

1 PLACE: Dobbs Building, Raleigh, North Carolina
2 DATE: Friday, March 10, 2023
3 TIME: 9:30 a.m. - 10:45 a.m.
4 DOCKET NO: A-41, Sub 22
5 BEFORE: Commissioner Kimberly W. Duffley, Presiding
6 Chair Charlotte A. Mitchell
7 Commissioner ToNola D. Brown-Bland
8 Commissioner Daniel G. Clodfelter
9 Commissioner Jeffrey A. Hughes
10 Commissioner Floyd B. McKissick, Jr.
11 Commissioner Karen M. Kemerait
12
13

14 IN THE MATTER OF:

15 Joint Application of

16 Bald Head Island Transportation, Inc., and
17 Bald Head Island Ferry Transportation, LLC, for
18 Approval of Transfer of Common Carrier Certificate to
19 Bald Head Island Ferry Transportation, LLC, and
20 Permission to Pledge Assets
21

22 Volume 7
23
24

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2 VILLAGE OF BALD HEAD ISLAND:

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NORTH CAROLINA UTILITIES COMMISSION

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1	T A B L E O F C O N T E N T S	
2	E X A M I N A T I O N S	
3		PAGE
4	PANEL OF	
5	MICHELLE A. BOSWELL, JOHN R. HINTON,	
6	AND KRISHNA K. RAJEEV	
7	Further Examination By Mr. Ferrell	10
8	Further Examination By Mr. Schauer	12
9	Further Examination By Mr. Higgins	32
10	Further Examination By Mr. Creech	34
11	Examination By Commissioner Duffley	38
12	Examination By Chair Mitchell	41
13	Examination By Commissioner Duffley	42
14	Examination By Commissioner McKissick	43
15	Examination By Commissioner Clodfelter	48
16	Examination By Mr. Styers	54
17	Examination By Mr. Schauer	56
18	Examination By Mr. Creech	59
19	Examination By Commissioner Hughes	65
20		
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1	T A B L E O F C O N T E N T S	
2	E X A M I N A T I O N (C O N T ' D)	
3	JOHN D. TAYLOR	
4	Direct Examination By Mr. Styers	71
5	Prefiled Direct Testimony of John Taylor	74
6	Summary of John Taylor	110
7	Cross Examination By Mr. Schauer	114

E X H I B I T S

Identified / Admitted

Confidential Village Public Staff 14/69
Cross Exhibit 1

Village Public Staff Cross Exhibit 2 23/69

Public Staff Joint Panel Exhibit 1 --/68

Public Staff Joint Amended and --/68
Supplemental Joint Testimony Exhibit 1

BHIT Public Staff Cross Examination --/68
Exhibits 1 and 2

JDT-1R Rebuttal Exhibit 73/--

P R O C E E D I N G S

COMMISSIONER DUFFLEY: Good morning, everyone. It is Friday and I have really enjoyed spending the week with all of you. So -- and I mean that, I do mean that. So, but, I hope that we can get through everything today.

We're going to head into confidential session in just a minute, but are there any housekeeping matters that we need to deal with before we go into confidential session?

MR. SCHAUER: So there's one matter on behalf of the Village. When Ms. Perry was called to testify, we presented an exhibit which was Village Redirect Exhibit 3 which purported to identify an error in the calculation of tax. Upon the Public Staff's testimony, we revisited those calculations provided by Mr. Taylor. And we are retracting our position that the tax was calculated incorrectly and we wanted to make the Commission aware that we identified our error, and hopefully that might eliminate a need of kind of drawing that all on testimony. So we just want to go ahead and fess that up.

COMMISSIONER DUFFLEY: Okay. So I'm not

1 following what you're saying. Do you want to withdraw
2 the Village Redirect Exhibit 3, withdraw the
3 correction?

4 MR. SCHAUER: So the exhibit was a purported
5 correction to the calculation of tax. It turns out we
6 no longer believe the tax was needed to be corrected.
7 And so, yes, I think it would make sense to withdraw
8 the exhibit.

9 COMMISSIONER DUFFLEY: Withdraw it. Okay.
10 So without objection, that exhibit will be withdrawn.
11 Okay. And Ms. Hawkins, do we want to address the
12 additional proposed documents for admission, the
13 SharpVue responses to Public Staff data request?

14 MS. HAWKINS: Not at this time, I don't
15 think.

16 COMMISSIONER DUFFLEY: Okay.

17 MS. HAWKINS: Thank you.

18 COMMISSIONER DUFFLEY: Chair Mitchell wants
19 to ask a point of clarification. Well, yeah. So
20 we'll come back to that on a break. Okay. So
21 Mr. McCoy, if we can head into confidential session,
22 please.

23 (Whereupon, confidential session begins)

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11	Single bar, starts at left edge, ends at approximately 92% width.
12	Single bar, starts at left edge, ends at approximately 98% width.
13	Single bar, starts at left edge, ends at approximately 80% width.
14	Two bars: first starts at ~20% width and ends at ~55% width; second starts at ~60% width and ends at ~92% width.
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17	Single bar, starts at left edge, ends at approximately 35% width.
18	Single bar, starts at ~20% width, ends at approximately 95% width.
19	Single bar, starts at left edge, ends at approximately 98% width.
20	Two bars: first starts at ~20% width and ends at ~55% width; second starts at ~60% width and ends at ~68% width.
21	Single bar, starts at ~20% width, ends at approximately 75% width.
22	Two bars: first starts at ~20% width and ends at ~55% width; second starts at ~60% width and ends at ~95% width.
23	Single bar, starts at left edge, ends at approximately 65% width.
24	Two bars: first starts at left edge and ends at ~5% width; second starts at ~15% width and ends at approximately 98% width.

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NORTH CAROLINA UTILITIES COMMISSION

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16 (Whereupon, confidential session ends)

17 COMMISSIONER DUFFLEY: Chair Mitchell has a
18 clarification question.

19 CHAIR MITCHELL: So we've had four documents
20 admitted into the record: BHIT Public Staff
21 Cross-Examination Exhibits 1 and 2 that you just moved
22 in, and then Village Perry Redirect-Examination
23 Exhibits 1 and 2. Are those the same documents?
24

1 MR. STYERS: No.

2 CHAIR MITCHELL: Are those the same
3 documents? I know you've withdrawn three.

4 MR. SCHAUER: Yes. I believe they are the
5 same -- they're the same documents. The formatting
6 might be slightly different, but they're both
7 Mr. Taylor's work papers. I think my version was one
8 of those landscape versus portrait.

9 CHAIR MITCHELL: Yeah.

10 MR. SCHAUER: But they are the same numbers.

11 CHAIR MITCHELL: Okay. Just for purposes of
12 the record, I want to make sure.

13 MR. STYERS: Okay. Thank you. I just was
14 thinking that your redirect exhibits might have had
15 some of the correction columns in it but was not --

16 MR. SCHAUER: No. We provided the two
17 original work papers and then we had the third exhibit
18 which we've since withdrawn.

19 CHAIR MITCHELL: All right. Thank you.

20 MR. STYERS: Yeah, thank you.

21 COMMISSIONER DUFFLEY: Okay, Mr. Styers.
22 We're back on rebuttal.

23 MR. STYERS: Per our discussion at the end
24 of the day, we're going to go a little bit out of the

1 sequence. And given Mr. Taylor's travel schedule,
2 we'd like to call now as rebuttal witness Mr. John
3 Taylor.

4 JOHN TAYLOR;
5 having been duly sworn,
6 testified as follows:

7 DIRECT EXAMINATION BY MR. STYERS:

8 Q Please state your name, address, and employment
9 for the record.

10 A John Taylor. I'm managing partner of Atrium
11 Economics. The address is 10 Hospital Center
12 Commons, Suite 400, Hilton Head Island, South
13 Carolina 29926.

14 Q Have you caused to be prefiled in this docket
15 rebuttal testimony consisting of 13 pages in
16 question and answer format?

17 A I have.

18 Q Okay. Was testimony prepared by you or under
19 your direction?

20 A It was.

21 Q If you were asked those same questions today now
22 that you're under oath, would you provide the
23 same answers as in that prefiled testimony?

24 A Yes, I would.

1 Q Do you have any corrections or additions to that
2 testimony that you prefiled?

3 A No, I do not.

4 Q Okay. Were there one -- was there one exhibit
5 identified in and filed concurrently with your
6 rebuttal testimony?

7 A Yes, there was.

8 Q Did you also prepare two spreadsheets quantifying
9 your testimony on page 24 of your testimony that
10 have been admitted into evidence in this docket
11 so far as Public Staff Cross-Examination
12 Exhibits 1 and 2, BHIT Cross-Examination
13 Exhibits 1 and 2?

