

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. A-41, SUB 22

In the Matter of)	
Joint Application of Bald Head Island)	
Transportation, Inc., and Bald Head)	
Island Ferry Transportation, LLC, for)	THIRD MOTION TO
Approval of Transfer of Common Carrier)	COMPEL RESPONSES OF
Certificate to Bald Head Island Ferry)	SHARPVUE CAPITAL, LLC
Transportation, LLC, and Permission to)	
Pledge Assets)	

The Village of Bald Head Island (the “Village”), by and through counsel and pursuant to the Order Scheduling Hearing, Establishing Procedural Deadlines, and Requiring Public Notice, moves the Commission to compel SharpVue Capital, LLC (“SharpVue”)¹ to provide its unredacted Responses to Public Staff’s Data Request Nos. 4 and 5 to Bald Head Island Ferry Transportation, Inc. (“BHIFT”). Attached as Exhibits are copies of the relevant discovery requests and responses.

BACKGROUND

The background to this dispute is set forth in the Village’s Second Motion to Compel filed on November 22, 2022, and is incorporated herein by reference.

Pursuant to its obligations under the Village’s DR1,² on November 22, 2022, SharpVue served on the Village a copy of its responses to the Public Staff’s Data Requests Nos. 4 and 5 to SharpVue’s affiliate, BHIFT. *See Exhibit 1 and Exhibit 2* hereto. However,

¹ For purposes of this motion, “SharpVue” includes reference to SharpVue Capital, LLC and its affiliated entities.

² Exhibit 2 to the Village’s Second Motion to Compel.

SharpVue only provided the Village with a public, redacted version of the responses.³ Upon receipt, Village's counsel requested an unredacted version of the responses, which SharpVue has refused to provide citing its position that the information constitutes "trade secret" information. On information and believe this "trade secret" information has been provided to the Public Staff.⁴

Based on the foregoing, this motion seeks an order compelling the production of the following: a full, unredacted version of SharpVue's responses to the Public Staff's Data Requests Nos. 4 and 5 to BHIFT, including any documents that may be referenced therein.

ARGUMENT

This Third Motion to Compel presents the identical issue presented in the Village's Second Motion to Compel; to wit, SharpVue has not made any cognizable objection to production of the requested information.

The parties have negotiated a Confidentiality Agreement⁵ to facilitate the exchange of confidential information, including trade secret information. SharpVue has not made any claim that the information in issue is privileged, irrelevant, or otherwise not subject to production and therefore has waived any such arguments. *See Hairston v. Hairston*, 209 N.C. App. 750, 709 S.E.2d 601 (Table), 2011 WL 532774, at *2 (2011) (failure to state objections to discovery requests waives objection).

³ The Village is filing separate confidential versions of SharpVue's responses to Public Staff DR4 in order to protect from public disclosure certain information in DR4-1 which SharpVue inadvertently designated as "public" in its transmittal to the Village. By making this filing, the Village does not concede that the information is appropriately designated as "AEO Confidential".

⁴ Counsel is unaware whether this information was provided to other intervenors in the proceeding.

⁵ Exhibit 1 to the Village's Second Motion to Compel.

SharpVue’s only basis for refusing to provide to the Village the responses in issue is its claim that the information is confidential—i.e., that it is information which SharpVue regards as “trade secret” and therefore benefits as protection from disclosure as confidential information. *See, e.g.*, G.S. § 62-34(c) (allowing the Public Staff to examine confidential information “as defined in G.S. 132-1.2”). The bare assertion that information is “trade secret” does not immunize the information in issue from production in discovery—rather it is merely a basis for asserting confidentiality.⁶ Indeed, under North Carolina’s public records law, the assertion of “trade secret” status is a threshold requirement for designation under the “confidential information” exception. *See* G.S. § 62-132.1.2(1). If merely claiming confidentiality was a sufficient basis for non-production, the purpose of discovery would be defeated and parties would never be provided access to any information other than which is already public. This rationale is particularly lacking merit given that the parties have negotiated a mechanism to address this precise issue. *See* Exhibit 1 to Village’s Second Motion to Compel (defining “Protected Information” as information that qualifies as “confidential information” under the Public Records Act).

Although the Village bears no burden of demonstrating relevance here,⁷ the relevance and importance of the information is clear from the context of the questions. Public Staff DRs 4-1, 4-2, and 5-3—the responses to which have been partially redacted—seek information relating to SharpVue’s financial qualifications, ability to own and manage

⁶ Additionally, SharpVue has not made any showing that the information qualifies for protection as “trade secrets”. The Village reserves its right to challenge the designation of confidentiality in future filings.

