

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. A-41, SUB 22

In the Matter of)	
Joint Application of Bald Head Island)	SUPPLEMENTAL DIRECT
Transportation, Inc., and Bald Head Island Ferry)	TESTIMONY OF
Transportation, LLC, for Approval of Transfer)	SCOTT T. GARDNER
of Common Carrier Certificate to Bald Head)	ON BEHALF OF
Island Ferry Transportation, LLC, and)	VILLAGE OF BALD HEAD ISLAND
Permission to Pledge Assets)	

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Feb 20 2023

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. A-41, SUB 22

Supplemental Direct Testimony of Scott T. Gardner

On Behalf of the Village of Bald Head Island

February 20, 2022

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

2 A. My name is Scott Thomas Gardner. I am currently serving as the Mayor Pro Tem
3 for the Village of Bald Head Island (the “Village”), and I am a member of the
4 Village Council. My official address is 106 Lighthouse Wynd, Bald Head Island,
5 North Carolina 28461.

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

8 A. Yes, I submitted pre-filed Direct Testimony on December 14, 2022, which was
9 prior to the issuance of the Commission’s Order Ruling on Complaint and Request
10 for Determination of Public Utility Status in Docket No. A-41, Sub 21 – which I
11 will refer to as the “Sub 21 Order”.

12 **Q. CAN YOU SPEAK TO THE VILLAGE’S MOTIVATION FOR**
13 **PARTICIPATION IN THIS TRANSFER PROCEEDING?**

14 A. The Village’s interest in this proceeding is in protecting the Island. We seek a safe,
15 reliable, reasonably priced transportation system that is appropriate to serve the
16 needs of the Island and its various stakeholders, not just today, but over time. I

1 cannot overemphasize the critical importance of the transportation system to
2 everything that happens on the Island: the success of the Island depends on a
3 properly functioning, efficient, and affordable means of public access. Given that
4 the Village Council is comprised of full-time residents of the Island, who utilize the
5 transportation systems on a frequent basis, and who are on the “front lines” when
6 citizens and stakeholders have questions or concerns about the operation of the
7 system, the Council is uniquely situated to advocate for the interests of the public.
8 And in doing so, we have no preconceived notions about who should own and
9 operate the transportation system: we only seek the arrangement that is most
10 advantageous to the long-term interests of the Island and the public, and our
11 preference is to seek collaboration around mutual goals wherever possible.

12 **Q. WHAT IS THE PURPOSE OF THIS SUPPLEMENTAL DIRECT**
13 **TESTIMONY?**

14 A. My supplemental testimony addresses developments subsequent to the filing of my
15 pre-filed Direct Testimony, including the Amended Application for Transfer of
16 Common Carrier Certificate filed by Bald Head Island Transportation, Inc.
17 (“BHIT”), Bald Head Island Limited, LLC (“BHIL”), and Bald Head Island Ferry
18 Transportation, LLC (“BHIFT”) on January 24, 2023 which was necessitated to
19 comply with the Commission’s Sub 21 Order.

20 **Q. WHAT DID THE COMMISSION DECIDE IN THE SUB 21 ORDER?**

21 A. In the Sub 21 Order the Commission agreed with the position of the Village that
22 the parking and barge operations of BHIL are subject to the Commission’s

1 jurisdiction and authority. The Commission reserved for later decision the exact
2 scope and degree of regulation that would be exercised over the parking and barge
3 operations, but determined that N.C.G.S. § 62-111(a) prohibited the sale, transfer
4 or pledge of the parking and barge assets and operations without Commission
5 approval and granted temporary authority for continued operation of the parking
6 and barge assets under BHIT's existing certificate. These latter conclusions
7 necessitated the amendment of the transfer application in this proceeding to address
8 parking and barge operations in addition to the ferry/tram operation.

