

PLACE: Dobbs Building, Raleigh, North Carolina

DATE: Monday, October 10, 2022

TIME: 2:00 p.m. - 5:26 p.m.

DOCKET NO: A-41, Sub 21

BEFORE: Commissioner ToNola D. Brown-Bland, Presiding

Commissioner Daniel G. Clodfelter

Commissioner Kimberly W. Duffley

Commissioner Jeffrey A. Hughes

Commissioner Floyd B. McKissick, Jr.

IN THE MATTER OF:

Village of Bald Head Island,

Complainant

V.

Bald Head Island Transportation, Inc.,

and Bald Head Island Limited, LLC,

Respondents

Volume 1

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Oct 19 2022

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

COMMISSIONER BROWN-BLAND: Good afternoon. We will come to order and go on the record. I am ToNola D. Brown-Bland of the North Carolina Utility Commission, the presiding Commissioner for this hearing; and with me this afternoon are Commissioners Daniel D. Clodfelter, Kimberly W. Duffley, Floyd B. McKissick, Jr., and Jeffrey A. Hughes. Chair Mitchell and Commissioner Kemerait are recused from this proceeding.

I now call for hearing Docket Number A-41, Sub 21, In the Matter of Complaint of Village of Bald Head Island vs. Bald Head Island Transportation, Inc. and Bald Head Island Limited, LLC.

On February 16, 2022, the Village of Bald Head Island, hereafter Village or Complainant, filed with the Commission a complaint and request for determination of public utility status against Bald Head Island Transportation, Inc., hereafter BHIT or Transportation; and Bald Head Island Limited, LLC, hereafter BHIL or Limited; collectively, the Respondents.

Petitions to intervene were filed by

1 Bald Head Island Club, hereafter BHI Club; and Bald  
2 Head Island Association, hereafter Association or  
3 Bald Head Association. Those petitions to  
4 intervene were allowed by Commission orders issued  
5 on March 18th and July 22nd of 2022 respectively.

6 The intervention and participation of  
7 the Public Staff is recognized pursuant to  
8 North Carolina General Statute §62-15(d) and  
9 Commission Rule R1-19(e).

10 On March 30, 2022, Respondents filed  
11 Response Motion to Dismiss and Answer.

12 On April 1, 2022, Respondents filed a  
13 motion that Commission take judicial notice, or in  
14 the alternative for leave to file supplemental  
15 exhibits to its answer.

16 On April 22, 2022, Complainant filed a  
17 response to Respondents' Response Motion to Dismiss  
18 and Answer.

19 On June 17, 2022, the Commission issued  
20 an order which, among other things, scheduled  
21 hearing on the complaint for today, Monday,  
22 October 10, 2022, at 2:00 p.m. in the Commission  
23 hearing room in Raleigh, North Carolina, and  
24 establish procedures.



1                   On July 8, 2022, the Complainant filed a  
2 motion to join necessary party.

3                   On July 11, 2022, Respondents filed a  
4 response to Complainant's motion to join necessary  
5 party.

6                   On July 13, 2022, Complainant filed  
7 reply to Respondents' response to motion to join  
8 necessary party, as well as response to -- scratch  
9 that.

10                  On August 1, 2022, the Commission issued  
11 an order allowing Complainant's motion to join  
12 SharpVue Capital, LLC, hereafter SharpVue, as a  
13 necessary party.

14                  On August 9, 2022, testimony and  
15 exhibits of witnesses Scott T. Gardner,  
16 Dr. Julius A. Wright, Kevin W. O'Donnell, Brandy  
17 Monroe, David Cox, George Corvin, and  
18 Stephen Boyett, which included matters deemed  
19 confidential.

20                  On August 16, 2022, the Commission  
21 issued an order on Respondents' motion to take  
22 judicial notice and motion to dismiss, which, among  
23 other things, took judicial notice of Commission's  
24 2010 order granting partial rate increase and

1 requiring notice in Docket Number A-41, Sub 7 --  
2 hereafter for a shortcut everyone may refer to it  
3 as the 2010 Rate Case Order -- and denied  
4 Respondents' motion to dismiss.

5 On September 8, 2022, the Public Staff  
6 filed initial comments, BHI Club filed the direct  
7 testimony of David Sawyer, and Bald Head  
8 Association filed the direct testimony and exhibits  
9 of Alan Briggs.

10 Also on September 8, 2022, the  
11 Respondents filed the direct testimony and exhibits  
12 of James Leonard, Shirley A. Mayfield, and  
13 James W. Fulton, Jr., which included matters deemed  
14 confidential.

15 On September 9, 2022, Respondents filed  
16 confidential exhibits to the confidential direct  
17 testimony of witness Leonard, as well as witness  
18 Leonard's public direct testimony and exhibits.  
19 Respondents also filed the direct testimony and  
20 exhibits of Charles A. Paul.

21 On September 14, 2022, a consumer  
22 statement of position from Robert T. Blau and  
23 J. Paul Carey was filed.

24 On September 28, 2022, Bald Head

1 Association filed a reply testimony of witness  
2 Briggs, SharpVue filed rebuttal testimony of  
3 Lee H. Roberts, and Complainant filed rebuttal  
4 testimony and exhibits of witnesses O'Donnell,  
5 Wright, and Gardner. Also on September 28th,  
6 Complainant filed reply comments to Public Staff's  
7 initial comments.

8 On September 29, 2022, Respondents filed  
9 a motion in limine.

10 On September 30, 2022, the Complainant  
11 filed a verified motion for preliminary injunction  
12 prohibiting sale of assets prior to determination  
13 by Commission.

14 Consumers Blau and Carey filed a second  
15 joint consumer statement of position on  
16 October 3rd, 2022.

17 On October 4, 2022, Complainant filed  
18 opposition to Respondents' motion in limine, and  
19 Respondents and SharpVue filed a response in  
20 opposition to Complainant's motion for preliminary  
21 injunction.

22 On October 6, 2022, Complainant filed  
23 reply to Respondents' and SharpVue's response to  
24 motion for preliminary injunction.

1                   On October 7, 2022, the Commission  
2                   issued an order denying Respondents' motion in  
3                   limine.

4                   Also October 7, 2022, Commission staff  
5                   informed counsel for the parties that the motion  
6                   for preliminary injunction would be heard today  
7                   prior to hearing and -- prior to hearing and  
8                   receiving evidence in the hearing on the complaint.

9                   In compliance with the requirements of  
10                  the State Government Ethics Act, I remind all  
11                  members of the Commission of our duty to avoid  
12                  conflicts of interest, and I inquire at this time  
13                  whether any member of the Commission has a known  
14                  conflict of interest with regard to the matters  
15                  before us in this docket.

16                  (No response.)

17                  COMMISSIONER BROWN-BLAND: The record  
18                  will reflect that no conflicts were identified.

19                  I will now call upon counsel for the  
20                  parties to announce their appearances and I will  
21                  begin with the complainant.

22                  MR. TRATHEN: Good afternoon,  
23                  Commissioners. I am Marcus Trathen with the law  
24                  firm of Brooks Pierce here in Raleigh, and with me

1 my colleagues Craig Schauer and Amanda Hawkins. We  
2 make an appearance on the behalf of the Village of  
3 Bald Head Island. And if I could, I would just  
4 like to introduce the mayor of Bald Head Island,  
5 Peter Quinn, who is here with us today as well.

6 COMMISSIONER BROWN-BLAND: Okay.  
7 Welcome, Mayor. Thank you.

8 Respondents?

9 MR. STYERS: Madam Chair, members of the  
10 Commission, my name is Gray Styers from the law  
11 firm of Fox Rothschild. We represent the  
12 respondents, Bald Head Island Limited, LLC and Bald  
13 Head Island Transportation, and joined by my  
14 colleague, Mr. Brad Risinger, also from Fox  
15 Rothschild on behalf of the Respondents.

16 COMMISSIONER BROWN-BLAND: All right.  
17 Thank you.

18 MR. FERRELL: Madam Chair, David  
19 Ferrell, the law firm of Nexsen Pruit here in  
20 Raleigh, and I'm here representing SharpVue  
21 Capital, LLC.

22 COMMISSIONER BROWN-BLAND: Thank you,  
23 Mr. Ferrell.

24 MR. HIGGINS: Good afternoon,

1           Commissioners. Dan Higgins with Burns, Day &  
2           Presnell on behalf of the Bald Head Island Club.

3                       COMMISSIONER BROWN-BLAND: Club?

4                       MR. HIGGINS: Yes, ma'am.

5                       COMMISSIONER BROWN-BLAND: Thank you.

6                       MR. FINLEY: Ms. Commissioner,  
7           Edward Finley on behalf of Bald Head Association.

8                       COMMISSIONER BROWN-BLAND: Thank you.

9           That takes care of the appearances.

10                      Are there preliminary matters that need  
11           to be addressed before we move on to the hearing on  
12           the complainant's motion for preliminary  
13           injunction?

14                      MR. STYERS: Madam Chair, there were two  
15           items that were mentioned in the email from  
16           Commission's counsel on Friday, or at least one  
17           item, that I thought we may want to take care of  
18           now or later, at your discretion, as well as one  
19           scheduling issue that we can address now or later.  
20           It's your preference.

21                      COMMISSIONER BROWN-BLAND: Is one of  
22           those matters the confidentiality?

23                      MR. STYERS: One of those matters is  
24           confidentiality; yes, ma'am.

1                   COMMISSIONER BROWN-BLAND: I'll hear  
2                   from you now.

3                   MR. STYERS: It was a good question to  
4                   try to clarify and to make this hearing as  
5                   efficient as possible, given the amount of  
6                   confidentiality, and I will not speak on behalf of  
7                   SharpVue, their counsel can, but we have had  
8                   discussions with SharpVue on this.

9                   Much of the information regarding the  
10                  historic financial performance of both -- of all  
11                  the divisions of Bald Head Island Limited; its  
12                  subsidiary, Bald Head Island Transportation; as  
13                  well as its parking division and its barge  
14                  division, were provided to the Bald Head Island  
15                  Transportation Association -- Authority. Excuse  
16                  me, Authority -- during that transaction. That was  
17                  a public entity. It has been shared in a variety  
18                  of forums in response to questions that had been  
19                  sponsored on the island. We have tried to be  
20                  transparent in that regard.

21                  So with regards to historic financial  
22                  data, even of the unregulated operations, while  
23                  most of the information has been provided pursuant  
24                  to confidentiality agreements to date that the

1 parties have entered into, given how onerous the  
2 hearing would be if we were trying to close and  
3 open and seal transcripts every time financial  
4 information was provided -- and it's largely the  
5 information by Kevin O'Donnell, Mr. Julius Wright,  
6 Ms. Shirley Mayfield -- it's not practical for that  
7 to be maintained confidential. So the historic,  
8 backward-looking information, we will no longer  
9 assert confidentiality of this information.

10 With regards to the APA, the Asset  
11 Purchase Agreement between Bald Head Island Limited  
12 and SharpVue Capital and its affiliates, and its  
13 terms, conditions, and exhibits, and schedules  
14 going into detail about the terms of that  
15 transaction, that is still considered confidential.  
16 So any specific questions, answers, references to  
17 specific provisions of the APA, we ask that be  
18 confidential. We don't think that that would  
19 necessarily be extensive, but that may come up in  
20 the motion hearing that we're getting ready to  
21 start and go into, so I will note that.

22 With regards to any question regarding  
23 personnel issues, of course, of individuals who are  
24 employed by any of the parties by name or that



1 would otherwise identify them, beyond what's been  
2 already publicly disclosed, we feel like personnel  
3 information -- and that would include specific  
4 investors, information about investors of the  
5 parties, and owners of the parties, we think that  
6 needs to continue to be confidential. We don't  
7 think there will be many questions asked about  
8 that, if any.

9 And, finally -- and I may let  
10 Mr. Ferrell address this -- any forward-looking  
11 projections of -- that SharpVue has made or any  
12 methodology that SharpVue has employed that would  
13 confident- -- that would be proprietary to that  
14 firm on a forward-looking basis, would certainly be  
15 confidential trade secret. But we think, likely,  
16 the bulk of the information that's been identified  
17 as confidential regarding past financial data, if  
18 that is not deemed confidential in the hearing or  
19 the transcript, that should address most of the  
20 issues. I think that that was the source of the  
21 Commission's inquiry on Friday.

22 COMMISSIONER BROWN-BLAND: Thank you,  
23 Mr. Styers.

24 Mr. Ferrell, did you want to add?

1 MR. FERRELL: Thank you, Madam Chair.  
2 Mr. Styers covered it. It's just mainly the  
3 forward-looking information of SharpVue and their  
4 proprietary business analysis and calculations that  
5 we would continue to assert confidentiality over.

6 COMMISSIONER BROWN-BLAND: All right.  
7 Thank you.

8 Is there anything to add from the  
9 Complainants?

10 MR. TRATHEN: I guess really what I have  
11 a question, if I might, this is -- I'm just hearing  
12 this for the first time, so I appreciate the  
13 considerations with respect to the confidentiality.  
14 I think this will assist us in navigating the  
15 complexities of the hearing.

16 A couple of questions, if I might.  
17 First, with respect to the forward-looking  
18 financial information. There are -- there is  
19 information in those projections, particularly  
20 SharpVue, which are not forward-looking financial  
21 in nature. They are just statements. Are those  
22 now nonconfidential or are you saying that the  
23 entire document, including statements which aren't  
24 necessarily projections -- financial projections,

1 are confidential?

2 MR. FERRELL: It's our --  
3 Madam Chairman, may I respond?

4 It's our position that the documents and  
5 the information in the documents, themselves, are  
6 going to continue to be treated as confidential.  
7 Primarily, they're in investor presentations that  
8 were prepared by SharpVue, and so it seems  
9 difficult to separate things out, and so I think we  
10 would feel more comfortable to keep those documents  
11 confidential if that's acceptable.

12 COMMISSIONER BROWN-BLAND: Does that  
13 answer your question, Mr. Trathen?

14 MR. TRATHEN: It does. And with respect  
15 to forward-looking projections, there are some of  
16 those that come from Limited as well. I'm thinking  
17 of the Mercator report. Can I assume from your  
18 response that that would be confidential -- that  
19 would still be confidential?

20 MR. STYERS: With regards to those  
21 excerpts of the Mercator report going forward, I  
22 think the answer would be yes. So going-forward  
23 projections of the Mercator report, those segments,  
24 but not the report in its entirety. If you have

1 questions about those sections, yes, those would  
2 still be confidential.

3 MR. TRATHEN: Okay. And if I may, there  
4 is in addition some other information that you had  
5 not addressed that was labeled as confidential, and  
6 we were always a little bit curious as to that:  
7 parking information, the number of spaces, the maps  
8 of the parking areas that were designated as  
9 confidential and ended up in our exhibits JW-14,  
10 15, 16 and 3. What's your position with respect to  
11 those?

12 MR. STYERS: Number of parking spaces,  
13 maps, that type of information, I'd maybe want to  
14 look at those exhibits during the first break,  
15 Mr. Trathen, but, as you described them here, they  
16 would not be confidential at this point. No need  
17 to protect those.

18 MR. TRATHEN: Okay. Thank you.

19 COMMISSIONER BROWN-BLAND: So I  
20 appreciate the parties' clarification and coming to  
21 an understanding with regard to those items  
22 previously discussed.

23 MR. STYERS: The other issue -- I'm  
24 sorry. I'm sorry.

1 COMMISSIONER BROWN-BLAND: Go ahead.

2 MR. STYERS: So we have been able to  
3 work through, I think, every issue with regards to  
4 order of witnesses and cross and times reserved and  
5 presentation of evidence. The only two things  
6 perhaps that are still open are whether we would be  
7 allowed to make very brief opening statements prior  
8 to the presentation of witnesses. We communicated  
9 with Mr. Trathen that we would like to have that  
10 opportunity. We feel like, given the volume of  
11 information that's filed in this docket, that  
12 putting some of that in context in 10 minutes or so  
13 could perhaps be helpful to the Commission. Each  
14 side, of course.

15 And then the only other issue regarding  
16 order of witnesses is that the complainant has  
17 requested bringing two of their expert witnesses  
18 back up at the end to -- a second time to present  
19 their rebuttal testimony. We saw no reason for  
20 that. If they are here, they present their direct  
21 testimony, we feel like it would be most  
22 appropriate and efficient to present their evidence  
23 all at one time rather than divide their  
24 presentation up as the direct and then come back

1 later as rebuttal. So those are two remaining  
2 issues.

3 COMMISSIONER BROWN-BLAND: Okay. On  
4 your last one, I am going to allow them to present  
5 their case the way they choose to and present their  
6 witnesses on rebuttal if they choose to.

7 On your first one, on opening  
8 statements, let me think about that and I'll let  
9 you know after we complete the hearing that we have  
10 on the preliminary.

11 MR. TRATHEN: Madam Chair, if I could  
12 respond briefly to that. I don't see the need for  
13 opening statements. We'll -- if you would like  
14 them, we will certainly oblige, but I think the  
15 Commission has certainly had plenty to read, and we  
16 are gonna have a little bit of a hearing in  
17 advance, so I think it may make sense to just start  
18 the proceeding, but however you would like to  
19 proceed we'll be --

20 COMMISSIONER BROWN-BLAND: Okay. Thank  
21 you for that, Mr. Trathen.

22 So, as already stated, we're gonna start  
23 out having a hearing on the motion for preliminary  
24 injunction, and before we start, I want to say

1 this.

2 I'll give each side -- and I do mean  
3 side, in terms of alignment, 10 minutes to bring us  
4 up to speed or to make argument. It is not  
5 necessary to be overly repetitive of what's been  
6 filed. The Commission has read what you both  
7 filed. So I would ask you to boil down -- you  
8 know, boil it down to your arguments and the basics  
9 of what are needed or what will be needed to make a  
10 decision on this, and then the Commission will have  
11 questions for you. So we'll start with the movant.

12 MR. SCHAUER: Thank you. Craig Schauer  
13 on behalf of the Village.

14 COMMISSIONER BROWN-BLAND: Good to see  
15 you again. Seems like it was just yesterday.

16 MR. SCHAUER: I know. I've been away  
17 for too long. I had to find a way to come back.

18 So as the Commissioners are aware, this  
19 proceeding presents the question of whether the  
20 Commission should regulate the parking facilities  
21 and the barge associated with the Bald Head Island  
22 ferry. And in the motion we filed last week, we're  
23 asking the Commission to enjoin the sale of the  
24 parking and barge assets until the Commission has

1 determined whether those assets should be  
2 regulated.

3 In terms of the timing of filing the  
4 motion, we filed the complaint back in  
5 February 2006- -- February of this year. They  
6 announced the transaction in May. When the  
7 transaction was announced -- I believe this is in  
8 the materials that have been filed -- we did reach  
9 out to them to try to get some type of reassurance  
10 that they would postpone the transaction pending a  
11 decision from the ruling. They were not able to  
12 give us that reassurance.

13 So we tried to work with them, to the  
14 extent possible, before we brought this to the  
15 Commission, but we felt like we needed to file it,  
16 given that, I believe, the 90-day notice expires in  
17 the middle of the hearing that we are going to be  
18 having.

19 Our concern, and why we're -- we filed  
20 the motion -- is we fear that, while the  
21 Commissioners are hearing about the parking  
22 facilities and the barge and deciding whether or  
23 not they're gonna be regulated, Limited is going to  
24 sell those assets right out from under the



1 Commissioners' noses. We feel that they should not  
2 be allowed to sell the assets before the Commission  
3 makes a decision about the regulatory status of the  
4 assets. And in filing the motion, we're asking to  
5 preserve the status quo, in the sense that Limited  
6 owns the assets right now, and we would like them  
7 to continue to own the assets prior to the -- prior  
8 to them moving into other owners' hands, because we  
9 believe that the transfer of those assets could be  
10 implicated by the decision that the Commission is  
11 gonna make in light of the evidence that's gonna be  
12 put on during this hearing.

13           Regarding the factual merits, we don't  
14 believe we need to present any evidence, although  
15 we're certainly happy to, because when we filed the  
16 motion, it was a verified motion, so all the facts  
17 were verified by council -- council member  
18 Mr. Gardner, and, as well, we filed an affidavit of  
19 Dr. Wright, who verified all of his testimony.

20           And so we feel like all of the facts in  
21 support of the motion are in front of the  
22 Commission for purposes of deciding it, and while  
23 we'd be happy to put a witness on the stand, we  
24 don't think it's necessary, but will certainly do

1 so if the Commission has any questions or wanted to  
2 hear any specific evidence.

3 You know, in terms of the standard, you  
4 know, there's two elements for a preliminary  
5 injunction or a temporary restraining order: a  
6 likelihood of success on the merits, followed by  
7 irreparable harm.

8 In terms of likelihood of success on the  
9 merits, we did note, in a reply brief, that we take  
10 the position Respondents did not actually respond  
11 to the argument of the merits on the case, and  
12 therefore, it's waived. However, should the  
13 Commissioners want to entertain the merits, I'd  
14 like to, kind of, highlight some of the facts and  
15 the law as they apply to those issues.

16 In terms of the facts regarding the  
17 parking, most ferries that we think of transport  
18 passengers and cars, and the Bald Head Island ferry  
19 is different, because the island does not allow  
20 cars. Therefore, ferry passengers must park their  
21 cars on the mainland in order to use the ferry  
22 service, and there is no alternative to the  
23 mainland parking, which is, we believe, established  
24 through the record before the Commission.

1                   And the Commissioners don't need to take  
2                   my word for it or Dr. Wright's word for it. If the  
3                   Commission have had the chance to read the Public  
4                   Staff's comment, there are two, I think, very  
5                   insightful quotes that I'd like to remind the  
6                   Commissioners of. The first is the following:  
7                   quote, the availability of adequate and reasonably  
8                   priced parking is required for this unique utility  
9                   service to its customers. Later, they have another  
10                  quote that's along the same lines, and it's, quote,  
11                  it would be nearly impossible for customers to use  
12                  the ferry without an adequate amount of parking  
13                  offered at reasonable rates.

14                  Likewise, the Respondent's -- I believe  
15                  it's Limited's -- witness, Mr. Leonard, testified  
16                  that the Commission should, quote, ensure that  
17                  parking is available either at the terminal or in a  
18                  convenient community location. Granted, he doesn't  
19                  go as far as the Public Staff, but I think even he  
20                  would acknowledge that parking is necessary for the  
21                  ferry. And, in fact, I would like to say that,  
22                  without parking, there is no ferry service to Bald  
23                  Head Island. Practically speaking, it would not be  
24                  accessible.

1           So, in terms of the law, §62-32 grants  
2           the Commission general supervision powers over the  
3           services rendered by all public utilities. And we  
4           rely, first, on §62-3(27), which defines service.  
5           And it says, "Any service furnished by a public  
6           utility" -- I'm sorry. Defines service as, "any  
7           service furnished by a public utility," and this is  
8           the important line, "including any ancillary  
9           service or facility used in connection with some  
10          service."

11          So, over the course of the hearing --  
12          and I think it's in the evidence before you -- the  
13          parking isn't just used in connection with the  
14          ferry service. It's necessary for the ferry  
15          service, in terms of the public's access to it.

16          We also rely on what I would call the  
17          parent corporation definition of utility, which is  
18          62-2(23)(c) [sic]. And, in short, it says, "A  
19          parent corporation of a public utility whose  
20          ownership has an effect of the rate or service of  
21          such public utility can also be deemed a public  
22          utility." And given that Limited owns the parking  
23          facilities that are necessary for the service and,  
24          we'll establish also, impact the rates, given that

1 have you to pay for parking in addition to the  
2 ferry ticket in order to use the service, we  
3 believe that the Commission could exercise  
4 jurisdiction over the parking facilities under that  
5 statutory basis as well.

6 Regarding the barge. The barge, we  
7 believe, is a common carrier under the definition  
8 under 62-3(6), which talks about, "any person that  
9 holds itself out to the general public to engage in  
10 the transportation of persons or household goods  
11 for compensation." And what's important -- and I  
12 think we'll probably discuss this in legal briefing  
13 later, and we touch on this in our comment --  
14 "including transportation by a boat."

15 In other words, the General Assembly  
16 identified the use of boats for transporting  
17 persons and household goods, and we believe the  
18 barge falls within that statutory definition.

19 There's abundant evidence in the record  
20 that the barge transports household goods to and  
21 from the island, including a very long log that  
22 identifies appliances and furniture being  
23 transferred on the barge that was provided by the  
24 Respondents. The barge also transports persons to

1 accompany the vehicle while it's being transported  
2 across on the barge.

3 And, in many ways, the barge service is  
4 simply what you would think of in terms of a  
5 traditional ferry service: A vehicular ferry  
6 service that transports both the vehicle and the  
7 passenger. That is what the barge is, and so,  
8 therefore, we do believe it falls within the common  
9 carrier status.

10 In terms of reparable [sic] harm, the  
11 first point I think we make in the pleadings on  
12 this is we focus on 62-11 -- 111(a), and it  
13 prohibits the transfer of a utility franchise  
14 without the approval of the Commission, which shall  
15 only be given if justified by the public  
16 convenience and necessity.

17 Everyone here agrees that the ferry is a  
18 utility franchise, and without the parking at Deep  
19 Point terminal, there is no ferry service. So,  
20 therefore, we believe that the parking is part of  
21 the utility franchise, and, therefore, it cannot be  
22 transferred absent the Commission's approval.

23 Likewise, if the barge is a common  
24 carrier, that franchise could not be transferred

1 absent the Commission's approval.

2 And our concern in not enjoining the  
3 transaction until the Commission reaches a  
4 determination on the merits is that, once sold,  
5 Limited will have forever deprived the Village and  
6 ratepayers of the protection of the Commission  
7 ensuring that that sale of those utility assets was  
8 justified by the public convenience and necessity.

9 In other words, once it's gone, you  
10 can't go back and say, well, we're gonna -- we  
11 don't believe you -- we have serious doubts that  
12 the Commission will have the ability to go back and  
13 revisit the transaction once it's occurred. And so  
14 we would like to maintain the status quo so the  
15 Commission can reach the decision of whether or not  
16 the transaction needs to be justified by the public  
17 convenience and necessity before that transaction  
18 takes place.

19 There is also the harm of the potential  
20 dismemberment of the different operations and  
21 assets. What might happen if an injunction is not  
22 issued is the barge and the parking facilities  
23 could be transferred to SharpVue while the ferry,  
24 itself, is still held by Transportation pending

1 Docket Sub 22 and the transfer proceeding there.  
2 So at that point, we could go months with the  
3 assets being held. The assets which we believe  
4 need to be operated jointly in order for the  
5 transportation system to function would be held by  
6 separate entities. And also, once the assets are  
7 in the possession of SharpVue Capital, there is  
8 risk that SharpVue Capital could simply flip them  
9 again to another owner, and there could be another  
10 degree of separation between BHIT, which would, at  
11 this time, still own the ferry and the parking  
12 facilities -- or the barge, which are interrelated  
13 with the ferry.

14 In terms of law, if I could, in  
15 preparing for this, I would like to hand up one  
16 piece of precedent I think is insightful on this  
17 point, if I may approach.

18 COMMISSIONER BROWN-BLAND: You may.

19 (Pause.)

20 MR. SCHAUER: I've highlighted page 7,  
21 and I'll cut to the chase. This is an order issued  
22 by the Commission in 2014 that talks about 62-111,  
23 and it's -- it quotes an argument presented by the  
24 Public Staff in this document that talks about



1 assets to be transferred and whether or not they're  
2 substantial or integral to the part of the system  
3 or the facilities used to provide a public utility  
4 service, which is what we believe is here. And the  
5 Public Staff took the position that Commission  
6 approval is necessary for such a transfer. And the  
7 Commission, in the following line, said we  
8 generally agree with the Public Staff's assessment  
9 of the law. And so we do feel like that, kind of,  
10 corroborates our position that key components of  
11 the utility system or the utility service cannot be  
12 separated and sold to another entity absent  
13 Commissioner approval.

14 We'd be happy to talk about the bond if  
15 we get that far, but we do believe that what the  
16 Village is doing here is it is serving a  
17 governmental function. It's acting on behalf of  
18 its citizens. The only means it can seek to  
19 protect its interest is by filing a preliminary  
20 injunction with the Commission which has  
21 jurisdiction over the services. So we do believe  
22 that we are not obligated to pay our bond. Thank  
23 you.

24 COMMISSIONER BROWN-BLAND: All right.

1 Mr. Styers.

2 MR. STYERS: Members of the Commission,  
3 Gray Styers on behalf of Bald Head Island  
4 Transportation and Bald Head Island Limited.

5 In the complaint that was filed in  
6 February of this year, the Village never requested  
7 any injunctive relief to stop any transfer or sale  
8 of any assets whatsoever. We move to dismiss, and  
9 the Commission, itself, stated, quote, on page 10  
10 of your order, "A thorough review of the four  
11 corners of the complaint does not yield any request  
12 by the Village of Bald Head Island, either  
13 expressed or implied, that the Commission  
14 influence, restrict, or control the disposition or  
15 acquisition of any property." It was in the  
16 Commission's own order, and presumably was felt to  
17 be sufficiently relevant to be included in your  
18 decision not to dismiss the complaint from it's  
19 very onset as we requested at that point.

20 From BHIT and BHIL's perspective, this  
21 request coming here two weeks before the hearing is  
22 particularly disturbing given the history of the  
23 relationship of the parties that are worth -- at  
24 least worth recounting.

1                   Mr. George Mitchell died in 2013. Let  
2 me repeat that. The owner -- ultimate owner of  
3 this ferry died nine years ago in 2013. By 2015,  
4 the management of BHIT and BHL [sic] started  
5 working on a sales litigation -- liquidation  
6 solution in light of the fact it needed to be sold.  
7 Worked on that beginning in 2015, started meeting  
8 with legislators, meeting with the governor,  
9 meeting with stakeholders, and ultimately meeting  
10 with the mayor and the mayor pro tem of the Village  
11 of Bald Head Island in my office in early 2017, at  
12 which time the Village said, "We support this plan  
13 to dispose of the assets by sale to the Bald  
14 Head -- to -- if the legislature were to create  
15 authority." After receiving that commitment by the  
16 Village, the legislature -- Senator Bill Rabon  
17 introduced the bill to create ferry transportation  
18 authorities. The Village voted unanimously to  
19 create the authority, to appoint directors. And  
20 from 2017 to 2020, members on that authority board,  
21 and worked for three years through due diligence  
22 for the sale that was needed and necessary after  
23 Mr. Mitchell's death, in light of the need to  
24 liquidate his ferry system.