14 A Yes.

15 Q Okay.

16 MR. STYERS: At this time, I would ask that
17 the prefiled testimony of -- rebuttal testimony of
18 John Taylor consisting of 32 pages in question and
19 answer format and the one exhibit be attached -- be
20 admitted into evidence at this time and in the record.

21 COMMISSIONER DUFFLEY: The rebuttal prefiled
22 testimony of John Taylor will be received into
23 evidence and treated as if given orally from the
24 witness stand. As per the exhibit, it will be

1 identified as prefiled at this time.

2 (WHEREUPON, JDT-1R Rebuttal
3 Exhibit is identified for the
4 record)

5 (WHEREUPON, the prefiled rebuttal
6 testimony of JOHN TAYLOR is
7 received into evidence and copied
8 into the record as if given
9 orally from the stand)

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STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. A-41, SUB 22

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

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

**REBUTTAL TESTIMONY OF
JOHN D. TAYLOR,
MANAGING PARTNER
ATRIUM ECONOMICS, LLC**

February 27, 2023

OFFICIAL COPY

Apr 13 2023

TABLE OF CONTENTS

I. INTRODUCTION1

II. ACQUISITION AND CERTIFICATE TRANSFER STANDARDS4

III. ROLE OF EQUITY INVESTORS IN REGULATED UTILITIES.....6

 A. Response to Concerns Over SharpVue’s Motivation as an Equity Investor 7

 B. Response to Concerns Over SharpVue’s Access to Capital 14

 C. Summary 15

IV. RATE REGULATION OF PARKING AND BARGE OPERATIONS17

 A. Valuation of Rate Base 17

 B. Implications of Original Cost Rate Base Set at Purchase Price..... 23

V. REGULATORY CONDITIONS AND ANALYSIS OF PARKING RATES26

VI. SUMMARY AND CONCLUSIONS31

OFFICIAL COPY

APR 13 2023

I. INTRODUCTION

Q. Please state your name and business address.

A. My name is John D. Taylor, and I am employed by Atrium Economics, LLC (“Atrium”) as a Managing Partner. My business address is 10 Hospital Center Commons, Suite 400 Hilton Head Island, SC 29926.

Q. On whose behalf are you appearing in this proceeding?

A. I am appearing on behalf of the Applicants, Bald Head Island Transportation, Inc., (“BHIT”), Bald Head Island Limited, LLC (“BHIL”), and SharpVue Capital (“SharpVue”).

Q. Please describe your professional background and education.

A. As a utility pricing and policy expert, I support various energy and utility related projects regarding economics, finance, and public policy. In the public utility space, I have assisted with asset divestitures, allocated class cost of service studies, rate of return calculations, line extension policies, cash working capital impacts, tax litigation, revenue allocation, rate design, mergers and acquisitions, and affiliate cost allocation. I have reviewed and analyzed these subject matters, considering the accounting treatment, the financial investment, and the operational configuration of a company’s assets. For utility rate cases, I have performed: allocated class cost of service studies; revenue allocation; rate design; valuation modeling; affiliate cost allocation; and various cost of service analyses. Also, I have filed testimony on class cost of service studies, return on equity, and statistical audit sampling. Specifically, I have presented expert testimony in Florida, Indiana, Maine, Massachusetts, Minnesota, New Hampshire, North Carolina, Illinois, Delaware, Oregon, Pennsylvania, Virginia, Washington, West Virginia, British Columbia, and the Federal

Energy Regulatory Commission (“FERC”). Regarding my educational and professional background, I studied electrical and mechanical engineering and worked for an industrial inspection company, providing hands-on experience with utility assets and equipment. I received an undergraduate degree in Environmental Economics, with an emphasis in econometrics and regulatory policy. I also earned a Masters in Economics from American University in Washington, DC. A copy of my resume is provided as Exhibit JDT-1R.

Q. What is the purpose of your rebuttal testimony?

A. My rebuttal testimony relates to the application filed on July 14, 2022, by BHIL, BHIT, and Bald Head Island Ferry Transportation, LLC (“BHIFT”) (together, the “Applicants”) for approval: (1) to transfer BHIT’s Common Carrier Certificate to BHIFT, to operate the passenger ferry transportation services to and from Bald Head Island and the tram services on the island (the “Transfer”), and (2) for BHIFT or SharpVue to pledge assets and borrow or issue debt to finance the Transfer, (the “Pledging of Assets,” and collectively with the Transfer is the “Proposed Transaction”). My rebuttal testimony addresses the testimony submitted by the following entities and individuals as it relates to the Proposed Transaction:

- Public Staff – North Carolina Utilities Commission (“NCUC” or “Commission”) (“Public Staff”) - Joint Testimonies of Sonja R. Johnson, Krishna K. Rajeev, and John R. Hinton (“Public Staff witnesses”);
- Village of Bald Head Island (“Village”) – Testimony of Scott T. Gardner (“Village witness Gardner” or “Mr. Gardner”);
- Village – Testimony of Kevin W. O’Donnell, CFA (“Village witness O’Donnell” or “Mr. O’Donnell”), and the affidavit attached thereto;
- Village– Testimony of J. Lee Lloyd (“Village witness Lloyd” or “Mr. Lloyd”);

- 1 • Village– Testimony of Dr. Julius A. Wright (“Village witness Wright” or “Mr.
2 Wright”); and
- 3 • Bald Head Association (“BHA”) – testimony of Robert Drumheller (“BHA witness
4 Drumheller” or “Mr. Drumheller”).

5 **Q. What information have you reviewed while preparing this rebuttal testimony?**

6 A. I reviewed various filings and testimony filed in this docket, Docket No. A-41, Sub 22,
7 including many data requests and responses. I also met with the Applicants and their legal
8 counsel to discuss the details of the Proposed Transaction, the pending application, and the
9 parties’ positions in this proceeding. I have had numerous and detailed discussions with
10 Chad Paul, Chief Executive Officer, and Shirley Mayfield, Chief Financial Officer, of
11 BHIL and reviewed historic and current financial information about the ferry, tram, barge,
12 and parking operations. In addition to reviewing information in this docket, I reviewed
13 filings and testimony filed in Docket No. A-41, Sub 21 (“Sub 21”), including the
14 Commission Order dated December 30, 2022. (the “Sub 21 Order”).

15 **Q. Please summarize your principal conclusions.**

16 A. The following conclusions and recommendations summarize the positions taken in this
17 rebuttal testimony concerning the Proposed Transaction.

- 18 • The current status quo – with the ultimate owner of the utility being an estate
19 liquidating all assets and no longer having any interest in owning and operating the
20 utility – is unsustainable and fraught with regulatory risk. That is the baseline
21 against which the risks and benefits of the SharpVue acquisition should be
22 compared.

- 1 • The Village's concerns about SharpVue being a private equity fund are misplaced
- 2 and not relevant to the evaluation of the Proposed Transaction.
- 3 • This Commission can address the issues raised by the Village during any future rate
- 4 proceedings. Multiple stakeholders have deemed the present rates for ferry, parking
- 5 and barge operations as reasonable and fair, and the Commission will thoroughly
- 6 vet and scrutinize any proposals relating to future rates when and if such proposals
- 7 are filed.
- 8 • Outside of ratemaking processes, additional protections for ratepayers can be
- 9 provided through merger-related regulatory conditions (i.e., transaction
- 10 commitments) and enforcement of utility statutes regarding affiliate transactions.
- 11 • The current legal status of the parking and barge assets is that they are part of
- 12 regulated utility operations. The Commission should set rate base at the lesser of
- 13 purchase price or fair market value for the parking and barge assets – which, in this
- 14 case, the purchase price is the fair market value.
- 15

16 II. ACQUISITION AND CERTIFICATE TRANSFER STANDARDS

17 **Q. Please summarize the certificate transfer criteria under the North Carolina General**
18 **Statutes Chapter 62.**

19 A. In prior merger proceedings¹, the NCUC has established a three-part test for determining
20 whether a proposed utility merger is justified by public convenience and necessity. The

¹ Order Approving Merger Subject to Regulatory Conditions and Code of Conduct (Duke/Progress Merger Order), issued June 13, 2012, in Docket Nos. E-2, Sub 998, and E-7, Sub 986, *aff'd*, In re Duke Energy Corp., 232 N.C. App. 573, 755 S.E.2d 382 (2014), and Order Approving Merger Subject to Regulatory Conditions and Code of Conduct issued September 29, 2016, in Docket Nos. E-2, Sub 1095, and E-7, Sub 1100, and G-9, Sub 682 (Duke/Piedmont Merger Order).

test includes (1) whether the merger would have an adverse impact on the rates and services provided by the merging utilities; (2) whether ratepayers would be protected as much as possible from potential costs and risks of the merger; and (3) whether the merger would result in sufficient benefits to offset potential costs and risks.