9 **Q. DOES THE COMMISSION'S SUB 21 ORDER RESOLVE THE VILLAGE'S**
10 **CONCERNS ABOUT THE SHARPVUE TRANSFER?**

11 A. The Sub 21 Order does not resolve the Village's concerns about this *specific*
12 transfer – which I will elaborate on in this supplemental testimony. But the order
13 goes a long way towards addressing the Village's overall concerns about ensuring
14 that the consolidated utility assets will be protected for the benefit of the public so
15 long as the assets are privately held. Having the Commission's continued oversight
16 of the consolidated utility operations will help ensure a safe, reliable, reasonably
17 priced transportation system which is essential to the Island's long-term success.
18 We are aware there are many important matters of widespread consumer impact
19 that are on the Commission's agenda, and the Village is grateful to the Commission
20 for its time and attention on the issues brought forward in the Sub 21 docket.

21 **Q. PLEASE ELABORATE ON YOUR REMAINING CONCERNS WITH**
22 **RESPECT TO THE SHARPVUE APPLICATION?**

1 A. There are several. First, I think it is significant that SharpVue refuses to accept the
2 Commission's determination in the Sub 21 Order and has filed an appeal of that
3 decision. In fact, the Amended Application makes clear that that the Applicants do
4 not concede that the Commission has jurisdiction over the parking and barge
5 operations and that they are making the amended filing "so that the transaction ...
6 may close." In other words, they are seeking to close on the transaction while they
7 are simultaneously litigating the Commission's authority over critical aspects of the
8 transfer.

9 This approach only serves to amplify concerns that I spoke to in my pre-
10 filed Direct Testimony about the proposed transfer: *i.e.*, that SharpVue, as a private
11 equity firm, is ill-suited to operate in the highly-regulated utility environment and
12 that its decisions will be motivated by profit-maximizing motives rather than public
13 service motives. I appreciate that SharpVue is entitled to exercise its right to
14 appeal. But it is remarkable to me that SharpVue is unwilling to accept the
15 Commission's commonsense order on regulation, and this action only serves to
16 highlight the concerns expressed by many on the Island – concerns that were
17 articulated at the Commission's public hearing in this proceeding – that SharpVue's
18 business plan will be focused on maximizing returns for investors rather than
19 providing a utility service. Thankfully, the Sub 21 Order will offer a backstop
20 against these harms, assuming that the appellate courts do not disturb the Order;
21 but the fact that there are guardrails does not mean that the Commission should
22 approve a transfer which has not been demonstrated to be in the public interest.

1 The sale of these assets to a private equity firm – particularly where the funding is
2 coming from a special-purpose-entity rather than an institutional fund – could set
3 the transportation system on a path which may be difficult to reverse, where the
4 assets are monetized for commercial and private gain as opposed to being held for
5 the using and consuming public.

6 **Q. YOU PREVIOUSLY MENTIONED THE VILLAGE’S DESIRE FOR**
7 **COLLABORATION WHEREVER POSSIBLE. DID BHIL’S CEO,**
8 **MR. PAUL, SIGNAL THAT LIMITED WAS PURSUING A “LITIGATION**
9 **STRATEGY” IN RECENT PUBLIC COMMENTS?**

10 A. Yes, I remotely monitored (via electronic streaming) the recent annual meeting of
11 the Bald Head Association where Mr. Paul stated that the Mitchell Estate “has
12 decided to let the courts figure it out” by filing the appeal, as well as by initiating
13 parallel litigation against the Village over the Village’s right of first refusal
14 (“ROFR”) to purchase the transportation system assets. It is unfortunate that
15 Limited has chosen this route – and that SharpVue has joined the appeal.