1                   Then it was set for January 5, 2021, on  
2                   the LGC agenda to approve the bonds for that sale  
3                   to occur.

4                   On December 15th, three weeks before,  
5                   the Village did a 180-degree reversal, changed its  
6                   position, and said, "We oppose the sale of -- the  
7                   sale of the transaction -- the sale of the assets,  
8                   the bonds, to the authority," and I have letters to  
9                   that effect, if you would be interested in that.

10                  Then, three months later, March of 2021,  
11                  the Village said, "We want to buy the ferry and the  
12                  parking and the barge, all of the assets, in 2021,  
13                  and we're, in fact, gonna -- we're gonna get bond  
14                  approval so we can purchase it."

15                  In January 13th of this year, the  
16                  Village wrote a letter saying to -- Village wrote a  
17                  letter to Mr. Paul of Bald Head Island Limited  
18                  saying, "The transportation system would be best  
19                  owned and operated by the Village. We're informed  
20                  that you're considering selling this to someone  
21                  else." Second paragraph. First sentence to the  
22                  third paragraph, "Among other things, the Village  
23                  is preparing to petition the North Carolina  
24                  Utilities Commission to formally assert regulatory

1 jurisdiction of the parking lots and barge used in  
2 connection with the transportation system."

3 Not having received a response to their  
4 liking to this letter in January 13th, then in  
5 February, three weeks later, the petition was filed  
6 before this Commission that we're here on the  
7 hearing today.

8 The Village has sunk one multiyear  
9 effort to sell those assets, and we believe they  
10 are now trying to sink another. And the  
11 Commission, we believe, should not facilitate a  
12 hostile acquisition strategy and continue the  
13 efforts to stop that sale. That's the context that  
14 we're here today for.

15 SharpVue is simply stepping into the  
16 shoes of Bald Head Island Limited. So this goes to  
17 the issue of irreparable harm. Today, as we sit  
18 here, Bald Head Island Limited has never been a  
19 regulated utility. There is a certificate to Bald  
20 Head Island Limited. It owns the parking and the  
21 barge. And, likewise, SharpVue subsidiaries are  
22 not currently regulated.

23 So if -- and that's a very big "if," and  
24 I'll discuss that in a moment -- the Commission

1        were to extend regulatory jurisdiction over Bald  
2        Head Island Limited for the very first time, it  
3        would be no different than extending the  
4        jurisdiction over SharpVue for the very first time.  
5        Notwithstanding the rhetoric of the complainant to  
6        the contrary, no one is trying to avoid or outflank  
7        the jurisdiction the Commission may have under the  
8        laws of the state of North Carolina. You, the  
9        Commission, will make its decision regarding these  
10       assets and operations regardless of who owns them.  
11       That's what the complaint says, that's what the  
12       response to the motion to dismiss says, and that's  
13       what the Commission has said in its order.  
14       Regardless of who owns them.

15                Then, when you added SharpVue as a  
16       party, the Commission said, on page 5 of its order,  
17       "By joining SharpVue in the proceeding, the  
18       Commission avoids any future attempt by SharpVue to  
19       relitigate the Commission's jurisdiction over the  
20       regulatory status of the unregulated assets that it  
21       has contracted to purchase."

22                So the decision to add SharpVue means  
23       that you have jurisdiction over SharpVue today.  
24       They are here, and that's the reason you added them

1 as a necessary party.

2 Now, with regards to the likelihood of  
3 success, that is a relevant consideration for any  
4 preliminary injunction, of course. Likelihood of  
5 success. These assets have been operating in  
6 North Carolina, knowledge of the Public Staff,  
7 perhaps knowledge of the Commission, itself, for  
8 over 30 years. The Public Staff has known, the  
9 Commission has known for 30 years exactly the  
10 parking arrangements that have occurred, then to go  
11 landing, and down at Deep Point, the barge has  
12 operated for almost 40 years, and there has been no  
13 assertion of jurisdiction at any time while it's  
14 been operating for 30 years.

15 If there is a utility operating outside  
16 its authority, I think the -- the Commission knew  
17 about it for 30 years, I think that the Commission  
18 certainly could have brought it sua sponte, the  
19 Public Staff could have, or the Village could have  
20 in the last 30 years. Only after they hear that  
21 we're getting ready to sell this to a third party  
22 do they file this action.

23 Second, the business -- the businesses  
24 of operating parking and barge are not found

1 anywhere or even referenced anywhere in Chapter 62.

2 So I understand the Village has done a  
3 very good job cobbling together this argument that  
4 they have been able to survive the motion to  
5 dismiss. I recognize the argument that they have  
6 made about related assets. You're gonna hear a lot  
7 of conflicting evidence on that over the next two  
8 or three days, but the reality is that parking and  
9 barge has never been regulated anywhere under any  
10 facility in North Carolina by this Commission  
11 under -- at any point in time. It's not in the  
12 General Statutes. It's not in the intent of the  
13 legislation.

14 And third, while having a passenger  
15 ferry to a resort island may be unique and only one  
16 in North Carolina, it is not unique around the  
17 country. There are lots of examples of passenger  
18 ferries around the country that have parking on the  
19 mainland, the ferries going to the island. As  
20 you'll hear from Mr. Leonard and in the prefiled  
21 testimony you've already read, parking operations  
22 are not regulated under state utility regulatory  
23 commission -- regulatory jurisdiction in any state  
24 anywhere in the United States.



1                   So if it's been operating here for  
2                   30 years and no one's ever deemed it to be a  
3                   utility, if it's not in the statutes and it's not  
4                   deemed to be subject to regulation anywhere in the  
5                   country, how could there be a likelihood of success  
6                   on that issue in this docket? But that's yet to be  
7                   determined from the evidence you're getting ready  
8                   to hear.

9                   I will touch on, briefly, this whole  
10                  issue of whether this is a government function and  
11                  I'll make it very brief. You know, the complainant  
12                  correctly cited the law that, whether it's a  
13                  governmental or proprietary function in nature,  
14                  courts consider whether the undertaking is one  
15                  which only a government agency could engage in.  
16                  They stated the Williams case cited in their reply  
17                  brief. Not only is this not a function that only a  
18                  government can engage in, a government has not been  
19                  engaging in this function for 30 years, quite  
20                  frankly.

21                  Pursuing to purchase the assets in the  
22                  marketplace over another purchaser and the use of  
23                  injunction that was never pled in the complaint is  
24                  certainly not a governmental function. Or another

1 way of thinking about it, to try to derail a sale  
2 of assets by filing a complaint under Commission  
3 Rule 1-9 is certainly not limited to a governmental  
4 actor. Anyone can file a complaint, anyone can  
5 compete for the purchase of assets. That is a  
6 proprietary function for sure. You don't ever need  
7 to reach that issue.

8 Mr. Roberts' commitments have taken the  
9 availability of parking off the table. He is  
10 committed that parking will be available. That's  
11 before you.

12 If there are questions that the  
13 Commission may have of Mr. Roberts or of Mr. Paul  
14 regarding their intents, their timing -- they are  
15 not going to be closing on the sale next week, and  
16 they can -- I'm happy for them to take the witness  
17 stand and for you to ask them any questions that  
18 you may like about -- and Mr. Roberts will say --  
19 I'll proffer his evidence that he is not -- he will  
20 commit not to resell this asset until the  
21 Commission has ruled in this docket. He will  
22 commit that whatever Commission ruling there is  
23 will be applicable to the assets, whether it is  
24 owned -- whether he closes or not, whether it's

1 before closing or after closing. He will commit  
2 that this closing will not occur until the  
3 Commission has decided -- has some time. We'll  
4 give you some time to rule on this motion. I'm  
5 glad for Mr. Roberts and Mr. Paul to both take the  
6 witness stand for your questions, since that was  
7 somewhat implied, and make some stipulations on the  
8 record to allay any of the fears that have been  
9 raised by the complainant. Thank you for listening  
10 to me on this point.

11 COMMISSIONER BROWN-BLAND: Thank you,  
12 Mr. Styers.

13 Did you want to make a separate  
14 argument?

15 MR. FERRELL: Just very briefly, if I  
16 might have a few moments.

17 COMMISSIONER BROWN-BLAND: Very briefly,  
18 because I wanted to limit it to the same side here,  
19 but very briefly I'll give you a minute or two.

20 MR. FERRELL: I just wanted to -- as the  
21 counsel for SharpVue, wanted to reiterate what  
22 Mr. Styers said about any questions you have from  
23 us, we're glad to answer them. But just so the  
24 record is crystal clear, we have said in our

1       rebuttal testimony that was filed in this matter  
2       that SharpVue intends, after -- if they are  
3       successful in closing on the parking lot, to  
4       continue to offer the same level of parking that  
5       has been in existence and will not raise rates  
6       beyond inflationary increases for -- I believe they  
7       put in at least four years, but we envision that  
8       these will be conditions on the transfer in the Sub  
9       22 proceeding that is scheduled for hearing in  
10       January that we'll continue to work with the Public  
11       Staff and the other parties to determine whether an  
12       agreement can be reached on these issues. That's  
13       our intent. But we've gone ahead and put it on the  
14       record as to what our intentions are.

15               But I think we're also -- as Mr. Styers  
16       said, we certainly believe this is a, you know,  
17       solution looking for a problem. We plan to hold  
18       these assets long term. We don't plan to flip them  
19       to a third party. We're glad to stipulate that,  
20       until these decisions are made here, that they  
21       don't plan to sell the parking or the barge to a  
22       third party. That is not our intent, and we  
23       certainly will be glad to stipulate to that if that  
24       gives the Commission comfort.

1 I mean, certainly, we recognize that a  
2 decision in this case will have some impact on the  
3 deal, but these are two, you know, sophisticated  
4 business parties that have already attempted in the  
5 APA to allocate risk among themselves. That is a  
6 discussion they will have, but, you know, SharpVue  
7 has investors, they have concerns about, you know,  
8 the cost of finance, interest rates. I mean, delay  
9 hurts this deal. Delay could make this more  
10 expensive.

11 You've heard Mr. Styers represent that  
12 we believe that that's part of the Village's motive  
13 here, is to try to scuttle this deal like they  
14 scuttled the Authority deal. We've put a team  
15 together, we're committed to this project, and we  
16 believe the delay would harm us. And since this is  
17 an equity remedy, we believe the Commission must  
18 weigh the equities here. And we don't see any harm  
19 to the Village or the public, because parking is  
20 not gonna change, barge is not gonna change,  
21 operation of the ferry's not gonna change after any  
22 transfer of the parking and the barge if that  
23 closing occurs.

24 And just, quite frankly, as a practice

1 matter, given the due diligence that needs to be  
2 done before closing, we can't close on these  
3 asset -- these two assets and any other  
4 nonregulated assets until mid-November anyway. So  
5 this is not a situation where this closing is  
6 scheduled for Thursday of this week after this  
7 hearing. I mean, it's not like that.

8 So Mr. Styers are not the deal lawyers,  
9 but we know the deal lawyers, we are talking to the  
10 deal lawyers, and we understand that there are  
11 steps that have to be made to make that happen.

12 So, again, glad to answer any questions.  
13 You know, Mr. Roberts is here if you would rather  
14 hear it from him than me, be we certainly are  
15 committed to continuing what we believe is the  
16 status quo, and that is, we've got a contract to  
17 buy these assets, and these assets are not leaving  
18 the Commission's jurisdiction because of the  
19 transfer. I mean, the Commission's already said,  
20 in its order adding us, that ownership is not the  
21 issue. It's what happens to these assets. Are  
22 they changed in character after a ruling? And  
23 that's a business decision the parties can allocate  
24 among themselves.

1 Thank you for the additional time.

2 COMMISSIONER BROWN-BLAND: Thank you.

3 Before we move on to the questions that the  
4 Commission has, I did want to -- intend to ask you  
5 about the Asset Purchase Agreement.

6 Excerpts from the Asset Purchase  
7 Agreement between Transportation and Limited as the  
8 sellers and SharpVue as the buyer dated  
9 May 17, 2022, were attached to the verified motion  
10 for preliminary injunction, and we will take notice  
11 of the excerpts in making our decision. However,  
12 the Commission would also like that entire  
13 agreement to be in this record.

14 Would either of the parties object to  
15 that and/or be prepared to move it into the record  
16 at this time?

17 MR. STYERS: We could do so in the  
18 record. It would need to be confidential, of  
19 course, for reasons previously --

20 COMMISSIONER BROWN-BLAND: It will  
21 remain confidential.

22 MR. STYERS: -- articulated, but I  
23 believe it's part of the record in Sub 22, so I see  
24 no reason why we couldn't move that into the record

1 in Sub 21.

2 COMMISSIONER BROWN-BLAND: All right.

3 Is there any objection?

4 MR. SCHAUER: No objection.

5 MR. FERRELL: No objection.

6 COMMISSIONER BROWN-BLAND: All right.

7 If one of you will do the honors, I will go ahead  
8 and receive it.

9 MR. STYERS: So Transportation Limited  
10 would like to move into evidence as Preliminary  
11 Injunction Hearing Exhibit 1 --

12 COMMISSIONER BROWN-BLAND: It will be so  
13 identified.

14 MR. STYERS: -- the Asset Purchase  
15 Agreement between Bald Head Island Limited and  
16 Transportation and SharpVue Capital and its  
17 affiliates in its entirety, subject to  
18 confidentiality -- as a confidential document and  
19 subject to the confidentiality protections.

20 COMMISSIONER BROWN-BLAND: All right.  
21 Without objection, that motion will be allowed.

22 (Preliminary Injunction Hearing Exhibit  
23 1 was marked for identification.)

24 COMMISSIONER BROWN-BLAND: All right.



1 Questions from the Commission?

2 Commissioner Clodfelter.

3 COMMISSIONER CLODFELTER: Mr. Styers,  
4 thank you for the motion. Just to be absolutely  
5 certain about it, the document you just moved into  
6 the record on this motion hearing is the same as  
7 Confidential Exhibit E to the application for  
8 transfer in Docket A-21, Sub 22; is that correct?

9 MR. STYERS: That is correct.

10 COMMISSIONER CLODFELTER: Great. Thank  
11 you.

12 MR. STYERS: I do not have that document  
13 in front of me. I will say -- I wasn't  
14 anticipating, so if there are specific questions to  
15 me, I do not have that in front of me, but again,  
16 Mr. Paul and Mr. Roberts are the ones in the room  
17 most familiar with those documents.

18 COMMISSIONER CLODFELTER: Well, at some  
19 point before we shut things down, if someone will  
20 correct me that I misread the docket, if I have; if  
21 not, I just want to confirm that the document I'm  
22 looking at --

23 MR. STYERS: Yes.

24 COMMISSIONER CLODFELTER: -- is the one

1 you moved into evidence.

2 MR. STYERS: It is.

3 COMMISSIONER CLODFELTER: Okay. I have  
4 several questions in no particular order.

5 Mr. Styers, you were reading from a  
6 letter, which I'm not sure whether that's in the  
7 record on this motion.

8 MR. STYERS: It is not.

9 COMMISSIONER CLODFELTER: Do you intend  
10 to introduce it or not?

11 MR. STYERS: Yes.

12 COMMISSIONER CLODFELTER: If you don't  
13 intend to, I'm gonna ignore what you said.

14 MR. STYERS: Yeah. Okay. I would like  
15 to move into the record -- and I have copies  
16 here -- as Preliminary Injunction Hearing  
17 Exhibit 2 --

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

20 MR. STYERS: -- a letter from the  
21 Village of Bald Head Island to the Local Government  
22 Commission dated December 15, 2020, on Village of  
23 Bald Head Island stationery.

24 COMMISSIONER BROWN-BLAND: Actually, let

1 me reidentify it as the Respondents Preliminary  
2 Injunction Hearing Exhibit Number 1.

3 (Respondents Preliminary Injunction  
4 Hearing Exhibit 1 was marked for  
5 identification.)

6 MR. STYERS: Respondents Exhibit number  
7 1. Okay. Respondents Preliminary Exhibit Number  
8 1. Mr. Paul will distribute -- I mean,  
9 Mr. Risinger will distribute a copy to the  
10 Commission and to counsel at this time. The  
11 exhibit sticker is at the corner. Not knowing how  
12 it will be identified, I would ask you to write in  
13 Respondent s Exhibit Number 2 -- I'm sorry,  
14 Respondent Exhibit Number 1.

15 COMMISSIONER BROWN-BLAND: Preliminary  
16 Injunction Hearing Number 1.

17 MR. STYERS: Okay. On this one. Thank  
18 you. And that's the letter I quoted from asking  
19 the Local Government Commission to take the item  
20 off the January 2nd.

21 Then Respondents Preliminary Injunction  
22 Hearing Exhibit 2 is a letter from Village of Bald  
23 Head Island dated January 13, 2022, stating that it  
24 wished to purchase the ferry.

1                   Mr. Risinger, make sure that's the  
2                   January letter -- I mean March letter.

3                   MR. RISINGER: You handed me January.

4                   COMMISSIONER BROWN-BLAND: This is  
5                   January 13th?

6                   MR. STYERS: That's correct.

7                   COMMISSIONER BROWN-BLAND: All right.  
8                   This letter on the Village of Bald Head Island  
9                   letterhead dated January 13, 2022, will be  
10                  identified as Respondents Preliminary Injunction  
11                  Hearing Exhibit Number 2.

12                  (Respondents Preliminary Injunction  
13                  Hearing Exhibit 2 was marked for  
14                  identification.)

15                  MR. STYERS: I'm sorry. Let me make  
16                  sure I identify that correctly. That's the letter  
17                  to Mr. Paul and Bald Head Island Limited saying  
18                  that it was going to file a complaint. I got them  
19                  out of order. I apologize.

20                  Then Exhibit 3 is the March 21st letter  
21                  to the Local Government Commission stating that it  
22                  wished to purchase the ferry. And I'll have  
23                  Mr. Risinger distribute that as well. So the  
24                  second is the letter to Bald Head Island Limited

1 saying it wished to purchase the ferry and intended  
2 to file a complaint in the Commission, and then  
3 Exhibit 3 is the letter of the Commission -- the  
4 Local Government Commission saying it wished to  
5 purchase the complaint -- asset, excuse me. So  
6 those are the three letters that I referenced in my  
7 remarks. They are not in chronological order, but  
8 I think the record will reflect which ones are  
9 which by the date.

10 COMMISSIONER BROWN-BLAND: All right.  
11 This letter on the Village of Bald Head Island  
12 letterhead dated March 22, 2021, will be identified  
13 as Respondents Preliminary Injunction Hearing  
14 Number 3.

15 MR. STYERS: Yes, Madam Chair.  
16 (Respondents Preliminary Injunction  
17 Hearing Exhibit 3 was marked for  
18 identification.)

19 COMMISSIONER CLODFELTER: And the  
20 various readings you were doing were from one or  
21 more of these exhibits?

22 MR. STYERS: That's correct. Thank you.

23 COMMISSIONER CLODFELTER: I have --  
24 again, in no particular order, Mr. Styers, with

1       respect to action or inaction or whatever you want  
2       to call it over the last 30 years, I want to be  
3       sure I understand your legal argument there. You  
4       are not arguing, are you, that there is some  
5       estoppel or laches or waiver against this agency as  
6       part of the state of North Carolina, are you?

7               MR. STYERS: I'm not.

8               COMMISSIONER CLODFELTER: Thank you. I  
9       have some questions about the Asset Purchase  
10      Agreement that I think I can ask in a  
11      nonconfidential way that will elicit  
12      nonconfidential answers. If I don't succeed, then  
13      you will let me know and we'll go into confidential  
14      session.

15              MR. STYERS: And if I don't know the  
16      answer, I will respond accordingly.

17              COMMISSIONER CLODFELTER: Well, you have  
18      your colleague there with you, Mr. Ferrell, who may  
19      be able to help you out with the answers as well.  
20      And if we need to get testimony, we can. Just a  
21      series of questions.

22              Has the outside date, as that term is  
23      defined in the Asset Purchase Agreement, has that  
24      been changed since the document that is now in

1 evidence as Exhibit 1?

2 MR. STYERS: Not to my knowledge. But  
3 again, I do --

4 MR. FERRELL: I don't believe we have  
5 either.

6 MR. PAUL: So the answer, sir -- this is  
7 Chad Paul from Bald Head Island Limited. That  
8 outside date has not changed. However --

9 COMMISSIONER BROWN-BLAND: Excuse me,  
10 hold up.

11 COMMISSIONER CLODFELTER: We may need to  
12 get this into evidence.

13 COMMISSIONER BROWN-BLAND: Do you want  
14 to have him sworn in?

15 COMMISSIONER CLODFELTER: We may need to  
16 get this into evidence.

17 COMMISSIONER BROWN-BLAND: Would you  
18 come to the witness stand?

19 COMMISSIONER CLODFELTER: I've got  
20 several question of this sort, Mr. Styers, about --

21 MR. STYERS: We're not the deal -- we're  
22 not the deal attorneys on this.

23 COMMISSIONER CLODFELTER: I understand,  
24 but I need to be sure I can rely on the answers

1 from an evidentiary standpoint.

2 MR. STYERS: I completely understand.

3 COMMISSIONER CLODFELTER: Got it.

4 MR. STYERS: And would you like Mr. Paul  
5 and Mr. Roberts both, since they're both the  
6 representing parties?

7 COMMISSIONER CLODFELTER: Well, I may be  
8 able to ask the questions that either one of them  
9 could answer, so it's up to you guys --

10 MR. STYERS: Okay.

11 COMMISSIONER CLODFELTER: -- how you  
12 want to do this.

13 COMMISSIONER BROWN-BLAND: There is no  
14 objection to you coming up together. I'm gonna --  
15 all right. If you'll place your left hand on the  
16 Bible and raise your right.

17 Whereupon,

18 CHARLES A. PAUL, III AND LEE ROBERTS,  
19 having first been duly sworn, were examined  
20 and testified as follows:

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

23 Mr. Styers, if you will identify them  
24 and get them identified for the record.



1 DIRECT EXAMINATION BY MR. STYERS:

2 Q. Mr. Paul, would you please state your name  
3 and current position for the record, please?

4 A. (Charles A. Paul, III) I am  
5 Charles A. Paul, III. I am the CEO of Bald Island  
6 Limited [sic] and a manager of Bald Island Limited  
7 [sic], and I'm the president of Bald Island  
8 Transportation [sic]. I've served in that capacity for  
9 11 years.

10 Q. And, Mr. Roberts, would you please just state  
11 your name and your position for the record as well?

12 A. (Lee Roberts) Thank you. Good afternoon.  
13 I'm Lee Roberts from -- a managing partner of SharpVue  
14 Capital here in Raleigh.

15 EXAMINATION BY COMMISSIONER CLODFELTER:

16 Q. Gentlemen, I will take an answer from either  
17 one of you or both of you. If you have different  
18 answers, I need to know that also. If you don't agree  
19 on the answer, I need to know that as well.

20 But again, my question -- first question is,  
21 there is a term in -- that's defined in the Asset  
22 Purchase Agreement as the outside date. Has that been  
23 changed since May 17, 2022?

24 A. (Charles A. Paul, III) The answer is no, but

1 we wanted to be clear, there is a tolling agreement  
2 being prepared right now to add some time to that. And  
3 so we didn't want to have the answer no, and then a  
4 tolling agreement is signed tomorrow.

5 Q. Well, you answered the second question,  
6 because the next question was gonna be is it  
7 contemplated that there will be a change?

8 A. Yes, sir. It would have to be based on the  
9 proceeding here.

10 Q. Okay. And would it be the contemplation of  
11 the parties that, if such an agreement is executed, it  
12 would be filed as a supplemental exhibit in the  
13 A-41, Sub 22 docket?

14 A. Absolutely.

15 Q. Okay. Thank you. Has there been an  
16 assignment of the Asset Purchase Agreement to any  
17 person or entity that was not originally a party to it?

18 A. No. No. I think that the only thing that  
19 might be is we allocated potentially where some of the  
20 assets may be within the SharpVue affiliates, but no,  
21 it's not been assigned to anyone else.

22 Q. But that allocation would have been among the  
23 parties who were parties to the original agreement?

24 A. Already part of the agreement.

1 Q. Already parties to the agreement.

2 Is there any contemplation on either party's  
3 part that there will be an assignment to any other  
4 person or party outside the original parties to the  
5 agreement?

6 A. Not from seller.

7 Q. Okay.

8 A. (Lee Roberts) Nor from buyer.

9 Q. Nor from buyer.

10 Has there been any waiver of any of the  
11 required consents listed in schedule 7.5 of the Asset  
12 Purchase Agreement? Do you need to see the agreement  
13 in order to answer that question? Again, I'm trying to  
14 stay away from asking you the contents of the  
15 agreement, which are confidential, but if you need to  
16 see the agreement, I'm sure one is floating around.

17 (Pause.)

18 MR. FERRELL: May I approach the  
19 witness?

20 COMMISSIONER BROWN-BLAND: Yes, you may.

21 THE WITNESS: (Witness peruses  
22 document.)

23 Q. Schedule 7.5 lists several required consents,  
24 and my question was, has there been a waiver requested

1 or given with respect to any of those required  
2 consents?

3 A. (Charles A. Paul, III) Not from selling.

4 A. (Lee Roberts) Nor from buyer.

5 Q. Nor from buyer. Is there any contemplation  
6 that either seller or buyer will request such a waiver?

7 A. No.

8 A. (Charles A. Paul, III) No.

9 Q. Let me back up a minute. This question is  
10 gonna relate to Section 5.2 of the Asset Purchase  
11 Agreement, and the question there is, really, has there  
12 been any amendment to that section since the original  
13 agreement was executed in May that relates to the  
14 preclosing conduct of the business?

15 A. Seller is full -- fulfilled those obligations  
16 as written.

17 Q. Okay. And there has not been any amendment  
18 to that section?

19 A. (Lee Roberts) There has not.

20 Q. Is there contemplation that there will be any  
21 amendment to that section prior to closing?

22 A. (Charles A. Paul, III) Not from seller.

23 A. (Lee Roberts) No. It's not been  
24 contemplated.

1 Q. Okay. Has -- and this will apply  
2 differently, so let me ask first buyer.

3 Has there been any waiver requested or given  
4 of the closing conditions in Section 7.7?

5 A. (Witness peruses document.)

6 Q. Sorry to make you read it. I'm trying to ask  
7 you a question without disclosing what that section  
8 actually says.

9 A. (Witness peruses document.)

10 (Charles A. Paul, III) Mr. Clodfelter, could  
11 you repeat the question?

12 Q. Well, that's the -- those are the seller's  
13 conditions -- excuse me, the buyer's conditions to  
14 closing; and my question is, has there been any waiver  
15 of that condition in 7.7 requested or given, either  
16 one?

17 A. (Lee Roberts) There has not been a waiver  
18 requested nor given.

19 Q. Or given. Is there a contemplation that  
20 there would be a request for such a waiver made?

21 A. There is not, no.

22 Q. Okay.

23 A. It may be helpful just to note that the --  
24 the Asset Purchase Agreement that you have is -- this

1 has not been modified.

2 Q. Well, I was gonna ask you a general question  
3 at the end, so you may have saved us some time, but let  
4 me go through the steps here.

5 Mr. Paul, you need to look at Section 8.7,  
6 and the questions I'll ask you there is, again, just  
7 trying to get this on the record here.

8 A. (Witness peruses document.)

9 Q. The question there is, has there been any  
10 waiver requested or given with respect to that  
11 condition to closing on 8.7?

12 A. (Charles A. Paul, III) No, there's been no  
13 waiver given. However, I will want to be clear, as it  
14 relates to the items in 8.7, Bald Island Limited did  
15 pro- -- offer to the Village, even though it does not  
16 believe the ROFR has good standing, the right of first  
17 refusal, we did a transmittal letter to them, and their  
18 60 days expires on November 6th. So they have until  
19 November 6th to say, "Hey, we want to buy it," or, "No,  
20 we don't want to buy it."

21 So we did, outside of all the stuff, but  
22 noticed everybody here that's present -- we did send a  
23 transmittal letter, even though we do not believe that  
24 the ROFR has validity, so that we could solve 8.7.

1 Q. But -- thank you for that. Has there been,  
2 to your knowledge -- I'm gonna ask the Village's  
3 counsel the same question.

4 Has there been any determination as to the  
5 validity or enforceability of the claimed right of  
6 first refusal dated August 1999?

7 A. Not from a court, no.

8 Q. Okay. Or from any other tribunal, such as  
9 the Local Government Commission?

10 A. No. I'm aware of that.

11 Q. Or any other administrative agency?

12 A. The only thing I would point to is that the  
13 Senate Bill 391 that was passed unanimously by the  
14 legislature, my sense is that the state legislature and  
15 two separate governors would not have gone through the  
16 process if, in fact, they thought a local municipality  
17 could, in fact, operate and own assets and operations  
18 that are also located in a completely different  
19 municipality. These things are located in Southport.

20 Q. You've answered my question. Thank you, sir.  
21 You're gonna get plenty of opportunity to talk later.  
22 I'm just trying to nail a couple of very discrete  
23 things down now.

24 So, again, to back up, just be sure, you have

1 not been asked -- the sellers have not been asked, nor  
2 have they given any waiver of the conditions in 8.7?

3 A. I do not believe we have been asked, and we  
4 haven't given any waiver.

5 Q. Is there any contemplation that you would be  
6 asked to do so or that you would give such a waiver?

7 A. I can't contemplate why, now, given that we  
8 executed a transmittal letter to the Village.

9 Q. Okay. Now the generic question, and I think  
10 I already have the answer to that from Mr. Roberts, is,  
11 have there been any other amendments to the material  
12 terms of the Asset Purchase Agreement, other than, for  
13 example, changes to the disclosure schedules or  
14 updating the disclosure schedules? I'm not asking  
15 about things like that, but have the substantive  
16 provisions of the agreement been amended in any other  
17 respect since May 22, 2022 -- May 17, 2022?