Q. How do the NCUC certificate transfer standards apply to this proposed acquisition?

A. With respect to the first certificate transfer standard, regarding whether the merger would have any adverse impact on the rates and services, SharpVue has indicated in its Application and testimony that there are no immediate plans to change rates, terms, or conditions of service; management; or operational structure with no significant changes in the number of employees and staff.² In addition, SharpVue has agreed to hold ratepayers harmless from all transaction costs associated with the transfer.

Concerning the second certificate transfer standard, related to consumer protection, SharpVue and BHIL will agree to merger conditions designed to protect ratepayers as much as reasonably possible from potential costs and risks associated with the Transfer.

The third standard is related to public benefits from the transfer. BHIFT has indicated that services will continue uninterrupted in the same cost-effective, safe, and reliable manner that the public has come to expect. Another benefit of BHIFT's proposed purchase includes the retention of key managers and employees, which will allow for a smooth transition from BHIT for both employees and customers. In addition, BHIFT is adequately capitalized and has access to sufficient capital to enhance service quality, maintain cost-effective and efficient operations, and to accommodate future growth.

² Docket No. A-41, Sub 22, Application paragraph 16, pp. 5-6, paragraph 19, pp 6-7.

1 **Q. Is there anything else that you believe is important to consider in evaluating whether**
2 **these standards have been met?**

3 A. Yes. Economics – my professional field – relies heavily on the study of choices between
4 alternatives. A particular option's risks, costs, and benefits do not exist in a vacuum. The
5 risks, costs, and benefits of any choice (e.g. approving a transfer) must be evaluated in
6 comparison with those that exist in an alternative choice (e.g. denying a transfer and
7 maintaining existing ownership). In this case, the baseline against which the risks and
8 benefits of the SharpVue acquisition should be compared is the continuation of the current
9 situation in which the ultimate owner of the utility is an estate liquidating all assets that is
10 neither interested in continuing to own and operate the utility nor in planning for and
11 making needed investments. That status quo is unsustainable and fraught with risk for
12 consumers. Denial of the transfer would be much less beneficial to customers than
13 approval of the Application. None of the response testimony filed by the Village
14 acknowledges this reality.

15
16 **III. ROLE OF EQUITY INVESTORS IN REGULATED UTILITIES**

17 **Q. What concerns does Village witness Gardner raise about the proposed acquirer**
18 **SharpVue?**

19 A. In his direct testimony, Village witness Gardner presents several concerns with the
20 Proposed Transaction. One of his themes relates to SharpVue's motives and capabilities
21 as a private equity fund. Specifically, Village witness Gardner claims (a) SharpVue is a

profit-motivated investor,³ (b) SharpVue does not have access to capital,⁴ (c) SharpVue is not in it for the “long haul”,⁵ and (d) SharpVue’s ownership has no connection to or vested interest in the island.”⁶ I believe these concerns are based on unsubstantiated fears rather than facts, and I will address each of them.

A. Response to Concerns Over SharpVue’s Motivation as an Equity Investor

Q. By way of background and context, can you explain the role of equity in the capital structure of a rate-regulated business such as BHIFT?

A. Yes. Equity exists in the capital structure to act as a shock absorber to offset operating and financial risks for the business. Since debt holders have a higher priority claim to the utility’s assets than equity holders, introducing equity into the capital structure also reduces the risk to debt holders, thereby lowering the cost of debt (relative to a 100% debt capital structure). Conversely, the higher the debt ratio, the greater the earnings risk and the higher the cost of equity, as adding debt increases the utility’s fixed cost of financing burden.

Q. What is the capital structure SharpVue is proposing for the transaction?

A. SharpVue is proposing to finance its \$67.2 million investment with \$27.7 million of equity capital and \$41.6 million of debt capital. This split results in a 60% debt and 40% equity capital structure.

Q. What are some the fundamental economic principles that guide regulators in setting a fair rate of return?

³ Direct Testimony of Scott T. Gardner, p. 17.

⁴ Direct Testimony of Scott T. Gardner, p. 19.

⁵ Direct Testimony of Scott T. Gardner, p. 17.

⁶ Direct Testimony of Scott T. Gardner, p. 22.

1 A. The ratemaking process is premised on the principle that, in order for investors and
2 companies to commit the capital needed to provide safe and reliable utility service, the
3 utility must have the opportunity to recover the return of invested capital, and the market-
4 required return on that capital. Because utility operations are capital intensive, regulatory
5 decisions should enable the utility to attract capital on fair and reasonable terms, such that
6 rates are sufficient to allow the utility to recover its operating costs and to earn a just and
7 reasonable rate of return on invested capital.

8 The determination of a just and reasonable return depends equally on the fair valuation of
9 rate base as well as the setting of a fair return; both components are of equal importance
10 since it is their arithmetic product that results in the investment return. The result can be
11 changed by increasing or decreasing either rate base or the return that is allowed on it.⁷

12 Hence it is equally important that both components of the return, rate base and the
13 allowed return, are fair.

14 The foundations of public utility regulation require that utilities receive a fair rate of
15 return sufficient to attract needed capital to maintain important infrastructure for
16 customers at reasonable rates. The basic tenets of this regulatory doctrine originate from
17 several decisions by the United States Supreme Court, notably *Bluefield Waterworks and*
18 *Improvement Company v. Public Service Commission of West Virginia*, 262 U.S. 679
19 (1923) (“*Bluefield*”), and *Federal Power Commission v. Hope Natural Gas Company*,
20 320 U.S. 591 (1944) (“*Hope*”). In *Bluefield*, the Court stated:

21 A public utility is entitled to such rates as will permit it to earn a return on
22 the value of the property which it employs for the convenience of the

⁷ Kahn, Alfred E., *The Economics of Regulation, Principles and Institutions, Volume 1, Economic Principles*, (1970) at 36.

1 public equal to that generally being made at the same time and in the same
2 general part of the country on investments in other business undertakings
3 which are attended by corresponding risks and uncertainties...

4 The return should be reasonably sufficient to assure investor confidence in
5 the financial soundness of the utility and should be adequate, under
6 efficient and economical management, to maintain and support its credit
7 and enable it to raise the money necessary for the proper discharge of its
8 public duties.

9 In its landmark decision in the *Hope* case, the United States Supreme Court stated:

10 From the investor or company point of view it is important that there be
11 enough revenue not only for operating expenses but also for the capital costs
12 of the business. These include service on the debt and dividends on the
13 stock. By that standard the return to the equity owner should be
14 commensurate with returns on investments in other enterprises having
15 corresponding risks. The return, moreover, should be sufficient to assure
16 confidence in the financial integrity of the enterprise so as to maintain its
17 credit and to attract capital.⁸

18 A reasonable rate of return (referenced in the quote above as the “capital costs of the
19 business”) must satisfy all three criteria set out in *Hope* of fairly compensating continued
20 investment, by 1) being commensurate with returns on investments in other enterprises
21 having corresponding risks; 2) affording continued access to capital by the utility on
22 reasonable terms, and 3) and provides adequate financing flexibility to maintain the
23 financial integrity of the utility.

24 **Q. How does the capital structure ultimately flow through to and impact the rates**
25 **charged to ferry users?**

26 A. The regulatory rate of return is calculated by multiplying the cost of each capital
27 component by its percentage of the capital structure. For example, in its last rate case in

⁸ *Federal Power Commission v. Hope Natural Gas Company*, 320 U.S. 391 (1944).

2010, the NCUC set BHIT's rates at a level that allowed it the opportunity to earn a return on invested capital of 8.33%, stating:

The Stipulating Parties agreed that these revenues are intended to provide BHIT, through sound management, the opportunity to earn an overall rate of return of 8.33% on a rate base of \$3,943,335, with BHIT's long-term debt cost of 6.65% and a rate of return of 10.00% on the member's equity component of the following imputed capital structure:

Long-Term Debt.....50%

Member's Equity50%

The Commission finds and concludes that this aspect of the Stipulation is just and reasonable.⁹

Therefore, BHIT's revenue requirement used to determine customer rates included \$328,480 in return on invested capital, calculated as:

Table 1 – Cost of Capital and Return in 2010 Rate Case

	Amount	Percentage	Return
Equity Capital	\$1,971,668	50%	10.00%
Debt Capital	\$ 1,971,668	50%	6.65%
Total Capital	\$ 3,943,335	100%	8.33%
Multiplied by	8.33%		
Return on Capital	\$328,480		

Q. Is it typical for regulated utilities to utilize equity in their capital structures?

Yes. As the Commission's own history evinces, a balanced mix of debt and equity is just and reasonable in setting the rates of return for regulated utilities. While defining the "optimal" capital structure is both an art and a science, the data on commission-approved capital structures demonstrate that a substantial source of equity in a utility capital structure is just, reasonable, and in the best interest of utility ratepayers.

