

PLACE: Dobbs Building, Raleigh, North Carolina
DATE: Wednesday, October 12, 2022
TIME: 1:41 p.m. - 4:37 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 5

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E X H I B I T S

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P R O C E E D I N G S

COMMISSIONER BROWN-BLAND: All right.

Let's come back on the record.

Whereupon,

JAMES FULTON,

having previously been duly sworn, was examined

and testified as follows:

CONTINUED REDIRECT EXAMINATION BY MR. STYERS:

Q. I believe my last question was for roll-on/roll-off barge, to have operated as intended, you need a driver to actually drive the vehicle on the barge and then drive the vehicle off the barge?

A. That's correct.

Q. So let me, however, set up a hypothetical where that might not be the case.

So does the driver or person who drives the vehicle on and off, do they need a ticket in any fashion?

A. No they do not.

Q. Are they given a ticket?

A. No.

Q. Okay. If a driver drives an 18-foot box truck onto the barge, he's charged \$180?

A. Correct.

1 Q. In the discretion of the captain, he can ride
2 in the cab of the truck while it's going across; that
3 is correct?

4 A. That is also correct.

5 Q. Okay. And a ride in the truck is \$180,
6 charged for the 18-foot box truck?

7 A. Yes.

8 Q. Let's assume -- and this is a multipart
9 hypothetical, so bear with me, Mr. Fulton.

10 Let's assume that the driver drives the box
11 truck on the barge, turns off the ignition, leaves the
12 keys in the ignition, gets off the barge, goes to Deep
13 Point terminal to have lunch in the restaurant there.
14 And then his colleague is waiting on the island side at
15 the barge landing, and when the barge lands, gets onto
16 the barge, into the cab, turns the ignition on, and
17 drives the truck off.

18 Do you understand that hypothetical?

19 A. Yes.

20 Q. In that case, what's the charge for the
21 18-foot box truck to drive across?

22 A. It was the original \$180.

23 Q. So you're not charging anything for the
24 driver to ride in the cab of the truck across the

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1 barge?

2 A. No.

3 Q. Actually, Dr. Wright identified it as an
4 exhibit, but then Mr. Trathen asked you questions
5 specifically about two certificate common carrier
6 issues in North Carolina, namely Cape Lookout
7 Camping -- Cabin and Camps; the Davis, North Carolina
8 ferry; and the Morris Marina ferries.

9 Do you remember that -- those questions by
10 Mr. Trathen?

11 A. Yes.

12 Q. So I have previously distributed, and when
13 asked that -- okay. I'll ask him to identify each one,
14 and then I'll have them marked.

15 One of the exhibits before you, at the top
16 left, says Morris Marina Ferry Service.

17 If I represent to you that that is a page
18 from Morris Marina ferry service website -- have you
19 looked at that website before, Mr. Fulton?

20 A. I have.

21 Q. Does this appear to be a page off the Morris
22 Marina website?

23 A. It does. I recognize it.

24 MR. STYERS: So I would ask that this be

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1 identified as Fulton Redirect Exhibit 1.

2 COMMISSIONER BROWN-BLAND: It will be so
3 identified.

4 (Fulton Redirect Exhibit 1 was marked
5 for identification.)

6 Q. And then I've also handed to you another
7 exhibit -- a sheet of paper -- two sheets of paper. At
8 the top it reads Cape Lookout Cabins and Camps; Davis,
9 North Carolina ferry.

10 Have you seen this visual shown on this
11 exhibit in the past?

12 A. I have, by looking on their website, yes.

13 Q. So this is from the website of the Cape
14 Lookout Cabin and Camps and ferries?

15 A. Yes.

16 MR. STYERS: I would ask that this
17 document be labeled as Fulton Redirect Exhibit 2.

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

20 (Fulton Redirect Exhibit 2 was marked
21 for identification.)

22 Q. And I'm gonna try to make this quick. Hope
23 the transcript reads clearly. And if not, I can break
24 it up.

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1 Do both Fulton Redirect Exhibit 1 and
2 Redirect Exhibit 2 refer to the services as ferry
3 services?

4 A. Yes.

5 Q. And does the barge hold itself out as a ferry
6 service?

7 A. No.

8 Q. On the first -- on the Fulton Redirect
9 Exhibit 2, it is pricing -- I'm sorry, Exhibit 1,
10 Morris Marina, there is pricing for passengers in the
11 third column, is there not?

12 A. Yes.

13 Q. The price for adult passenger, \$18; children,
14 \$9; is that correct?

15 A. Yeah. On the --

16 Q. On the Morris Marina.

17 A. Morris? Yes.

18 Q. And on the Fulton Redirect Exhibit 2, there
19 is pricing information for passengers about the middle
20 of the page.

21 Do you see that, Mr. Fulton?

22 A. Yes.

23 Q. And that reads adult passengers, \$18; and
24 children under 10, \$8?

1 A. Yes.

2 Q. So based upon the information that you have
3 here, shown on Fulton Redirect Exhibit 1 and Fulton
4 Redirect Exhibit 2, these ferry services are charging
5 for passengers to ride on it, do they not?

6 A. Yes.

7 Q. And I think we established you're not
8 charging anything for the driver who may ride over in
9 the cab of a vehicle on the barge?

10 A. We are not.

11 Q. And you're not allowing anyone to walk on the
12 barge and ride over?

13 A. We are not.

14 Q. Okay. You were asked by Mr. Higgins about
15 the barge running on a regular schedule.

16 Do you remember that question?

17 A. Yes.

18 Q. If there is a special project on the island,
19 such as a road repaving or something that requires a
20 particular delivery of trucks, asphalt, concrete, at a
21 particular time, can arrangements be made to contract
22 for a special run of the barge?

23 A. They can.

24 Q. Okay. So while it runs -- it does run on

1 time schedules, it -- certainly, you can contract for
2 it, if you wanted to contract for the entire barge?