18 A. Not from seller's perspective, subject to the  
19 tolling agreement that we're working on right now.

20 Q. Thank you for that.

21 Mr. Roberts, same answer for you?

22 A. (Lee Roberts) Same answer. There is a  
23 tolling agreement that's been drafted to extend the  
24 outside date, per your question, and I believe that's



1 the only substantive modification that it makes to  
2 the -- to the agreement, but that agreement has not  
3 been executed.

4 Q. And I'm sure that, if it is executed -- and I  
5 think your counsel indicated that it would -- or you  
6 indicated that it would be filed in the Sub 22  
7 docket -- that, of course, would be a confidential  
8 filing as well?

9 A. That's correct.

10 Q. Okay. I -- since -- since you're here --  
11 those were the specific questions I had for you, but  
12 since you're both here, I want to be sure I understand  
13 the nature of the commitments that your counsel was  
14 offering to us in connection with the motion for  
15 preliminary injunction. I heard several things.

16 I'm not really asking you about what you may  
17 do with the assets after you have closed and when this  
18 is all over. I'm asking really about where we are,  
19 sitting here right now today, where the matter before  
20 this Commission is, should we take any action with  
21 respect to the closing, if I could put it in layman's  
22 terms.

23 So what's the nature of the commitments that  
24 the parties are prepared to make on that question?

1           A.       So I think there are two specific  
2 commitments. One is relating to the timing of closing  
3 the transaction, independent of this process. So while  
4 any buyer would like to close as quickly as possible  
5 once you assemble the capital, put the debt financing  
6 in place, rising rate environment, those all militate  
7 in favor of a closing as quickly as possible. Among  
8 those reasons is not -- one of those reasons is not to  
9 try to outflank the Utilities Commission, as our  
10 counsel stated. And so, as a practical matter, we are  
11 not in a position to close before mid-November, and  
12 we're willing to commit to not close on these -- these  
13 assets until -- until mid-November.

14                   What we had contemplated was two closings,  
15 one on all the assets that are currently nonregulated.  
16 And as you know from the Asset Purchase Agreement,  
17 there are a series of assets that are -- that are not  
18 part of this proceeding in any way at all, and our hope  
19 and plan has been to close on all of those assets,  
20 excluding ferry and tram. Again, we're not in a  
21 position to do that before mid-November, and we're  
22 willing to commit that we won't do that.

23                   And then the second part of the commitment is  
24 to address the concern that we might, in some way, flip

1 those assets to another buyer, an unrelated third-party  
2 buyer. We've always intended to be a long-term holder  
3 of the assets that are at issue here, and it's,  
4 therefore, easy for us to commit on the record that we  
5 will not sell these assets on to another -- another  
6 party.

7 Q. I think we may need to confer about what -- I  
8 think -- I take your answer, and I thank you for your  
9 answer. Whether this needs to be reduced to some form  
10 of stipulation or something, I don't know, but we need  
11 to probably talk with Commission counsel about what we  
12 need here. Let me ask you this follow-up question.

13 So I understand you -- what you said you're  
14 prepared to commit to in connection with the question  
15 we have before us today. And so talk to me about what  
16 happens in the circumstance where you might proceed in  
17 the manner that you've discussed, according to the  
18 timetable you proposed, what is the risk that then you  
19 later say, well, we don't want the rest of it; we don't  
20 want the ferry? What happens then?

21 A. Well, I think we'd still be bound by the --  
22 by the terms of the Asset Purchase Agreement. And it's  
23 hard to contemplate a situation in which we were  
24 permitted to buy the ferry, but wouldn't -- wouldn't

1 want to. The ferry's already -- already regulated.  
2 The Sub 22 proceeding is simply a transfer of the  
3 certificate of convenience. It doesn't relate to  
4 the -- to the rate charged to consumers or any other  
5 economic aspect of the transaction. So I don't -- I  
6 don't see what would happen, from a regulatory  
7 standpoint, relating to the ferry that would affect our  
8 investment decision, and therefore our intention to  
9 purchase the ferry as well.

10 Q. I think, in fairness, that's all I really  
11 should ask you on that point, but thank you for that.

12 COMMISSIONER CLODFELTER: I have one --  
13 well, I have one question for the Village's  
14 counsel -- and if you need to put a witness up  
15 about this, I'm not sure it's a matter that would  
16 require a witness -- but you are not aware, or are  
17 you aware of any binding determination as to the  
18 validity and enforceability of the 1999 right of  
19 first refusal? Has there been a determination by  
20 any authority, administrative or judicial, that  
21 that is or is not binding and enforceable?

22 MR. TRATHEN: Commissioner Clodfelter,  
23 I'll take that one, and Charles Baldwin is the  
24 Village general counsel, and if he needs to weigh

1 in here, please, we'll have him do so. But no,  
2 we're in agreement that there has not been any  
3 judicial or binding interpretation with respect to  
4 the right of first refusal.

5 COMMISSIONER CLODFELTER: Okay. Thank  
6 you.

7 COMMISSIONER BROWN-BLAND: Commissioner  
8 Duffley?

9 EXAMINATION BY COMMISSIONER DUFFLEY:

10 Q. So are you also willing to commit -- I did  
11 hear two different things. I heard the November date  
12 from counsel to my left, as well as until a final  
13 resolution of the matter. And so your testimony, I'm  
14 hearing you state that November date.

15 If circumstances change, though, prior to  
16 this November date that you have committed to, are you  
17 committed to providing the Commission notice, and what  
18 amount of notice?

19 A. (Lee Roberts) I want to make sure I  
20 understand your question.

21 Q. I heard your testimony to be that the sale of  
22 the nonregulated assets would not occur until  
23 mid-November, but if circumstances change to where you  
24 determine that due diligence had occurred and you

1 wanted to sell at the end of October, are you committed  
2 to provide notice to the Commission that there is a  
3 change of this date, and what amount of notice would  
4 you give the Commission?

5 A. I understand. Thank you for that  
6 clarification. I don't anticipate a change of that  
7 nature. However, if something unforeseen -- well, I  
8 won't even -- I mean, we're willing to stipulate that  
9 we're not -- we're not going to close before  
10 mid-November.

11 MR. STYERS: Period.

12 COMMISSIONER DUFFLEY: Thank you.

13 COMMISSIONER BROWN-BLAND: Commissioner  
14 McKissick?

15 COMMISSIONER MCKISSICK: Sure. Just one  
16 or two questions.

17 EXAMINATION BY COMMISSIONER MCKISSICK:

18 Q. And I guess what I want to make certain of is  
19 that the statements you've made today, Mr. Roberts, as  
20 it relates to SharpVue, that it also applies to the  
21 affiliates of SharpVue, which would include Pelican  
22 Logistics, LLC.

23 A. (Lee Roberts) Absolutely.

24 Q. And the others?

1           A.       Those are subsidiaries and they're our  
2 affiliates under our control.

3           Q.       So it would be binding as to them as well?

4           A.       By all means.

5           Q.       And then secondly, would you consider not  
6 closing until the pendency of this action is concluded,  
7 relating to whether these assets would become regulated  
8 assets or not? Because we don't know if that would  
9 occur prior to the mid-November that you stated, but it  
10 could occur prior to that time, it could occur somewhat  
11 after that time. But is that something that you would  
12 be willing to commit to during the pendency of this  
13 particular proceeding?

14          A.       We're obviously eager to be as cooperative as  
15 possible with the Commission and with this process.  
16 We're trying to juggle competing interests. One is the  
17 interest of our investors, our financing partner, to  
18 close in an expeditious manner. We signed the letter  
19 of agreement for this transaction December 29, 2021,  
20 and, in any environment, you have an incentive to close  
21 as expeditiously as possible. It's especially true  
22 when market conditions are as uncertain as those we've  
23 experienced in the last several months. So what I  
24 would say is that we're willing to make the

1 mid-November commitment, and we're willing to discuss  
2 with the Commission if additional time is necessary,  
3 but we do have to balance those -- those competing  
4 considerations.

5 Q. And let me follow up on that. When you say  
6 you're willing to discuss if additional time, perhaps,  
7 might be needed, would you be willing to do so, I  
8 guess, if we provided you with some type of a timeline  
9 where you would be required to give notice, and we  
10 would be, you know, inclined to respond, or how would  
11 you see that occurring?

12 A. It would, obviously, be very helpful to us to  
13 know what additional time we were committing to, rather  
14 than a purely open-ended commitment.

15 Q. Okay. I guess the last question, and it  
16 relates to language which I saw in the motion which is  
17 before us at this time relating to the preliminary  
18 injunction. There were allegedly statements which had  
19 been made by you relating to the timing of the closing  
20 related to the nonregulated assets.

21 Are you familiar with that language that was  
22 in the motion indicating you wanted to --

23 A. Regarding a newspaper article?

24 Q. I believe so.



1 A. Yes, sir.

2 Q. Could you clarify exactly what was stated at  
3 that time which was alleged, or would you like to  
4 provide greater clarity?

5 A. Well, I think I said something along the  
6 lines of "would like to close on the nonregulated  
7 assets as quickly as possible." I think I probably --  
8 I don't remember that article, specifically, but I  
9 certainly told investors that we hoped that we could  
10 close in the third quarter of this year. That's  
11 obviously not -- not going to happen.

12 But I have been consistent in saying that we  
13 hoped that -- that we could close on the nonregulated  
14 assets -- which, for clarity, are everything besides  
15 the ferry and the tram, currently -- as quickly as  
16 possible, for the reasons they said, with the  
17 recognition that the closing of the ferry and tram  
18 would require the certificate of convenience process to  
19 take place on its own -- on its own schedule determined  
20 by the Commission.

21 Q. Thank you.

22 COMMISSIONER MCKISSICK: I don't have  
23 any further questions.

24 EXAMINATION BY COMMISSIONER BROWN-BLAND:

1 Q. All right, gentlemen, you said you're not in  
2 a position to close until mid-November. Without  
3 disclosing any kind of confidential terms or -- but in  
4 a more general way than that, why is that? Is there a  
5 number of steps that need to be taken that would be  
6 prohibiting closing -- completion of closing before  
7 November, and did it have anything to do with the  
8 letter that's been transmitted already regarding the  
9 ROFR?

10 A. (Lee Roberts) No, there is a -- it's a  
11 complex transaction with a lot of assets subject to the  
12 overall -- the overall contract and just the number of  
13 steps that need to take place with respect to due  
14 diligence, title work, insurance work. The lender  
15 needs to complete a good bit of work. It's all the  
16 moving parts that go into a transaction of this nature.

17 Q. All right. And to your knowledge, to both of  
18 you, is there any other litigation pending between  
19 these parties that are before the Commission today  
20 that's pending anyplace in any other kind of forum or  
21 venue?

22 A. No, not to -- by "these parties" you mean the  
23 Village --

24 Q. The Village --

1           A.       The Bald Head Island Limited, Bald Head  
2 Island Transportation, SharpVue Capital?

3           Q.       Yes.

4           A.       Not to my knowledge.

5           Q.       All right.

6                    COMMISSIONER BROWN-BLAND:   And over at  
7 Mr. Trathen's table, same answer?

8                    MR. TRATHEN:   Same answer, yes.

9                    MR. STYERS:   I will say not at this  
10 time.

11           Q.       All right.  And I've heard the status quo  
12 term used, and a commitment to maintaining the status  
13 quo; does that include not closing on the regulated and  
14 unregulated assets?

15           A.       Well, when we -- when we talked about  
16 maintaining the status quo, I think that was in an  
17 operational context, that the -- that the users of all  
18 of these assets really shouldn't see any -- much, if  
19 any, change in the experience of a user of the parking  
20 and the barge, the ferry, the tram.  That would  
21 maintain the status quo from a -- from an operations  
22 and customer standpoint.

23           Q.       All right.  And as long as the decision  
24 remains pending on the public utility status of the

1 parking facilities and the barge, would you agree to or  
2 have any issue with agreeing to give the Commission  
3 prior notice of a closing, say, at least a 10-day prior  
4 notice in writing?

5 A. Of course. That's -- that's easily done. We  
6 would be happy to make that commitment.

7 MR. STYERS: Yes. As counsel, I will  
8 also second that we would be glad to have that --  
9 put this in writing in some fashion as your counsel  
10 directs.

11 COMMISSIONER BROWN-BLAND: While I am  
12 highly reluctant, given the time and everything we  
13 have in front of us, to do this, I want to offer  
14 the Village an opportunity to ask a few very  
15 limited questions on the Commission's questions.

16 MR. TRATHEN: Madam Commissioner, I  
17 don't think we have any questions for these  
18 witnesses at this time. However, we would, if we  
19 could, have a few comments in reply to some of the  
20 points that have been made.

21 COMMISSIONER BROWN-BLAND: All right.  
22 We will come back to you.

23 MR. STYERS: One question?

24 COMMISSIONER BROWN-BLAND: Yes,

1 Mr. Styers, to clarify on the Commission's  
2 questions?

3 MR. STYERS: Yes.

4 EXAMINATION BY MR. STYERS:

5 Q. In response to both Ms. Brown-Bland and  
6 Mr. McKissick's questions, if this closing were to  
7 occur and this Commission had not yet issued a final  
8 decision in this Docket Sub 21, would you acknowledge  
9 that, whatever the final decision in this docket or on  
10 appeal might be, that it would be applicable to the  
11 assets, regardless of who owns them?

12 A. (Lee Roberts) Yes, of course.

13 COMMISSIONER BROWN-BLAND: All right.  
14 Then thank you for coming, because we had not  
15 indicated we would take a sworn witness statement  
16 before the hearing portion, so thank you for  
17 stepping up and being of assistance to the  
18 Commission, but you may step down at this time.

19 Mr. Trathen?

20 MR. TRATHEN: If I could just briefly  
21 here. So we appreciate the commitment. As it  
22 stands, we are a little bit mystified why it has  
23 unfolded in this fashion. It really seems that the  
24 request that has been made, which is simply to hold

1 the status quo intact, is a very typical, usual  
2 sort of request in these proceedings. So I'm --  
3 we're puzzled about all of this.

4 Now, I would like to make a couple of  
5 points. One, with respect to -- as I understand  
6 it, their argument is that they're gonna be harmed  
7 if they can't close, but they've really not  
8 presented any evidence whatsoever of that. Yeah,  
9 they would like to start earning money quicker;  
10 that's not evidence of harm. That's just a  
11 business proposition on their part.

12 I think the issue is, with respect to  
13 the Commission's authority, how do we maintain the  
14 integrity of the Commission's authority in this  
15 proceeding where that is what is in issue, whether  
16 or not the Commission needs to approve the  
17 transfer. And a couple of things that have not  
18 really been teased out here.

19 If this -- so they're offering through  
20 mid-November. We're in mid-October. So under the  
21 typical procedures, we will be filing briefs in  
22 mid-November, and they will be closing. And so if  
23 that happens, we're kind of in this nightmare  
24 scenario. So we now have the most valuable part of

1 these assets, which is parking and barge, owned by  
2 someone else. We now have the utility owned by  
3 Transportation. And for the Village, that is a  
4 complete nightmare scenario. The Village -- excuse  
5 me, the ferry -- this is evidence in the record,  
6 it's testimony of witness Wright. The ferry has no  
7 rights to use the parking. They don't own the  
8 parking, they don't have an easement, they don't  
9 have a lease. There is nothing. And we asked them  
10 in discovery, do you contemplate a lease  
11 arrangement with respect to SharpVue in connection  
12 with this transaction, and the answer was no.

13 So we've got two different owners.  
14 You've got a central property the utility needs to  
15 use, but they have no rights to use. So while  
16 there are intercompany agreements in place with  
17 respect to various of these assets, the terminal,  
18 some other real estate, but not the parking. Well,  
19 with respect to those other properties, do those  
20 intercompany agreements -- if SharpVue now is  
21 owning part of these assets, do those intercompany  
22 agreements now have to be renegotiated with a new  
23 party? And if so, did those need to be filed and  
24 approved by the Commission as affiliate contracts?

1           What about the intercompany allocations, the cost  
2           allocations between these companies, which they  
3           have an extensive protocol for tracking those  
4           expenses and recording them? Part of these assets  
5           are now owned by another company; how does that  
6           happen? And sort of most importantly here, for  
7           purposes of a lot of ratepayers, what happens with  
8           the \$500,000 imputation which was awarded in the  
9           2010 rate case, which currently remains in effect?  
10          The rationale for that imputation was that it was  
11          coming from parking. So now parking is owned by a  
12          third party. You have money coming from a third  
13          party -- which, the jurisdiction has not been  
14          ascertained by this Commission -- so then  
15          Transportation is gonna come back and say, "Well,  
16          we need our rates reduced because we're not getting  
17          this imputation anymore."

18                    These complexities are enormous in the  
19                    overriding picture here that really is -- again,  
20                    I've probably said nightmare now for the third time  
21                    -- for the Village is to separate what has  
22                    historically for 30 years been operated as an  
23                    integrated whole, this transportation system, now  
24                    all of a sudden to take the most valuable piece of



1           this and to sell it to a private equity firm  
2           outside the control and jurisdiction of the  
3           Commission when you've got this transfer  
4           proceedings which may or may not ever happen. You  
5           know, I think you asked, you know, what happens if  
6           that's not approved, or what happens if you decide  
7           you don't want to acquire the ferry. Those are  
8           giant unknowns, and it just didn't make sense, from  
9           our perspective, that you would leave those sorts  
10          of ambiguities out there when the simple solution  
11          is simply to move forward with this proceeding,  
12          let's get answers to these questions, and do this  
13          course, and then everybody can move forward with  
14          knowledge of what the Commission's order is with  
15          respect to the jurisdictional nature of these  
16          assets. So thank you.

17                        COMMISSIONER BROWN-BLAND: All right.  
18           Commissioner Clodfelter?

19                        COMMISSIONER CLODFELTER: Mr. Trathen,  
20           then, simple question. It is the Village's  
21           position that it's not satisfied with reliance on  
22           Section 7.7 and 8.7 of the Asset Purchase Agreement  
23           and the party's commitment that they will not  
24           modify or waive this?

1 MR. TRATHEN: Correct.

2 COMMISSIONER BROWN-BLAND: All right. I  
3 think that brings us to the conclusion of the  
4 hearing on the motion. And I think I'll go ahead  
5 and entertain a motion on your exhibits.

6 MR. STYERS: Oh, we would move into  
7 evidence the Preliminary Injunction Hearing 1 that  
8 is the Asset Purchase Agreement that has been  
9 presented -- identified earlier, and move into  
10 evidence Respondents Exhibits 1, 2, and 3, which  
11 are the three letters from the Village of Bald Head  
12 to the Commission, one to Bald Head Island Limited,  
13 that have been previously marked and introduced.  
14 We ask that they be moved into evidence in this  
15 hearing.

16 COMMISSIONER BROWN-BLAND: All right.  
17 Without objection?

18 MR. TRATHEN: No objection.

19 COMMISSIONER BROWN-BLAND: All right.  
20 That motion will be allowed, and Respondents  
21 Preliminary Injunction Hearing Exhibits 1 through 3  
22 will be received into evidence, as well as Hearing  
23 Preliminary Injunction Exhibit 1 and --

24 MR. STYERS: With the Hearing Exhibit 1

1 being confidential.

2 COMMISSIONER BROWN-BLAND: Yes. It  
3 would remain confidential, and I was just going to  
4 ask, would you get that filed for us?

5 MR. STYERS: Certainly would.

6 (Preliminary Injunction Hearing Exhibit  
7 1 and Respondents Preliminary Injunction  
8 Hearing Exhibits 1 through 3 were  
9 admitted into evidence.)

10 COMMISSIONER BROWN-BLAND: Thank you  
11 very much. At this time, we are gonna take a quick  
12 break before we come back to resume with the  
13 evidentiary hearing, and we'll come back on the  
14 record at 3:45.

15 (At this time, a recess was taken from  
16 3:28 p.m. until 3:47 p.m.)

17 COMMISSIONER BROWN-BLAND: Let's come  
18 back on the record. Once again, besides the  
19 matters that have already been entertained, any  
20 preliminary matters before we move into the  
21 evidentiary hearing?

22 (No response.)

23 COMMISSIONER BROWN-BLAND: All right.

24 That being the case, I'll turn the case over to the

1 Complainant.

2 MR. STYERS: Has the Commission decided  
3 whether to allow opening statements or not?

4 COMMISSIONER BROWN-BLAND: I think, if  
5 your openings can be very, very brief, like, yes,  
6 five minutes each side.

7 We'll start with the Village.

8 MR. TRATHEN: Thank you, Madam Chair.  
9 So you've read our complaint, you've seen the  
10 testimony of our witnesses, you've heard a little  
11 bit in advance of preliminary injunctions. I know  
12 you know about Bald Head Island, you know there are  
13 no cars on the island, you know it's a unique  
14 vacation destination enjoyed by hundreds of  
15 thousands of North Carolinians, so we'll start  
16 there.

17 But let me get to the heart of the  
18 matter for purposes of this hearing. This is --  
19 this proceeding is about ensuring continued public  
20 access to the precious asset of the state for  
21 future generations. We are at a critical juncture  
22 in the life of the island. The decision the  
23 Commission makes here will have lasting impacts.

24 For Limited -- and I think you just saw

1 that here just a second ago -- this is about how  
2 soon and how much they get paid on the way out the  
3 door.

4 For the Village and all those who enjoy  
5 the island, this is about preserving the island  
6 going forward.

7 Now, the transportation system that  
8 currently serves the island, which was established  
9 by the developer of the island, there are three  
10 principal revenue-generating components: the ferry,  
11 parking that serves the ferry and the terminal, and  
12 then the barge. You know that the parking and  
13 barge are not currently regulated, although the  
14 Commission approved the stipulation in the 2010  
15 rate case recognizing a linkage between parking and  
16 the ferry.

17 Now, the parking and the barge are, by  
18 far, the economic engine of the combined  
19 enterprise. Our testimony and analysis shows the  
20 extent to which this is true. And so the Village,  
21 in this proceeding, is asking the Commission to  
22 confirm what has been apparent to the users of the  
23 system for quite some time, that all three  
24 components are integral components of a unified,

1 interconnected common carrier transportation system  
2 serving the island, and they are subject to the  
3 regulatory authority of the Commission.

4 Now, how did we get here? I just want  
5 to, kind of, reset this really briefly.

6 Historically, it has been in the self-interest of  
7 the island's developer to make the transportation  
8 efficient and affordable to induce the public to  
9 invest in the island, whether this is by buying  
10 property, starting a business, or simply  
11 vacationing. The developer is now disengaging from  
12 the island, and the sale of the transportation  
13 system was one of the last big pieces remaining.

14 The issue of regulation has always been  
15 looming in the background, as we've cited testimony  
16 showing that this came up as early as 1998, but we  
17 haven't needed an answer to this question, because  
18 the developer's always been willing to smooth  
19 things over. But now that the developer is  
20 stepping back, we need an answer to the question  
21 for the future of the island.

22 Now, we've given you legal basis, and  
23 the post-hearing brief will tie it all together,  
24 but there is, kind of, a fundamental issue of

1 fairness here that I want to be sure to articulate  
2 for you. Having developed this unique community,  
3 having induced people from all stripes of life to  
4 make investments in the community over many years  
5 in reliance on the availability, reasonable access  
6 to the community, Limited isn't entitled to just  
7 break it all up on the way out the door and pretend  
8 like the Commission doesn't have anything to say  
9 about that.

10 They're trying to divest in such a way  
11 that they get paid monopoly valuations for what  
12 should be recognized as a fundamental utility  
13 business built on the backs of ratepayers. If they  
14 succeed, ratepayers will be left paying for all of  
15 this with no protection that the assets will remain  
16 used and useful in support of the utility operation  
17 in the future.

18 Now, you've already heard from Limited,  
19 and you'll hear it in the case, that no one's ever  
20 done this or that. First off, we disagree. We  
21 think there is ample evidence that parking  
22 facilities have been treated in North Carolina as  
23 utility assets, and that's not a controversial  
24 notion. Pretty much, any utility of any size

1       likely has something like a parking lot in their  
2       rate base. We've provided you authority for this.

3               But here's, kind of, the basic point.  
4       The fact is that no one on Limited's side of the  
5       room has been able to identify a single situation  
6       in North Carolina or anywhere else in the nation  
7       that presents comparable facts to those in issue  
8       here, the vibrant island community that is wholly  
9       dependent on a single monopoly provider for  
10      transportation to and from the island for delivery  
11      of goods and supplies and for parking that is  
12      essential to its service. So they -- there is a  
13      lot of talk about ferries and this and that, but  
14      none of them are on facts similar to what we have  
15      here. It's a unique situation calling for a  
16      solution that is custom to the situation. And  
17      thankfully, our utility statutes are written in a  
18      broad fashion so the Commission has flexible and  
19      sufficient power to protect the public. So thank  
20      you very much for your time.

21              COMMISSIONER BROWN-BLAND: Thank you for  
22      taking five minutes.

23              MR. RISINGER: Thank the Chair and the  
24      Commission for hearing us briefly. I'm



1 Brad Risinger here on behalf of the Respondents.

2 We'd like to just briefly, more as a  
3 grace note to all that you heard in the preliminary  
4 injunction hearings than as a formal statement, to  
5 address the notion that the Village has perpetuated  
6 throughout its pleadings and again here today that  
7 Limited and BHIT are somehow trying to favor their  
8 bottom line at the expense of the public interest  
9 on the way out the door. That's really unfair and  
10 it's misplaced and it's really misguided.

11 The Respondents are engaged, you know,  
12 under contract with SharpVue in a fair market value  
13 transaction that's an alternative to what they  
14 preferred, which was to sell these assets many  
15 million dollars under their fair market value to a  
16 public trust that they worked hard to establish.  
17 And we don't need to -- I'm not gonna belabor the  
18 point that the -- that it fell apart, and the  
19 evidence is pretty clear that the Village chose  
20 another path and wanted to own the assets  
21 themselves, and that's really fine. But then to  
22 say that when we turn to identify a purchaser that  
23 was very much like us, another private entity that  
24 would keep the properties together and make the

1 commitments that SharpVue has made regarding the  
2 availability and pricing of parking, I think it's a  
3 really unfair characterization that we're trying to  
4 walk away from the table with unjust rewards for  
5 the stewardship that our clients conducted over  
6 these assets for a long period of time.

7 It was a graceful consensus solution  
8 that turned out not to work, and our clients chose  
9 the best options that were available to them, and I  
10 think brought before, you know, the Commission and  
11 the public an asset purchaser that's based here,  
12 that has concerns about the growth of the island,  
13 and has acknowledged that the island succeeding is  
14 of utmost importance to them, as the company,  
15 because that's how the parking and the barge will  
16 succeed for them.

17 As a corollary, the Village has also  
18 suggested, you know, at various times in the  
19 proceeding, that -- that the -- the so-called  
20 inflated value of these assets that are -- the  
21 parking and barge assets being sold, were inflated  
22 on the backs of abusive pricing behavior on  
23 behalf -- on behalf of Limited and the conduct of  
24 these assets over time.

1                   And just for a second I want to, sort  
2                   of, set the -- the template against which that  
3                   statement is made. And that template is that  
4                   parking is very affordable on the island. The --  
5                   our clients have a significant investment in the  
6                   workers and the contractors who are the economic  
7                   engine of the island. The people that come to the  
8                   island every day that work and staff the businesses  
9                   that serve visitors on the island, and the  
10                  contractors that come out and build it, those folks  
11                  can park in the parking lots by buying an annual  
12                  pass for less than \$2 a day. And for folks on the  
13                  island, the longer-term folks that park in the  
14                  lots, they can also buy passes. And those passes  
15                  allow them to pick between two lots, one a little  
16                  closer on our campus than the other, and the  
17                  average price of those spots is under \$4 a day.  
18                  The visitors to the island -- the visitors that are  
19                  coming out to vacation, they pay \$12 a day. You  
20                  will hear evidence in the case that that's very  
21                  much consistent, if not below, what's charged in  
22                  many similar settings across the country. And all  
23                  in, if you consider all these prices and all of the  
24                  exits that we track in and out of our lots, the

1 average of those exits out is \$9. This is not a  
2 situation where Limited has taken advantage of  
3 their situation. They've made a substantial  
4 commitment to making it affordable for the people  
5 that drive the island to get out there, and they've  
6 made it reasonable for people that want to visit  
7 the island to get out there.

8 So we just wanted to make sure that, you  
9 know, as Mr. O'Donnell and others come up, we're  
10 set against that context that Limited has made a  
11 strong commitment for affordability of the parking,  
12 and SharpVue, coming in behind, as the partner in  
13 the transaction, has made commitments as well,  
14 regarding the availability of those spaces, and not  
15 reducing the number of those spaces without  
16 Commission consent, and they've made Commissions --  
17 commitments of at least four years on the CPIU  
18 index pricing for parking that's already low.

19 Another thing we'd like to add, just, as  
20 a final note before we get started is -- it's about  
21 the barge, and about what the barge is and what the  
22 barge isn't. The barge is regulated as a freight  
23 barge under federal law. It does not carry  
24 passengers and it is not allowed to under federal

1 law. The barge, under the appropriate regulations,  
2 is only allowed to have the crew and 12 additional  
3 folks, and those additional folks can be drivers of  
4 the -- of the vehicles that come on and off. It's  
5 a roll-on/roll-off barge, and it's more efficient  
6 for those people to be allowed to stay with those  
7 vehicles. If there are extra folks that come on  
8 board, those extra folks are directed to the ferry.  
9 We don't treat those -- Limited does not treat the  
10 people that ride with the vehicles as passengers.  
11 They are not charged a fee to ride with their --  
12 the vehicles that they're gonna drive off the barge  
13 on the other side.

14 Limited acknowledges that the barge  
15 contains all of the supplies that sustain the  
16 island. It's never been any question that that's  
17 what happens. So all of the fuel tankers and the  
18 grocery trucks and the construction supplies and  
19 the equipment and the materials that build the  
20 houses on the island, they all come across on the  
21 barge. And all the things that folks use to set up  
22 their residences on the island, whether they're  
23 gonna live there or they rent them, all the  
24 furniture and all the interior furnishings that

1 make up those residences come across.