⁹ NCUC Docket No. A-41, Sub 7, "Order Granting Partial Rate Increase and Requiring Notice," p. 5.

1 **Q. Are there electric and natural gas utilities owned by private equity funds?**

2 A. Yes. It is common for private equity firms to invest in and own regulated electric and
3 natural gas utilities in the United States. Out of those utilities covered by S&P Capital IQ,
4 36 of them in the United States (including Frontier Natural Gas Company of North
5 Carolina) are owned by private equity firms. These utilities operate in 30 states and have
6 assets (utility plant) of \$41.4 billion as of the most recently reported quarter. To my
7 knowledge, each of these utilities is rate regulated by their state utility commission.

8 **Q. Why is private equity becoming a common source of equity for utilities, especially in**
9 **the context of utility acquisitions?**

10 A. Based upon my involvement in and observations of the utilities industry, it appears that
11 acquisitions by publicly-traded investor-owned utilities (IOUs) are still occurring, but
12 usually within their core industries where the purchaser already has operational expertise
13 and investments and thus can build economies of scale. Therefore, it is not likely that
14 public equity markets would be interested in, or would look favorably upon, the financing
15 of small infrastructure investments with a mix of regulated and non-regulated operations
16 in an unfamiliar industry. In addition, public debt (even investment-grade public debt) may
17 become difficult to issue in a declining economic and/or particular political environment,
18 as evidenced by the failure of the Bald Head Island Transportation Authority ("BHITA" or
19 "Authority") and the Village to secure approval from North Carolina's Local Government
20 Commission to issue bonds for the purchase of these very same assets. Therefore, private
21 equity often becomes the best available source of capital.

22 **Q. How would you describe the source of equity for BHIT/BHIL over the past thirty**
23 **years?**

1 A. Although the source of funding has been from a single individual, or a single family, rather
2 than from a group of investors, the existing owner of the BHIT is, and always has been, a
3 private entity with “private equity” invested in the business. It appears to me that Bald
4 Head Island has prospered under that ownership structure and capitalization of these assets.

5 **Q. How do you respond to Mr. Gardner’s concern that SharpVue’s primary obligation**
6 **will be to its investors and not to ratepayers?**¹⁰

7 A. I have five primary responses to this concern.

8 1) The utility’s business risk is the driving factor in determining investors’ required rates
9 of return on equity and debt. Regulatory commissions set a utility’s cost of capital
10 based on the returns investors could earn by investing in other enterprises having
11 corresponding risks. Therefore, the authorized return on equity for a utility owned
12 (fully or partially) by private equity should be no different than the authorized return
13 on equity for a utility with publicly-traded shares.

14 2) As demonstrated by the approved capital structures in the 2010 Rate Case (A-41, Sub
15 7) in Table 1 above, regulatory commissions believe that equity plays an essential role
16 in the capital structure of utilities. An optimal capital structure contains a mix of
17 equity and debt that minimizes the utility’s weighted average cost of capital, which
18 benefits ratepayers.

19 3) Regardless of the source of capital that funds a utility’s business (public equity,
20 private equity, corporate, municipal, or other forms of debt), the utility’s assets must
21 be financed by outside investment. That requires investors to whom the utility has

¹⁰ Direct Testimony of Scott T. Gardner, p. 22.

1 financial obligations. The difference between debt financing (either corporate or
2 municipal) and equity financing is the type of obligations incurred, not the absence of
3 investors. No source of capital is free, so there is no scenario under which the concerns
4 raised by Village witness Gardner about a privately owned utility's obligations to its
5 investors would not exist.

- 6 4) One of the roles of regulation in general, and the NCUC as it pertains to this case, is
7 to manage the sometimes divergent interests of investors and ratepayers. The
8 "Production-Motivation" function of public utility rates gives rise to the capital-
9 attraction standard. Bonbright explains in the Principles of Public Utility Rates:

10 This production-motivation function of prices gives rise to the capital-
11 attraction standard of reasonable public utility rates. By this standard,
12 reasonable rates are rates adequate to yield revenues that will cover all
13 legitimate operating expenses plus a return on investment sufficient to
14 maintain sound corporate credit and to attract required amounts of new
15 capital. Rates below this level are deemed deficient because, at least in
16 the long run, they will not enable the company to live up to its obligations
17 to serve the community.¹¹

18 Utilities can best provide safe, reliable, and economical service to ratepayers with
19 ongoing access to capital on reasonable terms. The approved equity ratios in the figure
20 above validate that this is best achieved with equity in the utility's capital structure.

- 21 5) Due to the nature of the assets for sale and the focus of traditional IOU owners on their
22 core markets, it is likely that public equity markets would not be interested in
23 purchasing these assets. Private equity firms, such as SharpVue, are a natural fit for
24 purchasing assets such as these and play an important role in providing needed equity

¹¹ "Principles of Public Utility Rates, Second Edition", Bonbright, Danielsens, Kamerschen, Page 92.

investing. If SharpVue wasn't the investor, the alternative would likely be another private equity firm with fewer North Carolina ties.

B. Response to Concerns Over SharpVue's Access to Capital

Q. How do you respond to Mr. Gardner's concerns about SharpVue's access to capital?

A. SharpVue has provided details on its plans to provide a \$2.0 million revolving credit facility that will be used to fund future capital needs. The funding bank has prepared the loan term sheet, and SharpVue plans to close the loan transaction shortly after a Commission order approving the transaction.¹² In its direct testimony, the Public Staff states:

The Public Staff learned from BHIFT that investors have started making initial contributions towards their planned investment amounts, and that a capital call for the remaining capital will be made in advance of closing. BHIFT contends that the penalties embedded within the operating agreement for Holdings ensures that the remaining capital will be provided.¹³

SharpVue also has a binding \$5.4 million standby facility from its investors to provide future cash injections.¹⁴ While Village witness Gardner may have concerns about SharpVue's access to funds, SharpVue has demonstrated an ability to access enough funds to finance the Proposed Transaction, a line of credit, and additional equity investment commitments. In contrast, other entities have been unable to do so.

Q. What other entities could not raise funds to acquire and operate the assets?

A. In December 2017, the Authority approved a purchase of the assets at issue in this proceeding for \$47.8 million and subsequently sought approval for a revenue bond from

¹² Joint Testimony of Public Staff- North Carolina Utilities Commission, pages 12-13.

¹³ Joint Testimony of Public Staff- North Carolina Utilities Commission, page 13.

¹⁴ Direct Testimony of Robert Drumheller, page 13.

the LGC. The LGC has failed to approve a bond issuance to fund the Authority acquisition despite it bearing an investment grade rating from Standard & Poor's and having a full underwriting commitment to issue bonds from two major financial institutions. Moreover, the LGC also did not approve an application by the Village to issue bonds to support what the Village viewed as a competing proposal to purchase the assets at issue here. Against this landscape, BHIL moved to find another buyer. This is a fundamental consideration in this docket since the current owners have indicated their desire to terminate their ownership and operation of the assets for which transfer approval is sought, and SharpVue has demonstrated its ability to purchase the assets and fund future capital needs.

Q. After its review and due diligence on the proposed transaction, does the Public Staff share Mr. Gardner's concern?

A. No. In its joint testimony in this docket, Public Staff stated:

The Public Staff believes that Holdings and BHIFT will be adequately capitalized and supported by owners with significant investment experience and owner-managers Lee Roberts and Douglas Vaughn with access to sufficient capital. Additionally, BHIFT agreed to continue to provide for adequate and reasonably priced parking.¹⁵

Q. Do you share Mr. Gardner's concern about SharpVue's access to capital?

A. No. Based upon my review of the financial information, I share Public Staff's view that, based on its investment experience and the plans it has put in place, SharpVue has access to the capital necessary to acquire and operate these infrastructure businesses in a manner that is in the best interest of the public and ratepayers.

C. Summary

¹⁵ Joint Testimony of Public Staff- North Carolina Utilities Commission, page 14.

1 **Q. Please summarize your conclusions related to the concerns referenced in this section**
2 **of your rebuttal testimony.**

3 A. I have four main conclusions:

4 **SharpVue's proposed Capital Structure and Profit Motivations**

5 The proposed capital structure for this purchase is appropriate and consistent with the
6 following:

- 7 1. Other utilities around the country, in general
- 8 2. Utilities regulated by the NCUC
- 9 3. The capital structure approved by NCUC for BHIT since the 2010 rate case.