3 And the Village, in fact, has done that, have they not?

4 A. Yes.

5 Q. Finally, there was a question by Mr. Higgins
6 about the log that we talked about. I'm not gonna ask
7 that it be admitted into evidence, but there's -- there
8 is a log that's maintained by the barge office of
9 vehicles that are loaded onto the barge, are there not?

10 A. Yes.

11 Q. And one of the columns is type; is that
12 correct?

13 A. Yes.

14 Q. And one of the types is dump, correct?

15 A. Yes.

16 Q. But that does -- does that mean that
17 something is dumped on the barge?

18 A. That's a dump truck.

19 Q. Okay. And so another category is box?

20 A. It is.

21 Q. And that means, like dump means dump truck,
22 box is a?

23 A. A box truck.

24 Q. And that's a very very common --

1 A. Yes.

2 Q. -- way of transporting materials over to the
3 island?

4 So box does not mean a box of something
5 that's placed on --

6 A. No. It is a box truck, such as we have
7 commonly seen.

8 Q. And you've been working for the ferry, either
9 as employee -- I mean for the barge -- have experience
10 with the barge either as an employee or contractor for
11 27 years?

12 A. Yes.

13 Q. And you have never -- have you ever -- have
14 you ever seen a piece of furniture or appliance placed
15 by itself on the deck of the barge?

16 A. No.

17 MR. STYERS: No further questions.

18 COMMISSIONER BROWN-BLAND: Questions by
19 Commission?

20 Commissioner Clodfelter?

21 EXAMINATION BY COMMISSIONER CLODFELTER:

22 Q. Mr. Fulton, good afternoon.

23 A. Good afternoon.

24 Q. Mr. Styers and Mr. Higgins were very helpful

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1 to me. They obviated me for a lot of my questions, but
2 I have a couple I want to get -- just get clear on. I
3 am looking -- you don't need to have this in front of
4 you. I thought originally you would, but I don't think
5 so. I'm looking at a portion of the log, the barge
6 log, that is the Exhibit 12 to Mr. Wright's testimony.
7 And in that typed column that you were talking to Mr.
8 Styers about, there are a couple other things I just
9 want to ask you what they -- how they translate, what
10 they mean.

11 If I see an entry that says "deck load,"
12 would that be one of the transactions where the
13 forklift drives something onto and sets it down that
14 you were talking with Mr. Styers about? That's what
15 "deck load" means?

16 A. Yes, sir.

17 Q. Okay. On the deck loads, Mr. Styers got it
18 loaded on the mainland side; how does it get unloaded
19 on the island side?

20 A. Well, it came over at the request of someone
21 on the island, so they would come down. And as I
22 believe I said earlier, a lot of times that stuff is,
23 "oh, gee, I didn't know I needed it" stuff. So the
24 receiving party on the island would be there to meet

1 the barge and would take that deck cargo off.

2 Q. They'd pick it up on their side?

3 A. That's correct.

4 Q. Okay. Got it. There is an entry -- common
5 entry is T&T; is that tractor and trailer?

6 A. It is, yes.

7 Q. There is another entry that, frankly, I don't
8 have a clue what it is. It's very common, but it's
9 called Moffett.

10 A. Moffett. You -- that is a -- usually a
11 tractor trailer rig. If you've seen the Lowe's and the
12 Home Depot flatbeds going down, and they've got a
13 forklift bouncing around on the back of it, the
14 original manufacturer who invented that is Moffett. So
15 it's kind of like everything is called Kleenex.

16 Q. Got it.

17 A. It's a tractor trailer that can do materials
18 handling.

19 Q. And I think most of the others are obvious.
20 PU truck is a pickup truck, right?

21 A. Yes. Yes, sir.

22 Q. Okay. Now, there's a bunch of entries on the
23 log -- the log I have, which is mostly for June and
24 July of this year, 2022, for golf carts.

1 So tell me how a golf cart is loaded,
2 transported, and then unloaded.

3 A. What is it again?

4 Q. Golf carts.

5 A. Oh, golf carts.

6 Q. Yes. How does it get loaded, how does it get
7 transported, and how does it get unloaded?

8 A. It's driven on by the owning or selling
9 party. Some of those large golf cart entries you see
10 is the Bald Head Island Club might replace all of the
11 golf carts on the course. So they would come down, get
12 all of those off the barge very quickly so the barge
13 could resume schedule, and then they start shuttling
14 them down to the club. It could be golf carts for Cary
15 Cart Company which sells and maintains golf carts.

16 Q. Again, I don't think you need to have this in
17 front of you. You're familiar enough with this to
18 know. I'm just trying to see what I'm reading when I
19 read it.

20 A. Yes, sir.

21 Q. So, like, on July 20 -- July 7th this year on
22 the 1:00 ferry run, Cary Cart Company puts a whole
23 bunch of golf carts on there at one time for that one
24 run.

1 They don't each have a driver, do they?

2 A. No, sir, they -- you know, they might have
3 two, three, four people to come down there and
4 expeditiously get all those carts on, and then they
5 either ride the ferry across on passenger ticket or
6 their comrades on the other side unload them.

7 Q. Okay. But they do it as quickly as they can,
8 but they don't each one have a passenger in the golf
9 cart who drives it on and drives it off for each cart?

10 A. No, sir.

11 Q. They don't to that?

12 A. No, sir.

13 Q. All right. Thank you. And as I say, thanks
14 also to Mr. Higgins and Mr. Styers.

15 I do want to ask you a question about another
16 aspect of the operation. And again, I don't think you
17 need to have this in front of you. I'm gonna read you
18 something from the Mercator report, and I'm doing it
19 really just to get the context so you have the context
20 for what it is I'm asking about.

21 So, in the description of the freight
22 handling facility, Mercator says, "The transportation
23 system serving Bald Head Island includes a small
24 freight handling operation where small parcels of cargo

1 are combined and loaded aboard trucks for transport to
2 the island. The freight handling operation has
3 historically been undertaken by the Department of Bald
4 Head Island Limited, but all revenues and costs of the
5 cross-docking kept separate from the tug and freight
6 barge operations."