2 But we agree with the Public Staff's  
3 view of that, in that we're not -- we shouldn't be  
4 subject to the double regulation that the Village  
5 proposes by suggesting that, if Mayflower comes  
6 across with the contents of someone's house who is  
7 relocating to the island, or if a furniture vendor  
8 comes across on the island and delivers household  
9 goods, and those folks are regulated as household  
10 good carriers under Chapter 62, there is no reason,  
11 as the Public Staff points out, for there to be  
12 double regulation for the barge, which is an  
13 intermodal carrier that just helps the regulated  
14 carriers who move those things make one journey  
15 across the river, you know, to allow them to finish  
16 their journey. We don't think it's appropriate  
17 under 62, we don't think there is any precedent for  
18 that regulation under 62, and we thank you for the  
19 time.

20 COMMISSIONER BROWN-BLAND: Okay. Thank  
21 you.

22 The case is now with the Village.

23 MR. TRATHEN: Thank you, Madam Chair.

24 If I could address a housekeeping matter first.

1 Our second witness is Brandy Munroe, and we had  
2 exchanged communications with counsel, and my  
3 understanding is that everyone had agreed to waive  
4 cross, and I had also understood from Commission  
5 staff that the Commissioners had no cross, and if  
6 that is the case, I would ask that she be excused  
7 at the appropriate time, if that's now or later.

8 COMMISSIONER BROWN-BLAND: All right.  
9 Mr. Trathen, if -- the witness Brandy Munroe may be  
10 excused without objection.

11 MR. TRATHEN: And is it appropriate now  
12 for me to enter her testimony into the record, or  
13 would you like to do that at a --

14 COMMISSIONER BROWN-BLAND: That's up to  
15 you, if you would like her to be the first witness  
16 in the transcript.

17 MR. TRATHEN: That would be fine. I  
18 would -- I would ask that her testimony consisting  
19 of six pages be entered into the record as if  
20 orally given.

21 COMMISSIONER BROWN-BLAND: There being  
22 no objection, that motion is allowed.

23 (Whereupon, the prefiled direct  
24 testimony of Brandy Munroe was copied

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into the record as if given orally from  
the stand.)

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Oct 19 2022



STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH

DOCKET NO. A-41, SUB 21

VILLAGE OF BALD HEAD ISLAND, )  
Complainant, )  
v. )  
BALD HEAD ISLAND TRANSPORTATION, )  
INC., BALD HEAD ISLAND LIMITED, LLC, )  
and SHARPVUE CAPITAL, LLC, )  
Respondents. )

DIRECT TESTIMONY OF  
BRANDY MUNROE  
ON BEHALF OF  
VILLAGE OF BALD HEAD  
ISLAND

**BEFORE THE NORTH CAROLINA UTILITIES COMMISSION****DOCKET NO. A-41, SUB 21**

**Direct Testimony of Brandy Munroe  
On Behalf of the Village of Bald Head Island  
August 9, 2022**

**Q. PLEASE STATE YOUR NAME, OCCUPATION, AND ADDRESS.**

A. My name is Brandy Munroe. I live on Bald Head Island and am the owner of Bald Head Island Services Rentals and Sales, Inc. (“Bald Head Island Services”). My home address is 7 Bufflehead Court, Bald Head Island, NC 28461. My business address is 2 E Merchants Row, Bald Head Island, NC 28461.

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

A. I am submitting this Direct Testimony on behalf of the Village of Bald Head Island (the “Village”).

**Q. PLEASE DESCRIBE YOUR RELATIONSHIP WITH BALD HEAD ISLAND.**

A. I live on the Island and have worked here for seventeen years. I’ve owned a business here for twelve years, and we have over 40 employees.

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

A. I received a business degree from the University of North Carolina at Wilmington in 2003. I worked my way through college managing a furniture store in Wilmington. After college I earned my real estate license and then became a rental reservationist for Bald Head Island Limited in 2004. A position became available for a real estate assistant for Bald Head Island Limited, which I accepted. I worked my way up as the lead assistant for the top two agents on the island. While in this position I found our clients needed professional cleaning from the new homes they purchased. I could never find the perfect cleaner who could meet our standards of the homes they purchased so I began cleaning myself on my time off. From there, the cleaning business just continued to grow. During this time, I found the management of most rental homes were lacking and subpar so I began managing a handful of homes. Over the last 10 years I have gone from 5 homes to over 130 homes. Bald Head Island Services is now the largest rental company on the Island. We provide property management, maintenance, cleaning, and services for the Island's many rental properties.

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

A. Bald Head Island encompasses 12000 acres of which only 2000 will be developed. We have 2000 acres of marshes, 7 miles of undevelopable beaches and 200 acres

of Virgin Maritime forest that has been deeded for perpetuity. This allows visitors from around the world to enjoy time standing still!

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

A. Some members of the public can reach the island by personal watercraft, but almost all members of the public reach Bald Head Island by using its ferry system.

**Q. WHAT MEMBERS OF THE PUBLIC RELY ON THE FERRY TO REACH THE ISLAND?**

A. Vacationers and homeowners rely on the ferry to reach the Island. But so do many employees, such as my own. Of my staff of 40, only three live on the Island. The rest commute from the mainland and rely on the ferry to reach the Island every day.

**Q. HAVE YOU EVER USED THE PARKING FACILITIES AT THE DEEP POINT MARINA?**

A. Yes. I use the parking facilities myself and have an annual pass. My employees also park at the parking facilities daily. The cost of parking and using the ferry is a major expense for my business.

**Q. PLEASE DESCRIBE YOUR USE OF THE PARKING FACILITIES AT THE DEEP POINT MARINA.**

A. Our whole lifestyle as well as our business depends on the ferry system. We purchase over a dozen yearly parking passes as well as daily parking for our part-time employees.

**Q. WHAT ARE YOUR PRIMARY CONCERNS ABOUT WHERE THINGS STAND TODAY WITH THE FERRY AND PARKING OPERATIONS?**

A. Aside from day-to-day concerns about things like whether the ferries will run on time or whether the parking lots will be full, I am worried that if the ferry system and parking facilities are bought by a company that is focused on maximizing profit as opposed to promoting the interests of the Island it will not take the concerns of businesses, Islanders, and vacationers into account. I am particularly concerned that the parking facilities—which are essential to use of the ferry and, ultimately, my business—will not have any regulatory oversight concerning their operations. Who will listen to service complaints? Who will protect us from excess rate increases—when the rates are already quite high for businesses like mine? Who will ensure that any future sales are in the public interest?

The Island is dependent on workers who come over to the Island every day. If business owners can't afford parking, this will trickle down to every business on the Island. If this happens the businesses will have to close causing loss of property values for homeowners, creating massive unemployment and huge tax dollars losses for Brunswick County.

**Q. ARE YOU AWARE OF ANYBODY WHO HAS USED THE PASSENGER FERRY WITHOUT HAVING TO PARK AT THE PARKING FACILITIES?**

A. I think that 99% of ferry passengers use the parking facility. Maybe there are a few people who come to the ferry by car service from the airport.

**Q. HAVE YOU EVER USED THE BARGE AND TUG SERVICE?**

A. Yes. Quite frequently.

**Q. PLEASE DESCRIBE YOUR USE OF THE BARGE AND TUG SERVICE.**

A. I rely on the barge to bring supplies over for my business. I have also used the barge to bring household goods over for my personal use. A few years ago I rented a U-Haul and brought over a bathroom vanity and light fixtures for my house. I called the barge to reserve a spot. I rode over on the barge with the U-Haul. Everyone on the Island knows that the only way to get furniture or other large household goods over the Island is by using the barge.

**Q. DOES THIS COMPLETE YOUR DIRECT TESTIMONY?**

A. Yes.

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MR. TRATHEN: She also prepared a summary of her testimony, and I also ask that that be entered into the record.

COMMISSIONER BROWN-BLAND: And that motion is, likewise, allowed.

(Whereupon, the prefiled summary testimony of Brandy Munroe was copied into the record as if given orally from the stand.)

**Summary of the Direct Testimony of Brandy Munroe  
On Behalf of the Village of Bald Head Island**

My direct testimony discusses the impact of the Deep Point ferry, parking, and barge operations on island businesses.

I first provide an overview of my business. I am the owner of Bald Head Island Services Rentals and Sales, Inc. (“Bald Head Island Services”). We are the largest rental company on the Island. We provide property management, maintenance, cleaning, and services for over 130 rental properties on the Island, and have over 40 employees.

Next, I discuss the impact of the parking facilities on my businesses. Of my staff of 40, only three live on the Island. The rest commute from the mainland and rely on the ferry to reach the Island every day. Bald Head Island Services purchases over a dozen yearly parking passes as well as daily parking for our part-time employees. The cost of parking and using the ferry is a major expense for my business.

My testimony notes my concerns regarding the regulatory status of the parking facilities. In the absence of regulatory oversight, I am worried that if the ferry system and parking facilities are bought by a company that is focused on maximizing profit as opposed to promoting the interests of the Island it will not take the concerns of businesses, Islanders, and vacationers into account. If business owners can’t afford parking, this will trickle down to every business on the Island. If this happens the businesses will have to close causing loss of property values for homeowners, creating massive unemployment and huge tax dollars losses for Brunswick County.

Lastly, I discuss my business and personal use of the barge and tug service. I rely on the barge to bring supplies over for my business, and have used the barge to bring



household goods over for my personal use, since the only way to get furniture or other large household goods to the Island is by using the barge.

This concludes the summary of my Direct Testimony.

1 MR. TRATHEN: Thank you very much. I  
2 would call George Corvin.

3 Whereupon,

4 GEORGE CORVIN,  
5 having first been duly sworn, was examined  
6 and testified as follows:

7 COMMISSIONER BROWN-BLAND: All right.  
8 You may be seated.

9 Mr. Trathen?

10 DIRECT EXAMINATION BY MR. TRATHEN:

11 Q. Good afternoon. Could you please state your  
12 name and address for the record?

13 A. Yes, sir. My name is George Corvin. My  
14 address on Bald Head Island is 105 North Bald Head Wynd  
15 in Bald Head Island, North Carolina 28461.

16 Q. Mr. Corvin, did you cause to be filed in this  
17 proceeding direct testimony consisting of nine pages  
18 and no exhibits?

19 A. Yes, sir, I did.

20 Q. Do you have any corrections to your  
21 testimony?

22 A. I do not.

23 Q. If I asked you the questions in these  
24 prefiled submissions today, would your answers be the

1 same?

2 A. They would.

3 Q. Did you also cause to be filed in this  
4 proceeding a summary of your testimony?

5 A. I did.

6 Q. And is the summary true and accurate to the  
7 best of your information and belief?

8 A. Yes, sir, it is.

9 MR. TRATHEN: Madam Chair, I'd ask that  
10 Mr. Corvin's direct testimony be copied into the  
11 record as if orally given from the stand.

12 COMMISSIONER BROWN-BLAND: The  
13 testimony -- direct -- prefiled direct testimony of  
14 witness George Corvin will be received into the  
15 record as evidence at this time and treated as if  
16 given orally from the witness stand.

17 (Whereupon, the prefiled direct  
18 testimony of George Corvin was copied  
19 into the record as if given orally from  
20 the stand.)

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STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH

DOCKET NO. A-41, SUB 21

VILLAGE OF BALD HEAD ISLAND, )  
Complainant, )

v. )

BALD HEAD ISLAND TRANSPORTATION, )  
INC., BALD HEAD ISLAND LIMITED, LLC, )  
and SHARPVUE CAPITAL, LLC, )

Respondents. )

DIRECT TESTIMONY OF  
GEORGE CORVIN  
ON BEHALF OF  
VILLAGE OF BALD HEAD  
ISLAND

OFFICIAL COPY

Aug 19 2022

**BEFORE THE NORTH CAROLINA UTILITIES COMMISSION****DOCKET NO. A-41, SUB 21****Direct Testimony of George Corvin****On Behalf of the Village of Bald Head Island****August 9, 2022**

1 **Q. PLEASE STATE YOUR NAME AND ADDRESS.**

2 A. My name is George Corvin. My wife, Karen, and I own a vacation home on Bald  
3 Head Island. Our address on the island is 105 North Bald Head Wynd, Bald Head  
4 Island, NC 28461.

5

6 **Q. ON WHOSE BEHALF ARE YOU SUBMITTING THIS DIRECT**  
7 **TESTIMONY?**

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

10

11 **Q. PLEASE DESCRIBE YOUR RELATIONSHIP WITH BALD HEAD**  
12 **ISLAND.**

13 A. My wife and I purchased our home on Bald Head Island in 2016. Before purchasing  
14 our home on Bald Head Island, we vacationed on the island annually for eighteen  
15 years.

1           We are currently “part time” islanders, although our goal is to someday  
2           move to the island permanently. Right now, we come to the island at least every  
3           other weekend and spend several weeks each year at our home for holidays and  
4           vacation.

5  
6   **Q.   PLEASE DESCRIBE YOUR EDUCATIONAL AND PROFESSIONAL**  
7   **EXPERIENCE.**

8   A.   I graduated from the University of Alabama School of Medicine in Birmingham in  
9           1992. I completed a four-year residency in General Psychiatry at the Medical  
10          College of Georgia in Augusta, GA in 1996 and was Chief Psychiatric Resident for  
11          the MCG Psychiatric Training Program from 1995 to 1996. After finishing my  
12          residency, I completed a fellowship in Forensic Psychiatry with the United States  
13          Department of Justice.

14                After completing my fellowship, I began working in private practice in  
15                Raleigh, North Carolina. Currently, I split my time between my private practice and  
16                my forensic psychiatry consulting practice, through which I complete civil and  
17                criminal evaluations to be used in court proceedings. I am board certified in both  
18                general and forensic psychiatry, and I hold active medical licenses in North  
19                Carolina and Kentucky.

20  
21   **Q.   PLEASE PROVIDE A SUMMARY OF YOUR TESTIMONY.**

22   A.   It seems critical to me that the parking facility and barge be regulated as is currently  
23          the case with the ferry and tram services. To be quite honest, I was surprised when

1 I learned that this was not already the case. Bald Head's ferry, tram, parking, and  
2 barge access are all integrally interrelated. Interruption of user access to any of  
3 those assets inevitably endangers access (and the productive benefit of access) to  
4 the others.

5 If homeowners, employees, and vacationers cannot rely upon reasonable  
6 access to parking at Deep Point, it doesn't matter how well the regulated assets  
7 (ferries and trams) are run, because people will not be able to access them (or will  
8 come to believe that their access to these services in the future is at risk). This is  
9 particularly problematic given that there are no viable alternatives to these assets.  
10 Individually and as a whole, they are effectively the only means to move people  
11 and materials on and off the island, and the failure of any of them puts Bald Head  
12 island at great risk.

13 These services are the lifeblood of Bald Head Island, and without each of  
14 them working effectively in conjunction with the others, those who live, work, or  
15 vacation on the island will be seriously impacted. Even the perception that access  
16 to these services might be interrupted has serious implications. For example,  
17 concerns about BHI Transportation in recent months has undoubtedly contributed  
18 to skyrocketing slip values at the marina and fueled the outcry in response to BHI  
19 Limited's recent move to reduce the availability of water-taxi service to/from the  
20 island.

21 I am generally not a fan of government regulation, but there are situations  
22 where regulation of this sort is essential, and in my opinion this is without a doubt  
23 one of those situations.

1 **Q. PLEASE PROVIDE A BRIEF OVERVIEW OF BALD HEAD ISLAND AND**  
2 **ITS SIGNIFICANCE TO THE CITIZENS OF NORTH CAROLINA.**

3 A. Bald Head Island is important to many different people. It is where people vacation,  
4 make a living, or choose to live full time. Bald Head Island is a very unique place,  
5 not only to North Carolina, but to the country. What Bald Head provides is  
6 important from a conservation, nature, and educational standpoint. The island has  
7 its own unique history and cultural significance. In deciding to purchase a home  
8 on the island, my wife and I decided that we wanted to be part of this community  
9 to help protect this unique environment.

10 Without protecting the parking facilities and barge, all of the things that  
11 make Bald Head unique are in danger. Even if people simply believe their ability  
12 to move back and forth between the island and mainland is threatened, the island's  
13 economy will suffer. It seems the market is already reflecting people's anxieties  
14 about the potential transportation system sale. For example, prices for boat slips—  
15 of which there are a limited number—are skyrocketing. Slips that sold for \$50,000  
16 several years ago are now selling for approximately \$275,000, and there is currently  
17 a slip in the marina listed for \$1,100,000. I believe this stunning increase in prices  
18 is driven, at least in part, by fear over future access to the island.

19 If people are discouraged from visiting or living on Bald Head Island, this  
20 change will have massive implications beyond the island. For example, Brunswick  
21 County relies heavily on Bald Head Island's tax base. My daughter teaches in a  
22 Title I school in Brunswick County, and I have witnessed firsthand how important



1 that tax revenue is to her students. That tax revenue depends on the island's tourism  
2 industry.

3  
4 **Q. HOW DOES THE PUBLIC REACH BALD HEAD ISLAND?**

5 A. The ferry is the only means by which the public can reach Bald Head Island. While  
6 individuals operating their own boats (and who have access to dockage on the  
7 island) can access the island without use of the ferry, the capacity for this means of  
8 access is highly limited. For example, private dockage on the island is extremely  
9 limited, and with some regularity, maritime conditions are such that transiting to  
10 the island from Southport is hazardous for small craft. Simply stated, the vast  
11 majority of individuals who vacation, live, or work on Bald Head Island are unable  
12 to access the island by any means other than use of the ferry system. Without  
13 reasonable access to on-site parking at Deep Point, it would become extremely  
14 difficult, if not impossible, for these same individuals to access the ferry.

15  
16 **Q. WHAT MEMBERS OF THE PUBLIC RELY ON THE FERRY TO**  
17 **REACH THE ISLAND?**

18 A. It's not just vacationers who rely on the ferry. People who work in the island and  
19 make their living there also rely on the ferry for affordable transportation to work.  
20 People mistakenly think that the island is just a "playground for rich," but families  
21 from all backgrounds vacation on the island year after year. Families return to the  
22 island because of its unique history and environment and because it is an accessible  
23 "semi-tropical" location. This is a place where they can teach their children about

1 the importance of nature and conservation, or the history of the lighthouse – and do  
2 so in an ecosystem that is unique in North Carolina. There are not many  
3 communities like this in United States.

4 If it becomes financially unsound to use the parking facilities and ride the  
5 ferry, we risk running off those families and the workers on which the island relies.  
6

7 **Q. HAVE YOU EVER USED THE PARKING FACILITIES AT THE DEEP  
8 POINT MARINA?**

9 A. Yes. We use the parking facilities frequently, and have done so for years. I have  
10 an annual pass, although I have also used daily parking in years past.  
11

12 **Q. PLEASE DESCRIBE YOUR USE OF THE PARKING FACILITIES AT  
13 THE DEEP POINT MARINA.**

14 A. Because my wife and I still work in Raleigh, we will often come down to the island  
15 on the weekends. Each time, we must park at the parking facilities at the Deep  
16 Point Marina.

17 Ferry riders have to be able to use a car. The ferry landing at Deep Point  
18 Marina is located in a relatively isolated/remote area. There is no other access to  
19 parking in that area and no other reliable and readily accessible way to get to the  
20 ferry other than driving to the marina.  
21

1 **Q. ARE YOU AWARE OF ANYBODY WHO HAS USED THE PASSENGER**  
2 **FERRY WITHOUT HAVING TO PARK AT THE PARKING FACILITIES?**

3 A. I am not aware of anyone who has used the ferry without having to park at the  
4 parking facilities.

5  
6 **Q. HAVE YOU EVER USED THE BARGE AND TUG SERVICE?**

7 A. Yes.

8  
9 **Q. PLEASE DESCRIBE YOUR USE OF THE BARGE AND TUG SERVICE.**

10 A. I have used the barge to transport furniture I was bringing to the island in 2016. I  
11 rented a 26 foot truck to bring over furniture for my house. I called up the barge to  
12 reserve a spot. I rode over on the barge with my truck. The workers on the barge  
13 were well aware that I was transporting furniture. I have also arranged for other  
14 large items to be delivered to our home over the years by use of the barge service.  
15 It is well known on the island that this is the only way to get furniture and other  
16 large household items transported to the island.

17  
18 **Q. DO YOU HAVE ANY CONCLUDING THOUGHTS?**

19 A. I would urge the Commission to exercise its authority to help ensure that the island  
20 is preserved for the public's future use. As the developer of the island phases out  
21 of its involvement with the island, I fear we are at a tipping point – for the better or  
22 for the worse. As I said, I was surprised to learn that the parking and barge were  
23 not already regulated since they are integrally related with the ferry service. If the

1 assets are sold such that some properties are subject to regulation and others are  
2 not, I fear it will not be possible for the public to remain confident that fair and  
3 reasonable access to the island will continue in the future.

4

5 **Q. DOES THIS COMPLETE YOUR DIRECT TESTIMONY?**

6 A. Yes.

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MR. TRATHEN: Also ask that his summary be entered into the record at the appropriate time.

COMMISSIONER BROWN-BLAND: The summary will be received into evidence at this time.

(Whereupon, the prefiled summary testimony of George Corvin was copied into the record as if given orally from the stand.)

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Oct 19 2022

**Summary of the Direct Testimony of George Corvin  
On Behalf of the Village of Bald Head Island**

In my direct testimony I discuss my perspective as a Bald Head Island homeowner.

Because my wife and I still work in Raleigh, we will often come down to the Island on the weekends. Each time, we must park at the parking facilities at the Deep Point Terminal. Due to its remote location, there is no other reliable and readily accessible way to get to the ferry other than driving to Deep Point. And there is no alternative way for the public to get to the Island—the ferry is the only way for the public, including residents, visitors, and workers, to reach the Island.

As I explain in my direct testimony, it seems critical to me that the parking facility and barge be regulated like the ferry and tram services. Bald Head's ferry, tram, parking, and barge access are all integrally interrelated. These services are the lifeblood of Bald Head Island, and without each of them working effectively in conjunction with the others, those who live, work, or vacation on the Island will be seriously impacted. Even the perception that access to these services might be disrupted has serious implications.

My testimony emphasizes that families from all backgrounds vacation on the Island year after year to take advantage of the unique history and environment that the Island offers. Without affordable and available public access to the Island—which includes access to parking and the barge—we risk running off those families and workers on which the Island relies.

If people are discouraged from visiting or living on Bald Head Island, this change will have massive implications beyond the Island. For example, my daughter teaches in a

Title I school in Brunswick County, and I have witnessed firsthand how important that tax revenue is to her students. That tax revenue depends on the Island's tourism industry.

The barge is also an important service. It is well known on the Island that this is the only way to get furniture and other large household items transported to the Island. I have myself used the barge to transport furniture in a U-haul back in 2016.

I am generally not a fan of government regulation, but there are situations where regulation of this sort is essential, and in my opinion this is one of those situations.

This concludes the summary of my Direct Testimony.

1 MR. TRATHEN: Witness is available for  
2 cross examination.

3 MR. RISINGER: I would like to advise  
4 the Chair, the Respondents, BHIL and BHIT, have no  
5 questions for witness Corvin.

6 COMMISSIONER BROWN-BLAND: All right.

7 MR. FERRELL: No questions from  
8 SharpVue.

9 COMMISSIONER BROWN-BLAND: All right.  
10 Are there questions from the Commission?

11 (No response.)

12 COMMISSIONER BROWN-BLAND: There are no  
13 questions, so, Mr. Corvin, you -- well, I'll  
14 hold -- let me see. No. I already received your  
15 testimony. There are no exhibits to this, so,  
16 Mr. Corvin, you may be excused.

17 THE WITNESS: Thank you, Madam Chair.

18 COMMISSIONER BROWN-BLAND: That may be a  
19 record.

20 MS. HAWKINS: I call David Cox.

21 COMMISSIONER BROWN-BLAND: Mr. Cox,  
22 thank you.

23 Whereupon,

24 DAVID COX,



1           having first been duly sworn, was examined

2                           and testified as follows:

3                           COMMISSIONER BROWN-BLAND: All right.

4           Please be seated.

5                           Ms. Hawkins?

6   DIRECT EXAMINATION BY MS. HAWKINS:

7           Q.     Good afternoon. Please state your name and  
8           official address for the record.

9           A.     Yes. My name is David Cox. I am the acting  
10          director for the Village of Bald Head Island. I live  
11          at 9853 North Olde Towne Wynd in Belville,  
12          North Carolina.

13                          COMMISSIONER BROWN-BLAND: All right.

14          Just -- Madam Court Reporter, are you hearing?

15                          (Court Reporter responds.)

16                          COMMISSIONER BROWN-BLAND: All right.

17          Be sure you speak into the microphone.

18                          THE WITNESS: Sorry.

19                          COMMISSIONER BROWN-BLAND: All right.

20          Q.     Mr. Cox, did you cause to be filed in this  
21          proceeding direct testimony consisting of nine pages  
22          and no exhibit?

23          A.     Yes.

24          Q.     And do you have any corrections to your

1 testimony?

2 A. No.

3 Q. If I asked you the questions in these  
4 prefiled submissions today, would your answers be the  
5 same?

6 A. Yes, they would be.

7 Q. Did you cause to be filed in this proceeding  
8 a summary of your testimony? A summary of your  
9 testimony?

10 A. I'm sorry?

11 Q. Did you cause to be filed in this  
12 proceeding --

13 A. Yes, yes.

14 Q. -- a summary of your testimony?

15 A. Yes.

16 Q. And is that summary true and accurate to the  
17 best of your information and belief?

18 A. Yes.

19 MS. HAWKINS: Madam Chair, I would ask  
20 that Mr. Cox's direct testimony be copied into the  
21 record as if given orally from the stand.

22 COMMISSIONER BROWN-BLAND: There being  
23 no objection, that motion is allowed.

24 (Whereupon, the prefiled direct

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testimony of David Cox was copied into  
the record as if given orally from the  
stand.)

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Oct 19 2022

STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH

DOCKET NO. A-41, SUB 21

VILLAGE OF BALD HEAD ISLAND, )  
Complainant, )

v. )

BALD HEAD ISLAND TRANSPORTATION, )  
INC., BALD HEAD ISLAND LIMITED, LLC, )  
and SHARPVUE CAPITAL, LLC, )

Respondents. )

DIRECT TESTIMONY OF  
DAVID COX  
ON BEHALF OF  
VILLAGE OF BALD HEAD  
ISLAND

OFFICIAL COPY

Aug 19 2022

**BEFORE THE NORTH CAROLINA UTILITIES COMMISSION****DOCKET NO. A-41, SUB 21****Direct Testimony of David Cox****On Behalf of the Village of Bald Head Island****August 9, 2022**

1 **Q. PLEASE STATE YOUR NAME, OCCUPATION, AND BUSINESS ADDRESS.**

2 A. My name is David Cox, and I am the Director of Technology for the Village of Bald Head  
3 Island (the "Village"). I have served in this role since July of 2007. As the Village's  
4 technology officer, I am responsible for managing all of the Village's hardware, software,  
5 and telecommunications assets and need; I oversee the full spectrum of software and  
6 hardware needed to operate a local government. I also am responsible for the Village's  
7 Island Package Center, which serves as the distribution hub for U.S. Mail, Federal Express  
8 and UPS packages coming to and from the island. My business address is 106 Lighthouse  
9 Wynd, Bald Head Island, NC 28461.

10

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

12 A. I am submitting this Direct Testimony on behalf of the Village.

13

14 **Q. PLEASE DESCRIBE YOUR WORK EXPERIENCE ON THE ISLAND.**

15 A. I started working for the Village in May of 1999 as a law enforcement officer. As an officer,  
16 I was responsible for enforcing the Village's local ordinances and North Carolina's laws,

1 as well as maintaining the peace and safety of the island. In 2007, I started my current  
2 position as the Director of Technology.

3  
4 **Q. PLEASE DESCRIBE YOUR EDUCATIONAL AND PROFESSIONAL**  
5 **EXPERIENCE.**

6 A. I received a liberal arts degree from UNC Wilmington. After graduation, I started as a law  
7 enforcement officer for the Village. I have since received a municipal management  
8 certification and a chief information officer certification from UNC Chapel Hill.

9  
10 **Q. PLEASE PROVIDE A BRIEF OVERVIEW OF BALD HEAD ISLAND AND ITS**  
11 **SIGNIFICANCE TO THE CITIZENS OF NORTH CAROLINA.**

12 A. Bald Head Island is a barrier island, located three miles off the mainland of the southern  
13 coast of North Carolina. The island is only accessible by boat. The island is fueled by a  
14 tourism economy. Tourists come to the island to enjoy its 10,000 acres of wildlife preserves  
15 and beaches and, for many, to stay at one of the island's private residences.

16  
17 **Q. HOW DOES THE PUBLIC REACH BALD HEAD ISLAND?**

18 A. The ferry is the only way the public can reach the island.

19  
20 **Q. WHAT MEMBERS OF THE PUBLIC RELY ON THE FERRY TO REACH THE**  
21 **ISLAND?**

22 A. The first category of passengers that comes to mind would be the island's full-time  
23 residents This is a small group of between approximately 300 people, although they are

1 frequent users of the service.

2 A larger and daily group of passengers would be the employees who support the  
3 island; this would be employees of the Village, the Bald Head Island Club, the Bald Head  
4 Island Conservancy, or one of the commercial establishments on the island. These sorkder,  
5 such as myself, rely on the ferry every workday to get on and off the island.

6 Another large group of passengers would be the construction contractors who come  
7 to the island to work on residential and commercial construction projects. This includes  
8 plumbers, electricians, carpenters, and various other tradesman. There always is  
9 construction on the island, whether it is in new homes, new commercial establishments, or  
10 repairs and renovations to existing structures.

11 There are also the daily visitors—we call them “day trippers.” These are tourists  
12 who visit the island for a day to tour Old Baldy Lighthouse or the Conservancy, shop and  
13 dine on the island, or maybe visit one of the island’s beaches or maritime forest.

14 Last, there are the vacationers. These are the members of the public who stay at a  
15 house, condo or inn on the island, most often during the summer months. The vacationers  
16 could either be renting or staying at their own or a friend’s vacation home. The island’s  
17 economy is centered on the tourism industry, which makes these vacationers the engine for  
18 our economy.

