue uninterrupted in the same cost-effective, safe, and reliable manner that the public has come to historically enjoy. In the long run, SharpVue is willing and able to provide the operations with the capital they need to accommodate growth and enhance the consumer experience while maintaining efficient operations.

Second, as a North Carolina company, with North Carolina management, SharpVue is committed to the success of the island. As tourism grows, ridership on the ferry increases, barge usage increases, and parking facilities are utilized. Our financial success providing this infrastructure is very much tied to the overall continued success of the island. This was true for BHIL/BHIT in the past, and it will be equally true for us -- or for any entity owning and operating the parking facilities or barge in the future. There is a "symbiotic relationship between the island community, the Clubs and vacationer tourism" and a "reliable, safe, and affordable transportation system", and "symbiosis," by definition, is a *mutually* beneficial relationship that runs both ways: a successful island community, the Clubs, and vacationer tourism is essential for a commercially successful transportation system. Neither BHIL/BHIT, SharpVue, nor any other owner would institute a pricing structure or policies that would harm the island. It is in all of our mutual interests to view each other as cooperative partners, working together toward common goals. That is one

reason that the adversarial nature of these proceedings has been, in my opinion, unnecessary and counter-productive.

Third, the cost structure of operating infrastructure assets also aligns our interests with those of the island. Moreover, we owe a duty to our investors to increase – not decrease – the utilization of our assets. The parking, barge (and ferry) operations require a large amount of capital investment and therefore have high fixed costs. In other words, it costs approximately the same to make a ferry run with 1 passenger as it does with 150 passengers; to utilize staff and technology to park 1 car in the existing parking lots, as it does 2,000; to operate a barge full of construction vehicles as it does with one golf cart. Our economic incentives are to maximize our asset utilization, which can only be accomplished if the island is successful and is an attractive destination for primary and second-home owners as well as vacationer tourism. To implement policies or a pricing structure that would depress or discourage economic activity on the island would be inconsistent with our motivations as prospective owners/operators of the barge and parking assets, or with sound economic and investment principles.

Given these fundamental economic principles, it's not surprising that, to my knowledge, no state Utilities Commission in the country has ever found it necessary to rate regulate parking operations for ferry passengers, and, to my knowledge, nowhere in the country, have parking rates been increased to a point that has depressed ferry ridership.

Sometimes an equity investor will purchase an underperforming company with the intent of making changes to make it more profitable, but that is absolutely not the situation here. Instead, we see BHIL as an unusual situation in which an extremely well-run company needs to be sold for external reasons (i.e., the death of Mr. George Mitchell), and it is our intent to continue that track record of success. We intend to spend the first year after the purchase communicating with

stakeholders and evaluating the current operations in more detail and, of course, looking for opportunities to improve service and make any needed investments over time.

Given that SharpVue intends to continue providing parking services at reasonable rates anyway, and in response to the Public Staff's comments filed on September 8, SharpVue is willing to make specific commitments to ensure the continued availability of adequate parking at reasonable prices and address the concerns raised by the Village. If the transfer of the Certificate of Public Convenience and Necessity ("CPCN") is approved in Docket A-41, Sub 22, SharpVue commits, as a condition of that transfer, that we will provide no less spaces for parking than currently provided by BHIL today: 1,955 paved, lined spaces and the 347 spaces in unpaved, gravel lots. We will meet this parking space commitment (1) at the Deep Point parking lots currently used by BHIL; (2) through the acquisition and development of other conveniently located parking lots with regular shuttle service to convey passengers and their baggage to and from the Deep Point terminal; or (3) through the construction of parking decks or garages in lieu of surface lots. This obligation would continue until such time as the Commission were to allow a waiver or modification of this condition upon a showing of a demonstrable decline in demand for parking at Deep Point or the availability of equivalent parking by a third-party provider. After all, the opportunity exists for a third-party parking provider, as SharpVue has agreed it will not restrict access to the road leading to the Deep Point Marina from Highway 211 (Ferry Road) in Southport. Again, SharpVue has no intention to eliminate parking for ferry passengers, and I want to take that concern off the table.