16 **Q. CAN YOU BRIEFLY ADDRESS THE PARALLEL LITIGATION THAT**
17 **LIMITED HAS INITIATED AGAINST THE VILLAGE RELATING TO**
18 **THE VILLAGE’S RIGHT-OF-FIRST-REFUSAL?**

19 A. Yes, BHIL and BHIT have initiated litigation seeking a determination, as I
20 understand it, that the Village’s ROFR is invalid because the Utilities Commission
21 never approved the ROFR or, alternatively, because the Village has forfeited its

1 rights under the ROFR.¹ The Village's understanding of the legal status of the
2 ROFR is that it is valid and enforceable, and the Village intends to defend against
3 the assertions and claims made in the litigation.

4 **Q. DOES THE ROFR LITIGATION IMPACT THIS PROCEEDING IN YOUR**
5 **VIEW?**

6 A. I am not a lawyer, and am not offering a legal opinion, but it is the Village's position
7 that BHIL and BHIT cannot transfer the transportation assets to a buyer without
8 first complying with their obligations under the ROFR, which they have not done
9 to date. Again, the Village does not have preconceived notions about "who" should
10 own and operate the transportation system, but, through the ROFR, the Village has
11 a contractual right to step into the buyer's role should the Village decide it would
12 be in the best interests of the public.

13 **Q. DO YOU HAVE OTHER REMAINING CONCERNS WITH THE**
14 **SHARPVUE TRANSACTION?**

15 A. Yes – in addition to the broad concern that the transaction has not been shown to
16 be in the public interest – I have some more specific concerns regarding the
17 proposed transaction. In my pre-filed Direct Testimony, I pointed out that
18 SharpVue, in discovery responses, had refused to commit that it would not seek to
19 recover an acquisition premium by raising parking or barge fees. This concern has
20 only been magnified by the Amended Application, given that SharpVue omitted

¹ See Exhibit B to Village Motion to Hold Proceeding in Abeyance and Request for Expedited Ruling on the Motion, at Prayer for Relief p. 12.

1 any commitment not to seek recovery of acquisition premiums. By appealing the
2 Sub 21 Order and deleting the prior commitment to not seek recovery of an
3 acquisition premium, it is obvious that SharpVue is intending to seek recovery of
4 these premiums from ratepayers.

5 **Q. DO YOU HAVE A RECOMMENDATION FOR THE COMMISSION ON**
6 **THIS ISSUE?**

7 A. The Village's expert witnesses, Dr. Wright, is addressing this issue in more detail,
8 but I agree with his recommendation that the any action of the Commission in this
9 proceeding should be conditioned on a requirement that acquisition premium not
10 be recovered from ratepayers. My understanding is that this position is consistent
11 with the Commission's well-established approach to this issue. Addressing this
12 issue now will avoid what will otherwise be a contentious hearing on this issue in
13 the future and it will also help SharpVue and its investors manage their expectations
14 as regards going forward utility operations.

15 **Q. HAVE YOU REVIEWED THE AMENDED DIRECT TESTIMONY OF LEE**
16 **ROBERTS FILED IN THIS PROCEEDING?**

17 A. Yes.

18 **Q. DOES THAT TESTIMONY HELP ALLEVIATE ANY CONCERNS YOU**
19 **MIGHT HAVE ABOUT THE SHARPVUE TRANSACTION?**

20 A. Unfortunately, it does not. I wish it did. I have a number of specific observations
21 to illustrate what I perceive to be missing from the testimony.

- 22 • As I mentioned, Mr. Roberts states that SharpVue will not seek to recover

1 transaction costs from ratepayers but he has retracted his prior commitment
2 not to seek to recover the acquisition premium from “passengers.” This
3 omission is extremely significant and, in my view, signals that SharpVue
4 intends to seek to extract these premiums from parking, barge and ferry
5 customers. It suggests to me that there will be another contentious
6 proceeding on this topic in the future.