7 That's the context. Tell me more about how
8 this freight consolidation and then transport operation
9 works. Describe it in a little more detail to me.

10 A. The -- the barge is -- excluding the captain
11 and his deckhands, the officer personnel if you will,
12 is basically a two-person office where you, as the
13 customer, come and say, "I'd like space on the X:00;
14 this is what I've got." Totally separate operation
15 from what you are referring to, and I think what
16 Mercator was talking about, is what's called shipping
17 and receiving facility.

18 They have box trucks and they are bringing
19 over things like food, office supplies, this sort of
20 thing. They come to the barge office as a customer,
21 and they get charged against their accounts for however
22 many trucks they want to bring. Totally separate
23 operation, but in the same building, we just have a
24 little office for the barge people.

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1 Q. Well, would it work this way? Is this the
2 way it works? So I got something I want to send to a
3 friend over on the island, and it's not a big pallet
4 that needs a forklift or doesn't need a full truck. I
5 might take it to the freight handling facility and say,
6 "Can you put this on one of your next box trucks going
7 over," and they would combine that with a bunch of
8 other stuff that might have a similar character, and
9 then they'd go to the barge office and say, "I got a
10 box truck that needs to go over; can you schedule me on
11 this trip?"

12 Is that the way it works?

13 A. Yes, sir, except -- and I'm speaking now of
14 the shipping and receiving facility, not barge -- their
15 customers are either internal clients in other
16 departments within Bald Head Island Limited. For
17 example, water jugs for water coolers that Limited has
18 got in its offices, they would bring that over. Or,
19 there could be a commercial facility on the island that
20 wants some support some way or another, but for
21 individuals, they're not in that business. They would
22 probably give you some suggestions of other companies
23 in the Southport area you might engage to do that.

24 Q. They'd say take it to Federal Express and it

1 will go on the next Federal Express truck that goes
2 over to the island?

3 A. Yes, sir.

4 Q. They'd say that. So who, again, can use that
5 facility? Tell me, again, who -- who has access to the
6 service of the freight handling facility?

7 A. To the shipping and receiving?

8 Q. Shipping and receiving is what you call it?

9 A. It's a Bald Head Island Limited operation.
10 It looks primarily for internal support. In other
11 words, it's supporting Bald Head Island Limited
12 departments. You know, the water jugs is a trivial
13 example, but these are big 4-gallon jugs, and they
14 might carry 20 of those things over there at one time
15 and distribute them to the various floors in the
16 building.

17 It's -- when Limited -- another example would
18 be when Limited had, for example, restaurants -- owned
19 and operated restaurants on the island. A lot of stuff
20 for the restaurants, consumables -- not necessarily
21 food, since they don't have refrigerated trucks --
22 would come over from shipping and receiving. But
23 again, they come to the barge office as a customer with
24 a truck that needs carriage.

1 Q. Thank you. That's very helpful. I just -- I
2 got to be real clear, then. I want to be sure I
3 understand how that thing works.

4 So what about a business on the island that's
5 not part of Bald Head Island Limited; could it use the
6 shipping and receiving function?

7 A. It would depend, sir, but typically they have
8 contracted with other commercial facilities. We
9 don't -- we, Bald Head Island Limited, does not hold
10 itself out to the public, "Hey, come and see if we
11 could put stuff in our truck for you." They don't do
12 that. That's inward looking.

13 Q. That's not done either on the mainland side
14 or on the island side?

15 A. Yup.

16 Q. Okay. And so cross-docking, just define what
17 that means. That's a term I don't know. It's referred
18 to in the Mercator write-up on the shipping/receiving
19 as the cross-docking activity. What's cross-docking?

20 A. My assumption, the way they use that is,
21 someone delivers supplies to Bald Head Island Limited
22 shipping and receiving. They do have a loading dock.
23 And then shipping and receiving puts that into one of
24 their trucks, comes to the separate barge office and

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1 says, "I'd like to get this on the 7:00 ferry tomorrow
2 morning." So it -- there is not a dock, per se, at the
3 barge, but it drives onto the barge, so it's crossed
4 another dock, if you will.

5 Q. All right. That helps me, but you may have
6 confused me a little bit with another part of the
7 answer. You say "someone comes."

8 I thought I understood that the only people
9 who really would do that would be some operation of
10 Bald Head Island Limited?

11 A. For the shipping and receiving facility?

12 Q. Yes.

13 A. No. It's -- I'm using the term inward
14 looking. That does not hold itself out to the
15 individual or commercial company as we will take care
16 of what you need. They are there for the benefit of
17 providing supplies within Bald Head Island Limited.

18 Q. Okay. I'm gonna leave it at that, because if
19 I got it really confused, these lawyers will clear it
20 up when they ask questions after me, but that's what I
21 had, and I appreciate your time.

22 A. Thank you.

23 EXAMINATION BY COMMISSIONER BROWN-BLAND:

24 Q. Mr. Fulton, just, really, one question. Does

1 Bald Head Limited own a forklift?

2 A. If -- if we did, it would be in the shipping
3 and receiving, and I don't recall that we've ever owned
4 one. They could have. But it would have been just
5 within that shipping and receiving facility that I
6 spoke about earlier.

7 Q. All right. And then when goods go from one
8 end to the other end, at the Island end, is it -- who
9 meets -- who meets the barge to take off the materials
10 that have gone over?

11 A. It would be the -- the recipient on the other
12 side usually is of the same uniform, if you will, as
13 the person that shipped the article across. In other
14 words, James Fulton's Construction Company, we had a
15 parts runner somewhere on the mainland who ran and got
16 those 5-gallon buckets of paint that I forgot, and he
17 gets the stuff put on one of their trucks or a rental
18 truck, and when it -- and he tells the other guy on the
19 other side on Bald Head, "Hey, it's gonna be on the
20 X:00 barge. Come down there and meet it." And that's
21 the way it would be handled. So it's -- it's all
22 within that same commercial consumer, if you will.

23 Q. So is it ever like the -- like a retailer,
24 like a Lowe's, do they ever put it on on their end as,

1 kind of, part of their delivery services, and then
2 somebody meets them on the other end?