10 Furthermore, because the NCUC will regulate utility-related rates, I see no reason for
11 concern about SharpVue utilizing private equity to fund the equity portion of the
12 acquisition. As I mentioned earlier, the rate of return SharpVue will be allowed the
13 opportunity to earn on regulated operations relates to the risk of the regulated business
14 operations (measured by investors' required rate of return on similar investments), a return
15 that the NCUC authorizes.

16 **SharpVue's Access to Capital**

17 SharpVue has been successful accessing and deploying capital to fund infrastructure
18 investments. In addition to its proven track record, once closed, SharpVue can access a
19 \$2.0 million revolving credit facility. SharpVue has also obtained commitments from its
20 investors to provide capital injections of up to \$5.4 million in the future for any needed
21 capital expenditures. I have reviewed BHIL's financial information and am familiar with
22 the capitalization of other regulated utility operations around the county, and I believe
23 SharpVue's access to capital is sufficient to own and operate the ferry, tram, parking, and

1 barge/tugboat systems, and it certainly is much more willing and able to have funds
2 available to meet future capital needs than a liquidating estate.

3 **IV. RATE REGULATION OF PARKING AND BARGE OPERATIONS**

4 **A. Valuation of Rate Base**

5 **Q. How is rate base used in the context of rate-regulated utility service?**

6 A. Rate base represents the total value of the capital assets the utility uses in providing service,
7 net of depreciation, upon which the investor is allowed to earn a fair rate of return. In
8 general, rate base and the Commission-authorized rate of return define the earnings
9 opportunity of the regulated investment.

10 **Q. Is the typical concept of rate base an issue in this certificate transfer docket?**

11 A. The Commission states in its Sub 21 Order that it has not determined to what extent the
12 parking and barge operations will be rate regulated. That Order stated:

13 The Commission highlights that it has in the past found varying degrees of
14 oversight to be reasonable and appropriate for certain utilities, services, or classes
15 of utilities, for a variety of reasons and depending on circumstances — to include
16 simple notice for some utility actions or even outright deregulation of previously
17 regulated services based upon the development of other competition or the
18 existence of other consumer protection measures. See, e.g., Sub 49 Order; see also
19 Notice of Proposed Revisions of Certain Rules in Chapter 2 & Chapter 5 of the
20 Rules & Regulations of the N.C. Utilities Commission, No. M-100, Sub 109
21 (N.C.U.C. May 20, 1986). The Commission has also made reasonable
22 accommodations for certain industry functions without requiring full rate or tariff
23 review. . . . The Commission is generally guided by the principle that its authority
24 only need be imposed to achieve the purposes for the regulation. However, this
25 Order leaves these, and other questions — e.g., whether a certain amount of, or in
26 what iteration, parking must be made available to ferry passengers — for another
27 day, when such matters are properly pending before the Commission. Because
28 these questions were not presented by the Complaint and, as a result, there has been
29 incomplete evidence and argument presented upon them, the Commission declines
30 to expand the scope of this proceeding to determine the same.

31
32 Unlike the Sub 21 proceeding, the Applicants in Sub 22 are requesting a determination of
33 the rate base value for the parking and barge assets. The reason for this request should be

1 clear: if SharpVue cannot earn a fair return on its full investment, there is no reason for it
2 to make the investment. Unlike the Sub 21 proceeding, the testimony of BHIL and
3 SharpVue in this Sub 22 proceeding does present the Commission with sufficient evidence
4 and reason to make a rate base determination. This is true despite the fact that SharpVue
5 has agreed not to seek a rate increase for at least one year, because SharpVue needs to
6 know now - before deciding whether to close on the Transaction – if it would be deprived
7 in the future of earning a return on the assets subject to regulation. It is necessary for
8 investors, owners, and lenders to have visibility into the earnings potential of the asset they
9 are acquiring prior to closing.

10 This case presents an extraordinary situation: the parking operations and
11 barge/tugboat operations have been operated by BHIL for over thirty years as unregulated,
12 separate, and stand-alone operations. The assets used by these operations have never been
13 included in any rate base calculations. The Commission has never established rates for
14 these services. Therefore, the depreciation of those assets has never been included and
15 recovered as a cost of a regulated service; nor has there ever been a return built into
16 Commission-approved rates. Yet, these assets are now deemed to be part of a regulated
17 utility pursuant to the Sub 21 Order – less than two months prior to a hearing on an
18 application to transfer those assets to a purchaser. I am not aware of any precedent
19 anywhere with similar facts, and counsel has advised me they are also unaware of any
20 precedent. Therefore, I believe it is appropriate to rely upon seminal and fundamental
21 economic and financial principles to consider the issues of rate base and future rates in this
22 transfer docket.

1 **Q. Why does the Commission need to decide in this docket what will be the amount of**
2 **rate base for the regulated parking and barge operations?**

3 A. As a practical matter, as explained immediately above, a buyer of a regulated entity (and
4 its lenders) needs to know at least the general framework of how it will be allowed to set
5 rates and earn revenue. In less unique, more typical situations, the “rules of the road” for
6 typical utility ratemaking are well established. But in this docket, the Applicants find
7 themselves in unmapped and uncharted territory, where different paths lead to very
8 different outcomes. The Village has recommended one path for the Commission to take –
9 full rate regulation of parking and barge rates in which the rate base is BHIL’s net book
10 value derived from when the assets were purchased decades before. As I explain below,
11 I believe this derivation of rate base is incorrect.

12 **Q. How should the value of that rate base should be determined?**

13 A. The Commission has generally ruled that rate base will be the lesser of net original cost or
14 the purchase price when a utility acquisition is made. In this case, the net original cost and
15 the purchase price for the parking and barge assets are the same, the apportionment of the
16 \$56 million that SharpVue has agreed to pay for those parking and barge assets. This view
17 is obviously quite different from how the Village has presented net original cost.

18 **Q. If the net original cost and the purchase price are the same for the parking and barge**
19 **assets, does that mean there is zero acquisition premium?**

20 A. Yes, because the transaction price (which is lower than the most recent appraised value)
21 between SharpVue and BHIL is the original utility cost. Prior to acquisition by SharpVue,
22 or at least prior to the Sub 21 Order, the parking and barge assets have not been owned by
23 a utility and have not been regulated assets. The \$25 million acquisition premium put

forward in the Perry Affidavit and attached to Village witness O'Donnell's testimony is incorrectly premised on the net book value of the assets carried on the books of BHIL and not the acquired cost of the assets by SharpVue. Thus, this figure is incorrect and should be disregarded. Below, I have updated the Perry Affidavit analysis with the appropriate data.

Table 2 – The Non-Existence of an Acquisition Premium¹⁶

	Parking	Barge	Ferry	Total
Purchase Price Allocation	\$22,901,938	\$8,358,150	\$3,320,810	\$34,580,901
Rate Base	\$22,901,938	\$8,358,150	\$3,320,810	\$34,580,901
Acquisition Premium	\$0.00	\$0.00	\$0.00	\$0.00

Q. Village witness O'Donnell claims that it is Commission precedent to set rate base at the original cost Net Book Value on the books of the transferor for transfers of utility property; and that the transfer of assets to rate base at their fair value could lead to customers paying for the same regulated asset more than once? Do you agree with his assessment?

A. No. Witness O'Donnell's arguments pertain only to previous utility assets and not assets that are new to a utility. Mr. O'Donnell attempts to support his argument that SharpVue's rate base should be valued on BHIL's net carrying value for the assets, by pointing to

¹⁶ Exhibit KWO-6

1 Commission R1-17.¹⁷ But, contrary to witness O'Donnell's interpretation, this Rule does
2 not require that net original cost of the prior owner must be used to establish rate base of
3 the new owner. Rather, it simply states that where the assets have been devoted to public
4 use by a prior owner, then both the purchase price and original cost at time of purchase
5 must be provided in the application. In this case, the valuation of rate base should be set
6 at SharpVue's purchase price of those assets (i.e., SharpVue's original cost, not the original
7 cost of the prior non-utility owner). When an electric utility places a transformer into
8 service, it does not do so at the original cost incurred by the transformer manufacturer, it
9 puts into rate base the cost incurred to purchase the transformer, the market value of that
10 transformer (i.e., the original cost to the first utility to acquire that equipment).