19  
20 **Q. HAVE YOU EVER USED THE PARKING FACILITIES AT THE DEEP POINT**  
21 **MARINA?**

22 **A.** Yes. Although I have worked on the island for over two decades, I have never lived on the  
23 island. Therefore, I have had to drive to the ferry terminal every workday for the past

1 twenty plus years. At first, I was parking at the Indigo Plantation marina when the ferry  
2 left from there, but years ago the ferry moved to the current Deep Point terminal facility.

3  
4 **Q. PLEASE DESCRIBE YOUR USE OF THE PARKING FACILITIES AT THE DEEP  
5 POINT MARINA.**

6 A. Because I am in charge of the Village's technology, I try to arrive earlier than other staff  
7 to make sure the servers are booted and the systems are running by the time everybody else  
8 arrives. I typically arrive at the parking facilities at 5:00 a.m. and ride on the 5:30 a.m.  
9 contractors ferry, which is the first ferry of the day. The contractors ferry is a discount ferry  
10 for workers on the island that primarily serves contractors and other workers on the island.

11 I park in the "Contractors Lot," which is where contractors and Village employees  
12 park. Overnight parking is prohibited in the Contractors Lot. Therefore, when I arrive for  
13 the 5:30 a.m. contractors ferry, the Contractors Lot is pretty empty because all of the  
14 vehicles from the day before have left. I am part of the first wave of ferry passengers for  
15 the new day. After I park and catch the ferry, the Contractors Lot starts to fill up in the  
16 coming hours.

17 I typically return to my car on the 3:00 p.m. contractors ferry, which is the first  
18 contractors ferry to leave the island in the afternoon. Because this is the first contractor  
19 ferry to carry workers off the island, the Contractors Lot is generally at or near capacity  
20 when I arrive back at my car.

21  
22 **Q. ARE YOU AWARE OF ANYBODY WHO HAS USED THE PASSENGER FERRY  
23 WITHOUT HAVING TO PARK AT THE PARKING FACILITIES?**



1 A. I am not aware of anybody who has taken the ferry and has parked anywhere other than  
2 the parking facilities at the terminal. To my knowledge, the parking facilities at Deep Point  
3 are the only local parking facility in the general vicinity. I am not aware of any other public  
4 parking in the area.

5 I guess one could try to park in a commercial lot somewhere else and walk to the  
6 terminal. The closest lot of which I am aware would be the Circle K on Stewart Avenue in  
7 Southport, however. I cannot imagine anybody actually parking there to ride the ferry. The  
8 Circle K lot is about a mile and a half away from the terminal. Plus, it is not true public  
9 parking; there is no guarantee your car would not be towed by the time you returned to the  
10 Circle K. It also cannot hold the hundreds of cars that park at the Deep Point terminal every  
11 day.

12 I am also not aware of any public bus that travels to the Deep Point terminal. To  
13 ride the ferry, you must take a vehicle to the terminal and you must park that vehicle in the  
14 terminal's parking facilities. From my perspective, to ride the ferry, you have to pay for a  
15 ferry ticket plus you have to pay for parking. There is no other way.

16

17 **Q. HAVE YOU EVER USED THE BARGE AND TUG SERVICE?**

18 A. I have. I first used the barge as a law enforcement officer whenever we would need to  
19 remove municipal vehicles from the island to have them serviced on the mainland.

20 As of late, I have had far more interaction with the barge service in my role  
21 overseeing the Island Package Center (the "IPC"). The IPC is the delivery hub for packages  
22 and mail that come to and from the island. The Village took over the IPC back in 2015;  
23 prior to that, it was operated by Bald Head Island Limited, LLC. When the Village took

1 over the IPC, a key part of the responsibility was to manage the tracking and logistics  
2 software needed to ensure packages and mail get to their intended recipients. This was  
3 another IT project for the Village, which required a lot of involvement by me. I have  
4 retained oversight over the IPC ever since. The IPC's operations are dependent on the  
5 barge.

6  
7 **Q. CAN YOU TELL US ABOUT THE IPC'S OPERATIONS?**

8 A. The IPC is a very busy place. On average, it handles about 7,000 packages a month. Local  
9 carriers, such as UPS, FedEx, and DHL, do not deliver packages to the island; rather, they  
10 deliver packages to a warehouse on the mainland and then the Village transports the  
11 packages to the IPC on the island via the barge. In other words, once the package arrives  
12 at the material warehouse, it is "released" from carrier and the carrier considers it  
13 "delivered." At that point, the Village takes over.

14  
15 **Q. CAN YOU TALK MORE ABOUT THIS PROCESS?**

16 A. At the warehouse, we organize the packages onto pallets that are then placed on warehouse  
17 trucks. The trucks are then driven onto the barge to be transported to the island. The Village  
18 pays \$95 per pallet of packages that is transported on the barge. Last year, the Village spent  
19 about \$107,000 in barge fees for the transportation of pallets.

20 Once on the island, the trucks drive to the IPC loading dock to unload the pallets.  
21 After the warehouse truck delivers the package pallets to the IPC, we unload them, manifest  
22 the packages, assign owners by address, and then distribute the packages to the island  
23 addresses.

1           The IPC also offers islanders point of sale operations for the receipt of packages  
2 that islanders wish to send out by a local carrier. Those packages are transported to the  
3 mainland via the barge as well. The local carriers pick up the packages at the mainland  
4 warehouse.

5  
6 **Q.   WHAT TYPES OF ITEMS ARE DELIVERED TO THE MAINLAND**  
7 **WAREHOUSE TO BE TRANSPORTED ON THE BARGE TO THE IPC?**

8 A.   It seems like everything and then some. Certainly a lot of household goods. Short of  
9 carrying an item onto the passenger ferry, the only way to get a household good to the  
10 island is by barge. This is especially true for large household items. Because there are size  
11 constraints on what you can carry on the passenger ferry, all big household items come  
12 over on the warehouse truck and barge.

13           I think I have seen everything you could imagine as a household item come through  
14 IPC: chairs, lamps, mattresses, book shelves, TVs, kitchen tables, refrigerators, grills—you  
15 name it. For those on the island, the barge carries everything plus the kitchen sink. And I  
16 mean that literally: I have even seen a kitchen sink arrive at the IPC after having come over  
17 on the barge.

18  
19 **Q.   OTHER THAN THE DELIVERY SERVICE YOU DESCRIBED, HOW ELSE**  
20 **MIGHT A PERSON GET HOUSEHOLD GOODS TO THE ISLAND?**

21 A.   Assuming we are talking about items that one cannot carry-on to the passenger ferry, the  
22 only way would be private boat or the barge. For example, you could transport items in a  
23 personal vehicle – or a rented vehicle or trailer – by driving it on the barge. And many

1 people on the island do exactly that.

2

3 **Q. DOES THIS COMPLETE YOUR DIRECT TESTIMONY?**

4 **A. Yes.**

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MS. HAWKINS: And I would also ask that his summary be entered into the record.

COMMISSIONER BROWN-BLAND: And his summary, likewise, will be entered into the record at this time.

(Whereupon, the prefiled summary testimony of David Cox was copied into the record as if given orally from the stand.)

**Summary of the Direct Testimony of David Cox  
On Behalf of the Village of Bald Head Island**

The purpose of my testimony is to explain the reliance of island employees on the parking facilities at the Deep Point marina, and to discuss the role of the barge in package and household goods transportation to the island.

I first discuss my work experience on the island. I have been the Director of Technology for the Village of Bald Head Island (the “Village”) since July of 2007. As the Village’s technology officer, I am responsible for managing all of the Village’s hardware, software, and telecommunications assets and needs. I also am responsible for the Village’s Island Package Center (the “IPC”), which serves as the distribution hub for U.S. Mail, Federal Express and UPS packages coming to and from the island. I started working for the Village in May of 1999 as a law enforcement officer.

Next, I discuss my reliance on the parking facilities at the Deep Point marina. Although I have worked on the island for over two decades, I have never lived on the island. Therefore, I have had to drive and park at the ferry terminal every workday for the past twenty plus years. I am not aware of anybody who has taken the ferry and has parked anywhere other than the parking facilities at the terminal. The closest commercial parking lot of which I am aware would be the Circle K on Stewart Avenue in Southport, which is about a mile and a half away from the terminal, is not true public parking, and cannot hold the hundreds of cars that park at the Deep Point terminal every day. I am also not aware of any public bus that travels to the Deep Point terminal.

I then discuss the dependence of the IPC on the barge and tug service. The IPC is the delivery hub for packages and mail that come to and from the island, and handles an

average of about 7,000 packages a month. Local carriers, such as UPS, FedEx, and DHL, do not deliver packages to the island; rather, they deliver packages to a warehouse on the mainland for transport by the barge to the IPC on the island. The IPC also offers islanders point of sale operations for the receipt of packages that islanders wish to send out by a local carrier. Those packages are transported to the mainland via the barge as well.

Because there are size constraints on what you can carry on the passenger ferry, all big household items come over on the warehouse truck and barge. I think I have seen everything you could imagine as a household item come through the IPC via the barge. Individuals can also direct transport items on the barge by using a personal vehicle or rented vehicle or trailer.

This concludes the summary of my Direct Testimony.

1 MS. HAWKINS: The witness is available  
2 for cross examination.

3 MR. RISINGER: Limited and BHIT have no  
4 questions for Mr. Cox.

5 COMMISSIONER BROWN-BLAND: And SharpVue?

6 MR. FERRELL: SharpVue has no questions.

7 COMMISSIONER BROWN-BLAND: Are there  
8 questions from the Commission?

9 Commissioner McKissick?

10 EXAMINATION BY COMMISSIONER MCKISSICK:

11 Q. Just one or two questions, sir. In terms of  
12 parking and accessibility of parking, I believe in your  
13 testimony you speak about parking -- the closest  
14 parking being roughly around where the Circle K is on  
15 Stewart Avenue.

16 Can you elaborate a little bit more about  
17 what kind of parking is available there and how far  
18 that is away from the terminal?

19 A. The Circle K is a convenience store that is  
20 the closest commercial parking lot. It's actually --  
21 it's not -- it's not a public parking facility. It's a  
22 commercial parking area. That's the closest thing to  
23 Deep Point that would be considered a parking lot, and  
24 it's approximately -- maybe just a small amount over a



1 mile.

2 Q. Roughly over a mile?

3 A. Yeah.

4 Q. So there's -- not as if there is parking  
5 spaces available where you pay a fee for parking, it  
6 just relates to the --

7 A. Basically it's a gas station and car wash  
8 with a parking lot attached to it.

9 Q. I see.

10 A. It's just the first open stop where you could  
11 park, but you would have to make arrangements with the  
12 owners. There is no -- like I say, it's not arranged  
13 public parking, it's just a gas station parking lot.

14 Q. And is there parking available near downtown  
15 Southpoint -- Southport?

16 A. There are public spaces available in downtown  
17 Southport, but that's much farther down. That would be  
18 several miles from Deep Point.

19 Q. Several miles?

20 A. Yes.

21 Q. Okay. And what kind of parking would be  
22 available there, if you know?

23 A. Just storefront parking.

24 Q. Storefront parking, and that would be about

1 it?

2 A. That would be it.

3 Q. So basically the parking available there near  
4 the Deep Point terminal is the only large parking area  
5 that's immediately accessible to people that might want  
6 to use the ferry?

7 A. That would be correct.

8 Q. Thank you. I don't have any further  
9 questions.

10 COMMISSIONER BROWN-BLAND: Commissioner  
11 Duffley?

12 EXAMINATION BY COMMISSIONER DUFFLEY:

13 Q. Good afternoon. I have a question for you.

14 A. Sure.

15 Q. So what is your commute from your house to  
16 the point on when you go into work?

17 A. Okay. I live in Belville. I generally take  
18 Highway 133, which is about 28 miles. My total travel  
19 time is about 35 minutes from driveway to parking lot,  
20 and I generally -- parking lot is at 1301 Ferry Road,  
21 which I generally park in what's known as the  
22 contractor parking lot, which is the employee parking  
23 lot. Generally, my commute's about 35 minutes.

24 Q. So I'm talking about leaving the house and

1 sitting down in a chair starting work. What is your  
2 total time?

3 A. Oh, in that case, my normal -- my normal day  
4 is -- I generally take what's called the contractor  
5 boat, the 5:30 a.m. contractor boat. It usually  
6 arrives at the island about five minutes 'til 6:00. My  
7 office is located at the public safety facility on the  
8 island, which is on Edward Teach Extension. It takes  
9 me generally about 10 minutes to get there. So we're  
10 looking about probably an hour and a half.

11 Q. Okay. Thank you.

12 COMMISSIONER BROWN-BLAND: Are there  
13 questions on Commission's questions?

14 MS. HAWKINS: Nothing further.

15 COMMISSIONER BROWN-BLAND: All right.  
16 Mr. Cox, we thank you, and you may be excused.

17 MR. SCHAUER: Thank you. At this time,  
18 the Village calls Stephen Boyett.

19 COMMISSIONER BROWN-BLAND: All right.  
20 While Mr. Boyett is coming up, I had neglected to  
21 say it's the Commission's intent to adjourn for the  
22 day at 5:30. Or recess for the day, I should say.

23 Whereupon,

24 STEPHEN BOYETT,

1           having first been duly sworn, was examined  
2                           and testified as follows:

3                           COMMISSIONER BROWN-BLAND: You may be  
4           seated.

5           DIRECT EXAMINATION BY MR. SCHAUER:

6           Q.     Please state your name and official address  
7           for the record.

8           A.     Stephen Boyett. I live at 1101 Porters Lane  
9           Road, Rocky Point, North Carolina.

10          Q.     Did you cause to be filed in this proceeding  
11          direct testimony consisting of 12 pages and no  
12          exhibits?

13          A.     Yes.

14          Q.     Do you have any corrections to your  
15          testimony?

16          A.     No.

17          Q.     If I asked you the questions in your prefiled  
18          submission today, would your answers be the same?

19          A.     Yes.

20          Q.     Did you cause to be filed in this proceeding  
21          a summary of your testimony?

22          A.     Yes.

23          Q.     Is that summary true and accurate to the best  
24          of your information and belief?

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A. Yes.

MR. SCHAUER: At this time, we would ask that Mr. Boyett's direct testimony be copied into the record as if given orally from the stand.

COMMISSIONER BROWN-BLAND: Without objection, that motion is allowed.

(Whereupon, the prefiled direct testimony of Stephen Boyett was copied into the record as if given orally from the stand.)

OFFICIAL COPY  
Oct 19 2022

STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH

DOCKET NO. A-41, SUB 21

VILLAGE OF BALD HEAD ISLAND, )  
Complainant, )

v. )

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

DIRECT TESTIMONY OF  
STEPHEN BOYETT  
ON BEHALF OF  
VILLAGE OF BALD HEAD  
ISLAND

OFFICIAL COPY

Aug 19 2022

**BEFORE THE NORTH CAROLINA UTILITIES COMMISSION****DOCKET NO. A-41, SUB 21****Direct Testimony of Stephen Boyett****On Behalf of the Village of Bald Head Island****August 9, 2022**

1 **Q. PLEASE STATE YOUR NAME, OCCUPATION, AND BUSINESS**  
2 **ADDRESS.**

3 A. My name is Stephen Boyett. I am the Development Services Director for the  
4 Village of Bald Head Island (the “Village”). My responsibilities for the Village  
5 encompass planning and zoning decisions and building inspections. As part of my  
6 building inspection duties, I review building plans, issue permits, conduct  
7 inspections of structures on the island, and approve final certificates of occupancy.  
8 I also am responsible for compliance with the Coastal Area Management Act and  
9 related environmental issues. My business address is 106 Lighthouse Wynd, Bald  
10 Head Island, NC 28461.

11

12 **Q. ON WHOSE BEHALF ARE YOU SUBMITTING THIS DIRECT**  
13 **TESTIMONY?**

14 A. I am submitting this Direct Testimony on behalf of the Village.

15

1 **Q. PLEASE DESCRIBE YOUR EDUCATIONAL AND PROFESSIONAL**  
2 **EXPERIENCE.**

3 A. I attended East Carolina University where I studied construction management and  
4 then completed my studies at Mount Olive University, where I graduated with a  
5 degree in criminal justice and criminology. After graduation, I worked at a  
6 construction framing company before taking a job with the Village as Head  
7 Building Inspector. I served as the Village's Head Building Inspector for  
8 approximately ten years before responsibilities for zoning and land use were  
9 combined with the Building Inspector duties to create my current position as  
10 Development Services Director. I have held that position for about eight years.

11

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

14 A. Bald Head Island is a beautiful barrier island that is home to residential properties  
15 and a lot of wildlife and vegetation. Of the island's approximately 12,000 acres,  
16 only 2,000 is developed while the remaining 10,000 is a wildlife preserve. Given  
17 this, the opportunities for outdoor activities on the island are numerous—including  
18 hiking, birdwatching, turtle watching (the island is a well-known nesting ground  
19 for sea turtles), canoeing, and boating. The Village, which has municipal authority  
20 for the whole island, has a long history of protecting the natural resources under its  
21 care. The Village, the island's residents, and our regular visitors take pride in the  
22 unique natural beauty of our island. For many North Carolinians, the island serves  
23 as a regular vacation destination and a unique opportunity to experience our state's



1 coastal habitats.

2

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

4 A. The only way to reach the island is by boat. For the public, that means taking the  
5 passenger ferry operated by Bald Head Island Transportation, Inc.

6

7 **Q. WHAT MEMBERS OF THE PUBLIC RELY ON THE FERRY TO**  
8 **REACH THE ISLAND?**

9 A. The ferry hosts a wide range of passengers. The island is home to approximately  
10 300 full-time residents. Obviously, they rely heavily on the ferry. In the summer,  
11 the day population on the island balloons with vacationers. During the peak tourist  
12 weeks in the summer, the population can reach over 7,000. These vacationers, who  
13 either rent properties or come to stay at their personal vacation homes, rely on the  
14 ferry to get to and from the island.

15 In addition to owners, renters and other overnight visitors, there are many  
16 daily visitors who we call “day trippers.” These visitors are often tourists staying  
17 in Southport, Wilmington, or Oak Island, who want to explore Bald Head Island  
18 for a day. I believe most day trippers visit the island to experience its reputation for  
19 being a unique car-free sanctuary and preserve. Many day trippers also come for  
20 shopping and dining, as well as to visit the Bald Head Island Conservancy (the  
21 “Conservancy”) and Old Baldy Lighthouse.

22

23 **Q. CAN YOU TALK MORE ABOUT THESE TWO ATTRACTIONS?**

24 A. The Conservancy is a non-profit organization that operates on the island and

1 focuses on stewardship of the island's natural resources. It hosts educational  
2 programs, conducts research, runs a summer internship program, and provides  
3 stewardship programs (such as turtle monitoring). I suspect that any day tripper  
4 who ventures beyond the island marina would visit the Conservancy. It is one of  
5 the main attractions for visitors.

6 Old Baldy is another major attraction on the island. One of the oldest  
7 lighthouses in North Carolina, Old Baldy is easily accessible via a short walk from  
8 the island's marina. Visitors can climb the lighthouse for a vista of the island, and  
9 there are various historical materials in the gift shop at its base.

10

11 **Q. ASIDE FROM TOURISTS AND RESIDENTS, WHO ELSE RELIES ON**  
12 **THE FERRY?**

13 A. In addition to tourists and residents, the ferry transports employees and contractors.  
14 During the day, the island is operated by hundreds of Village employees, workers  
15 at retail stores and restaurants, and contractors and tradesmen. Few, if any, of these  
16 workers reside on the island. Instead, they are daily passengers who rely on the  
17 ferry and barge to take them to and from their jobs. The island depends on these  
18 workers, and these workers depend on the ferry.

19

20 **Q. HAVE YOU EVER USED THE PARKING FACILITIES AT THE DEEP**  
21 **POINT MARINA?**

22 A. Yes. I park every day at the Deep Point ferry terminal parking facilities.

23

1 **Q. PLEASE DESCRIBE YOUR USE OF THE PARKING FACILITIES AT**  
2 **THE DEEP POINT MARINA.**

3 A. As an employee of the Village, I park in the lot designated for contractors. We refer  
4 to the lot as the “Contractor Lot.” To my knowledge, Village employees, retail  
5 employees, and construction laborers are the sole users of the Contractor Lot. No  
6 overnight parking is allowed in the Contractor Lot, so those who use the lot must  
7 arrive and park there every morning and remove their vehicles before the evening.  
8 As a Village employee, I have a pass card that gives me access to the Contractor  
9 Lot. The Village pays for my parking.

10 My typical schedule is to take the 6:30 a.m. contractor ferry in the mornings.  
11 The contractor ferry is a no-frills (island tram or baggage) ferry that is specifically  
12 scheduled for workers and contractors—although the same boats can also be used  
13 for regular passengers, depending on need. I usually arrive in the Contractor Lot  
14 around 5:45 a.m. At that time, the lot is about a quarter full, as some contractors  
15 and employees have already parked and taken the 5:30 a.m. contractor ferry. When  
16 I leave the island in the afternoon and return to my car, the Contractor Lot is usually  
17 80% full, as many of the other island workers have not yet returned from the island.

18 Although the number of vehicles in the Contractor Lot can fluctuate some  
19 based on the level of construction activity on the island and whether we are in the  
20 height of summer tourist season, the lot has consistently been pretty full as of late.  
21 That is likely because it is both the busiest time of the year for seasonal workers  
22 and there are about 50 houses being constructed now, plus some commercial  
23 projects, as well as some home repairs and renovations.

1 **Q. ARE YOU AWARE OF ANYBODY WHO HAS USED THE PASSENGER**  
2 **FERRY WITHOUT HAVING TO PARK AT THE PARKING FACILITIES?**

3 A. No. In fact, there are “No Parking” signs up and down Ferry Road SE, which is the  
4 road that leads to the entrance to the Deep Point property. I assume that if you park  
5 on Ferry Road SE, you will get towed, and I have never seen anybody try to park  
6 on that road.

7 I am not sure how far away you would have to go to find a place to park that  
8 was not in one of the terminal’s parking lots. It would be far away, and you would  
9 have to walk a significant distance to then reach the terminal. The Deep Point  
10 property is surrounded by neighborhoods, and beyond those neighborhoods there  
11 is not a lot of public parking in Southport. I am not aware of any public or  
12 commercial parking lot that is within walking distance of the terminal. The closest  
13 parking lot of which I can think is near Howe Street in Southport, and Howe Street  
14 is over a mile away from the Deep Point terminal.

15 I am also not aware of any public buses that have a stop near or at ferry  
16 terminal. Certainly, I have never seen any public buses making stops near or at the  
17 ferry terminal.

18

19 **Q. HAVE YOU EVER USED THE BARGE AND TUG SERVICE?**

20 A. Yes, I had to use the barge once. The Village had a temporary construction trailer  
21 that we were using on the island, and I was responsible for getting the trailer  
22 removed from the island when we were done with it. I had to coordinate with the  
23 Village’s construction contractor and the barge reservation service, making sure we

1 could get the contractor's truck on the barge in the morning, have it pick up the  
2 trailer during the day, and then have the truck and trailer returned to the mainland  
3 on the barge in the evening.

4 One thing that is often overlooked by suppliers and contractors who are new  
5 to the island is the importance of not just getting construction trucks on the island  
6 in the morning, but getting them off in the evening. If a truck bringing materials  
7 fails to get a spot on an evening return barge, then the truck will be stuck on the  
8 island until the next day. If it is a Friday, the truck will be stuck on the island until  
9 Monday, as the barge does not operate on the weekend.

10

11 **Q. PLEASE DESCRIBE YOUR EXPERIENCE WITH THE BARGE AND TUG**  
12 **SERVICE.**

13 A. Although I have used the barge only once, my work for the Village is heavily  
14 influenced by the barge. As the Development Services Director, I oversee  
15 construction on the island, and the main challenge of building on Bald Head Island  
16 is the barge's schedule.

17 The barge is the lifeblood to construction on the island. First, with an island  
18 that is only accessible by boat, all material must come over on a boat. The vast  
19 majority of all construction materials and household items come over on the barge.  
20 The only exceptions would be small items that a passenger could carry onto the  
21 ferry and, if one owned a boat, whatever small items the boat owner could put on  
22 their boat.

23 Second, not only is the barge the means by which materials reach the island,

1 but the barge schedule dictates construction schedules. A contractor must plan his  
2 building schedule around access to the barge. Space on the barge is often booked  
3 well in advance, so it is difficult to get supplies to the island on short notice.  
4 Experienced contractors learned to schedule their deliveries and stock up on  
5 supplies in advance. New contractors immediately realize that they cannot get  
6 materials on a daily basis; they need to schedule deliveries well in advance based  
7 on the barge's schedule. On occasion, if there is a cancelled barge run, the  
8 cancellation can delay a construction schedule for days or weeks as they wait for  
9 the next opportunities for the needed building supplies to arrive.

10

11 **Q. WHAT MATERIALS COME OVER ON THE BARGE?**

12 A. The materials that come across the barge include everything needed to build and  
13 furnish a house. Lumber, nails, tiles, grout—you name it, it comes across on the  
14 barge. It also includes the delivery of appliances and furniture. The barge regularly  
15 transports furniture to the island.

16 In fact, very recently I was working with a contractor who was anxious for  
17 me to issue a certificate of occupancy that day because the furniture for the house  
18 was scheduled to be delivered the next day. The contractor knew that if the house  
19 did not receive the certificate of occupancy, the homeowners would not be allowed  
20 to move the furniture into the house as scheduled. The furniture delivery would  
21 have to be rescheduled and, given how full the barge has been, it could be weeks  
22 before the furniture could be delivered again. I would say that a large percentage of  
23 contractors, maybe as much as 40% or so, ask me to perform final inspections by a

1 certain date because they are expecting furniture to be delivered within a day or two  
2 of when they hope to get approval. The need to get construction approval finalized  
3 because the barge is scheduled to bring over furniture and appliances on certain  
4 date is a common topic in my role as a building inspector.

5 The barge also transports furniture off the island. The Village's Public  
6 Works Department offers a service to property owners of collecting and removing  
7 household items that can be donated to goodwill. Public Works regularly picks up  
8 furniture in its truck, loads the truck and the furniture on to the barge, and then  
9 disposes of the furniture on the mainland.

10 Similarly, as part of my duties, I am part of the post-storm Emergency  
11 Operations Team. I help conduct assessments of the island roads and do exterior  
12 inspections of structures to help assess damage to the island. After a major  
13 hurricane or other storm, it is common for damaged furniture, appliances, and other  
14 household items to have to be collected and transported off-island via the barge  
15 before they become a safety hazard.

16  
17 **Q. IS IT COMMON KNOWLEDGE ON THE ISLAND THAT THE BARGE IS**  
18 **THE APPROPRIATE VEHICLE FOR TRANSPORTING LARGE AND**  
19 **BULK ITEMS FOR HOUSEHOLD USE TO THE ISLAND?**

20 **A.** Absolutely. Without question. Unless you own a boat, or have access to someone  
21 else's private boat, the barge is the only way to get these items to the island.  
22  
23

- 1 Q. DOES THIS COMPLETE YOUR DIRECT TESTIMONY?
- 2 A. Yes.



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MR. SCHAUER: We would also move that his summary be entered into the record as well.

COMMISSIONER BROWN-BLAND: And that motion is, likewise, allowed.

(Whereupon, the prefiled summary testimony of Stephen Boyett was copied into the record as if given orally from the stand.)

**Summary of the Direct Testimony of Stephen Boyett  
On Behalf of the Village of Bald Head Island**

The purpose of my testimony is to explain the reliance of island workers on the parking facilities at the Deep Point marina, and to discuss the critical role of the barge in the construction and furnishing of homes on the island.

I first provide an overview of the island and its many natural features that make it a popular vacation destination. I note that the island is accessible only by boat.

I then discuss my role as the Development Services Director for the Village of Bald Head Island (the “Village”). My responsibilities encompass planning and zoning decisions, and building inspections. I review building plans, issue permits, conduct inspections of structures on the island, and approve final certificates of occupancy.

Next, I discuss how ferry parking is critical to the wide range of passengers who rely on the ferry to reach the island. Few, if any, of the hundreds of workers who support the island reside on the island. Instead, they park every day at the “Contractor Lot” to commute to the island. I am not aware of anybody who has used the passenger ferry without having to park at the parking facilities. There are “No Parking” signs up and down the road leading to the entrance to the Deep Point property; I am not aware of any public busses that have a stop near the ferry terminal, and the closest alternative parking lot of which I can think is near Howe Street in Southport, over a mile away from the Deep Point terminal.

Lastly, I discuss the essential role played by the barge as the lifeblood of construction on the island. The barge carries everything needed to build and furnish a house, from construction materials to appliances and furniture. The only exceptions would

be small items that a passenger could carry onto the ferry and, if one owned a boat, whatever small items the boat owner could put on their boat.

My testimony also notes that the barge schedule dictates construction schedules. As a building inspector, as many as 40% of contractors ask me to perform final inspections by a certain date because they are expecting furniture to be delivered within a day or two of when they hope to get approval. Having to reschedule a furniture delivery can result in a delay before the furniture can be delivered again, due to the availability barge space.

I also note that it is common knowledge on the island that the barge is the appropriate vehicle for transporting large and bulk items for household use to the island.

This concludes the summary of my Direct Testimony.

1 MR. SCHAUER: Mr. Boyett is available  
2 for questions.

3 MR. RISINGER: No questions from Limited  
4 or BHIT.

5 COMMISSIONER BROWN-BLAND: And SharpVue?

6 MR. FERRELL: No questions from  
7 SharpVue.

8 COMMISSIONER BROWN-BLAND: Questions  
9 from the Commission?

10 Commissioner McKissick?

11 EXAMINATION BY COMMISSIONER MCKISSICK:

12 Q. Thank you for being here this afternoon. I  
13 just want to make sure I understand part of your  
14 testimony here.

15 You're indicating that there is very limited  
16 parking except where the Deep Point terminal is  
17 located; is that correct?