For the reasons explained above, market forces, the risk of competition, and basic economics dictate that available parking will be reasonably priced, but, in addition, if the transfer of the CPCN is approved in Docket A-41, Sub 22, SharpVue commits, as a condition of that transfer, that it will not increase the aggregate rates for parking ticket classes or levels more than the then-applicable Consumer Price Index for All Urban Consumers (CPI-U) for at least four years.

These conditions, and others explained in more detail in my prefiled testimony, should assuage any legitimate concerns about SharpVue's intentions or the consequences of the parking and barge remaining unregulated – as it has been for almost thirty years. These measures also would be sufficient to accomplish the “oversight” of parking the Public Staff references in their Initial Comments.

Finally, I'll note that we have closely studied the tug and freight barge operations and, after consultation with counsel, agree with the comments of the Public Staff that the barge's transport of vehicles to and from the Island “does not involve the specialized functions associated with a household goods mover” that the Commission regulates under Chapter 62. SharpVue, through its management agreement with Pelican Logistics, is committed to continuing the excellent and fairly priced services that BHIL has afforded for many years and in the same manner as BHIL has provided them. We see no reason to implement significant changes to its pricing structure or operations.

BHIL and BHIT have served the people of Bald Head Island extremely well for many, many years. They have been good stewards and run a good operation. That's why I intend to hire their management and employees. Likewise, the Commission's regulation of the ferry and tram rates and service has appeared to work well. But there is no reason to now, after almost 30 years, to radically change that scope of regulation to address a hypothetical problem that doesn't exist,

and won't exist. Extending rate regulation over assets that operate in a potentially competitive market is administratively burdensome, reduces our incentives to invest and improve service, restricts our flexibility to match our services to customer demand, and is simply unnecessary. For those reasons, as the potential purchaser of the assets, I ask that you deny the demands sought by the Village in this docket.

### **CERTIFICATE OF SERVICE**

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

This 10<sup>th</sup> day of October, 2022.

**/s/ David P. Ferrell**

David P. Ferrell  
Attorney for SharpVue Capital, LLC

1 MR. FERRELL: Thank you. This witness is  
2 available for cross-examination.

3 COMMISSIONER BROWN-BLAND: All right. The  
4 Village?

5 MR. SCHAUER: Thank you, Commissioner  
6 Brown-Bland.

7 CROSS EXAMINATION BY MR. SCHAUER:

8 Q Good afternoon, Mr. Roberts. My name is Craig  
9 Schauer.

10 A Good afternoon.

11 Q I represent the Village. You are aware that  
12 the Village initiated this proceeding on  
13 February 16th, 2022, correct?

14 A Yes.

15 Q All right. And SharpVue announced the  
16 transaction with Limited and BHIT on May 31st  
17 of this year. Is that right?

18 A That's right.

19 Q At the time SharpVue announced its transaction  
20 with Limited, SharpVue is aware of this  
21 proceeding before the Utilities Commission?

22 A That's correct.

23 Q So SharpVue is aware that depending on the  
24 outcome of this proceeding, the Parking and

1 Barge assets that SharpVue is intending to  
2 purchase could be subject to regulation?

3 A Yes.

4 Q All right. The purpose of your testimony,  
5 according to your testimony on page 2 line 4,  
6 was to describe SharpVue's plans for the  
7 unregulated parking operations. Is that  
8 correct?

9 A Yes.

10 Q In discovery, SharpVue provided copies of  
11 investment presentations, did it not?

12 A It did.

13 MR. SCHAUER: Commissioner Brown-Bland, at  
14 this time, I have three of exhibits that are marked  
15 as confidential and would be still marked as  
16 confidential under the agreement of the parties, so  
17 I do think we'd like to go into closed session so I  
18 can distribute these and ask questions on them.