⁷ SharpVue has not asserted that the information in question is not relevant to the proceeding and therefore has waived any such claim. Moreover, the fact that SharpVue has provided the same information to the Public Staff, without objection, is inconsistent with any such claim.

the ferry/tram assets, and management arrangements for managing the assets. Given that the investment vehicle established by SharpVue for this transaction is quite small and closed in nature, the resources and capabilities of its owners is highly relevant to whether the public interest is served by SharpVue's acquisition of the assets. The operation of the ferry is a capital intensive operation which will require significant ongoing capital resources. Moreover, the management and control of the various affiliated entities identified by SharpVue in its Application—which is central to all issues in this proceeding—is far from clear in SharpVue's disclosures to date. Facts relating to these matters are highly relevant to the Commission's consideration and is information to which the Village is also entitled but which, to date, SharpVue has improperly withheld.

WHEREFORE, the Village respectfully requests that the Commission grant its Third Motion to Compel and (1) order SharpVue to provide the Village a full, unredacted version of SharpVue's responses to the Public Staff's Data Requests Nos. 4 and 5 to BHIFT, including any documents that may be referenced therein, and (2) provide such other and further relief as may be appropriate.

This 28th day of November, 2022.

By: /s/ Marcus Trathen
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Attorneys for Village of Bald Head Island

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing THIRD MOTION TO COMPEL has been served this day upon all parties of record in this proceeding, or their legal counsel, by electronic mail or by delivery to the United States Post Office, first-class postage pre-paid.

This the 28th day of November, 2022.

By: /s/ Marcus Trathen

EXHIBIT 1

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

Docket No. A-41, Sub 22

In the Matter of Joint Application)	
of Bald Head Island Transportation, Inc.,)	
and Bald Head Island Ferry)	
Transportation, LLC, for Approval of)	PUBLIC STAFF'S DATA
Transfer of Common Carrier Certificate)	REQUEST NO. 4 TO
to Bald Head Island Ferry)	BHIFT
Transportation, LLC, and Permission to)	
Pledge Assets)	
)	

SharpVue Capital, LLC ("SharpVue"), by and through its undersigned counsel, hereby responds to the Public Staff's Data Request No. 4 to BHIFT in the above-captioned docket.

GENERAL STATEMENT

BHIFT (referred to BHIFT or SharpVue) objects to the Data Requests to the extent they seek information, documents, materials, support, and/or things protected from disclosure by the attorney-client privilege, the work-product doctrine, consulting expert privilege, and/or the common-interest privilege. Inadvertent disclosure of any such information, documents materials, support, and/or things shall not operate as a waiver of any applicable privilege or immunity. SharpVue's production of documents or information does not waive any of SharpVue's rights to object to this request as not reasonably calculated to lead to the discovery of admissible evidence in this docket.

Certain SharpVue information provided herein is produced on the condition that it is held as confidential pursuant to applicable law. SharpVue does not agree that all requests are relevant to the legal issue raised in the Complaint, and reserves the right to object to the admissibility of

any of these responses, in whole or in part, at any further proceeding of this matter, on any grounds, including but not limited to timeliness, materiality, relevance, and privilege.

RESPONSES TO DATA REQUESTS

Please provide any available responses electronically. If in Excel format, be sure to include all working formulas. In addition, please include (1) the name and title of the individual who has the responsibility for the subject matter addressed therein, and (2) the identity of the person making the response by name, occupation, and job title.

- (1) & (2) Lee H. Roberts, Managing Partner
SharpVue Capital, LLC
3700 Glenwood Avenue, Suite 530
Raleigh NC, 27612

Topic: Owner financials. Financing details.

** [REDACTED] text is redacted in the public version.

1. Please provide a personal financial statement (balance sheet) for each of the top five (5) investors (by membership interest) in Bald Head Island Ferry Transportation, LLC.

RESPONSE: Objection as the information requested is a confidential business trade secret. Without waiving the objection and with the understanding that the information is being provided as confidential and will not be distributed beyond the Public Staff and NCUC, see SharpVue 1014 previously produced confidentially. [REDACTED]

[REDACTED]

2. With respect to the leveraging of utility asset, please provide the expected debt financing terms associated with the acquisition, including, without limitation, loan term, interest rate, and other key provisions.

RESPONSE: Objection as the information requested is a confidential business trade secret. Without waiving the objection and with the understanding that the information is being provided as confidential and will not be distributed beyond the Public Staff and NCUC, the term of the loan is expected to be [REDACTED]; the interest rate is expected to be [REDACTED] the loan is expected to be [REDACTED]

This the 22nd day of November, 2022.

NEXSEN PRUET PLLC

By: /s/ David P. Ferrell
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Attorneys for SharpVue Capital, LLC

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing RESPONSES TO THE PUBLIC STAFF'S DATA REQUEST NO. 4 TO BHIFT has been served this day upon all parties of record in this proceeding, or their legal counsel, by electronic mail.

This the 22nd day of November, 2022.