18 A. Yes, sir.

19 Q. But you do refer to parking on Howe Street in  
20 Southport?

21 A. Yes, sir. That would be the same kind of  
22 off-street parking that was mentioned with Mr. Cox.

23 Q. So it's not a centralized parking area, it's  
24 just on-street parking in front of -- I guess in the

1 downtown area?

2 A. Yes, sir.

3 Q. Okay. And, of course, I've never been down  
4 here, and -- but I read a lot in this record.

5 I gather there was parking at the Indigo  
6 Plantation; are you familiar with that?

7 A. Yes. I worked in my -- for the Village of  
8 Bald Head Island for a couple of years while that was  
9 still where the passenger ferry was loaded and  
10 offloaded.

11 Q. And how much parking was available there at  
12 that time, if you know?

13 A. It was still set up with similar different  
14 lots for contractors and then property owners. The  
15 amount of spaces, I'm not sure. I believe it's less  
16 than is currently at Deep Point, but it was still,  
17 basically, a card and ticketed access. It wasn't what  
18 I would consider public parking.

19 Q. And do you know who owned or controlled that  
20 parking area at that time?

21 A. That, I do not know.

22 Q. You do not know?

23 A. Yeah. Our parking was handled by our  
24 employer, the Village, so that, I'm not aware of.

1 Q. Are you familiar with the rates that were  
2 charged there?

3 A. At that time?

4 Q. Yes.

5 A. No, sir.

6 Q. Okay. And how would you compare the parking  
7 at that Indigo Plantation the way it is currently over  
8 near the Deep Point terminal?

9 A. I would consider it very similar, as far as  
10 walking distance to the ferry. The access, like I  
11 said, it was still a paid access.

12 Q. And geographically, if you know, what is the  
13 distance between where the Indigo Plantation parking  
14 would be, compared to where the Deep Point terminal is  
15 located, just for -- give me some sense of relative  
16 location of the two.

17 A. As far as walking distance?

18 Q. Walking distance would be great. Or if you  
19 could say it in those terms, or even driving distance.  
20 Just, kind of, geographically, what is that distance,  
21 if you might know?

22 A. Okay. So you want to know, kind of, where  
23 Indigo Plantation parking is versus Deep Point?

24 Q. Yes.

1           A.       Okay. Indigo Plantation is, kind of, central  
2 Southport. Deep Point is more of the waterfront  
3 directly off the river. The other one is, kind of,  
4 direct -- kind of off an inlet. It's more of a  
5 centralized. There's, kind of, an elementary school  
6 there. If you're aware of where the elementary school  
7 is in Southport, that's where Indigo Plantation is.  
8 Deep Point is in, kind of, the same location as the  
9 state ferry.

10          Q.       And if somebody were to park over in Indigo,  
11 how long would it take them to walk over to where Deep  
12 Point is?

13          A.       Substantial part of your day.

14          Q.       Oh, really? It's that far, geographically?

15          A.       Yeah. It's pretty far, geographically.

16          Q.       And travel time-wise, if someone was taking a  
17 shuttle or something, how long?

18          A.       I'd say at least probably somewhere in the  
19 neighborhood of a five-minute car ride.

20          Q.       Five-minute car ride? So would it be viable  
21 for somebody to park over at Indigo today and still use  
22 the Deep White [sic] parking as the terminal for taking  
23 the ferry, I should say?

24          A.       I would say, not without some other mode of

1 transportation once you park there.

2 Q. Okay. Thank you. I don't have any further  
3 questions.

4 COMMISSIONER BROWN-BLAND: Any questions  
5 on Commission's questions? Mr. Styers?

6 MR. STYERS: Just one or two.

7 EXAMINATION BY MR. STYERS:

8 Q. Did you ever park in Indigo Plantation when  
9 the shuttle ran from lot D and E to the terminal?

10 A. I did not.

11 Q. Do you remember there being a shuttle that  
12 ran from lot D and E to the terminal?

13 A. I do not.

14 Q. Okay.

15 MR. STYERS: No questions. I just  
16 wanted to check.

17 COMMISSIONER BROWN-BLAND: All right.

18 MR. SCHAUER: No questions.

19 COMMISSIONER BROWN-BLAND: All right.

20 Thank you, Mr. Boyett. You may be excused.

21 MR. SCHAUER: At this time, the Village  
22 calls Kevin O'Donnell to the stand.

23 Whereupon,

24 KEVIN O'DONNELL,



1           having first been duly sworn, was examined

2                           and testified as follows:

3                           COMMISSIONER BROWN-BLAND: All right.

4           You may be seated.

5 DIRECT EXAMINATION BY MR. SCHAUER:

6           Q.     Good afternoon.

7           A.     Good afternoon.

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

10          A.     Kevin O'Donnell. Business address 1350 SE  
11 Maynard Road, Suite 101, Cary 27511.

12          Q.     Did you cause to be filed in this proceeding  
13 direct testimony consisting of 12 pages and two  
14 exhibits?

15          A.     Yes.

16          Q.     Do you have any corrections to your direct  
17 testimony?

18          A.     To the direct, no. There was --

19          Q.     We'll get to the redirect -- rebuttal in a  
20 second.

21                   If I ask you questions found in your direct  
22 testimony today, would your answers be the same?

23          A.     Yes.

24          Q.     Did you cause to be filed in this proceeding

1 a summary of your direct testimony?

2 A. Yes.

3 Q. Okay. And is that summary true and accurate  
4 to the best of your information and belief?

5 A. Yes.

6 Q. Did you also cause to be filed in this  
7 proceeding rebuttal testimony consisting of 15 pages  
8 and two exhibits?

9 A. Yes.

10 Q. Do you have any corrections to your rebuttal  
11 testimony?

12 A. Page 10, line 17, that number 18.3 should  
13 read 42.2.

14 Q. Are there any other corrections to your  
15 testimony?

16 A. No.

17 Q. Subject to that correction, if I asked you  
18 the questions in your testimony today, would your  
19 answers be the same?

20 A. Yes.

21 Q. Did you cause to be filed in this proceeding  
22 a summary of your rebuttal testimony?

23 A. Yes.

24 Q. And is that summary true and accurate to the

1 best of your information and belief?

2 A. Yes.

3 MR. SCHAUER: At this time, we would ask  
4 that Mr. O'Donnell's direct testimony and rebuttal  
5 testimony be copied into the record as if given  
6 orally from the stand, and the corresponding  
7 exhibits be marked for identification as set out in  
8 his prefiled submission.

9 COMMISSIONER BROWN-BLAND: All right.  
10 Without objection, that motion will be allowed and  
11 Mr. O'Donnell's direct and rebuttal testimony will  
12 be received into the record as if given orally from  
13 the witness stand. The exhibits that correspond  
14 and were filed with the testimony will be  
15 identified as they were -- when they were  
16 prefiled -- they were marked when prefiled.

17 (Exhibit KWO-1, Confidential Exhibit  
18 KWO-2, and Rebuttal Exhibits KWO-1 and  
19 KWO-2 were identified as they were  
20 marked when prefiled.)

21 (Whereupon, the prefiled direct  
22 testimony of Kevin O'Donnell and the  
23 prefiled rebuttal testimony of  
24 Kevin O'Donnell were copied into the

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record as if given orally from the  
stand.)

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Oct 19 2022

STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH

DOCKET NO. A-41, SUB 21

VILLAGE OF BALD HEAD ISLAND, )  
Complainant, )  
v. )  
BALD HEAD ISLAND TRANSPORTATION, )  
INC., BALD HEAD ISLAND LIMITED, LLC, )  
and SHARPVUE CAPITAL, LLC, )  
Respondents. )

DIRECT TESTIMONY OF  
KEVIN W. O'DONNELL, CFA  
ON BEHALF OF  
VILLAGE OF BALD HEAD  
ISLAND

**BEFORE THE NORTH CAROLINA UTILITIES COMMISSION**

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

**Direct Testimony of Kevin W. O’Donnell, CFA**

**On Behalf of the Village of Bald Head Island**

**August 9, 2022**

1 **Q. PLEASE STATE YOUR NAME, POSITION, AND BUSINESS ADDRESS**  
2 **FOR THE RECORD.**

3 A. My name is Kevin W. O’Donnell. I am President of Nova Energy Consultants, Inc.  
4 My business address is 1350 SE Maynard Rd., Suite 101, Cary, North Carolina  
5 27511.

6  
7 **Q. ON WHOSE BEHALF ARE YOU PRESENTING TESTIMONY IN THIS**  
8 **PROCEEDING?**

9 A. I am testifying on behalf of the Village of Bald Head Island.

10

11 **Q. PLEASE SUMMARIZE YOUR EDUCATIONAL BACKGROUND AND**  
12 **RELEVANT EMPLOYMENT EXPERIENCE.**

13 A. I have a Bachelor of Science in Civil Engineering from North Carolina State  
14 University and a Master of Business Administration from Florida State University.  
15 I earned the designation of Chartered Financial Analyst (“CFA”) in 1988. I have  
16 worked in utility regulation since September 1984, when I joined the Public Staff

1 of the North Carolina Utilities Commission. I left the Public Staff in 1991 and have  
2 worked continuously in utility consulting since that time, first with Booth &  
3 Associates, Inc. (until 1994), then as Director of Retail Rates for the North Carolina  
4 Electric Membership Corporation (1994-1995), and since then in my own  
5 consulting firm.

6 I have been accepted as an expert witness on rate of return, cost of capital,  
7 capital structure, cost of service, rate design, and other regulatory issues in general  
8 rate cases, fuel cost proceedings, and other proceedings before the North Carolina  
9 Utilities Commission, the South Carolina Public Service Commission, the  
10 Wisconsin Public Service Commission, the Virginia State Commerce Commission,  
11 the Minnesota Public Service Commission, the New Jersey Commission of Public  
12 Utilities, the Colorado Public Utilities Commission, the District of Columbia Public  
13 Service Commission, and the Florida Public Service Commission. In 1996, I  
14 testified before the U.S. House of Representatives Committee on Commerce and  
15 Subcommittee on Energy and Power, concerning competition within the electric  
16 utility industry. Additional details regarding my education and work experience are  
17 set forth in Exhibit KWO-1.

18

19 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

20 A. The purpose of my testimony is to present my findings relating to certain matters  
21 at issue in this proceeding. Specifically, I was asked to review financial information  
22 relating to the ferry, parking, and barge departments operated under the control of  
23 Bald Head Island Limited, LLC, and provide an assessment of the extent to which

1 the currently unregulated services (parking and barge) are providing contribution  
2 to the regulated services (ferry).

3

4 **Q. WHAT RECORDS DID YOU REVIEW IN CONNECTION WITH YOUR**  
5 **ANALYSIS?**

6 A. In addition to the Complaint, I reviewed public filings from the 2010 rate case  
7 (Docket No. A-41, Sub 7), quarterly financial reports filed with the Commission in  
8 Docket No. A-41, Sub 7A relating to operation of the ferry, and various financial  
9 reports relating to all three operating departments provided in connection with this  
10 proceeding.

11

12 **Q. WHAT DID YOU FIND?**

13 A. I found that the ferry is consistently showing significant annual financial losses,

14 **[BEGIN CONFIDENTIAL]** [REDACTED]

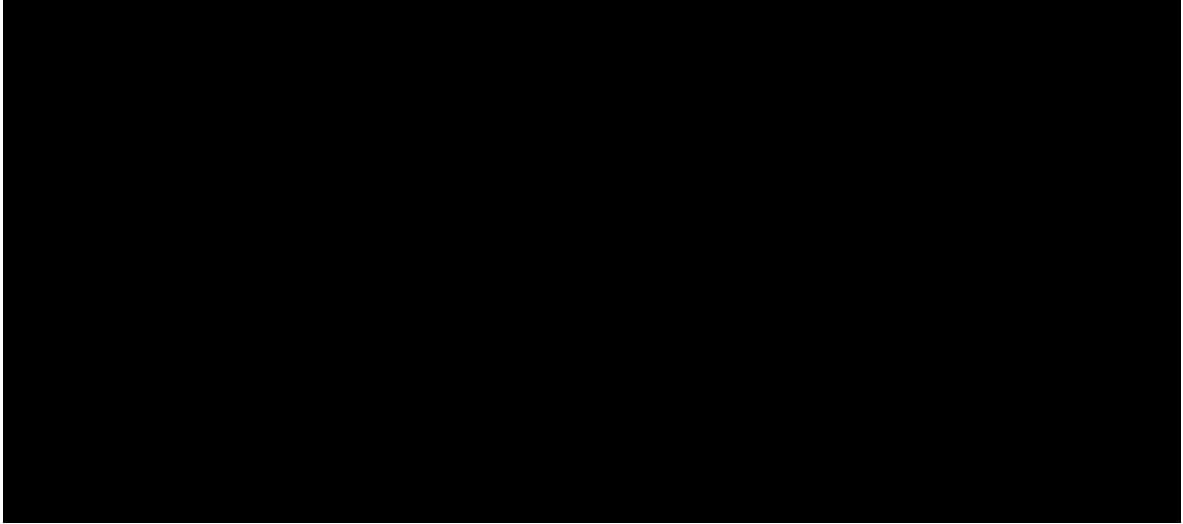
15 [REDACTED]

16 [REDACTED]

17



**Chart 1: 2014-2021 Comparison of Net Incomes of Ferry, Barge, and Parking<sup>1</sup>**



1 [Redacted]

2 [Redacted]

3 [Redacted]

4 [Redacted]

5 [Redacted]

6 **Q.** [Redacted]

7 [Redacted]

8 **A.** [Redacted]

9 [Redacted]

10 [Redacted]

11 [Redacted]

---

<sup>1</sup> Calculations are based on the financial statements of the ferry, which are available in Docket No. A-41, Sub 7A, and the financial statements of the parking and barge, which were provided in discovery (and attached as Exhibit KWO-2).

1 [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]<sup>2</sup> [REDACTED]

**Table 1: 2021E Revenue and EBITDA (mill.) by Line of Business**

[REDACTED]	[REDACTED]
------------	------------

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10

11 **Q.** [REDACTED]

12 [REDACTED]

13 **A.** [REDACTED]

14 [REDACTED]

15 [REDACTED]<sup>3</sup> [REDACTED]

---

<sup>2</sup> Bald Head Island Limited, LLC Project Pelican Confidential Memorandum, Draft – August 17, 2021 at 29 (Exhibit JAW-6, filed with the Direct Testimony of Julius Wright).

<sup>3</sup> [BEING AEO CONFIDENTIAL] [REDACTED]

1 Q. [REDACTED]

2 [REDACTED]

3 A. [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 **Table 2: Estimated ROR for Limited's Transportation Operations<sup>4</sup>**

[REDACTED TABLE]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

[REDACTED]

**[END AEO CONFIDENTIAL]**

<sup>4</sup> Net income is taken from ferry, parking, and barge departments financial statements. Rate base is calculated from related financial information produced in discovery.

1 [REDACTED]  
 2 [REDACTED]  
 3 [REDACTED]  
 4 [REDACTED] [END CONFIDENTIAL]

6 **Q. HAS LIMITED MADE STATEMENTS THAT ARE CONSISTENT WITH  
 7 YOUR FINDING THAT THE FERRY DIVISION IS OPERATING AT A  
 8 LOSS?**

9 A. Yes. In the 2010 Rate Case proceeding, Bald Head Island Transportation, Inc.  
 10 stated to the Commission that “BHIT’s ferry service has operated at a loss every  
 11 year since 1999.”<sup>5</sup> [BEGIN AEO CONFIDENTIAL] [REDACTED]  
 12 [REDACTED]  
 13 [REDACTED]<sup>6</sup> [END AEO CONFIDENTIAL]

15 **Q. DO YOU KNOW WHY THE FERRY DIVISION DID NOT FILE A RATE  
 16 CASE TO CORRECT THE DEFICIENCIES AS CITED ABOVE?**

17 A. No, not directly. However, I do have two theories. First, [BEGIN AEO  
 18 CONFIDENTIAL], [REDACTED]  
 19 [REDACTED]  
 20 [REDACTED]

---

<sup>5</sup> Application, Docket No. A-41, Sub 7, at ¶ 6.  
<sup>6</sup> Bald Head Island Limited, LLC Project Pelican Confidential Memorandum, Draft – August 17, 2021 at 29 (Exhibit JAW-6).

1 [REDACTED]

2 [REDACTED] [END AEO CONFIDENTIAL] Second, I also know that the issue  
3 of whether the parking should be regulated was a topic of debate in the last rate  
4 case (2010), and it is logical that Limited did not want to address the issue again  
5 before a proposed sale was announced.

6

7 **Q. WHY DO YOU SAY THAT LIMITED MAY NOT HAVE WANTED THE**  
8 **PARKING ISSUE TO BE RAISED BEFORE A SALE WAS ANNOUNCED?**

9 A. The valuation of a regulated asset is different from the valuation of an unregulated  
10 asset. Specifically, a regulated asset is typically valued at the net book value of the  
11 utility assets as it is only these assets that comprise the rate base upon which the  
12 utility is allowed to make a return.

13 Now, it is possible that an investor could pay a price greater than the net  
14 book value of the utility. However, in my experience, it is rare that regulators allow  
15 a price greater than net book value to be the basis upon which rates, and  
16 correspondingly future cash flows, are determined. Therefore, investors are  
17 unlikely to pay more than an asset’s net book value because the cash flows of the  
18 regulated asset will not justify a higher valuation.

19 In contrast, in a competitive enterprise that is not regulated, the cash flows  
20 of the asset are not limited to the authorized return on the asset’s net book value.  
21 Thus, the valuation of an unregulated asset is set at whatever the buyer and seller  
22 believe is a fair price based upon the maximum cash flows the asset can produce.

1 In addition, with the obvious exception of antitrust concerns, there is generally no  
 2 regulator that oversees the financial valuation of the entity being acquired. The  
 3 result is that an unregulated asset can be sold for a greater premium over a regulated  
 4 asset.

5 Limited may have declined to file a rate case and elected instead to absorb  
 6 the losses seen in the ferry division based on the fear that a filed rate case may  
 7 prompt the Commission to determine the parking needs to be regulated. Such a  
 8 determination by the Commission would limit the value of the parking division—  
 9 which would be a particular concern to a company seeking to sell the asset.

10

11 **Q. HAVE YOU SEEN ANY DOCUMENTS THAT SUPPORT YOUR THEORY**  
 12 **THAT LIMITED HAS AVOIDED A RATE CASE IN ORDER TO**  
 13 **MAXIMIZE THE VALUATION OF THE PARKING ASSETS?**

14 A. Yes. We can look at how SharpVue Capital, LLC is valuing the purchase of the  
 15 transportation assets. [BEGIN AEO CONFIDENTIAL] [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

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

21 [REDACTED]

---

<sup>7</sup> SharpVue Project Pelican Investment Opportunity January 2022, at 24 (Exhibit JAW-7).

1 [REDACTED]

2 [REDACTED] [END

3 AEO CONFIDENTIAL]

4

5 Q. ARE THERE ANY LIMITATIONS THAT YOU WISH TO ARTICULATE  
6 WITH RESPECT TO YOUR FINANCIAL FINDINGS?

7 A. Yes. I relied on the financial statements that Respondents produced to the Village  
8 as part of discovery in this proceeding. I have not conducted a full audit of the ferry,  
9 barge, and parking departments such as the Public Staff would normally conduct.  
10 The information provided by Respondents was, in some cases, was not fully  
11 transparent and it is possible that a more complete presentation would shed  
12 additional light on the analysis. Despite the lack of complete transparency within  
13 Limited’s financial statements, I believe the information the Village received is  
14 sufficient to support my overall findings and, as I stated above, it is consistent with  
15 Limited’s own statements. Although the exact amount of the [BEGIN AEO  
16 CONFIDENTIAL] [REDACTED]

17 [REDACTED]

18 [REDACTED] [END AEO CONFIDENTIAL] a full audit of Limited will  
19 not result in a different finding.

20

1 **Q. WHAT ARE YOUR CONCLUSIONS?**

2 A. Subject to the limitations I referenced, my financial analysis leads me to conclude  
3 that [BEGIN CONFIDENTIAL] [REDACTED]  
4 [REDACTED] [END CONFIDENTIAL] whereas the ferry division, which is a  
5 regulated entity in North Carolina, is not. When these three entities are combined  
6 into a single income statement, it is clear that [BEGIN CONFIDENTIAL] [REDACTED]  
7 [REDACTED]  
8 [REDACTED] [END  
9 CONFIDENTIAL]

10

11 **Q. DOES THIS COMPLETE YOUR DIRECT TESTIMONY?**

12 A. Yes.



STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH

DOCKET NO. A-41, SUB 21

VILLAGE OF BALD HEAD ISLAND, )  
Complainant, )  
v. )  
BALD HEAD ISLAND TRANSPORTATION, )  
INC., BALD HEAD ISLAND LIMITED, LLC, )  
and SHARPVUE CAPITAL, LLC, )  
Respondents. )

REBUTTAL TESTIMONY OF  
KEVIN W. O'DONNELL, CFA  
ON BEHALF OF  
VILLAGE OF BALD HEAD  
ISLAND

## BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. A-41, SUB 21

Rebuttal Testimony of Kevin W. O'Donnell, CFA

On Behalf of the Village of Bald Head Island

September 28, 2022

1 Q. PLEASE STATE YOUR NAME, TITLE, AND ADDRESS.

2 A. My name is Kevin W. O'Donnell. I am President of Nova Energy Consultants, Inc.  
3 My business address is 1350 SE Maynard Rd., Suite 101, Cary, North Carolina  
4 27511.

5

6 Q. DID YOU PREVIOUSLY FILE DIRECT TESTIMONY IN THIS  
7 PROCEEDING?

8 A. Yes.

9

10 Q. PLEASE BRIEFLY SUMMARIZE YOUR REBUTTAL TESTIMONY.

11 A. My testimony to responds to several points raised in the testimony submitted by  
12 Shirley A. Mayfield on behalf of Bald Head Island Transportation, Inc. ("BHIT")  
13 and Bald Head Island Limited, LLC ("Limited") (collectively, "Respondents") in  
14 this proceeding.

15 First, I note generally that Ms. Mayfield does not dispute the basic financial  
16 analysis set forth in my Direct Testimony showing that **[BEGIN**

1 **CONFIDENTIAL]** [REDACTED]

2 [REDACTED]

3 [REDACTED] **[END CONFIDENTIAL]** Ms. Mayfield also does not  
4 dispute the logical inference set out in my Direct Testimony – specifically, that  
5 Limited may have been avoiding filing a rate case for fear that it might result in  
6 regulation of the entirety of its transportation operations.

7 Second, I respond to Ms. Mayfield’s claim that, should the Commission  
8 grant the Village’s Complaint, the additional regulated assets would be valued for  
9 rate making purposes based on market value – rather than book value.

10 Third, I respond to Ms. Mayfield’s reference to the 2010 rate case and its  
11 significance to this proceeding.

12 Finally, based on new information provided by Respondents, I update my  
13 prior testimony estimating the rate of return for the combined transportation  
14 operations using the net book value from financial records provided in response to  
15 our data requests. Under my revised calculations, the combined rate of return is an  
16 extremely healthy **[BEGIN CONFIDENTIAL]** [REDACTED] **[END**  
17 **CONFIDENTIAL]**

18  
19 **Q. CAN YOU SUMMARIZE THE KEY POINTS FROM MS. MAYFIELD’S**  
20 **TESTIMONY?**

21 A. Yes. Ms. Mayfield discusses the stipulation in the 2010 rate case, asserts that the  
22 agreed-upon rate base did not include assets associated with the parking and barge

1 businesses, and argues that real estate assets associated with parking have never  
 2 been included in BHIT’s rate base. Further, she raises concerns about the potential  
 3 complexity of setting rates for a combined entity and suggests that the inclusion of  
 4 additional assets in rate base might raise concerns for the consuming public.  
 5 Finally, she discusses issues relating to valuation of assets and suggests that the  
 6 parking and barge assets should be included in rate base at their “fair market value,”  
 7 based on third party valuations conducted in connection with the potential sale of  
 8 those assets.

9  
 10 **Q. DOES MS. MAYFIELD DISPUTE THE FINANCIAL ANALYSIS SET**  
 11 **FORTH IN YOUR DIRECT TESTIMONY?**

12 **A. No, she does not. Ms. Mayfield does not contest [BEGIN CONFIDENTIAL]**

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]<sup>1</sup> [END

19 **CONFIDENTIAL]**

---

1 [REDACTED]

1           Additionally, I note that Ms. Mayfield also does not dispute the logical  
2 inference I discussed in my Direct Testimony – specifically, that Limited may have  
3 been avoiding filing a rate case seeking to increase revenues for its ferry business  
4 for fear that the proceeding might result in regulation of the entirety of its  
5 transportation operations. In fact her extended discussion of the valuation issues  
6 surrounding the SharpVue transaction tends to confirm my point.  
7

8 **Q.   WHAT IS YOUR RESPONSE TO MS. MAYFIELD’S CONTENTION**  
9 **THAT ASSETS SHOULD BE PLACED IN RATE BASE BASED ON “FAIR**  
10 **MARKET VALUE”?**

11 A.   When a utility files a rate case, it must comply with the filing requirements of  
12 Commission Rule R-17 which, in part, requires the filing of details surrounding the  
13 original cost of an assets.<sup>2</sup> Specifically, Commission Rule R1-17 states as follows  
14 as a filing requirement for original cost:

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

---

<sup>2</sup> I am aware of the General Assembly’s enactment of G.S. § 62-133.1A, which provides a mechanism by which government-owned water and wastewater systems can be acquired and the assets placed into rate base at “fair value.” However, this statute is the exception, not the rule, and is intended to address a specific public policy concern involving the acquisition by a private entity of an existing publicly owned water or wastewater system.

1 There is a strong financial reason for the above-stated Commission rule. It is  
2 intended to prevent consumers from double paying for the same utility asset.  
3 Placing assets in rate base at market value would, essentially, turn the keys to  
4 regulation of utility rates to arbitrage specialists that would buy and sell assets on  
5 an endless basis and force consumers to pay higher and higher rates for assets for  
6 which they have already paid.  
7

8 **Q. CAN YOU PROVIDE AN EXAMPLE THAT ILLUSTRATES THIS**  
9 **CONCERN?**

10 A. Yes. Suppose Duke owned a generating plant that was constructed for \$100 million  
11 30 years ago. Today, however, the plant is fully depreciated but Duke puts the plant  
12 on the market and it is sold to a merchant plant operator, which operates the plant  
13 for a year and then sells it back to Duke for \$50 million. Under Ms. Mayfield's  
14 contention, Duke would then be allowed to put the plant in rate base for \$50 million,  
15 even though consumers have already paid for the plant once. In this example,  
16 consumers would pay for the plant twice, thereby driving their rates upward and  
17 effectively allowing the utility to arbitrage the utility ratemaking process to obtain  
18 excessive profits. To avoid situations like this, the Commission has typically only  
19 allowed the original cost of the plant investment less depreciation or the net book  
20 value for purchases of regulated or non-regulated assets.

21 Ms. Mayfield's proposal in this case would be, indeed, a highly dangerous  
22 precedent in that it will have lasting implications for many years to come for a

1 variety of different utilities.

2

3 **Q. MS. MAYFIELD STATES THAT THE LAND USED FOR PARKING HAS**  
4 **BECOME INCREASINGLY VALUABLE OVER TIME AND SHOULD,**  
5 **THEREFORE, BE INCLUDED IN RATE BASE AT MARKET VALUE AS**  
6 **OPPOSED TO BOOK VALUE. DO YOU AGREE WITH HER**  
7 **CONTENTION?**

8 A. No. First off, it is important to acknowledge that the property at issue has been used  
9 since inception in support of the utility operation and owned by an affiliate of the  
10 utility. This is not analogous to the acquisition of non-utility property from an  
11 unrelated seller. Here the property in question has always been used and useful in  
12 support of the regulated operations. Moreover, the valuation of the parking  
13 operation referred to by Ms. Mayfield was based on the cash flow generated from  
14 the parking operation and assumptions concerning the future recovery of the cash  
15 flow – it was not a pure valuation of the land itself. For example, Mercator  
16 International, a financial valuation firm, valued the parking asset at **[BEGIN**  
17 **CONFIDENTIAL]** [REDACTED]  
18 [REDACTED]  
19 [REDACTED]<sup>3</sup> **[END CONFIDENTIAL]** Hence, for  
20 all these reasons, the regulatory basis for Ms. Mayfield’s claim for the inclusion of

---

<sup>3</sup> [REDACTED]  
[REDACTED]

1 the parking assets at market value is fundamentally flawed.

2

3 **Q. HAVE THE PARKING AND BARGE ASSETS OF LIMITED BEEN PAID**  
4 **FOR IN THE PAST BY CONSUMERS?**

5 A. Yes, they have. While the parking and barge operations have not been regulated to  
6 date, the fees set by the entities have allowed Limited to already receive the value  
7 of those assets many times over via extremely healthy returns on those assets. It is  
8 little wonder, therefore, that the market value of the parking and barge operations  
9 is so much greater than that of net book value.

10

11 **Q. IS YOUR CONCERN IN THE EXAMPLE ABOVE ABOUT RATEPAYERS**  
12 **PAYING TWICE FOR THE SAME ASSET RELEVANT HERE?**

13 A. Yes, particularly for parking. The same people who are buying ferry tickets (i.e.,  
14 ratepayers) are paying for parking. Despite the fact that the parking assets have  
15 not formally deemed to be a component of the regulated operation, as a practical  
16 matter utility ratepayers have been paying for this asset.

17

18 **Q. WOULD IT BE YOUR RECOMMENDATION TO THE VILLAGE TO**  
19 **OPPOSE MS. MAYFIELD'S RECOMMENDATION TO USE THE**  
20 **MARKET VALUE OF ASSETS IN THE RATE BASE IF THE BARGE AND**  
21 **PARKING WERE ULTIMATELY REGULATED?**

22 A. Absolutely. The evidence in this proceeding supports the conclusion that the barge



1 and parking operations are integrally linked to the operation of the ferry and that all  
2 three business units collectively represent a transportation monopoly. Under these  
3 circumstances, Limited should not be permitted to “game” the regulatory process  
4 by seeking to recover “fair market value” for what are, effectively, captive  
5 ratepayers that have been utilizing the assets as part of the regulated ferry  
6 operations. If the Commission permits this sort of regulatory gamesmanship here,  
7 it will invite every other utility to organize its property holdings in a similar fashion  
8 in hopes that they too will be able to arbitrage recovery of an inflated valuation of  
9 utility property from ratepayers.