19 COMMISSIONER BROWN-BLAND: All right.  
20 We'll do that and we'll ask -- I assume this  
21 information is information that belongs to BHIT or  
22 SharpVue?

23 MR. STYERS: SharpVue.

24 MR. FERRELL: Presumably so. I haven't

1 seen the exhibits, but presumably it is, and they  
2 were marked confidential, Attorneys' Eyes Only for  
3 purposes of production.

4 COMMISSIONER BROWN-BLAND: And from what  
5 was stated on the record yesterday, is it your  
6 understanding that these would still fall under a  
7 confidentiality?

8 MR. SCHAUER: Yes. Based on the  
9 conversation of the party, these are still subject  
10 to full confidentiality.

11 COMMISSIONER BROWN-BLAND: All right.  
12 Well then, I will hold Mr. Ferrell to make sure  
13 that -- at this time I will close the room to  
14 everyone except those who are entitled by agreement  
15 to have access to confidential information.

16 (CONFIDENTIAL SESSION BEGINS)

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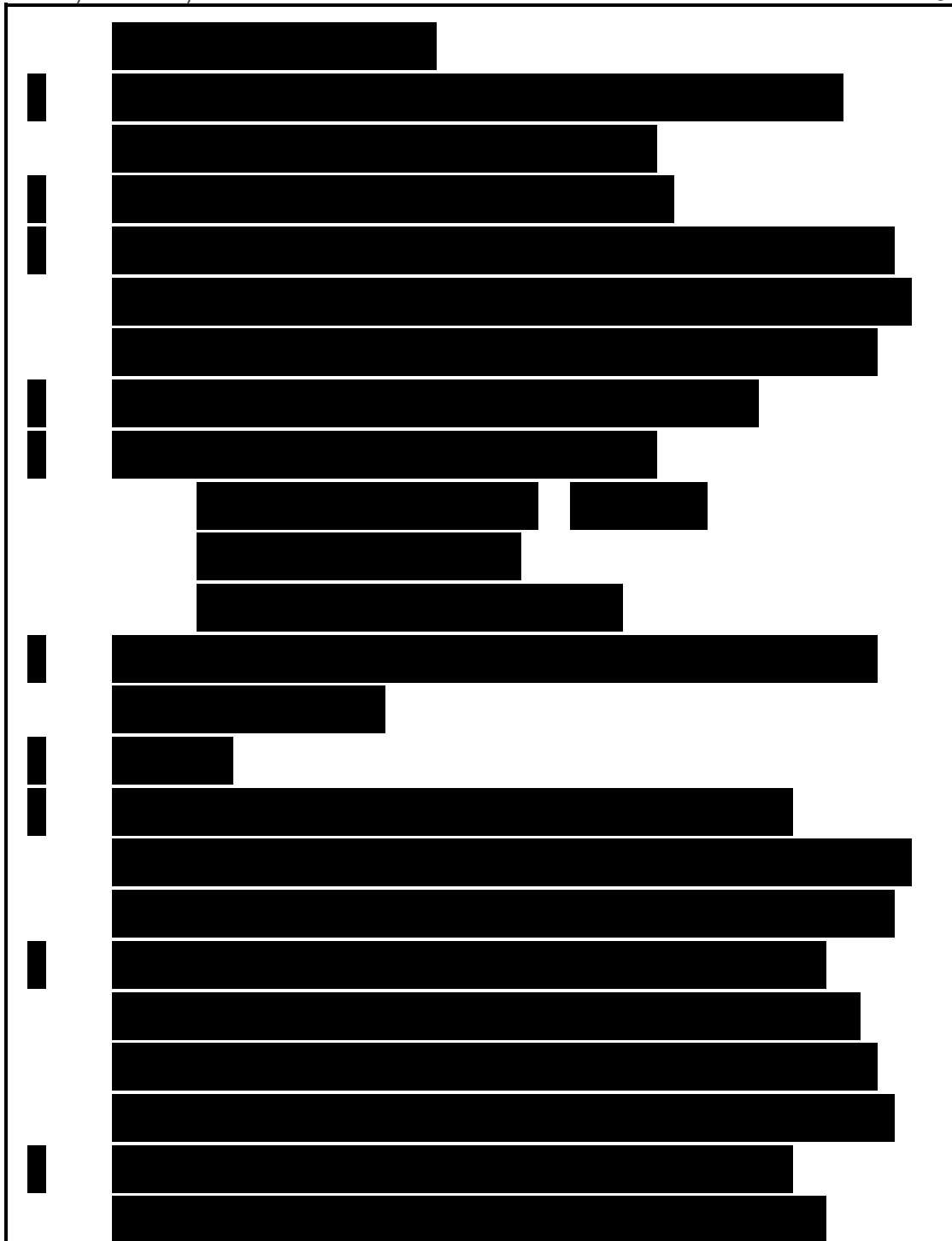
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NORTH CAROLINA UTILITIES COMMISSION