By: /s/ David P. Ferrell

EXHIBIT 2

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

Docket No. A-41, Sub 22

In the Matter of Joint Application)	
of Bald Head Island Transportation, Inc.,)	
and Bald Head Island Ferry)	
Transportation, LLC, for Approval of)	RESPONSE TO PUBLIC
Transfer of Common Carrier Certificate)	STAFF'S DATA REQUEST
to Bald Head Island Ferry)	NO. 5 TO BHIFT
Transportation, LLC, and Permission to)	
Pledge Assets)	
)	

SharpVue Capital, LLC ("SharpVue"), by and through its undersigned counsel, hereby responds to the Public Staff's Data Request No. 5 to BHIFT in the above-captioned docket.

GENERAL STATEMENT

BHIFT (referred to as BHIFT or SharpVue) objects to the Data Requests to the extent they seek information, documents, materials, support, and/or things protected from disclosure by the attorney-client privilege, the work-product doctrine, consulting expert privilege, and/or the common-interest privilege. Inadvertent disclosure of any such information, documents materials, support, and/or things shall not operate as a waiver of any applicable privilege or immunity. SharpVue's production of documents or information does not waive any of SharpVue's rights to object to this request as not reasonably calculated to lead to the discovery of admissible evidence in this docket.

Certain SharpVue information provided herein is produced on the condition that it is held as confidential pursuant to applicable law. SharpVue does not agree that all requests are relevant to the legal issue raised in the Complaint, and reserves the right to object to the admissibility of

any of these responses, in whole or in part, at any further proceeding of this matter, on any grounds, including but not limited to timeliness, materiality, relevance, and privilege.

RESPONSES TO DATA REQUESTS

Please provide any available responses electronically. If in Excel format, be sure to include all working formulas. In addition, please include (1) the name and title of the individual who has the responsibility for the subject matter addressed therein, and (2) the identity of the person making the response by name, occupation, and job title.

- (1) & (2) Lee H. Roberts, Managing Partner
SharpVue Capital, LLC
3700 Glenwood Avenue, Suite 530
Raleigh NC, 27612

Topic: Other items

** [REDACTED] text is redacted in the public version.

1. To the extent not already provided, please provide the Articles of Organization and Operating Agreement, or comparable organizational documents, including exhibits, schedules, and amendments thereto for SharpVue Capital, LLC, SVC Pelican Partners, LLC, Pelican Legacy Holdings, LLC, and Bald Head Island Ferry Transportation, LLC, as well as any other entity with ownership or control over Bald Head Island Ferry Transportation, LLC, its assets, and (control over) employees.

RESPONSE: We believe we have provided the requested documents for all entities described herein, except for SharpVue Capital, which will not have an ownership interest in Pelican Legacy Holdings, LLC or Bald Head Island Ferry Transportation, LLC at closing. See SharpVue 1053-1059, which were previously provided to the Public Staff as confidential – business trade secret, with the understanding that the information is being provided as confidential and will not be distributed beyond the Public Staff and NCUC, for the management agreement. See SharpVue 1108 to 1129.

2. Please provide any amendments (and supplements to Schedules and Exhibits) to the Asset Purchase Agreement dated May 17, 2022.

RESPONSE: We believe all amendments to the Asset Purchase Agreement have been provided.

3. Please discuss the interplay, if any, between SharpVue's contemplated "Investment Management Agreement" and [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [END CONFIDENTIAL] Please discuss.

RESPONSE: The management of Pelican Legacy Holdings, LLC by SVC Pelican Partners, LLC will primarily be provided by the employees of SharpVue Capital, LLC, specifically Lee Roberts and Doug Vaughn. [REDACTED]

[REDACTED] We reiterate our position that this is a common feature of private equity funds.

4. Please provide the expected debt service coverage ratio referenced on page 6 of the Roberts Rebuttal Testimony in Docket No. A-41, Sub 21. This response should include the company's opinion of what would be comparable for a S&P credit rated A+, A-, or BBB company.

RESPONSE: Objection in that the debt service coverage ratio referenced on page 6 of the Roberts Rebuttal Testimony in Docket No. A-41, Sub 21 is related to the Parking Assets, and therefore not relevant under A-41 Sub 22. Without waiving this objection, if we were to look at the expected debt service coverage on the entire transaction as described in the APA over the projection period, it is not lower than 1.5x as demonstrated on SharpVue-0016. It is our understanding that S&P does not publish or employ such a rubric and uses a multitude of factors to arrive at these overall credit ratings.

This the 22nd day of November, 2022.

NEXSEN PRUET PLLC

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Attorneys for SharpVue Capital, LLC

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing RESPONSES TO THE PUBLIC STAFF'S DATA REQUEST NO. 5 TO BHIFT has been served this day upon all parties of record in this proceeding, or their legal counsel, by electronic mail.

This the 22nd day of November, 2022.

By: /s/ David P. Ferrell