10

11 **Q. MS. MAYFIELD DISCUSSES THE 2010 RATE CASE AND MAKES THE**  
12 **POINT THAT THE PARKING ASSETS WERE NOT INCLUDED IN RATE**  
13 **BASE. DO YOU BELIEVE HER STATEMENT ON THIS MATTER BEARS**  
14 **ANY SIGNIFICANCE IN THE CURRENT CASE?**

15 A. No. The Commission’s order in the 2010 rate case did not address the issue of  
16 whether or not the barge and parking operations should be regulated. As a result, I  
17 fail to see how Ms. Mayfield’s statement in this regard has any meaning at all to  
18 this case.

19 Moreover, her statement fails to recognize the reality of what the  
20 Commission approved in its 2010 rate case order. I have examined the Public  
21 Staff’s workpapers from the 2010 rate case, and it is clear from those workpapers  
22 that the Public Staff developed the revenue imputation from the parking facilities

1 based on an evaluation of the parking operation *as if it were a regulated asset*.<sup>4</sup> In  
 2 other words, although BHIT’s rate base was not changed to include the parking  
 3 assets due to the stipulation of the parties – the stipulation effectively created the  
 4 same (or an approximate) result by analyzing the parking business as if it were  
 5 regulated. This adjustment to the regulated revenue requirement has been in place  
 6 for the last 12 years and is a practical recognition that parking revenues should be  
 7 attributed to the overall regulated ferry operation. My financial analysis set forth  
 8 herein would indicate that the 2010 revenue imputation substantially undervalues  
 9 the revenues that would be imputed if calculated on the same basis using current  
 10 financial data.

[BEGIN CONFIDENTIAL]

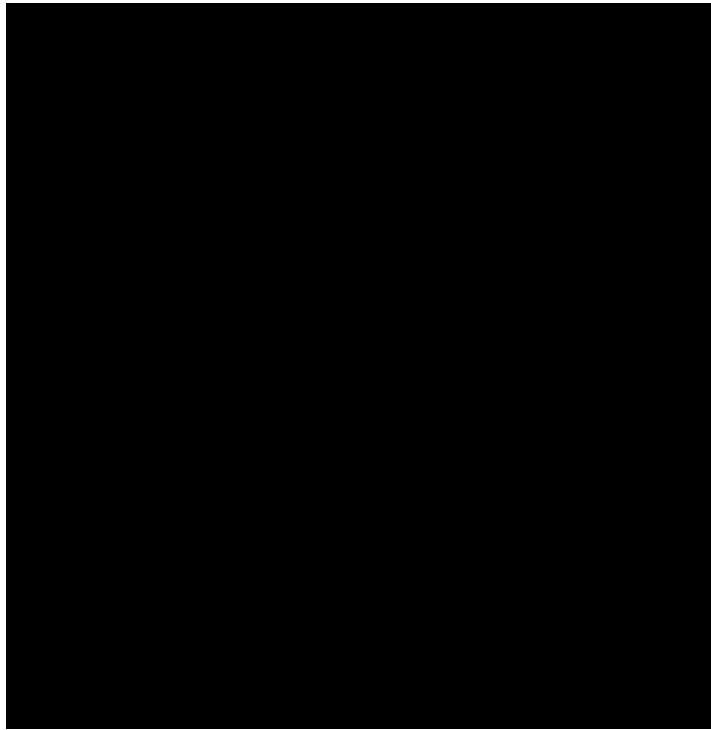
12 Q. [REDACTED]  
 13 [REDACTED]

14 A. [REDACTED]  
 15 [REDACTED]  
 16 [REDACTED]  
 17 [REDACTED]  
 18 [REDACTED]  
 19 [REDACTED]

---

4 [REDACTED]  
 [REDACTED]

**Table 1: Updated and Revised Consolidated Operations Rate of Return**



1	[Redacted]
2	[Redacted]
3	[Redacted]
4	[Redacted]
5	[Redacted]
6	[Redacted]
7	[Redacted]
8	[Redacted]
9	[Redacted]

1 Q. [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 A. [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8  
9 Q. [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 A. [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20

1 Q. [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 A. [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13  
14 Q. [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 A. [REDACTED]  
18 [REDACTED]  
19  
20 Q. [REDACTED]  
21 [REDACTED]

1 A. [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8  
9 Q. [REDACTED]  
10 [REDACTED]  
11 A. [REDACTED]  
12  
13 Q. [REDACTED]  
14 [REDACTED]  
15 [REDACTED].  
16 A. [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]

1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED]

5 [END CONFIDENTIAL]

6

7 **Q. DOES THIS COMPLETE YOUR REBUTTAL TESTIMONY?**

8 **A. Yes.**

1  
2  
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MR. SCHAUER: We would also ask that his two summaries be entered into the record at the appropriate time.

COMMISSIONER BROWN-BLAND: There being no objection, the summaries are received into evidence at this time.

(Whereupon, the prefilled summary of direct testimony of Kevin O'Donnell and prefilled summary of rebuttal testimony of Kevin O'Donnell were copied into the record as if given orally from the stand.)



**Summary of the Direct Testimony of Kevin O'Donnell  
On Behalf of the Village of Bald Head Island**

My direct testimony summarizes my review of financial information relating to the ferry, parking, and barge departments operated under the control of Bald Head Island Limited, LLC, and provides an assessment of the extent to which the currently unregulated services (parking and barge) are providing contribution to the regulated services (ferry).

I found that the ferry is consistently showing significant annual financial losses,

[BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

Although I do not know why the ferry division has not filed a rate case, in my direct testimony, I offered two theories. First, [BEGIN AEO CONFIDENTIAL], [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. [END AEO CONFIDENTIAL] Second, I also know that the issue of whether the parking should be regulated was a topic of debate in the last rate case (2010), and Limited may have wanted to avoid addressing this issue before the sale was announced because regulating the parking could possibly limit its value. In my direct testimony, I discussed how my review of SharpVue's valuation of the transportation assets supported my theory that Limited has avoided a rate case to maximize the value of the parking assets.

Although the information provided by Respondents was, in some cases, not fully transparent, I believe the information the Village received is sufficient to support my overall findings in my direct testimony. After receiving more information through discovery, I supplemented my analysis in my rebuttal testimony.

This concludes the summary of my direct testimony.

**Summary of the Rebuttal Testimony of Kevin O'Donnell  
On Behalf of the Village of Bald Head Island**

In my Rebuttal Testimony I respond to several points raised in the testimony submitted by Shirley Mayfield.

First, I note generally that Ms. Mayfield does not dispute the basic financial analysis set forth in my Direct Testimony showing that [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [END CONFIDENTIAL] Ms. Mayfield also does not dispute the logical inference set out in my Direct Testimony – specifically, that Limited may have avoided filing a rate case for fear that it might result in regulation of the entirety of its transportation operations.

Second, I respond to Ms. Mayfield's claim that, should the Commission grant the Village's Complaint, the additional regulated assets would be valued for rate-making purposes based on market value, rather than book value. When a utility files a rate case, per Commission Rule R-17, the utility must file information about the original cost of the assets. Rule R-17 prevents consumers from double paying for the same utility asset. Placing assets in rate base at market value would, essentially, turn the keys to regulation of utility rates over to arbitrage specialists that would buy and sell assets on an endless basis and force consumers to pay higher and higher rates for assets for which they have already paid.

Here, Limited has already received the value of the parking and barge operations from consumers several times over via extremely healthy returns on those assets, and it would be unfair to make those consumers pay for those assets again.

Ms. Mayfield contends that the land used for parking has become increasingly valuable over time and thus should be included in the rate base at this higher market value. I disagree. First, the property has always been used to support utility operation and owned by an affiliate of the utility. Thus, this situation is not analogous to the acquisition of non-utility property from an unrelated seller. Second, the valuation Ms. Mayfield refers to was based on cash flow generated by parking—not on a pure evaluation of the land itself.

Third, I respond to Ms. Mayfield's reference to the 2010 rate case and her assertion that parking assets were not included in the 2010 rate base. I do not believe her statement has any significance in this case. Further, she fails to recognize the reality of the Commission's order. It is clear from the Public Staff's workpapers in that case that the Public Staff developed the revenue imputation from the parking facilities based on an evaluation of the parking operation as if it were a regulated asset. The adjustment to the regulated revenue requirement is a practical recognition that parking revenues should be attributed to the overall regulated ferry operation.

Finally, based on new information provided by Respondents, I updated my prior testimony estimating the rate of return for the combined transportation operations using the net book value from financial records provided in response to our data requests. Under my revised calculations, the combined rate of return is an extremely healthy **[BEGIN CONFIDENTIAL]** [REDACTED]

[REDACTED] **[END CONFIDENTIAL]**

This concludes my summary of my rebuttal testimony.

1 MR. SCHAUER: And the witness is  
2 available for cross examination.

3 COMMISSIONER BROWN-BLAND: Mr. Styers?

4 MR. STYERS: Thank you.

5 CROSS EXAMINATION BY MR. STYERS:

6 Q. Good afternoon, Mr. O'Donnell.

7 A. Good afternoon, Mr. Styers.

8 Q. In your work preparing your testimony today,  
9 you reviewed the financial statements of Bald Head  
10 Island Transportation, correct?

11 A. Yes I did.

12 Q. And I think they may be attached as an  
13 exhibit to your testimony; is that correct?

14 A. That is correct.

15 COMMISSIONER BROWN-BLAND: Mr. Styers,  
16 make sure you stay in the microphone, please.

17 Q. You also reviewed the financial statements of  
18 the parking division of Bald Head Island Limited, did  
19 you not?

20 A. Yes.

21 Q. And, in fact, that -- those financial  
22 statements were attached to your exhibit as -- attached  
23 to your testimony as an exhibit, were they not?

24 A. Yes.

1 Q. As part of your work for testifying today,  
2 you also reviewed financial statements for the barge  
3 division of Bald Head Island Limited, did you not?

4 A. Yes.

5 Q. And those sets of financial statements are  
6 also attached to your testimony, are they not?

7 A. Yes. If I can draw a distinction, please,  
8 though. The balance sheet information that I got for  
9 the barge came in in time to do the rebuttal testimony,  
10 but I did not have that balance sheet information for  
11 the barge in the direct.

12 Q. Okay. But you did ultimately receive them;  
13 is that correct?

14 A. Yes, I did.

15 Q. So my point is, those were three different  
16 financial statements, were they not?

17 A. Yes.

18 Q. Okay. And each of those financial statements  
19 were audited by RSM separately, were they not?

20 A. As far as I know, yes.

21 Q. Okay. You don't dispute the numbers in  
22 those -- each of those three reports, do you?

23 A. No. I have no reason to dispute the  
24 individual numbers. I just have to take the numbers

1 that were given to me and run with them.

2 Q. Okay. And you don't dispute the conclusion  
3 of the auditors of those -- each of those three  
4 separate sets of financial statements, do you?

5 A. In regard to what?

6 Q. To the conclusion of the auditors that those  
7 were accurate financial statements.

8 A. No, I don't dispute that.

9 Q. Okay. Now, parking and barge are financially  
10 distinct from the ferry and tram activities, are they  
11 not?

12 A. Yes.

13 Q. Okay. And you have no opinions as to the  
14 operational relationships of the barge and parking  
15 operations of the ferry and tram operations, correct?

16 A. Operationally?

17 Q. Operationally.

18 A. I'm a finance person. I'm not an operations  
19 person, but I can tell you, seems like, obviously, they  
20 are -- they are linked. You can't have one without the  
21 other. But from an operational standpoint, I believe  
22 that there is some shared services, there are some  
23 leases. There is a whole lot of intertwining going on  
24 amongst the three divisions, but from an operations

1 standpoint, I'm just the finance guy.

2 Q. Let me -- you were deposed in this proceeding  
3 by Mr. Risinger, were you not?

4 A. Yes.

5 Q. And you were asked whether you have any  
6 opinions or testimony about the operational  
7 relationship; were you not asked that question?

8 A. Yes.

9 Q. And you said that you did not get into the  
10 operational aspects of this at all; is that correct?

11 A. If that's what it reads, that's what it  
12 reads. And I think that's what I'm just trying to say  
13 here too.

14 Q. Okay. So you don't have an opinion as to the  
15 operational relationship of these -- how they operate  
16 together or not, do you?

17 A. No. No. I mean, again, I'm a finance guy.  
18 I'm not an operations guy.

19 Q. Have you actually toured the facilities at  
20 Deep Point terminal?

21 A. No, I have not.

22 Q. Have you actually visited the facilities at  
23 Deep Point terminal?

24 A. No, I have not.



1 Q. Based upon your review, Bald Head Island  
2 Limited and Bald Head Island Transportation have  
3 maintained separate corporate boundaries of those  
4 entities for purposes of financing and accounting cost  
5 allocation, have they not?

6 A. Well, there are a lot of -- there are a lot  
7 of intertwinings that are going on amongst the two, as  
8 you can go back into the 2010 rate case and see some of  
9 those intertwinings. But in terms of the bookkeeping  
10 aspects, which I think is what you're asking, then  
11 yeah, the bookkeeping seems to be separate; but they  
12 were not necessarily separate in the 2010 rate case.

13 Q. Let me just make sure I'm wording -- I'll try  
14 to word my questions as succinctly as possible.

15 So we have Bald Head Island Limited as one  
16 corporate entity, correct?

17 A. Yes.

18 Q. Bald Head Island Transportation is another  
19 corporate entity, correct?

20 A. Yes.

21 Q. Okay. And based upon your review, they  
22 maintained separate corporate boundaries for purposes  
23 of financing, accounting, and cost allocations; is that  
24 correct, to your knowledge?

1           A.       I'm having trouble accepting that, because  
2 when I go back into the 2010 stipulation agreement,  
3 there was a \$523,000 transfer from the revenues of  
4 parking to the ferry system. That's one of the  
5 intertwinings I was referring to. There were some  
6 parking restrictions. That's another intertwining I  
7 was referring to. There was the lease on the island  
8 that was included in the rate base of the ferry.  
9 That's another intertwining that I'm referring to. So  
10 I'm having a little bit of trouble deciphering what you  
11 mean. I understand what you're trying to say, in terms  
12 of there are different bookkeeping aspects of it, but  
13 what I'm saying is there are -- there are affiliate  
14 transactions going on amongst the three that we have to  
15 parse out and understand.

16           Q.       So there are affiliate transactions between  
17 unregulated and regulated utilities in lots of examples  
18 in North Carolina, are there not?

19           A.       Yes.

20           Q.       So there are cost allocation rules for those  
21 types of transactions, are there not?

22           A.       Yes. And I think that is what happened in  
23 the 2010 rate case with the Public Staff. There were  
24 certain things that were set out in the stipulation,

1 but I'm trying to answer your question about, you know,  
2 if they are totally separate. And what I'm just trying  
3 to say is I understand your point about the books being  
4 totally separate, but I also have to point out that  
5 there are affiliate transactions amongst them that tie  
6 the three together.

7 Q. And there -- and there is accounting cost  
8 allocations for those transactions, are there not?

9 A. Per the 2010 rate case, yes.

10 Q. And per, you know, generally accepted utility  
11 accounting processes that this Commission expects of a  
12 utility to separate costs between utility and  
13 nonutility functions, correct?

14 A. I did not get into anything of that nature in  
15 this proceeding, and so if there are any particular  
16 cost allocation functions from barge to ferry or  
17 anything like that, I didn't get into that. I saw,  
18 obviously, Mr. Horde's testimony where he separated --  
19 allocated certain expenses and allocated certain plan,  
20 but whether or not that came from any type of cost  
21 allocation manual, I don't know. That was, kind of,  
22 beyond what I was looking at in this case.

23 Q. So you have no opinion that the costs haven't  
24 been properly allocated?

1           A.       That wasn't my task, to determine whether or  
2 not they had been properly allocated. I do know,  
3 however, that the link that was made, per the rate  
4 cases, the intertwining that I just talked about,  
5 that's there. Those three are there. But in terms of  
6 if there are any cost allocations that would be in sync  
7 with what the auditor came up with and whether or not  
8 those were done correctly or incorrectly, I didn't do  
9 that. That was beyond the scope of what I had to do.

10          Q.       So would you agree with the statement, from a  
11 financial standpoint, they seemed to be booking  
12 everything on a separate basis to the extent they can?

13          A.       From everything I've seen, yes. But again,  
14 you're asking me if I looked at all the accounting  
15 transactions, made certain that they were being all  
16 allocated in the proper manner. It appears that they  
17 are, but I did not go down that road in great depth.

18          Q.       And you have -- you saw no indication that  
19 they're not properly booking everything on a separate  
20 basis --

21          A.       No.

22          Q.       -- that you can?

23          A.       No, no. Didn't dig that far. Wasn't  
24 responsible for digging that far.

1 Q. I think you already said it's fairly common  
2 for companies to own subsidiaries that are both  
3 regulated and not regulated?

4 A. Yes.

5 Q. Have you ever rendered a market valuation of  
6 a nonregulated company, Mr. O'Donnell?

7 A. Yes.

8 Q. Tell me a little about market valuation of a  
9 nonregulated company that you've valued.

10 A. Now, when you get on beyond about two years  
11 in the past, memory gets a little bit foggy, and when  
12 you go back 20 years, it gets really foggy. So I think  
13 there was a particular case that a lawyer friend of  
14 mine brought to me whereby there was a machine maker  
15 that needed to have a value of his business done on a  
16 regular and ongoing basis, and there are two ways you  
17 do that. Number one, you look at the assets, and you  
18 look at the net book assets and say hey, this is your  
19 inventory, this is your building, this is your fixed  
20 assets, and so forth. The other way to do that is to  
21 look at the income statement and to stream out a number  
22 of cash flows and reduce it back to present value.  
23 So -- and the key point in that is not only the cash  
24 flows, but also, probably even more importantly, is the

1 cost of capital to use to reduce those flows back to  
2 the net present value. So --

3 Q. I just want to make sure I understand. So I  
4 was asking a specific instance in which you rendered a  
5 market valuation.

6 So did you render a market valuation of a  
7 nonregulated company in the past 20 years, to your  
8 knowledge?

9 A. Yeah, I'm sorry, yes.

10 Q. You have?

11 A. I have.

12 Q. In addition --

13 A. Nonregulated.

14 Q. Within the last 20 years or so? You said  
15 that was over 20 years ago.

16 A. It was 20 -- may have been right around  
17 20 years, yeah.

18 Q. Since then, have you done any other market  
19 valuations of nonregulated utilities -- nonregulated  
20 companies?

21 A. Would a municipality be a nonregulated  
22 company?

23 Q. Let's include that. Any market valuation --

24 A. Yes.

1 Q. -- of other than nonregulated or  
2 municipalities?

3 A. Nonregulated or munic- -- I've done one for a  
4 municipality in Florida.

5 Q. Okay. Other than what you've mentioned here,  
6 have you ever done a market valuation of a nonregulated  
7 utility or a municipality, other than what you've  
8 discussed right here in the last few minutes, in your  
9 career?

10 A. (No response.)

11 Q. That you --

12 A. I'm doing my best to remember. I write --  
13 well, one of the things we do in my business is I value  
14 industries, and I have a family money management  
15 business where I write reports for them, and less than  
16 a year ago I wrote a report on the oil industry.  
17 Recommended to buy. Seems like I was right on that  
18 one. But yeah, I mean, I've written reports like that  
19 for my family's money management business. But those  
20 are over all industries.

21 Q. Have you ever analyzed the financial  
22 statements of a parking company or parking operations,  
23 other than those at Deep Point?

24 A. No.

1 Q. Okay. Do you know what the typical capital  
2 expenditures are for a parking company?

3 A. Typical, no.

4 Q. Okay. Do you know what a typical operating  
5 expenditures -- operating expenditures are for a  
6 parking company?

7 A. Typical, no.

8 Q. Did you compare the financial performance of  
9 the Bald Head Island Limited parking operations to the  
10 financial performance of any other parking operations?

11 A. No, I did not.

12 Q. Have you ever analyzed the financial  
13 statements of a barge or maritime company, other than  
14 the one operated by Bald Head Island Limited?

15 A. No.

16 Q. Do you know what the typical capital  
17 expenditures are for a barge company?

18 A. No.

19 Q. Do you know what the typical operating  
20 expenditures are for a barge company?

21 A. No.

22 Q. Okay. Did you compare the financial  
23 performance of the Bald Head Island Limited barge  
24 operations to the financial performance of any other



1 barge company operations?

2 A. No, but I didn't think that it was needed to  
3 do any of that in the course of this work I was doing.  
4 It was -- I'm not sitting here trying to figure out how  
5 the valuation of these three separate entities compares  
6 to other entities. I'm trying to figure out, as a  
7 whole, what their class rates -- excuse me, their rates  
8 of return were, standing alone. So I wasn't tasked  
9 with coming up and saying hey, how does the value of  
10 this compare to barge A or parking B. That was --  
11 that's not why I was hired.

12 Q. There are other ferries that, over time in  
13 the past, have been regulated by the North Carolina  
14 Utilities Commission; you're aware of that, I'm sure?

15 A. No. To be honest with you, I --

16 Q. Did not know?

17 A. I don't get down to the coast very often.  
18 I'm sorry.

19 Q. So you never looked at any other ferry  
20 operations' --

21 A. No.

22 Q. -- financial performance?

23 A. I mean, I know the State of North Carolina  
24 owns some ferries, but beyond that, I don't know.

1 Q. So other than Bald Head Island ferry, you  
2 haven't analyzed any financial statements of other  
3 ferry companies?

4 A. It's like I said just a moment ago, there was  
5 no need for me to. That was beyond the task of what I  
6 was needed to do here.

7 Q. And therefore, you don't know what typical  
8 capital expenditures there may be for a ferry?

9 A. No.

10 Q. And you don't know what typical operating  
11 expenditures would be for a ferry either?

12 A. Again, there is no need for me to know that.

13 Q. Let me shift gears for a second and ask a  
14 question regarding something you are very familiar  
15 with, I know, which is rates and ratemaking process.  
16 Been involved in that many, many, many years.

17 So an accountant working in that arena,  
18 you're very familiar with the concept of rate shock,  
19 are you not?

20 A. Oh, only too well.

21 Q. Okay. So let me ask you, what would be your  
22 definition of rate shock, Mr. O'Donnell, the concept of  
23 rate shock?

24 A. I was asked this same question on Thursday of

1 last week in a case in Texas, and I define it as  
2 anything whereby a customer wasn't expecting a set rate  
3 increase. I mean, for example, the case I just  
4 completed, the overall rate increase is 7, but there  
5 was a certain class of customer that were getting an  
6 89.7 increase. That's rate shock. They weren't  
7 expecting it.

8 I'll take it a little bit closer to home,  
9 because when I leave here -- assuming you're kind  
10 enough to let me leave at 5:30 and I can get down to  
11 Stantonsburg -- rate shock to them is a 30 percent rate  
12 increase, where I had to go and recommend -- because  
13 the price of gas had gone up so much, those customers  
14 just dealt with a 15 percent rate increase, and then I  
15 came back a few months later and did another 15 percent  
16 rate increase. They weren't anticipating that. So  
17 that's rate shock to them. But if you go out ahead of  
18 time and tell people -- because this is what I learned  
19 in all my years of doing this -- is that if you inform  
20 people ahead of time that, hey, we got some serious  
21 things going on here, we've got Putin invading driving  
22 the price of gas up, and then you come back in and they  
23 understand that, and it's not necessarily rate shock.

24 Q. You -- earlier in your career you served on

1 the Public Staff; is that correct?

2 A. Yes.

3 Q. And you've certainly been in the room when  
4 rate case settlements have been negotiated with the  
5 Public Staff, have you not?

6 A. I'm assuming yes.

7 Q. Involved in some of the discussions with the  
8 Public Staff?

9 A. Yes.

10 Q. Is it your experience the Public Staff can  
11 express concern about the magnitude of a rate increase  
12 and the rate shock it may have on the using and  
13 consuming public?

14 A. Absolutely.

15 Q. Okay. And many utilities try to reach an  
16 agreement with the Public Staff and other intervenors  
17 in order to avoid the risk, time, and expense of the  
18 rate case hearing; you would agree with that, wouldn't  
19 you?

20 A. I'm sorry, could you say that again?

21 Q. Many utilities try to reach an agreement, a  
22 settlement, in order to try to avoid a contested  
23 hearing in a rate case?

24 A. Oh, yes.

1 Q. That's fairly common, is it not, to try to  
2 reach a settlement with the Public Staff?

3 A. Oh, absolutely. Try to hit a settlement with  
4 the Public Staff, yes.

5 Q. In order to avoid rate shock, sometimes a  
6 utility can't increase their rates to a point that the  
7 utility might otherwise be allowed to earn a rate of  
8 return and level of profitability; isn't that true?  
9 They can't earn what they otherwise might, because  
10 they're limited by rate shock?

11 A. No. I think there are different ways you can  
12 tackle that animal. One is the phase-in rates. So if  
13 you know that a company needs to raise their rates  
14 15 percent but there will be rate shock, then you do  
15 7-and-a-half percent one year and 7-and-a-half percent  
16 another year so you get up to that point. There are  
17 ways to deal with that.

18 Q. But in the first rate case, they are not able  
19 to achieve the increase they may otherwise need to what  
20 otherwise would be a rate of return on the rate base;  
21 you'd agree with that?

22 A. In that scenario, yes, but, no, you -- but at  
23 the same time, you can put those deferred revenues in a  
24 deferred asset account and recover them at a later

1 point.

2 Q. Were you, yourself, involved personally in  
3 the 2010 rate case for the ferry?

4 A. No.

5 Q. Okay. Do you know what the general ticket  
6 price was prior to that rate case in 2010?

7 A. No.

8 Q. Not being involved in the 2010 rate case, you  
9 have no firsthand knowledge whether rate shock was a  
10 concern in that rate case, do you? You just don't  
11 know?

12 A. I don't know, but I know that there -- all  
13 the concessions that were made, in terms of the ferry,  
14 obviously, had the Public Staff a little bit concerned,  
15 but whether or not they were concerned about rate  
16 shock, I can't tell you.

17 Q. But, as a general principle, when concern  
18 about rate shock is a factor raised by the Public  
19 Staff, rates may not -- that may be a limit on how much  
20 the Public Staff would support a rate increase; you  
21 would agree with that general statement?

22 A. Oh, yes. I mean, no one likes to have rate  
23 increases, period. And rate shock is definitely  
24 something that you don't want to deal with. And I've

1 been in front of boards for a long time, and I've had  
2 to talk about 30 percent rate hikes. It's the worst  
3 feeling in the world, when you know that you're dealing  
4 with people that cannot afford those kinds of rate  
5 hikes, but the alternative is that the utility you're  
6 dealing with is hurting.

7 Q. Yeah. You testified and in your testimony  
8 you stated the fact that ferry operations -- the ferry  
9 operations of Bald Head, itself, had not been very  
10 profitable?

11 A. That's correct.

12 Q. And, typically, you would agree -- I'm sorry,  
13 you would agree, typically, that when you see an entity  
14 that has got a negative income, they don't stick around  
15 very long. They're spun off or sold; you would agree  
16 with that, wouldn't you?

17 A. That's true.

18 Q. Yeah.

19 A. Which may be --

20 Q. Are you aware that Bald Head Island Limited  
21 worked for over six years to try to sell the ferry  
22 operation to the Bald Head Island Authority before  
23 hearing my opening -- my arguments earlier today?

24 A. No. When I was first hired to do this case,

1 I Googled, read a lot. Kind of stunned. I did not  
2 know all the details that were involved in this, but it  
3 was absolutely fascinating. It's a fascinating case.

4 Q. So you didn't know, until I referred to it  
5 today, that Mr. Paul, Ms. Mayfield met with the Village  
6 mayor and mayor pro tem in 2016 -- '17 to discuss the  
7 sale of -- the sale to the Authority and the effort to  
8 sell at that time?

9 A. I think that goes beyond the scope of my  
10 testimony, though, because that's -- I'm a finance guy.

11 Q. Well, but you expressed a theory, and I want  
12 to explore a little bit about that theory.

13 So you were not aware that -- about the  
14 legislation that was adopted in 2017; that was, kind  
15 of, beyond the scope of what you were looking at,  
16 correct?

17 A. I found that when I Googled it.

18 Q. Yeah. Do you know anything about the  
19 creation of the Bald Head Island Transportation  
20 Authority and its efforts to purchase the ferry from  
21 2018 to today?

22 A. Only what I read online at the Wilmington  
23 Star News, and Commissioner Raven, I believe it was,  
24 headed that up. And then I read a few news articles



1 about it, but, you know, that's been several months  
2 ago.

3 Q. Based on what you've looked at, what you've  
4 heard, you would agree that Bald Head Island Limited  
5 was trying to sell its utility asset to an unregulated  
6 entity during that time; you had no reason to dispute  
7 that, did you?

8 A. To be honest with you, everything I read in  
9 that -- all those articles just got me confused. I  
10 didn't know whether or not they were trying to sell. I  
11 didn't know whether or not the Authority was gonna take  
12 it over. I saw newspaper articles that quoted numbers,  
13 but I wasn't quite certain how all that was going to  
14 happen.

15 I mean, again, I'm just a finance guy, but  
16 when I read these things, I'm like, something doesn't  
17 quite make sense to me. The Authority and its credit  
18 rating concerned me, and I wasn't quite certain on how  
19 all that was gonna work out, whether it was gonna be a  
20 lease, whether it was gonna be a sale. I didn't know.

21 Q. Let me back up generally, so we're not  
22 talking about, necessarily, this transaction, but just  
23 a general proposition.

24 If a utility owner -- hypothetically, so

1 generally, if a utility owner was working diligently to  
2 sell a utility asset --

3 A. Right.

4 Q. -- to a nonregulated entity --

5 A. Right.

6 Q. -- and, in fact, even had an Asset Purchase  
7 Agreement negotiated with that entity for that sale,  
8 under those circumstances, it wouldn't make sense for  
9 the utility to go through the process of a contested  
10 rate case, would it?