11 Witness O'Donnell's proposal seems especially attenuated when you consider that BHIL
12 has operated a commercial parking business that was unregulated until less than two
13 months ago. That long-standing business has been no more "devoted to the public use"
14 than if it had been operated by one of the many other private concerns that own and operate
15 parking facilities across North Carolina. I am aware of no basis for the Commission to
16 declare that a parking business operated by one of these other private entities was "devoted
17 to the public use" simply because it provides a service *that the public uses*. The same
18 should be true for the commercial parking operation that SharpVue is purchasing from

¹⁷ O'Donnell at 6, line 12. The pertinent part of the Commission rule requires:

A statement or exhibit showing the original cost of all property of the applicant used or useful in the public service to which such proposed increased rates relate. If the original cost of any such property cannot be accurately determined, such facts should be stated and the best estimate of the original cost given. In case such property consists of plants or facilities which have been devoted to the public use by some other person, municipality, or utility, and subsequently purchased by the applicant, the purchase price of such plants or facilities must be shown, and also the original cost and accrued depreciation at the time of purchase must be shown, if known.

1 BHIL. And even if it were “public use” under all those years of ownership by BHIL, it
2 still was not owned by a utility nor regulated by the NCUC as a utility.

3 **Q. VBHI Witness O’Donnell claims that because BHIL’s unregulated parking operation**
4 **has supported the regulated ferry and tram service, that SharpVue’s purchase of**
5 **these unregulated assets should not be considered “analogous to the acquisition of**
6 **non-utility property”;¹⁸ Do you agree?**

7 A. No. These assets were never regulated as part of a public utility. The regulated ferry rate
8 payers have not paid for these assets through utility rates and BHIL never received a
9 regulated return or cost recovery through depreciation expense through regulated rates for
10 the services they provide. Simply because an unregulated entity provides service to the
11 same consumers of a regulated entity, does not naturally extend the regulation to the
12 unregulated entity. Nor should the rates be set based on the original cost incurred by the
13 non-regulated entity.

14 **Q. VHBI Witness O’Donnell also claims that because has already recovered the value of**
15 **the asset “many times over,” it is appropriate to treat them as a regulated entity;¹⁹**
16 **Do you agree?**

17 A. No. Regardless of whether this statement is factually accurate or can be verified, what
18 witness O’Donnell is proposing equates to retroactively regulating the parking and barge
19 operations by pointing to the fees that it has charged as a competitive venture, subject to
20 market conditions, without designated service territory, or entitlement to a rate of return,
21 and conflates those fees with the rates paid by utility ratepayers to arrive at the conclusion

¹⁸ VBHI Witness O’Donnell at p. 8, lines 11-18.

¹⁹ O’Donnell at p. 8, line 22 through p. 9, line 4.

1 that investors have already recovered their costs; and as such, it is appropriate to treat them
2 as a regulated entity for purposes of the transfer. This would include setting rate base at
3 the transferor's (BHIL's) net carrying value for the newly regulated assets.²⁰ Witness
4 O'Donnell's attempt to ascribe regulation to an unregulated entity, just by virtue of the fees
5 the unregulated entity has charged defies comprehension. Thankfully, the Commission has
6 provided unambiguous language as to which entities its rule applies, in its June 15, 1990,
7 order in a Carolina Water Service rate case, Docket No. W-354, Sub 81. In that order, the
8 Commission made clear that only when a **previously regulated utility** is acquired should
9 the net book value of the seller carry over to the new buyer for purposes of determining
10 rate base:

11 As a general proposition, when a public utility buys assets that have
12 previously been dedicated to public service as **utility property**, the
13 acquiring utility is entitled to include in rate base the lesser of the purchase
14 price or the net original cost of the acquired facilities in the hands of the
15 transferor at the time of transfer. The theory behind this proposition is that
16 the investor in utility property should only be entitled to recover his own
17 investment. Also, public utility ratepayers normally should only be
18 responsible for reimbursing an investor once for the cost of public utility
19 property through depreciation expense recovered through rates and through
20 payment of a return on the unrecovered investment.
21

22 (Emphasis added.) As stated above, the parking and barge operations have never been
23 regulated, were never utility property, and as such there is no regulated original cost upon
24 which to base future rates. As such, any future determination of rate base, as deemed
25 necessary by the Commission, should be set on the original costs of the assets to SharpVue
26 – its purchase price.

27 **B. Implications of Original Cost Rate Base Set at Purchase Price**

²⁰ Ibid.

1 **Q. If parking and barge operations were rate-regulated and based on a rate base**
2 **valuation, what would the rate impact on consumers be if the rate base was the**
3 **current market value (i.e., SharpVue's purchase price)?**

4 A. To my knowledge, there would be no material rate impact. SharpVue has committed to
5 hold rates constant for the barge and parking services for four years or its first rate case,
6 subject only to increases no greater than the rate of inflation. After that, any increase that
7 SharpVue might apply for would be subject to rigorous investigation by the Public Staff
8 and any intervenors, and could be no more than the Commission determines is just and
9 reasonable. Further, no party is questioning the reasonableness of present parking rates,
10 nor is the Commission making any change to those rates within the Sub 21 Order: "The
11 Commission notes that there has been no substantiated allegation that BHIL is, at present,
12 abusing its monopoly power, only that the risk exists for it — or a future owner — to do
13 so." The Order goes on to state, "the great weight of the evidence shows that, at present,
14 the parties appear to be generally satisfied with the current rates and services of both BHIL
15 and BHIT, as well as the agreement they struck in the last general rate case involving the
16 Parking Operations."²¹

17 A simple calculation can demonstrate that for the parking assets, the current net operating
18 income at a regulated return of only 8% would support a rate base similar in size to the
19 original cost basis that SharpVue indicated in its "Preliminary Estimated Purchase Price
20 Allocation." As shown on Table 2 above, the portion of the purchase price relating to the

²¹ Village of Bald Head Island v. Bald Head Island Transportation, Inc. and Bald Head Island Limited, LLC, Docket No. A-41, Sub 21, North Carolina Utilities Commission, Order dated December 30, 2022, at page 28. The Order also provides the following quote from oral testimony – (Association witness Briggs testifying: "We have a good deal there. There's no question . . . [i]t's reasonable.").

1 parking is \$22,901,938.²² As shown in O'Donnell Exhibit KWO-3, the Parking Facilities
2 Net Operating Income was \$1,945,049 for 2021. Dividing this number by a regulated rate
3 of return of 8% reveals that, even with parking rates held constant, the status quo parking
4 revenues and expenses would support a rate base of \$24 million – just slightly above the
5 allocated purchase price relating to the parking of \$23 million. As such, there would be no
6 material change to the parking rates consumers pay by setting rate base value at SharpVue's
7 purchase price.

8 **Q. From your assessment above, do you have an opinion as to why the Village is**
9 **concerned about including an “acquisition premium” in future parking rates?**

10 A. I expect the Village and its consultants can conduct a similar calculation as I have
11 completed above and determine that setting parking rates using the purchase price of
12 SharpVue (i.e., the original cost of the assets to SharpVue) would have no material impact
13 on parking rates. Yet, the Village still advocates for parking to be regulated and rate base
14 to be determined using the original net book value of BHIL. The use of the original owner's
15 costs would result in parking rates that are far below the current level, a current level of
16 rates which all parties have deemed as fair and reasonable. The only logical conclusion I
17 can make is that this is an effort by the Village to decrease the cash flow and value of the
18 assets to such an extent that the current acquirer is no longer interested or able to close on
19 the proposed transaction. As the Village has indicated an interest in acquiring these assets
20 themselves, but not at the arm's length price agreed to by SharpVue, it may be that the

²² Exhibit KWO-6

Village believes a Commission determination mandating use of original net book value would aid its own efforts to acquire these assets at less than fair market value.

Q. How would adoption of the Village's recommendation to set rates based on BHIL's original net cost of the parking and barge assets affect the ability of the regulated utility to sustain operations?

A. This would be a very impactful decision. First, SharpVue (or any other potential investor) would not be interested in pursuing a transaction in which it could not earn a return on \$25 million of its investment at the onset. Second, it would be impossible for BHIL to find an alternate investor that would be capable of funding the transaction and step into its shoes. There are many options for the deployment of investment capital in the equity markets. It is a fundamental economic principle that investment dollars will flow to those opportunities that offer reasonable returns commensurate with the level of risk the investor is willing to accept. No investor would (or should be expected to) accept the risks associated with maritime transportation operations (e.g. operational complexity, weather, economic cycles, etc.) while earning no return on \$25 million of its investment. This economic reality is the basis for the regulatory principle discussed previously that returns should be sufficient to attract necessary capital to fund operational and capital needs of the utility. A decision that would, in essence, write-off \$25 million of an investment would violate that principle.

V. REGULATORY CONDITIONS AND ANALYSIS OF PARKING RATES

Q. How has the NCUC utilized merger conditions and oversight of affiliate transactions to implement their regulatory authority?

1 A. The NCUC has required regulatory conditions in the approval of past mergers, and the
2 Applicants are proposing numerous regulatory conditions that are very similar to those
3 proposed by the Public Staff as part of this proceeding.