Rank	Country	Percentage
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2	Canada	85%
3	United Kingdom	98%
4	France	97%
5	Germany	82%
6	Italy	92%
7	Spain	99%
8	Japan	88%
9	China	94%
10	India	96%
11	South Korea	93%
12	Australia	75%
13	Brazil	65%
14	Russia	91%
15	Mexico	87%
16	Argentina	90%
17	South Africa	78%
18	India	99%
19	China	99%
20	United States	93%
21	United Kingdom	94%
22	Germany	72%
23	France	89%
24	Canada	96%

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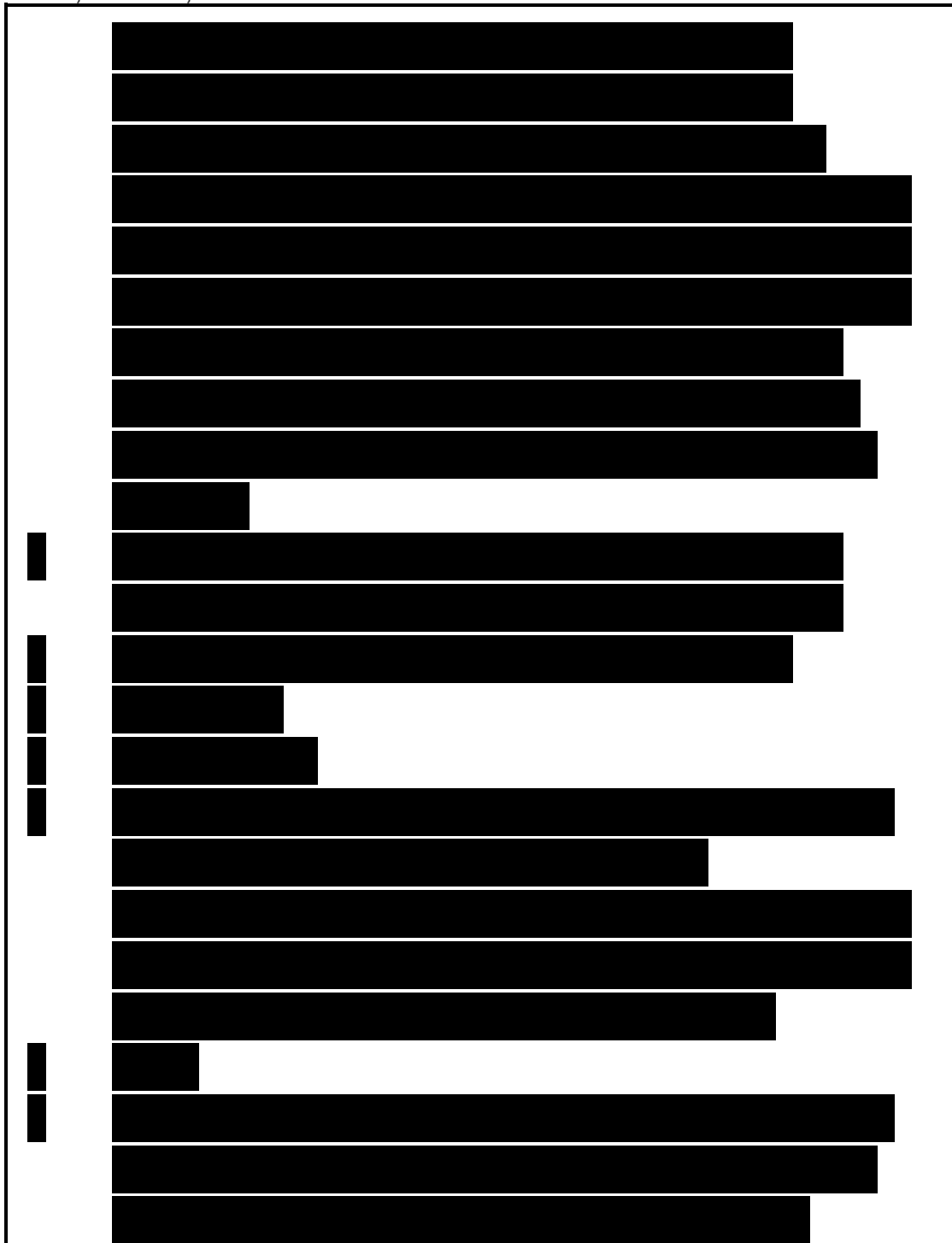
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A horizontal bar chart with 20 rows. Each row contains a single black bar. The bars are grouped into five sets of four, with a single bar in the middle of each group. The lengths of the bars vary significantly, with some being very short and others nearly spanning the width of the chart area.