3 A. It can be everything within -- primarily
4 it's -- when you look at the biggest thing they carry
5 on the barge -- biggest meaning largest number of
6 trucks -- it's box trucks. And so that can be
7 everything from a uniform company to somebody has
8 rented a box truck. They're in the construction
9 business, but they don't own a truck that size, and
10 they use it to get supplies over.

11 Q. When it's a pallet, same thing, do they go --
12 does the pallet go directly onto the barge?

13 A. Pallet is gonna be one of these individual
14 things that we call a deck load. Most of the
15 palletized stuff comes over loaded on either flatbed
16 trailers or inside of trucks. Most of the deck loads,
17 as I said, are things that either were not immediately
18 available to the construction company, if you will, on
19 Bald Head and have become available later and they're
20 being shipped to them, or they forgot and ran into
21 something in construction that's required, as I used
22 the example of the paint, but a lot of times it's
23 things like wallboard paste or whatever.

24 Q. So when the roll-off happens, somebody from

1 the construction entity comes and picks it up?

2 A. Yes. And they're -- most of -- well, not
3 most, but a lot of these construction entities that are
4 larger firms also have the materials-handling
5 equipment, like a forklift, so they come down. The
6 reason that they -- the two ends of that customer party
7 communicate is it's in every customer of the barge's
8 best interest that that barge makes its schedule on
9 time. So if you have sent something over to the island
10 and you're 5, 10 minutes late coming down to pick it
11 up, that starts causing a problem to unload the barge.
12 So that's why our customers, particularly those that
13 have been there for a long time, we use telephone
14 communication and let you know that what you were
15 looking for is coming over on the next barge, or
16 whatever time it is.

17 Q. All right. Are there questions on the
18 Commission's questions, Mr. Ferrell?

19 MR. STYERS: Just a very few.

20 MR. FERRELL: None for me.

21 COMMISSIONER BROWN-BLAND: All right.

22 Over with the -- from the Village?

23 MR. TRATHEN: None.

24 COMMISSIONER BROWN-BLAND: Club?

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1 MR. HIGGINS: No, ma'am.

2 COMMISSIONER BROWN-BLAND: Mr. Styers?

3 EXAMINATION BY MR. STYERS:

4 Q. Just to make sure that we're all, kind of, on
5 the same page, and we're as brief as possible here, the
6 vast majority of loads going over are on vehicles.

7 We talked a -- we've talked a
8 disproportionate amount about deck load palettes, but
9 the vast majority are vehicles, correct?

10 A. Yes, that's correct. In fact, there is
11 probably -- in this long list, if you went through and
12 counted deck loads, out of 70-some thousand things,
13 there is something like 1,400 entries for deck loads.

14 Q. And in most of the vehicles there is
15 actually -- we don't deny there is a driver who is
16 going over in the cab to roll on and roll off the
17 vehicle?

18 A. Correct.

19 Q. To your knowledge, there is nowhere on -- or
20 is there anywhere on the website where someone can
21 request shipping and handling -- shipping and receiving
22 to deliver something over on the island?

23 A. Not to my knowledge, no.

24 Q. Okay. To your knowledge, is there any

1 marketing flyers or brochures advertising Bald Head
2 Island Limited shipping and receiving service
3 delivering items to the island?

4 A. Not to my knowledge, no.

5 Q. To your knowledge, any marketing to the
6 public at all?

7 A. I have not seen any, no.

8 Q. So any services that would be -- would be --
9 even in theory, would be just, kind of, contract
10 business to business; would that be correct?

11 A. Yes.

12 Q. Okay. Internal Bald Head Island Limited use
13 of shipping and receiving would be just done by a
14 notation and journal entry from cost accounting
15 perspective, correct?

16 A. (No verbal response.)

17 Q. She needs to be able to -- if you'll answer
18 orally.

19 A. Yeah.

20 Q. Yes. To your knowledge, is there even any
21 type of cash register or receipt mechanism in shipping
22 and receiving to your knowledge?

23 A. In shipping and receiving?

24 Q. Yeah.

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1 A. I don't know. I don't think so.

2 Q. Okay. No further questions.

3 COMMISSIONER BROWN-BLAND: All right. I
4 will entertain motions.

5 MR. STYERS: First, we would ask that
6 the exhibits that were attached to Mr. Fulton's
7 prefiled testimony be admitted into evidence in the
8 record.

9 COMMISSIONER BROWN-BLAND: That motion
10 is allowed, and the six exhibits that were attached
11 to his direct are received into evidence.

12 (Fulton Exhibits 1 through 6 were
13 admitted into evidence.)

14 MR. STYERS: And then we'd also ask that
15 Fulton Redirect Exhibit 1 and Fulton Redirect
16 Exhibit 2 be admitted into the record as evidence
17 as well.

18 COMMISSIONER BROWN-BLAND: And that
19 motion is also allowed.

20 (Fulton Redirect Exhibits 1 and 2 were
21 admitted into evidence.)

22 MR. TRATHEN: Village would ask that its
23 four cross examination exhibits be entered into the
24 record.

Page 30

1 COMMISSIONER BROWN-BLAND: That motion
2 is also allowed as well.

3 (Village Fulton Cross Examination
4 Exhibits 1 through 4 were admitted into
5 evidence.)

6 COMMISSIONER BROWN-BLAND: Mr. Fulton,
7 you may step down and be excused.

8 THE WITNESS: Thank you.

9 MR. STYERS: At this time, Bald Head
10 Island Limited and Bald Head Island Transportation
11 will call Ms. Shirley Mayfield to the witness
12 stand.

13 Whereupon,

14 SHIRLEY MAYFIELD,
15 having first been duly sworn, was examined
16 and testified as follows:

17 COMMISSIONER BROWN-BLAND: You may be
18 seated. Mr. Styers is gonna start out.

19 DIRECT EXAMINATION BY MR. STYERS:

20 Q. Would you please state your name, address,
21 and position of employment for the record?

22 A. Shirley A. Mayfield. I am the chief
23 financial officer and manager in Bald Head Island
24 Limited, LLC, and I am chief financial officer,

1 secretary, and treasurer in Bald Head Island
2 Transportation.