4 **Q. Do the proposed regulatory conditions address the Village's concern that parking**
5 **may not be available in the future at a reasonable cost?**

6 A. Yes. However, first it is important to reiterate that the current parking is sufficient and is
7 reasonably priced. The Village's concern, as discussed above, relates to a hypothetical
8 situation in the future. The regulatory conditions offered by SharpVue ensure the
9 availability of parking and that parking barge rates will not increase greater than the rate
10 of inflation. The regulatory conditions and oversight of affiliate transactions address the
11 concerns about parking availability and pricing.

12 **Q. Beyond the testimony in Docket A-41, Sub 21, did you undertake any independent**
13 **analysis of the reasonableness of the pricing of parking at the Deep Point Terminal?**

14 A The general standard for evaluating affiliate transaction agreements is to allow services
15 between regulated and non-regulated affiliates at the lower of cost or market rates, subject
16 to Commission oversight. (The Applicants have agreed to that standard in this docket.) In
17 that context, "benchmarking" is often utilized to determine "market rates." Accordingly,
18 I thought it would be instructive to determine the appropriateness of the current parking
19 charges by benchmarking the prices charged by other parking businesses.

20 **Q. Have you performed a benchmarking analysis of North Carolina parking rates to**
21 **determine if the Bald Head Island parking is reasonably priced?**

22 A. Yes. Table 3 below contains a summary of various parking operations in North Carolina
23 and their prices.

1

Table 1 - North Carolina Maximum Daily Parking Rates

Parking Facility	Daily Max Rate
Wilmington International- Economy Daily Lot	\$9
Town of Carolina Beach- November & December	\$10
Charlotte Douglas International- Long-term Lot	\$10
Piedmont Triad International- Economy	\$10
Raleigh-Durham International- Economy	\$11
Deep Point Terminal Parking	\$12
Piedmont Triad International- Central Garage	\$12
City of Wilmington- Decks	\$12
Charlotte Douglas International- Daily Deck	\$12
Piedmont Triad International- Central Garage	\$12
Wilmington International- Daily Lot	\$12
City of Wilmington- River Place Deck	\$13
Downtown Raleigh State Gov't Complex- Parking Decks	\$14
Raleigh-Durham International- Express	\$14
Downtown Raleigh State Gov't Complex- Performing Arts Deck & Convention Center	\$15
Town of Holden Beach	\$15
City of Wilmington- Convention Center	\$15
Piedmont Triad International- Premium	\$15
Wilmington International- Premium Daily Lot	\$15
Charlotte Douglas International- Express Deck	\$16
Raleigh-Durham International- Central	\$17
City of Wilmington- On Street	\$19
Downtown Raleigh State Government Complex- Visitor	\$20
Town of Oak Island	\$20
Charlotte Douglas International- Hourly	\$24
Wilmington International- Hourly Lot	\$24
Town of Carolina Beach- March to October	\$25
Town of Wrightsville Beach	\$25
Raleigh-Durham International- Premier	\$26
Downtown Raleigh State Government Complex- Metered	\$30
Count= 30	

Parking Facility	Daily Max Rate
Average= \$16.13	
Median= \$15.00	
Mode= \$12.00	

Not considering discounted annual pass rates²³, the standard daily parking rate at the Deep Point Terminal is \$12 per day and its daily parking price ranks as the 6th lowest of those benchmarked. As shown in table above, the Deep Point parking price is below the average North Carolina daily parking rate of \$16.13. In fact, the parking prices at the Deep Point Terminal rank in the 23.3 percentile, placing them in the lowest quartile of the benchmarked North Carolina parking rates. The benchmark analysis also indicated that the median of the daily parking rates in North Carolina is \$15, and the mode is \$12. The mode represents the price in the benchmark analysis that is repeated the most times, meaning that a daily parking rate of \$12, as is the case at Deep Point, is quite common. Based on all this information, I conclude there is no indication that the Deep Point parking rates are priced above the market rate. In addition, a similar analysis can be conducted at any point in the future to ascertain if SharpVue's affiliate BHIFT provides reasonably priced parking.

Q. Do these benchmarking results also inform the decision regarding the appropriate method of determining rate base in these proceedings?

²³ Of course, this is a significant exclusion from the analysis because the uncontroverted evidence of record in A-41, Sub 21, is that owners and residents who tend to park for longer periods can buy an annual pass under which their fee in the Premium Lot is \$3.70 per day. The annual pass rate is even lower for a pass in the General Lot, at \$3.29 per day. Annual pass rates are lower still for contractors (\$1.92 per day) and Island employees (\$1.78 per day). NCUC Docket No. A-41, Sub 21, STG Cross Examination Ex. 2.

1 A. Yes. In the Sub 21 Order, the Commission has already ordered that the current rates should
2 stay in place. As explained earlier in my testimony, establishing the rate base at the current
3 market value (i.e., the SharpVue purchase price) would, in essence maintain rates at their
4 approximate current level resulting in minimal, if any, rate impact on consumers. And this
5 benchmarking demonstrates that the current rates are consistent with parking rates at other
6 locations around the state.

7 Said conversely, reducing the rate base by \$25 million as proposed by the Village would
8 result in parking rates that would be completely inconsistent and uneconomical for the
9 facilities' owner when compared with similar parking services provided around the state.
10 I am not a lawyer, but, in layman's terms, such a result would have the practical result of a
11 taking from BHIL or SharpVue in the amount of \$25 million of value.

12 **Q. One of your answers earlier in this testimony implied the Commission might seek to**
13 **regulate parking and tugboat/barge rates in some way other than by rate base/rate-**
14 **of-return ratemaking; could these benchmarking results also support such a result?**

15 A. Yes. If the current rates are consistent with rates at other parking facilities around the State,
16 and the Commission has already found that they are just and reasonable, then it would seem
17 to me that – so long as those rates could be adjusted only at or below the rate of inflation –
18 the administrative burden and expense of having to come in for a rate case (which would
19 inevitably be contested, based upon the history of Bald Head Island), or requiring
20 affirmative Commission approval for every adjustment of rates that might accommodate a
21 market opportunity or ratepayer request would outweigh any regulatory benefit and would
22 be administratively burdensome for an operation of this size, unnecessary as a practical
23 matter, and (from an economic perspective) extremely inefficient.

VI. SUMMARY AND CONCLUSIONS

Q. Please summarize the conclusions of your rebuttal testimony and provide your findings and recommendations.

A. When compared to the alternative of the current ownership status by the George Mitchell Estate, it is my opinion that the acquisition of the ferry, tram, barge, and parking assets and operations is clearly in the public interest and justified by the public convenience and necessity. There is nothing inherently problematic about the equity for a utility acquisition of this size and type to be provided by a private equity firm, and nothing about the structure of the SharpVue purchase that creates unreasonable risks to the public that are not addressed by the proposed regulatory conditions. While recognizing the general rule that assets that had been dedicated to public service *as utility property* are generally transferred for rate base purposes at original cost, that rule is not applicable to this unique situation, and any future rate base for the parking and barge assets should be at their current fair market value (i.e., the allocated purchase price paid by SharpVue). Lastly, benchmarking against other parking rates within the state support the conclusion that rates are fair and reasonable; and, as explained above, a fair market value at SharpVue's purchase price does not result in materially different parking rates. The goal of regulation should not be to limit an investor's return (because capital attraction is an important function of the regulatory compact) but to ensure rates ultimately are fair and reasonable. Bonbright states this succinctly stating, "Low prices and not low profits are the most important part of salutary economic performance."²⁴

²⁴ “Principles of Public Utility Rates, Second Edition”, Bonbright, Daniels, Kamerschen, Page 365.

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

2 **A. Yes, at this time.**

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Apr 13 2023

1 BY MR. STYERS:

2 Q Have you prepared a summary of your prefiled
3 rebuttal testimony that has been filed in this
4 docket?

5 A Yes, I have.

6 Q Okay. Is that summary true and accurate to the
7 best of your knowledge?

8 A Yes, although there is one edit that needs to be
9 made.

10 Q Okay. So what would the one edit be? And that
11 testimony, I think, has been circulated to
12 everyone. You should have that.

13 A So the last page, on page 3, the last sentence of
14 the first paragraph.

15 Q And what's the change?

16 A Yep. The term reasonable was duplicated. It's
17 in the sentence twice. The sentence should read,
18 "In contrast following the logic recommended by
19 the Village's witnesses would require rates to be
20 lowered significantly below the current
21 reasonable rates considerably decreasing the
22 value of those assets and jeopardizing the
23 financial viability of the entire enterprise and
24 the transfer."