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NORTH CAROLINA UTILITIES COMMISSION

Category	Item	Value
A	Item A1	95
	Item A2	65
	Item A3	85
	Item A4	85
B	Item B1	45
	Item B2	95
	Item B3	90
	Item B4	95
C	Item C1	55
	Item C2	75
	Item C3	85
	Item C4	35
D	Item D1	95
	Item D2	90
	Item D3	90
	Item D4	95
	Item D5	100
	Item D6	100
	Item D7	95
	Item D8	90
	Item D9	90
E	Item E1	55
	Item E2	90
	Item E3	85

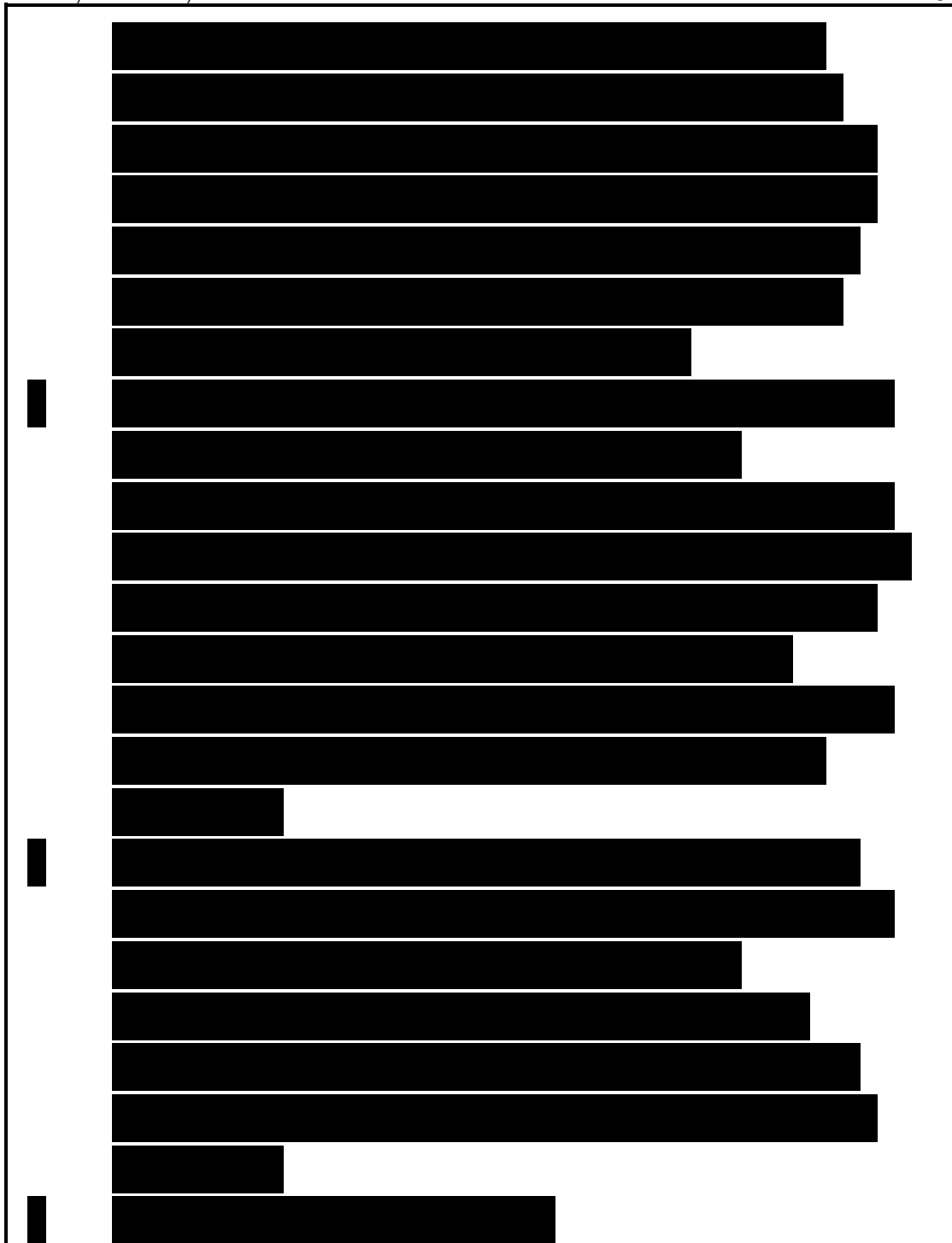
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A horizontal bar chart illustrating the number of people in each age group (1-24) who are currently in the workforce. The y-axis lists age groups from 1 to 24. The x-axis represents the number of people, with a scale from 0 to 100. Each bar is black. The data shows that workforce participation is highest for the 12-17 age group (approximately 95 people) and lowest for the 7-8 age group (approximately 10 people). Participation generally increases with age, with a slight dip in the 22-23 age group.

Age Group	Number of People in Workforce (Approximate)
1	85
2	90
3	95
4	90
5	80
6	95
7	10
8	10
9	95
10	30
11	50
12	95
13	85
14	90
15	80
16	80
17	90
18	85
19	85
20	80
21	55
22	10
23	95
24	90

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(CONFIDENTIAL SESSION ENDS)

COMMISSIONER BROWN-BLAND: All right.

Mr. Schauer, you still have more?

MR. SCHAUER: I do. I have a few more questions.

COMMISSIONER BROWN-BLAND: All right. Go right ahead.

BY MR. SCHAUER:

Q So Mr. Roberts, I'm looking at page 6 of your testimony starting at line 22. I'm sorry, the beginning of the last sentence where it says, "moreover," you state in your testimony that SharpVue has a duty its investors to increase, not decrease the utilization of your assets. Is that correct?

A I don't see that. I must have a different version of --

Q So I'm looking at --

A -- what you're looking at.

Q But would you agree with that?

A What pages are your -- it's a true statement.

Q It's a true statement. Okay. Stated differently, SharpVue owes a duty to its

1 investors to maximize the return on the assets  
2 it acquire. Is that correct?

3 A Of course.

4 Q So if SharpVue could earn a greater return by  
5 selling the parking lot real estate rather than  
6 by operating the parking lot, SharpVue would  
7 have a duty to sell the real estate?