3 Q. You may want to --

4 COMMISSIONER BROWN-BLAND: Ms. Mayfield,
5 you have a soft voice, so pull that mic up close.

6 THE WITNESS: Is that better?

7 COMMISSIONER BROWN-BLAND: That's
8 better.

9 Q. It is, thank you.

10 A. Okay.

11 Q. Have you caused to be prefiled in this docket
12 direct testimony consisting of 13 pages in question and
13 answer format?

14 A. I have.

15 Q. Was that testimony prepared by you or under
16 your direction?

17 A. Yes.

18 Q. If you were asked those same questions today,
19 now that you are under oath, would you provide the same
20 answers as in your prefiled testimony?

21 A. Yes.

22 Q. Do you have any corrections or additions to
23 your testimony?

24 A. No, I do not.

1 Q. Were there four exhibits labeled A through D
2 identified in and filed concurrently with your direct
3 testimony?

4 A. Yes.

5 Q. Okay. Are those exhibits true and accurate
6 in representing what they purport to represent to the
7 best of your knowledge?

8 A. Yes.

9 MR. STYERS: Madam Commissioner, we now
10 ask that the prefiled testimony of Shirley Mayfield
11 be moved into evidence and added to the transcript
12 as if given forth from the witness stand,
13 consisting of 13 pages in question and answer
14 format, and that the exhibits be identified A
15 through D as set forth attached to that testimony.

16 COMMISSIONER BROWN-BLAND: That motion
17 is allowed.

18 (Mayfield Exhibits A through D were
19 identified as they were marked when
20 prefiled.)

21 (Whereupon, the prefiled direct
22 testimony of Shirley Mayfield was copied
23 into the record as if given orally from
24 the stand.)

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. A-41, SUB 21

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of

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

**DIRECT TESTIMONY OF
SHIRLEY A. MAYFIELD**

September 8, 2022

OFFICIAL COPY

Sep 28 2022

1 **Q. Please state your name, occupation, and business address.**

2 A. My name is Shirley A. Mayfield. I am the Chief Financial Officer of Bald Head
3 Island Limited LLC ("BHIL"). I also serve as Secretary/Treasurer and a Manager
4 for Bald Head Island Limited, LLC. My business address is 6 Marina Wynd, Bald
5 Head Island, North Carolina 28461-5073.

6 **Q. Please describe your educational and professional background.**

7 A. I have a B.S. degree in accounting and a Master of Business Administration degree
8 from the University of North Carolina at Wilmington. I am a Certified Public
9 Accountant and have been licensed in the State of North Carolina since 1988. I
10 have worked for BHIL for 21 years. Prior to that, I worked as the Controller for
11 The Bonita Bay Group, a prominent developer in Southwest Florida, for three years,
12 and for Landfall Associates in Wilmington, North Carolina, for nine years before
13 that.

14 **Q. In your work for BHIL, do you also have any involvement with Bald Head
15 Island Transportation, Inc.?**

16 A. Yes. Bald Head Island Transportation, Inc., ("BHIT") is a wholly-owned
17 subsidiary of BHIL. As Chief Financial Officer for BHIL, I also have oversight
18 and responsibility for the finances of BHIT and serve as its Secretary/Treasurer.

19 **Q. Have you testified before the North Carolina Utilities Commission before?**

20 A. Yes, I testified in the general rate case for BHIT, Docket No. A-41, Sub 7, in 2010.

21 **Q. What is the purpose of your testimony in this proceeding?**

1 A. The purpose of my testimony is threefold: to describe the manner in which the
2 business lines of BHIT's regulated assets and BHIL's unregulated assets are
3 financially recorded, maintained, and analyzed; to discuss how those procedures
4 and practices impact analysis of BHIT's and BHIL's separate business lines; and
5 to address issues and circumstances arising from BHIT's 2010 Rate Case that are
6 relevant to this docket.

7 **Q. What is your approach as CFO to a BHIL corporate umbrella that includes**
8 **within its scope the regulated enterprises of BHIT – ferry and tram – and the**
9 **unregulated enterprises of BHIL – parking and tugboat/barge.**

10 A. We have a commitment and responsibility to ensure that BHIT's regulated activities
11 and records are independently and separately logged, maintained, and analyzed
12 apart from BHIL's non-regulated activities. This follows the basic guidepost of a
13 public utility that independence and transparency in such affairs is paramount so
14 that regulators can accurately assess the activities and economic health of the
15 regulated activity. This serves the interests of a regulator like the Commission in
16 ensuring safe and reliable service to consumers at a reasonable cost.

17 **Q. Does this approach to financial transparency have an impact on what the ferry**
18 **and tram can, and do, charge for their services?**

19 A. Yes, because we have a responsibility to conduct the business lines of BHIT and
20 BHIL in a way that allows the Commission to ascertain that the rates and allowable
21 rate of return on the public utility's business are based only on the used and useful
22 assets of BHIT and the revenues and expenses generated by those activities and

assets. Financial transparency allows the Commission to ensure that a regulated utility does not, for instance, divert revenue to an unregulated entity that would artificially reduce the utility's revenue or absorb expenses not specifically used in the regulated activity and perhaps bolster a case for higher than justified rates.

Q. What steps do BHIL and BHIT take to ensure the type of transparency required for the conduct of these distinct business lines?