- 7 • SharpVue agrees not to seek a rate change in ferry and tram services for one
8 year. However, this commitment says nothing about parking and barge
9 rates. In addition, Mr. Roberts expressly conditions his promise on the Sub
10 21 Order being overturned, saying that SharpVue “reserves the right” to
11 seek rate changes if the order is affirmed; which suggests SharpVue will ask
12 to increase prices for all services once it loses its appeal.
- 13 • Mr. Roberts does not articulate a single specific step that SharpVue pledges
14 to take to improve system operations and performance. In fact, SharpVue
15 characterizes current operations as “extremely well-run” and states its goal
16 as “continu[ing] that track record of success” and merely “stepping into the
17 shoes of BHIT and BHIL.” The perpetuation of a substandard
18 transportation system should not be the goal of a new owner.
- 19 • Mr. Roberts makes no commitment that SharpVue will not seek to monetize
20 utility assets by selling specific transportation assets on a piecemeal basis.
- 21 • Mr. Roberts makes no commitment that SharpVue will hold and operate the
22 utility assets for any particular period of time. This, of course, is of great

1 concern to the Island, which is dependent on the stability of its
2 transportation system. What we do not want is a situation where the system
3 (or components thereof) is bought and sold repeatedly.

4 In sum, SharpVue has not articulated any tangible public benefit from the
5 transaction that might offset the significant risks associated with the sale of utility
6 assets to a special-purpose fund, managed by a private equity firm with its prime
7 goal being to maximize profit for its investors, based on a business plan that is
8 dependent on the appellate courts overturning the Sub 21 Order.

9 As I stated in my prefiled Direct Testimony, these concerns are enhanced
10 by the fact that SharpVue has made no effort to work with the Village to address
11 its concerns. There has been no communication that I am aware of where SharpVue
12 has solicited the Village's input concerning current operations of the transportation
13 assets, its concerns regarding the proposed transaction, and measures that might be
14 implemented to address these concerns. This remains surprising to me given the
15 obvious need for the parties to work together should the transaction be
16 consummated and the fact that the Village would be one of SharpVue's largest
17 customers.

18 **Q. IN YOUR PRE-FILED DIRECT TESTIMONY, YOU DOCUMENT**
19 **SERIOUS SERVICE ISSUES PLAGUING THE TRANSPORTATION**
20 **SYSTEM. DO THE AMENDED FILINGS OFFER ANY COMFORT TO**
21 **THE VILLAGE ON THIS ISSUE?**

22 **A.** No, they do not. As stated, Mr. Roberts' testimony offers no specific commitments

1 to improve service quality. Moreover, I question whether there would be cash flow
2 to support operational and capital investments necessary to make service
3 improvements.

4 **Q. GIVEN THE APPLICANTS' AMENDED FILINGS AND YOUR**
5 **SUPPLEMENTAL TESTIMONY, PLEASE SUMMARIZE THE**
6 **VILLAGE'S CURRENT POSITION AS REGARDS THE TRANSFER OF**
7 **THE COMMON CARRIER CERTIFICATE TO SHARPVUE?**

8 A. The Village continues to have serious concerns about the proposed transaction and,
9 for that reason, is not able to support the application. This Village's concerns are
10 grounded in: (1) SharpVue's continued challenge to the Commission's assertion of
11 regulatory authority over parking and the barge and the unresolved legal issues
12 concerning these assets due to the pending appeal, (2) SharpVue's failure to
13 articulate any meaningful public benefit from the transaction including rate
14 reductions or any rate commitments at all that are not conditional on the Sub 21
15 Order appeal, (3) the removal of a commitment not to seek recovery of an
16 acquisition premium, (4) the failure to address the need for, and make commitments
17 regarding, system improvements, and (5) unanswered questions concerning
18 SharpVue's capabilities and plans for operating the system. As I observed
19 previously, this position is consistent with the sentiment of Island stakeholders, as
20 illustrated by a November survey sent by the Bald Head Association in November
21 to over 1,500 property owners. Only 23% of the respondents supported the transfer

1 of the certificate in this proceeding, while 56% opposed the transfer and another
2 22% did not have sufficient information to form an opinion.

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

4 **A. Yes.**