8 A If somebody came up and offered me twice as  
9 much money as I paid for my car, I'd probably  
10 sell it to them, yeah.

11 Q You testify on page 9 and I believe 12 of your  
12 testimony that as part of the Docket A- 41, Sub  
13 22 or the transfer proceeding as we've been  
14 calling it, SharpVue is offering to agree to  
15 certain conditions of transfer. Do you recall  
16 that testimony?

17 A Yes.

18 Q At this point, SharpVue has made offers of  
19 conditions but it hasn't actually agreed to or  
20 committed to any condition. Is that correct?

21 A I was confused by the references to that  
22 earlier. I thought -- I had certainly intended  
23 that we had committed in writing to the Public  
24 Staff or happy to do so and whatever other



1 format is appropriate. That we will keep the  
2 current number of parking places that are  
3 available now, available. That we won't raise  
4 the cost of parking in real terms, and that  
5 we'll continue the imputation of the 523,000  
6 from parking to the ferry operations. So I  
7 didn't want there to be any ambiguity about  
8 that. That was a commitment we've been  
9 prepared to make.

10 Q Okay. So -- and that's a commitment that's not  
11 subject to negotiations. That's kind of a  
12 starting offer. That's firm on behalf of  
13 SharpVue?

14 A Our understanding based on discussion with the  
15 Public Staff was that that was responsive to  
16 their interest. But if you're asking if that's  
17 a take it or leave it offer, of course not.  
18 We're obviously open to any dialogue that the  
19 Commission is interested in having.

20 Q To clarify, that's, I guess, a floor that  
21 you're willing to commit to and then discuss  
22 potential additional conditions or are you  
23 considering renegotiating those in light of  
24 other conditions that the Public Staff might

1 ask as part of that proceeding?

2 A We're willing to make those commitments. As I  
3 say, I thought we had already made those  
4 commitments in writing to the Public Staff and  
5 we'll remain open to any other discussion that  
6 the Commission wants to have.

7 Q Right. And am I correct that those conditions  
8 only become binding on SharpVue if the transfer  
9 of the ferry assets is approved as part of that  
10 proceeding?

11 A I'm not sure what relevance that has if the  
12 transfer wasn't approved.

13 Q Well, if you make those commitments in order to  
14 get the transfer approved but the Commission  
15 were to not approve the transfer, SharpVue  
16 would no longer be obligated to fulfill those  
17 commitments that it made to the Public Staff,  
18 correct?

19 A I guess I hadn't really thought about the  
20 possibility -- you're talking about the Sub 22  
21 proceeding?

22 Q Correct. That's what you discuss in your  
23 testimony, right?

24 A Yes.

1 Q Okay.

2 A I haven't thought about that, honestly. We  
3 hadn't thought about the possibility that the  
4 transfer, the Certificate of Convenience  
5 wouldn't be approved.

6 Q Okay.

7 A We thought there might be conditions attached  
8 to it. And again, we're happy to discuss that,  
9 but we believe a qualified purchaser would keep  
10 it the same management in place. We have the  
11 financial wherewithal.

12 Q I understand, but sitting here today, you're  
13 not willing to maintain those commitments even  
14 if the ferry transfer's not approved by the  
15 Commission?

16 A I just don't know what relevance those  
17 commitments would have without approval of the  
18 transfer.

19 Q I notice that the conditions that are offered  
20 by SharpVue are limited to quote "all times  
21 that SharpVue owns or controls the parking  
22 business." Is that correct?

23 A That's what was said, yes.

24 Q All right. So if SharpVue were to sell the

1           parking operations, then the conditions would  
2           not apply to the new owner.

3       A     Well, I think we discussed with the Public  
4           Staff the possibility of conveying those  
5           commitments with the assets for some period of  
6           time.

7       Q     Can you elaborate on that? What do you mean by  
8           conveying those commitments for some period of  
9           time?