11 A. I don't see how that plays into it.

12 Q. I'm just asking the question. Would they  
13 likely -- in your experience, if a company is at the  
14 eve -- let me -- okay. Let me repeat the question.

15 If a utility owner was working to sell a  
16 utility, and even had an Asset Purchase Agreement  
17 signed, they wouldn't come in to the Utilities  
18 Commission and ask for a rate case and a contested rate  
19 case increase, would they? Wouldn't need one.

20 MR. SCHAUER: Objection. He's already  
21 asked this question.

22 MR. STYERS: I'm looking for an answer.

23 COMMISSIONER BROWN-BLAND: I don't

24 believe he received an answer. Overruled.

1 THE WITNESS: Should I answer?

2 COMMISSIONER BROWN-BLAND: Yes. Answer  
3 to the best of your knowledge and in your  
4 experience.

5 THE WITNESS: Yeah, my -- SCANA,  
6 Dominion Resources. That was an example where I  
7 was involved in it and they were trying to sell it,  
8 but there was a rate case going on, and the rate  
9 case was going on at the same time they were trying  
10 to sell it, and my understanding was that, unless  
11 Dominion Resources got a certain valuation or  
12 promise that the failed Summer nuclear plant was  
13 going to be included in rates, that it wasn't going  
14 to happen. So I think that's a point where  
15 something like that would have occurred where,  
16 yeah, you could have a rate case and still try to  
17 sell it at the same time. It's a little bit south  
18 of us.

19 Q. In that instance, they're doing a rate case  
20 to try to increase a value of the utility, are they  
21 not?

22 A. They are trying to -- no, that -- no, that --  
23 they were trying to increase the rates, but the value  
24 of the utility had been pretty well hammered when all

1 the news broke about who knew what in regards to when  
2 on the Bechtel report. So that was a -- that was a  
3 case in which, as long as Dominion got the rates that  
4 they needed that included the nuclear plant recovery,  
5 then they were gonna go ahead and go forward with the  
6 deal. But if they didn't, they weren't gonna go  
7 through on the recovery of the deal. That was my  
8 understanding of the case.

9 Q. In that situation, the surviving entity, the  
10 purchaser of the asset, was still going to be a  
11 regulated utility, was it not?

12 A. Yes. Yes. It would have been, and it still  
13 is, a regulated utility, and customers did have to pay  
14 for the assets.

15 Q. My question is a little different. My  
16 question is, if a utility owner was working to sell to  
17 a nonregulated entity, municipality, public authority,  
18 it wouldn't make sense then -- because it wouldn't  
19 affect the value -- it wouldn't make sense to come in  
20 for a contested rate case before selling it to a  
21 nonregulated utility, unlike the SCANA/Dominion  
22 scenario.

23 A. I don't know how to answer that, Mr. Styers,  
24 because I -- I don't think it's gonna matter. You

1 know, if you have a \$100 million asset and you're  
2 trying to unload it to a -- I'm just gonna use Duke  
3 here. No offense to Duke, but I'm just gonna use Duke  
4 here because everyone knows Duke.

5 If Duke's got a \$100 million asset, and  
6 they're trying to unload it to a merchant generator,  
7 and -- would they necessarily worry about a rate case?  
8 I would look at that and say, well, it depends upon  
9 what is going to happen to that \$100 million asset.  
10 Because if I'm Duke, I'm gonna say, hey, listen, we  
11 fully depreciated this asset, and that \$100 million is  
12 gonna go float back to your ratepayers, and so we're  
13 gonna go ahead and sell this asset to the benefit of  
14 the ratepayers, and we're gonna lower your rate  
15 increase.

16 Q. Would it -- so would it really matter to  
17 Duke -- in that situation, would they come into a rate  
18 case for that scenario -- for that one reason in that  
19 situation?

20 A. For that one reason?

21 Q. Yeah.

22 A. No. They come in to rate cases at, you know,  
23 various times throughout the year, but for a single  
24 reason, I mean, you're filing to increase your rates.

1 You wouldn't come in to -- a single reason of selling  
2 it is not a rate case. That's a totally different  
3 docket.

4 Q. On page 8 of your testimony, you expressed a  
5 theory about the regulatory status, that the regulatory  
6 status of parking was a reason that BHIT hadn't come in  
7 for a rate case in the past several years.

8 That is your theory?

9 A. Yes.

10 Q. Have you ever talked with Mr. Paul about why  
11 BHIT had not come in for rate case since in 2010?

12 A. No.

13 Q. Did you talk to Ms. Mayfield about why it had  
14 not come in for a rate case since 2010?

15 A. No.

16 Q. Have you talked with any employee, agent,  
17 attorney about why BHIT had not come in for a rate  
18 case?

19 A. No. But I will say that I put this direct  
20 testimony out, and it could have been rebutted, and no  
21 one told me why.

22 Q. Well, you'll enjoy later in this hearing and  
23 this cross examination.

24 So did you talk with any board members of the

1 Authority -- of the Bald Head Island Transportation  
2 Authority, Susan Rayburn (phonetic spelling), or anyone  
3 else about whether Bald Head Transportation would come  
4 in for a rate case while they were pending the  
5 purchase?

6 A. No. But that's one of the things that got me  
7 confused when I was reading all those newspaper  
8 articles is with the Authority, whether or not they  
9 would be regulated here at the Utilities Commission.

10 Q. Have you read the Statute §391 which says  
11 they would not be regulated by the Utilities  
12 Commission?

13 A. I remember there was a statute created on  
14 that one, yes. But whether or not Bald Head Island  
15 would come in for a rate case at that time, I don't  
16 know.

17 Q. And you haven't talked with anyone currently  
18 on the Public Staff about why Bald Head Island  
19 Transportation didn't come in for a rate case?

20 A. No.

21 Q. Now, you have no direct evidence for why BHIT  
22 did not come in for rate cases in 2010; direct  
23 evidence?

24 A. I had an assumption and I had a theory that

1 made perfectly good sense to me.

2 Q. Okay. You've been doing accounting work --  
3 you've answered some of these questions. I'll try not  
4 to repeat it.

5 You've been doing accounting work for  
6 utilities in North Carolina for over 35 years, roughly?

7 A. Yes.

8 Q. And this is the first time you've ever looked  
9 at a ferry utility in your career?

10 A. That's correct.

11 Q. You would agree that Bald Head Island ferry  
12 is a unique operation among North Carolina utilities,  
13 would you not?

14 A. Yes.

15 Q. Okay. And you've noted in your deposition  
16 that the Bald Head Island situation is different from  
17 what you'd ever seen before, correct, Mr. O'Donnell?

18 A. Yes. I mean, it's -- I deal with electric,  
19 gas, water, all around the country, but not this.

20 Q. The scope of your engagement for this docket  
21 did not include evaluating the prudence of any cost of  
22 service, did it?

23 A. No.

24 Q. Yeah. So you don't have an opinion that all



1 the parking expenses weren't properly, prudently  
2 incurred and reported?

3 A. No.

4 Q. Also, your discovery engagement didn't  
5 include evaluation in any of the assets, whether all of  
6 the assets in the parking department financials were,  
7 in fact, used and useful?

8 A. No.

9 Q. And, in fact, you assumed that all of the  
10 assets on the balance sheet for the parking department  
11 were, in fact, used and useful for the parking, because  
12 you accepted that number on the balance sheet?

13 A. Yeah. I'm -- let me back up and say this.  
14 There are different sets of books. When you say "used  
15 and useful," that's a regulatory term. But some of the  
16 numbers I took were financial statements. We don't  
17 look at used and useful in financial statements. We  
18 look at used and useful for utility plant assets. So I  
19 looked at that and said I'm assuming that these are  
20 booked properly, whether or not they are used and  
21 useful, whether or not the Public Staff will come in  
22 and negatively adjust the assets downward because  
23 they're not used and useful. I didn't go down that  
24 road. I looked at the 2010 material by Mr. Horde, and

1 then I looked at the financial records that were  
2 provided to me in discovery.

3 Q. The Commission, itself, has never determined  
4 the cost of service for parking operations at Deep  
5 Point, have they?

6 A. As far as I know, no.

7 Q. And the Commission's never valued the parking  
8 facility's assets of the parking for ratemaking  
9 purposes, have they?

10 A. The Public Staff has.

11 Q. Commission has not ever valued all of the  
12 parking facility's assets for ratemaking purposes, have  
13 they?

14 A. Commission, as far as I know, has not valued  
15 those assets, but they did approve the stipulation  
16 where Mr. Horde did evaluate what it would be if the  
17 parking was regulated and he made a \$523,000 adjustment  
18 from parking to the ferry. So he basically treated the  
19 parking as if it was a regulated asset.

20 Q. Had you talked to Mr. Horde in preparation  
21 for your testimony in this docket?

22 A. No.

23 Q. Okay. The -- I'll make this an easier  
24 question then.

1           The Commission's never determined cost of  
2 service for barge operations, have they?

3           A.     Um.

4           Q.     For the Bald Head Island barge?

5           A.     Rate design? Are you talking about rate  
6 design cost of service?

7           Q.     Cost of -- yeah, cost of service for how  
8 much -- cost of service for barge operations.

9           In any docket anywhere, this Commission's  
10 never determined cost of service for a barge?

11          A.     The reason I'm hesitating with that -- I  
12 think the answer to that is no, but you have to  
13 understand, in my world, going around the country,  
14 there are two different definitions of cost of service.  
15 One is basically on financial statements and the other  
16 one is rate design. But so when it comes to cost of  
17 the service on the financial side, I think what  
18 Mr. Horde did, the answer to that would be yes. But if  
19 you're talking about cost of service on rate design,  
20 the answer to that is no.

21          Q.     And, likewise, the Commission's never valued  
22 barge facility assets for ratemaking purposes, have  
23 they?

24          A.     I'm sorry, can you repeat that?

1 Q. Commission's never valued the barge -- valued  
2 the barge facility assets for ratemaking purposes, have  
3 they?

4 A. Not that I'm aware of, no.

5 Q. I'm gonna step back again, not talk about  
6 this particular transaction, but in general ratemaking  
7 principles.

8 When a utility purchases or constructs a used  
9 and useful asset, it's allowed to add that asset to  
10 rate base at that time, correct?

11 A. Yes.

12 Q. Okay. And once it's in rate base, it's  
13 entitled to recover a reasonable rate of return on that  
14 asset once it's in rate base, correct?

15 A. It's undepreciated, yes.

16 Q. Yeah. And it is entitled to recover its  
17 prudently incurred cost of service?

18 A. Yes.

19 Q. And part of that cost of service is  
20 depreciation, is it not?

21 A. Yes.

22 Q. Part of that cost of service is taxes paid on  
23 that asset?

24 A. Yes.

1 Q. Okay. And I think you said it's entitled to  
2 cover rate of return on investment that's in the rate  
3 base?

4 A. Yes.

5 Q. Okay. Now, let me -- those are general  
6 ratemaking principles.

7 Now, for an unregulated asset, something  
8 that's not a utility, owner of that company, if it's  
9 not regulated, may or may not earn a profit, correct?  
10 It may be a profitable company or unprofitable company?

11 A. Absolutely.

12 Q. Its revenues may or may not exceed its  
13 expenses in a given year in a nonregulated company, is  
14 that correct?

15 A. That's true.

16 Q. So you would agree that investment risk  
17 profile for an unregulated company is very different  
18 from an investment risk profile for a regulated  
19 company, as general principle?

20 A. I've been doing that work for 37 years. Yes.

21 Q. And I think you said you haven't evaluated  
22 the financial performance or return of any other  
23 parking operations in your career?

24 A. No. I haven't done that. My focus has been

1 on the utility arena, but again, I do write reports  
2 from time to time for firms up in the Wall Street area.

3 Q. But regarding parking operations --

4 A. No.

5 Q. -- you haven't evaluated the finances?

6 A. No.

7 Q. And you wouldn't know -- are you familiar  
8 with SharpVue Capital?

9 A. I've heard the name. I really don't know  
10 them all that well at all.

11 Q. And so you don't know what other investments  
12 they have made in the past in other companies, do you?

13 A. No, I don't.

14 Q. And you don't know what investment  
15 opportunities they may have at any given time?

16 A. No, not at all.

17 (Pause.)

18 Q. Let me shift gears a little bit and talk  
19 about rate of return investment, ROI, something you are  
20 very familiar with.

21 Return of investment basically is a ratio of  
22 net operating income over total rate base. Those are  
23 general --

24 A. Generally, yes.

1 Q. In other words, take the net operating income  
2 and that's basically the numerator of --

3 A. Right.

4 Q. -- of return investment, and the total rate  
5 base is the denominator --

6 A. Right.

7 Q. -- is it not? Yeah.

8 A. For utility ratemaking.

9 Q. For utility ratemaking. And I'm in the  
10 utility ratemaking arena here.

11 With that mathematics, if the net operating  
12 income is higher, if the numerator goes up, then ROI is  
13 higher mathematically?

14 A. Assuming that the rate base stays the same.

15 Q. Assuming that the rate base stays the same,  
16 that would be correct; you would agree?

17 A. Yes.

18 Q. Okay. Now, if the operating income stays the  
19 same, talking about the denominator, if the total rate  
20 base is higher, then the ROI is lower, because you have  
21 a larger -- you would agree with that?

22 A. Yes.

23 Q. Okay. Conversely, if the total rate base was  
24 lower, the ROE would be, of course, higher?

1 A. Correct.

2 Q. The ratio.

3 In your work in this docket on behalf of the  
4 Village, you reviewed the filings and the dockets from  
5 the last Bald Head Island Transportation rate case?

6 A. Yes.

7 Q. Okay. And the Commission did approve a rate  
8 base total number for ferry and tram utility in that  
9 2010 rate case, did it not?

10 A. Yes.

11 Q. Okay. You, yourself, have prepared numerous  
12 rate case filings for lots of utilities over the years,  
13 haven't you, as an accountant?

14 A. Utilities, but more on the consumer side.

15 Q. Okay. But you're familiar with the rate base  
16 filing requirements?

17 A. Yes.

18 Q. The rate case filing requirements?

19 A. Yes.

20 Q. And typically, on a rate case filing, the  
21 utility files a schedule of the plant in service and  
22 accumulated depreciation, correct?

23 A. Yes.

24 Q. Okay. Plant in service should include the



1 assets that are used and useful in providing the  
2 utility service.

3 That's, kind of, what plant in service is, is  
4 it not?

5 A. Correct.

6 Q. Did you review the rate case application and  
7 testimony in the 2010 rate case for Bald Head Island  
8 ferry?

9 A. Yes.

10 Q. Ms. Shirley Mayfield filed the testimony as  
11 the utility's CFO and prepared most of the exhibits and  
12 schedules, based upon that testimony you reviewed?

13 A. Yes.

14 Q. Okay. And the exhibits and schedules  
15 included a plant in service schedule, did it not?

16 A. As far as I can remember, yes.

17 Q. And I didn't mean to test your memory. So  
18 let me --

19 MR. STYERS: May I approach the witness?

20 COMMISSIONER BROWN-BLAND: Yes, you may.

21 (Pause.)

22 Q. I'd like to hand you an exhibit that -- CWO,  
23 is that right, initials?

24 A. KWO.

1 Q. KWO Cross Exhibit Number 1.

2 And subject to check, does that appear to be  
3 the exhibits that were filed as part of the 2010 rate  
4 case by Ms. Mayfield? Do we have copies?

5 Subject to check, does that appear --

6 A. Yes.

7 Q. -- to be the rate case schedules filed in  
8 that 2010 Docket Sub 41 -- A-41, Sub 7?

9 A. Yes. I have no reason to doubt it.

10 Q. Okay. So let me --

11 COMMISSIONER BROWN-BLAND: Before you go  
12 further, let me identify it. This exhibit will be  
13 identified as KWO Cross Examination Exhibit  
14 Number 1.

15 (KWO Cross Examination Exhibit Number 1  
16 was marked for identification.)

17 Q. It is really hard to read some of those  
18 pages, so I'm gonna hand you a docket labeled -- a  
19 document labeled KWO Cross Exhibit 2, which is still  
20 not real easy to read, but it's Mayfield Exhibit 1,  
21 Schedule 2.1, plant in service accumulated depreciation  
22 and depreciation expense. It may be a little easier to  
23 read.

24 Do you see that exhibit?

1 A. Yes.

2 Q. Subject to check, does that appear to be  
3 Ms. Mayfield's plant in service schedule filed in the  
4 rate case in A-41, Sub 7?

5 A. Yeah. I have no reason to doubt that.

6 COMMISSIONER BROWN-BLAND: Okay. Before  
7 you go further, KWO Cross Examination Exhibit 2.

8 (KWO Cross Examination Exhibit Number 2  
9 marked for identification.)

10 Q. So that schedule, the plant in service  
11 accumulated depreciation and depreciation expenses,  
12 includes a category of vehicles, does it not, to the  
13 best you can read that, Mr. O'Donnell?

14 A. Yes.

15 Q. And then on the next page it's got a category  
16 called machinery and equipment, on the second page of  
17 schedule 2.1?

18 A. Yes. Yes.

19 Q. And then there is a category called computer  
20 hardware and computer software?

21 A. Yes.

22 Q. A category on the next page of boats?

23 A. Yes.

24 Q. And then the last page, again, also

1 additional machinery and equipment, computer hardware,  
2 computer software.

3 Those are the categories and exhibits in this  
4 plant schedule?

5 A. Yes.

6 Q. Going back to KWO Cross Examination  
7 Exhibit 1, from Docket A-41, Sub 7, Ms. Mayfield  
8 calculated, in her original cost rate base towards the  
9 bottom, of \$3,702,198. That was -- basically, this  
10 schedule 2 is her summary for the rate base that was  
11 part of the application, correct?

12 A. That's correct.

13 Q. Let me --

14 MR. STYERS: May I approach the witness  
15 again?

16 COMMISSIONER BROWN-BLAND: Yes, you may.

17 Q. I'm going to hand to you an exhibit marked  
18 KWO Cross Examination Exhibit 3 and ask if that appears  
19 to be the late-filed exhibit of Jim Horde filed in  
20 Docket Number A-41, Sub 7?

21 A. It does.

22 COMMISSIONER BROWN-BLAND: All right.

23 This exhibit will be identified as KWO Cross  
24 Examination Exhibit Number 3.

1 (KWO Cross Examination Exhibit Number 3  
2 was marked for identification.)

3 MR. STYERS: And again, it's hard to  
4 read, so if I may approach, exhibit -- I'm going to  
5 hand to you an enlargement of Horde Exhibit 1,  
6 Schedule 1-A, as KWO Cross Examination Exhibit 4.

7 COMMISSIONER BROWN-BLAND: It will be so  
8 identified.

9 (KWO Cross Examination Exhibit Number 4  
10 was marked for identification.)

11 Q. And that's just a page from Cross Examination  
12 Exhibit 3.

13 And would you agree that appears to be  
14 Mr. Horde's adjustments to the initial application and  
15 the Public Staff's recommendation of rate base in  
16 A-41, Sub 7?

17 A. It does. He has revised here, so I'm  
18 assuming this is what they finally settled on.

19 Q. Okay. And do you have any reason to  
20 disagree -- okay, let me back up.

21 So that rate base after adjustments and the  
22 settlement amount on the far right column is an amount  
23 of \$3,943,335; is that the rate base settlement  
24 calculation?

1 A. Yes.

2 Q. Okay. And those are the adjustments from  
3 Ms. Mayfield's initial company amount, which is the  
4 left-hand numerical column of \$3,702,156.

5 That was the number that was in  
6 Ms. Mayfield's initial application that we've looked at  
7 earlier, correct?

8 A. To be honest with you, Mr. Styers, I'm  
9 getting a little bit lost in the numbers that you're  
10 presenting to me here. I think, at the end of the day,  
11 what you're trying to say is that the net plant in  
12 service under the settlement of far right-hand column  
13 under column K is \$3,943,335 versus --

14 Q. Correct.

15 A. -- what Ms. Mayfield filed at \$3,935,344, so  
16 we're off by about \$8,000.

17 Q. They made adjustments during the course, as  
18 is often the case in a rate case?

19 A. Right.

20 Q. Have you reviewed the rate case order by the  
21 Commission in that docket?

22 A. The stipulation, yes.

23 Q. Actually, the order by the Commission.

24 A. Yes, I think I did read that. It's been a

1 while, but I think I did.

2 Q. And I can -- I won't -- I guess just for --  
3 even though it's -- the Commission's already taken  
4 judicial notice of it, just so the record is clear,  
5 I'll mark that KWO Cross Examination Exhibit 5, which  
6 is the --

7 MR. STYERS: If I may approach the  
8 witness?

9 Q. Which is the order by the Commission in that  
10 Docket A-41, Sub 7.

11 A. Okay.

12 Q. And in that order, the Commission --

13 COMMISSIONER BROWN-BLAND: It will be so  
14 identified as KWO Cross Examination Exhibit 5.

15 (KWO Cross Examination Exhibit Number 5  
16 was marked for identification.)

17 Q. Thank you. And in that order, the Commission  
18 found the rate base for the utility to be \$3,943,335,  
19 the same number as recommended in Mr. Horde's  
20 late-filed exhibit, correct?

21 A. Yes.

22 Q. And that rate base total did not include any  
23 parking assets or barge assets, did it?

24 A. (No response.)

1 Q. That total of the plant in service?

2 A. The plant in service -- let me get this  
3 right. There's an adjustment -- if I remember  
4 correctly, there was a lease on the island that went  
5 into rate base to reduce the revenue requirement. So  
6 there was an island lease of the rate base to reduce  
7 the revenue requirement. Let me see if I can find it.

8 (Witness peruses document.)

9 You know, as you -- as you see, Mr. Styers,  
10 there are offsetting increases and decreases in all of  
11 these numbers. That's what all the settlement  
12 adjustments were for. And there is a BHI terminal in  
13 rate base right here that increased 363,503.

14 Q. But that did not pertain to parking -- car  
15 parking --

16 A. Oh, yeah.

17 Q. -- car parking or barge, did it?

18 A. Right.

19 Q. So that had nothing to do --

20 A. I think you're right. It had to do with  
21 Limited and whether it was parking or whether it was in  
22 barge. I'm not certain whether or not that terminal  
23 was booked in which of those two, but it came from  
24 Limited and it went into the rate base.



1 Q. That was a lease by the ferry of the terminal  
2 building, correct?

3 A. Okay, yes.

4 Q. So it was the lease for the ferry terminal  
5 building from BHIL?

6 A. So Limited owned the -- okay. Limited owned  
7 the building and that was the lease that went in there.  
8 Okay.

9 Q. That was the terminal for the ferry  
10 operations, not the parking assets, themselves?

11 A. Yes. Okay.

12 Q. So you would agree that there is no assets in  
13 that rate base number that were parking or barge  
14 assets?

15 A. No. The only parking would be what we  
16 previously talked about with some of the revenue side.

17 Q. And not in the rate base?

18 A. Not in the rate base.

19 Q. Okay. So just about finished. And I realize  
20 we're pushing 5:30, so I want to see if I can wrap it  
21 up in the next 12 minutes.

22 So we talked about ROI as basically a ratio  
23 with a total rate base in the denominator, correct,  
24 Mr. O'Donnell?

1 A. Yes.

2 Q. And, mathematically, a denominator is lower,  
3 you agree that ROI would be higher --

4 A. Yes.

5 Q. -- given net operating income?

6 So, you know, for example, if the rate base  
7 was the same as net operating income, the return would  
8 be 100 percent; if you had -- if you basically had a  
9 number that was the same as the -- the net operating  
10 was rate base, and you were earning a dollar, it would  
11 be 100 percent rate of return, wouldn't it be?

12 A. Yes.

13 Q. Okay. Mathematically, if the rate base were  
14 100 -- however, if the rate base was 100 times the  
15 operating income, then ROI would be 1 percent?

16 A. That's correct.

17 Q. Okay. In your KWO-1 rebuttal exhibit, your  
18 calculation of total rate base for everything, parking,  
19 barge, ferry, was \$8,978,096 in your exhibit --  
20 rebuttal exhibit?

21 A. (Witness peruses document.)

22 I'm sorry, it's kind of like trying to find a  
23 needle in a haystack.

24 (Witness peruses document.)

1 All right. I'm here.

2 Q. So your -- your calculation shows a rate base  
3 of everything. Your number is \$8,978,096?

4 A. Yes. Yes.

5 Q. And you combined everything from the  
6 financial statements that you received, correct?

7 A. Yes. Updated through December 31, '21.

8 Q. And you noted earlier that regulatory  
9 accounting and financial statement accounting, you  
10 know, can be different; are two different concepts, are  
11 they not?

12 A. Yes.

13 Q. Okay. Is it your understanding that SharpVue  
14 is offering to purchase the assets of parking, barge,  
15 and ferry for \$56 million?

16 A. As I sit here right now, I don't know what  
17 the number is. I just -- I've heard some numbers. I  
18 don't know what it is.

19 Q. Subject to check and for purposes of a  
20 hypothetical, let's assume that SharpVue was purchasing  
21 the parking barge and ferry operation for \$56 million,  
22 for purpose of this illustration.

23 A. Right.

24 MR. STYERS: I'd ask the court reporter,

1 is our next Exhibit 6?

2 COURT REPORTER. Yes.

3 Q. 6. So just from -- as a mathematical  
4 exercise --

5 MR. STYERS: If I may approach with KWO  
6 Cross Examination Exhibit 6?

7 Q. We talked about how rate of return is a  
8 function of rate base.

9 If the denominator in your calculation was  
10 \$56 million and we assumed that operating income is the  
11 same, then that mathematics would provide a rate of  
12 return investment of 4.38 percent mathematically, would  
13 it not?

14 A. Based on a market value of \$56 million --

15 Q. Just the mathematics.

16 A. I can't argue with the math, but, you know,  
17 you're mixing a regulated net operating income with a  
18 market value, and we would -- we would never do that in  
19 regulatory ratemaking, because then we're getting back  
20 to the issue of Ms. Mayfield and I discussing  
21 fair market -- fair value versus book value and so  
22 forth and so on. I won't argue with your numbers, but  
23 the premise behind them I disagree with.

24 Q. Understood.

1                   COMMISSIONER BROWN-BLAND: We are  
2 gonna -- hold up right there. Thank you,  
3 Mr. O'Donnell, for that answer. We are gonna  
4 identify the one-page mathematical document as KWO  
5 Cross Examination Exhibit 6.

6                   MR. STYERS: Thank you very much.  
7                   (KWO Cross Examination Exhibit Number  
8 6 was marked for identification.)

9                   COMMISSIONER BROWN-BLAND: And --

10                  MR. STYERS: Maybe just a few more.  
11 I'll be finished by 5:30, I think.

12                  COMMISSIONER BROWN-BLAND: Well --

13                  MR. STYERS: Or we could finish now and  
14 I can finish up tomorrow.

15                  COMMISSIONER BROWN-BLAND: Well, based  
16 on what you heard, is the Village gonna have  
17 redirect?

18                  MR. SCHAUER: Yes, we will have some  
19 redirect.

20                  COMMISSIONER BROWN-BLAND: So,  
21 Mr. O'Donnell, we did not get you back on the road  
22 to head back up north. So we're gonna end right  
23 here for the day, in terms of the evidentiary  
24 hearing.

1 I want to turn our attention back to the  
2 hearing on the preliminary injunction. During that  
3 hearing, Transportation, Limited, and SharpVue  
4 agreed or offered to provide the Commission with a  
5 stipulation. The Commission is going to take you  
6 up on that, and we would like the stipulation  
7 between the parties to the Agreement -- to the  
8 Asset Purchase Agreement to include what you  
9 offered to include, but also to include  
10 specifically a stipulation not to buy or sell any  
11 asset subject to the Asset Purchase Agreement on or  
12 before November 18, 2022. And that Asset Purchase  
13 Agreement has been received into evidence here, and  
14 it's also in the Sub -- it's been filed in the  
15 Sub 22 docket.

16 To also stipulate to provide the  
17 Commission at least a 10-day notice in this  
18 proceeding of any closing date on any asset that's  
19 subject to the Asset Purchase Agreement, and  
20 stipulate to provide to the Commission at least a  
21 10-day notice in this proceeding of any proposed  
22 waiver, modification, or amendment of any of the  
23 material terms or provisions of the Asset Purchase  
24 Agreement, including the provisions of Articles 3,

1 5, 7, 8, or of schedule 7.5 without limitation --  
2 included without limitation. Is that clear?

3 MR. STYERS: I'll try. Hopefully we've  
4 got enough people in the room taking notes so that  
5 it will be clear by the time we put it down.

6 COMMISSIONER BROWN-BLAND: And we would  
7 like that to be filed by the end of the day  
8 tomorrow.

9 MR. STYERS: Okay. No problem. We'll  
10 do that. And if I have not written down my notes  
11 correctly, we will amend it to make sure it  
12 comports with the instructions today, but I think  
13 we will be able to communicate that.

14 COMMISSIONER BROWN-BLAND: And this is  
15 not a ruling on the motion for preliminary  
16 injunction. We will hold that in abeyance for the  
17 time being.

18 MR. STYERS: Understood. Okay.

19 COMMISSIONER BROWN-BLAND: All right. I  
20 will adjourn the -- not adjourn, but recess the  
21 proceeding for today four minutes early, and we  
22 start tomorrow at 9:30.

23 MR. STYERS: Thank you.

24 MR. SCHAUER: Thank you.

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(The hearing was adjourned at 5:26 p.m.  
and set to reconvene at 9:30 a.m. on  
Tuesday, October 11, 2022.)

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Oct 19 2022



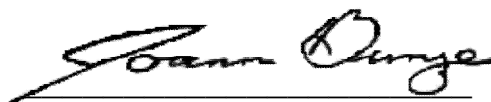
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STATE OF NORTH CAROLINA )  
COUNTY OF WAKE )

I, Joann Bunze, RPR, the officer before whom the foregoing hearing was conducted, do hereby certify that any witnesses whose testimony may appear in the foregoing hearing were duly sworn; that the foregoing proceedings were taken by me to the best of my ability and thereafter reduced to typewritten format under my direction; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this hearing was taken, and further that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.

This the 18th day of October, 2022.



JOANN BUNZE, RPR

Notary Public #200707300112