A. First, BHIL is organized in a way that bolsters this structural ethic. Our organization chart sets it forth, below, in Figure 1 (*see Exhibit A*):

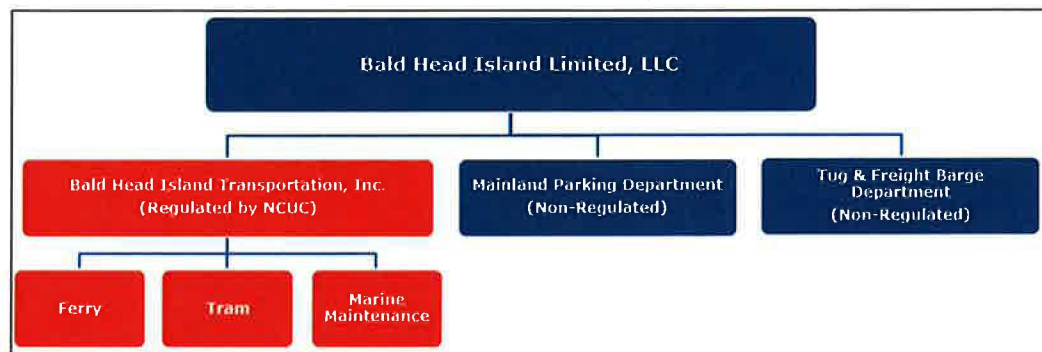


Figure 1

BHIT is a separate and distinct subsidiary of BHIL, and the ferry and tram activities are conducted wholly within its bounds. Second, Parking and Tug & Freight Barge are, themselves, distinct departments of BHIL with reporting lines only to BHIL.

Q. What kinds of specific measures are in place to ensure the distinct natures of the regulated activities from a practical, and financial, perspective?

A. One key metric is that, by Order of the Commission in the 2010 Rate Case, Docket No. A-41, Sub 7, I have signed and filed, every quarter for the past twelve years (in Docket No. A-41, Sub 7A), an income statement and plant schedules listing all of

1 the asset categories and accumulated depreciation for the rate base assets of BHIT.

2 These reports are publicly available on the Commission's website, and

3 Respondents also have produced each of those reports to Complainant in this

4 docket. A true and accurate copy of the most recent set of financial statements

5 produced to Complainant is attached hereto as Exhibit B.

6 **Q. Are any parking or barge assets included on the plant schedules included in**
7 **Exhibit B, or any of the other quarterly BHIT reports filed with the**
8 **Commission?**

9 **A.** No, the parking and barge assets are not owned by BHIT and have never been
10 considered to be part of BHIT's rate base; therefore, it would have been inaccurate
11 to include them on the financial statements.

12 **Q. If the Commission were to now determine that either the parking or barge**
13 **businesses lines of BHIL are regulated activities within the Commission's**
14 **jurisdiction, how would this affect the rate base of the utility?**

15 **A.** Because it is necessary for all used and useful assets necessary for the provision of
16 a regulated utility function to be owned (or leased) by the utility, the parking lot
17 and/or assets would need to be sold or leased to BHIT. As previously explained,
18 those assets have never been owned by BHIT in the past and have never been
19 considered to be part of BHIT's rate base, so, hypothetically, this would be a new
20 addition to BHIT's balance sheet and plant schedules. Those assets were appraised
21 for purposes of their potential sale to the Bald Head Island Transportation
22 Authority, so we know that their fair market value in an arm's length transaction is

1 well in excess of the *total* rate base of the regulated utility in the 2010 Rate
2 Case. Therefore, any new lease by BHIT of those assets should be based upon that
3 value and be included in the cost of service. As well, any purchase of those assets
4 by BHIT for inclusion, for the first time, in the BHIT rate base would increase the
5 BHIT rate base by more than its total from the 2010 Rate Case.

6 **Q. Are there activities conducted by either BHIT or BHIL that in some fashion**
7 **benefit the other? If so, how does BHIL account for such activities on the**
8 **books of the appropriate entity?**

9 **A.** Yes, there are certainly functions performed that benefit a regulated and non-
10 regulated entity that require us to appropriately charge costs and expenses so the
11 financial records of each entity reflects the appropriate expenses. One clear
12 example is the Marine Maintenance (MM) department that is a part of BHIT.
13 Because marine vessel maintenance and repair is a common and regular need for
14 BHIT's four ferries and BHIL's tugboat and barge, the same staff and shop
15 resources from the MM department are tasked with the maintenance of each entity's
16 vessels. Indeed, the MM department's facilities are purposefully situated on the
17 Deep Point campus so that all of the subject vessels can easily access its facility.
18 Costs and expenses of the MM Department are typically recorded in one of three
19 ways. First, the cost is a direct charge for a specific expense to the maintenance of
20 a specific vessel or to the barge. Second, for a split invoice -- where one invoice
21 covers multiple vessels and/or the barge -- the maintenance history, time expended,
22 parts and supplies are all considered and the decision to assign cost is determined

by experienced personnel in the MM department and then signed off on by the MM Supervisor. Lastly, we engage in detailed monthly allocations of expenses related to numerous Deep Point campus maintenance and services so that the cost is appropriately and fairly shared among the entities and departments consistent with their usage and afforded benefits.

Figure 2 (*see* Exhibit C), below, demonstrates at a broad level the categories of expenses that the Accounting department allocates on a monthly basis:

<u>Departmental Allocations of common expenses</u>	
Telephone	
Cable	
Utilities Water & Sewer	
Utilities Electric	
Trash & Garbage	
Supplies General	
Supplies Fuel	
R&M Buildings	
R&M Carts & Vehicles	
R&M Machinery & Equipment	
R&M Landscaping and Grounds	
R&M Docks & Piers	
Copying, Printing & Forms	
Pest Control	
Rental Equipment	
Taxes, Licenses, & Permits	
Security	
Property Tax	
Insurance	
Sales Tax	
Depreciation	
(Gain) or Loss Cap Asset	
VC Facilities Maintenance	
VC Housekeeping	
VC Monthly Parking (for security guard)	

Figure 2

The allocation model used today is the same methodology audited by the Public Staff and approved in the 2010 rate case.

1 **Q. Were you the CFO at the time of the last general rate case for BHIT, in Docket**
2 **No. A-41, Sub 7?**

3 **A. Yes, I was.**

4 **Q. In that position, did your work include the accounting calculations to**
5 **determine the rate base for BHIT in that rate case?**

6 **A. Yes, it did. Working with our regulatory accountant, I identified and determined**
7 the value of the assets of BHIT used and useful in providing regulated utility service
8 to and from and on the island.