10      A     Well, that we would ensure that any prospective  
11           buyer would also be bound by those same  
12           commitments. Again, it's not our plan to sell  
13           these assets. But in the event that we were to  
14           sell them, that the secondary buyer would also  
15           be bound.

16      Q     The last statement I want to understand in your  
17           testimony is on line -- page 11, line 6, and  
18           I'll just quote it for you. It's one sentence.  
19           "SharpVue has concluded that it can continue to  
20           operate the Ferry & Tram services at the  
21           approved rates at this time." Do you recall  
22           making that statement?

23      A     Yes.

24      Q     So the ferry is being operated at a loss, is it

1 not?

2 A I think it's slightly profitable. It's pretty  
3 close to break even. I think our investment  
4 presentation shows a slight profit.

5 Q Okay. SharpVue owes a duty to its investors to  
6 maximize the return on its assets, does it not?

7 A It does.

8 Q All right. Doesn't that mean SharpVue has a  
9 duty to its investors to increase the Ferry &  
10 Tram rates to make the operations profitable?

11 A We certainly have an obligation to make the  
12 overall investment profitable. The pricing  
13 power for the ferry is governed by the  
14 Utilities Commission and the investment  
15 materials, which would have discussed, show a  
16 path of profitability for the ferry with the  
17 rate increases that we outlined, \$3 in 2027 and  
18 \$2 -- sorry. \$3 in 2024 and \$2 each in 2027 and  
19 2030, so I think that's a decrease in real  
20 terms.

21 MR. SCHAUER: No further questions.

22 COMMISSIONER BROWN-BLAND: All right.

23 Bald Head Transportation?

24 MR. STYERS: I'll try to keep my cross to

1 a minute and 15 seconds at this point or do you want  
2 me to --

3 COMMISSIONER BROWN-BLAND: Well, you got a  
4 minute.

5 MR. STYERS: Okay. I will go ahead and  
6 start now.

7 COMMISSIONER BROWN-BLAND: But that  
8 doesn't mean you have to complete it. You got a  
9 minute.

10 MR. STYERS: Okay. I will go ahead and  
11 start.

12 CROSS EXAMINATION BY MR. STYERS:

13 Q Mr. Roberts, when did you first become aware of  
14 the Bald Head Island Ferry Operations, and in  
15 what context?

16 A Well, I visited Bald Head Island multiple times  
17 over the years just as a tourist, as a visitor.  
18 I've never owned any property there. The first  
19 time I became aware of this regulatory  
20 environment was I think in 2014 or 2015 when  
21 Mr. Paul, who I have known as a professional  
22 contact for sometime, approached me at the time  
23 I was serving as State Budget Director, and the  
24 legislation was pending to create the Bald Head

1           Island Transportation Authority. And so we had  
2           a conversation about that legislation and the  
3           creation of the authority, so I had general  
4           knowledge of Bald Head as a visitor and then  
5           specific knowledge prior to that, and then  
6           specific knowledge of this regulatory regime at  
7           that time.

8       Q     In making -- proposing to make an investment,  
9           such as you propose for the Bald Head Island  
10          assets, does your company undertake due  
11          diligence for the --

12       A     Of course.

13       Q     Tell us a little bit about the due diligence  
14          that you undertake prior to making a purchase?

15               COMMISSIONER BROWN-BLAND: Let's hold it  
16          right there and start with that question tomorrow  
17          morning at 9:30. And we will recess and go off the  
18          record, and then I would like to see counsel up here  
19          at the dais, please.

20               (The hearing was adjourned at 5:30 p.m.  
21          and set to reconvene at 9:30 a.m. on October 12,  
22          2022.)

23

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## C E R T I F I C A T E

I, TONJA VINES, DO HEREBY CERTIFY that the proceedings in the above-captioned matter were taken before me, that I did report in stenographic shorthand the Proceedings set forth herein, and the foregoing pages are a true and correct transcription to the best of my ability.

Tonja Vines

Tonja Vines