1 Q With that one correction of striking the word
2 "reasonable" the second time on the -- next to
3 the last line on the first paragraph of page 3,
4 is your summary true and accurate?

5 A Yes.

6 Q Okay.

7 MR. STYERS: So we would ask that the
8 summary of Mr. Taylor's testimony also be -- which has
9 been prefiled -- which has been filed, would also be
10 included in the record.

11 COMMISSIONER DUFFLEY: The summary will be
12 received into evidence at this time.

13 (WHEREUPON, the summary of JOHN
14 TAYLOR is copied into the record
15 and received into evidence)
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**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. A-41, SUB 22

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

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

**TESTIMONY SUMMARY
OF
JOHN TAYLOR

ON BEHALF OF
APPLICANTS**

John Taylor Testimony Summary**Docket No. A-41, Sub 22**

My name is John D. Taylor. I am the managing partner for Atrium Economics, LLC, an economics, finance, and public policy consulting firm primarily focused on utility pricing and policy issues and providing services in various states across North America, including North Carolina.

As I explain in detail in my testimony, I believe the proposed transaction is in the public interest and should be approved. In this case, the baseline against which the risks and benefits of the Sharp Vue acquisition should be compared is the continuation of the current situation in which the ultimate owner of the utility is an estate liquidating all assets that is neither interested in continuing to own and operate the utility nor in planning for and making needed investments. While intervenors raise concerns about a private equity firm as an investor, these concerns are unwarranted. All utilities have investors, and all investors expect a reasonable return on their investment corresponding to the risks. A primary role of a utility regulatory commission is to balance, sometimes disparate, interests between these investors and ratepayers. Further, from my research, 36 gas and electric utilities (covered by S&P Capital IQ) are owned by private equity firms and operate within 30 states with a total asset value of over 40 billion dollars.

A critical issue in dispute relates to the rate base issue raised by the intervenors. Based on my review of the testimony and relevant documents, it is my professional opinion that, under these unique circumstances, the rate base should be established as the lesser of the purchase price paid or fair market value. In this case, the purchase price is at or below the fair market value and thus is the appropriate measure. More importantly, including the purchase price in the rate base will have no material adverse impact on ratepayers in light of the current rates charged for parking and

barge services. (The rates for ferry and tram services are not affected by this issue because those assets had always been dedicated to utility, so their rate base is their depreciated net book value.)

The situation before the Commission is unprecedented. BHIL has operated the parking and barge operations for over 30 years as unregulated, stand-alone operations. Because the Commission only very recently concluded that the parking and barge operations should be considered regulated assets, the Commission will have to update the rate base to account for these assets moving forward. Indeed, the Commission had never included these assets in a rate base in the past and had never established rates for these services. Therefore, the depreciation of those assets (or property taxes) had never been included and recovered as a cost of a regulated service, and a return on these assets has never been approved by the Commission and incorporated in rates.

Moreover, this rate base determination has a genuine impact on the proposed transaction and ultimate ownership of the operations: if SharpVue cannot earn a fair return on its total investment, there is no reason for it to make that investment. A buyer of a regulated entity needs to know at least the general framework of how it will be allowed to set rates and earn revenue.

As an unregulated, private concern, BHIL has operated the parking and barge services for over 30 years. The mere fact that the public has used them does not mean they have been dedicated to public utility use, nor are they utility assets. To treat them as such would be to essentially retroactively regulate these assets. To my knowledge, the Commission has never done this and should not start now.

If there were any doubt about the wisdom of allowing SharpVue to include its purchase price for these newly regulated assets in the rate base, the implications of this approach for the rates of these services should erase it. No one contests that the current rates for parking and barge

are reasonable, and market research confirms that the rates for BHIL's parking are on the low end of market rates for parking in North Carolina. Most importantly, a simple calculation shows that there would be no material impact on these reasonable rates if the rate base were set at the purchase price of these assets. If the net operating income for the parking facilities is divided by the rate of return of approximately 8%, the status quo parking revenues and expenses will support a rate base approximately equal to the purchase price of the parking assets. In contrast, following the logic recommended by the Village's witnesses would require rates to be lowered significantly below the current reasonable rates reasonable, considerably decreasing the value of those assets and jeopardizing the financial viability of the entire enterprise and the transfer.

The result of such an outcome is not in the public interest. Neither SharpVue nor any other investor will purchase assets that they can not earn a return on \$25 million of their investment (the difference between the purchase price and the original cost of parking and barge assets to the Mitchell estate). Doing so would ignore economic realities and leave BHIL without an investor to purchase the assets and provide the necessary capital to fund operational and capital needs in the future. As a matter of fundamental regulatory economics, the correct outcome in this unique circumstance, instead, is for the rate base to be the fair market value of the assets (i.e. the purchase price) so that the returns on the investment will be sufficient to attract necessary capital, and in this case, doing so will not adversely affect the current rates paid by ratepayers.

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Testimony Summary of Bion Stewart 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 22, and has also been provided to Commission's Counsel and to the appropriate members of the NC Public Staff.

This 10th day of March, 2022.

/s/ M. Gray Styers, Jr.

M. Gray Styers, Jr.
Counsel for
Bald Head Island Transportation, Inc.
and Bald Head Island Limited, LLC

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Apr 18 2023

1 MR. STYERS: Thank you. The witness is
2 available for cross-examination.

3 MR. SCHAUER: Thank you.

4 COMMISSIONER DUFFLEY: Mr. Schauer.

5 CROSS EXAMINATION BY MR. SCHAUER:

6 Q Good morning, Mr. Taylor.

7 A Good morning.

8 Q Craig Schauer on behalf of the Village. The
9 Applicants hired you to provide expert testimony
10 on the proper treatment of acquisition opinions
11 for the transportation system, correct?

12 A That was one part of my engagement, yes.

13 Q You've testified at about how many proceedings?

14 A I think 37 or 38.

15 Q But you've never before testified or provided
16 expert testimony about a transportation system,
17 correct?

18 A I have not --

19 COMMISSIONER DUFFLEY: If I could interrupt
20 for a second. Mr. Gardner. Is he still outside
21 thinking it's confidential or --

22 UNIDENTIFIED SPEAKER: He's on a phone call.

23 COMMISSIONER DUFFLEY: Okay. But he knows
24 to come back in. Thank you.

1 BY MR. SCHAUER:

2 Q You've never before provided expert testimony
3 about a transportation system?

4 A Correct.

5 Q All right. And you've never before testified in
6 a regulatory transfer proceeding?

7 A I've provided expert reports related to the
8 transfer of regulated utilities, but have not
9 been the primary expert witness in those
10 proceedings. Namely, Puget Sound Energy was sold
11 to Macquarie which was a \$ 7 billion sale. I
12 worked on that. Bay State Gas, sale of Northern
13 Utilities to Northern, as well as the acquisition
14 of Gas Metro acquired a couple utilities in
15 Vermont.

16 I worked on the Nicor AGL merger
17 and the analysis related to the implications of
18 shared service cost as well as worked on the
19 divestiture of independent power plants,
20 including two nuclear facilities.

21 Q All right. And even though you worked on those
22 proceedings, you were not providing testimony?

23 A Correct.

24 Q As part of discovery, you produced some

1 calculations of the impact on rates as a result
2 of including the acquisition premium and rate
3 base, correct?

4 A Yes.

5 Q Right. If I could direct you to what's been
6 marked as BHIT Public Staff Cross Exhibit 1 and
7 BHIT Public Staff Cross-Examination Exhibit 2,
8 these are the two work papers that we just
9 discussed. Do you have copies of those?

10 A Yes, I do.

11 Q All right. I'd like to focus on parking, if
12 that's okay?

13 A Okay. That would be the Exhibit 1?

14 Q Yes. Thank you. And I just realized I hadn't
15 marked both as Exhibit 1, so I appreciate you
16 telling me that. Looking at lines --

17 COMMISSIONER DUFFLEY: Mr. Schauer, this is
18 a confidential exhibit. Are we going into
19 confidential information?

20 MR. SCHAUER: You know, I don't -- it's not
21 marked as confidential. I do not know.

22 MR. STYERS: Could we go off the record for
23 about a one-minute recess to address that?

24 COMMISSIONER DUFFLEY: Okay. We're going to

1 go off the record -- well, why are we going off the
2 record?

3 MR. STYERS: Can I have a one-minute recess
4 to talk to my client about that?

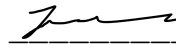
5 COMMISSIONER DUFFLEY: Yes. We'll take a
6 five-minute recess.

7 MR. STYERS: Thank you.

8 (Whereupon, a recess was taken at
9 10:00 a.m., and set to reconvene at
10 10:05 a.m.)
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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