9 **Q. Were your rate base calculations in the initial rate case application the same**
10 **as the ones eventually adopted by the Commission in its final order in that**
11 **docket?**

12 **A. No, during the course of the Rate Case, we had numerous discussions and**
13 negotiations with the Public Staff, and specifically with its Accounting Division,
14 head, Jim Hoard. Those negotiations resulted in various revisions to the rate base
15 calculations, but we were able to reach an agreement and stipulation of settlement
16 with the Public Staff and all of the intervenors prior to the hearing.

17 **Q. Was the Village of Bald Head Island an intervenor and party in that docket?**

18 **A. Yes, they were.**

19 **Q. Did the Village agree to the rate base calculations in the stipulation?**

20 **A. Yes, they did. I was present during the negotiations and agreement.**

21 **Q. Were the rate base calculations set forth in that stipulation of settlement**
22 **accepted and approved by the Commission and set forth in its Order?**

1 A. Yes, they were. All of the parties agreed that the rate base value of all assets used
2 and useful in the provision of the regulated utility service upon which the rates were
3 based was \$3,943,335, and, likewise, the Commission found in its Order that the
4 value of all assets used and useful were \$3,943,335. *Proposed Order of the*
5 *Stipulating Parties*, Docket No. A-41, Sub 7, ¶ 7 (Nov. 22, 2010); *Order Granting*
6 *Partial Rate Increase and Requiring Notice*, Docket No. A-41, Sub 7, ¶ 7 (Dec. 17,
7 2010).

8 Q. **At any time – in the initial application, in the negotiations with the Public Staff,**
9 **in the Stipulation of Settlement, or in the Commission’s final order -- did the**
10 **rate base of assets include any assets that were part of the parking or barge**
11 **businesses lines conducted by BHIL?**

12 A. No. Parking or barge assets were never part of the rate base calculations.

13 Q. **Have you reviewed the documents from BHIT’s initial application to the**
14 **Utilities Commission for authority to operate ferry service?**

15 A. Yes. The initial application in 1993, and the Commission Orders from 1993 and
16 1995, were filed in Docket No. A-41, Sub 0 and can found on the Commission’s
17 website.

18 Q. **Were any real estate assets including in the financial statement filed in Docket,**
19 **No. A-41, Sub 0 or in any regulatory filings made since then?**

20 A. Indeed, there were no real estate assets (*see* Exhibit D) in rate base connected with
21 parking furnished at Indigo Plantation as shown, below, in Figure 3:

EXHIBIT D Applicant's assets and liabilities are as follows: As of December 31, 1992:

<u>ASSETS</u>		<u>LIABILITIES</u>	
Real Estate	\$ -0-	Liens on Real Estate	\$ -0-
Rolling Equipment	773,208	Liens on Equipment	835,710
Cash on Hand	800	Judgments	-0-
Cash in Bank	14,713	Other Liabilities	53,612
Other Assets	197,773	Advances from Parent Co.	1,297,321
Total	\$1,486,494	Total	\$ 2,186,643

Page 2

Figure 3

In the almost thirty years that parking has been provided both at Indigo Plantation and, more recently, at Deep Point, parking facilities have never been regulated by the Commission and parking assets have never been part of the rate base of BHIT on which rates were calculated. Accordingly, rates for BHIT have never included recovery of a rate of return on the property used for parking, depreciation expenses of improvements on that property, or property taxes paid.

Q. Does a prospective inclusion of parking and/or barge assets into the rate base of the regulated utility pose concerns for BHIL and BHIT, or the public?

A. I believe the inclusion does pose a concern, not only for BHIL and BHIT, but also for the consuming public. First, there would be the matter of the form of inclusion -- lease or ownership; either would create a higher rate base and/or higher cost of service on which required revenues would be calculated to determine new ferry rates. One would also need to evaluate how and to what extent parking and barge

1 revenue generated would be applied in rate design to satisfy that requirement along
2 with the determination of how parking and barge assets would be assigned. If
3 services were on a first-come, first-served basis, what would be the consideration
4 of parking locations and availability on revenue generation? And how would barge
5 capacity and usage affect the overall financials? Hypothetically, with multiple
6 revenue streams from disparate sources with different cost structures, it would be a
7 much more complicated rate design process to determine the rates for various,
8 different services for various, different classes of customers (not to mention the
9 allocation of the parking and barge function assets and expenses between ferry and
10 non-ferry customers). I have not undertaken that analysis, nor is it broached by the
11 Complaint.

12 **Q. Would the manner in which the assets newly proposed for inclusion in the**
13 **utility's rate base be significant for BHIL and BHIT, and any prospective**
14 **owner of the assets such as SharpVue Capital?**

15 **A.** Very much so. We understand and agree with the Commission's recent order that
16 indicated there is no request in the Complaint to set or modify any rates, and we see
17 no basis for the Commission to change that view and convert this "complaint"
18 proceeding into a Rate Case. If the Commission were to entertain the inclusion into
19 the utility's rate base of some or all of the parking or barge assets, we believe that
20 is a process suited for a Rate Case and not a "complaint" proceeding. In particular,
21 there are unique issues related to these historically non-regulated assets that make

1 their treatment as a newly-declared used and useful asset an important
2 consideration.

3 **Q. Are there particular issues about the parking or barge assets that you would**
4 **commend to the Commission's attention?**

5 **A.** It will be particularly important for there to be thorough consideration in a future
6 Rate Case about how assets newly placed in the rate base are valued. This is
7 because BHIT, or SharpVue if the Commission approves the request pending in the
8 transfer docket (A-41, Sub 22), would be entitled to earn a reasonable rate of return
9 on its rate base assets, less depreciation.

10 Two of the many issues this invokes are how the Commission would value in the
11 utility's new rate base (i) improvements that have been significantly depreciated
12 since 2009 but for which BHIL has been allowed no recovery; and (ii) the real
13 property (land) used by BHIL for its parking operation (for both ferry and non-ferry
14 purposes), adjacent to the Cape Fear River, that does not depreciate. In fact, that
15 land has become increasingly valuable over time; thus, if the owner of the utility
16 (BHIT or SharpVue) was required to purchase it or lease it as a condition of its
17 inclusion in rate base, the fair market value of the land would necessarily underlie
18 either transaction.

19 **Q. Can you explain this with reference to sample financial metrics?**

20 **A.** For example, one of the certified appraisals done for the Bald Head Island
21 Transportation Authority ("Authority" or "BHITA") valued the real property
22 associated with the Deep Point campus at \$36,325,000. Another appraisal secured

1 by the Authority valued that real property at \$33,000,000. If BHIT must acquire or
2 lease the land on which BHIL's parking operations is conducted (approximately
3 half of the real property valued by the two appraisers) the fair market value of one
4 of those transactions should be included in rate base. However, witnesses for the
5 Village have suggested in discovery that only the net book value of the land (as
6 currently carried by BHIL) should be included in the utility's rate base. In essence,
7 the Village suggests that BHIT or SharpVue acquire or lease extremely valuable
8 land to make the Village's newly imagined regulatory regime possible, but only be
9 allowed to recover rates, and a reasonable rate of return, calculated off of a
10 historical book value that dates to 1996. This docket presents neither the
11 appropriately framed issues, nor the data, that are necessary for the Commission,
12 Public Staff, and the parties to argue and draw appropriate conclusions on this issue.

13 **Q. Are there other ways in which this docket is an improper forum to address**
14 **these issues?**

15 **A.** Yes, we believe it presents a premature exercise that combines concepts, data, and
16 parties to reach conclusions not requested in the Complaint. For instance, a witness
17 for Complainant, Kevin O'Donnell, suggests that it would be useful for the
18 Commission to aggregate the financial data of regulated and non-regulated assets
19 owned by different entities and combine them to make judgments about the
20 propriety of taking certain regulatory steps involving the parking and barge
21 businesses of BHIL. The Commission has stated this docket is directed at *whether*
22 the parking and barge businesses should be regulated. If it so elects, in that event,

1 *then* a rate case, pursuant to the applicable rules and regulations, the Commission
2 can identify the used and useful assets used in rendering utility service, determine
3 the ways in which they should be accounted for in the rate base, and undertake the
4 detailed task of discerning rates of return (based in part on the disparate risk profiles
5 of the various assets) and ultimately rates (and rate design for the various services)
6 supported by the data presented in the record in such a future docket. This
7 complexity underscores how and why parking, barge, and ferry/tram are separate
8 businesses and should be treated differently from a regulatory perspective. For this
9 and other reasons explained in other testimony, BHIL objects to the relief sought
10 in the Complaint and does not believe that this scenario should ever be reached.

11 **Q. Will you have any continuing role in the finances of BHIT's regulated assets**
12 **and BHIL's currently unregulated assets, if SharpVue ultimately acquires**
13 **them?**

14 **A. Yes. I have reached an agreement with SharpVue to stay on as Chief Financial**
15 **Officer and manager for at least thirty-six (36) months.**

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

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

1 Q. Ms. Mayfield, have you prepared a summary of
2 your prefiled testimony that's been filed in this
3 docket?

4 A. I have.

5 Q. Okay. And would that summary be the same if
6 you gave it orally today from the witness stand?

7 A. Yes.

8 MR. STYERS: We would ask that the
9 summary of the testimony of Ms. Mayfield's be
10 admitted into evidence in this docket at this time.

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

14 (Whereupon, the prefiled summary
15 testimony of Shirley Mayfield was copied
16 into the record as if given orally from
17 the stand.)
18
19
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24

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. A-41, SUB 21

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of:

Village of Bald Head Island,)
)
Complainant,)
)
v.)
)
Bald Head Island Transportation, Inc.)
and Bald Head Island Limited, LLC,)
)
Respondents.)

**TESTIMONY SUMMARY
OF
SHIRLEY A. MAYFIELD
ON BEHALF OF
RESPONDENTS**

OFFICIAL COPY

Oct 25 2022

Shirley A. Mayfield Testimony Summary

Docket No. A-41, Sub 21

My name is Shirley A. Mayfield. I am the Chief Financial Officer of Bald Head Island Limited LLC (“BHIL”). I also have oversight and responsibility for the finances of BHIT and serve as its Secretary/Treasurer.

It is my responsibility to ensure that the financial records for the business lines of BHIT and BHIL are accurately maintained and reported so that the Public Staff and Commission can determine that the rates and allowable rate of return on the public utility’s business are based only on the used and useful assets of BHIT and the revenues and expenses generated by those activities and assets.

The regulated and non-regulated entities under BHIL’s corporate umbrella operated separately and distinctly. Each operation has its own vertically integrated personnel base of employees, managers, and senior managers. The financial books of BHIT, the BHIL Parking Department, and the BHIL Tug & Freight Barge Department are kept, maintained, and audited separately. I make sure that their costs are properly documented, separated, or, where necessary, allocated.

When the Commission first granted a CPCN to BHIT to provide ferry service to and from Bald Head Island, in Docket No. A-41, Sub 0, in 1993, the financial statements filed and relied upon by the Commission showed no real estate assets in the rate base associated with parking. Much more recently and up to the present, by Order of the Commission in the 2010 Rate Case, Docket No. A-41, Sub 7, I have signed and filed, every quarter for the past twelve years (in Docket No. A-41, Sub 7A), an income statement and plant schedules listing all of the asset categories and accumulated depreciation for the rate base assets of BHIT. Because the parking and barge assets

are not owned by BHIT and have never been considered to be part of BHIT's rate base, they have never been included on those financial statements.

Speaking of the last (and only) rate case for BHIT, I was the CFO at that time, prepared the financial information that was submitted with the application, testified in that docket, and have first-hand knowledge of the rate base approved by the Commission in that docket and how it was derived. Working with our regulatory accountant, I identified and determined the value of the assets of BHIT used and useful in providing regulated utility service to and from and on the island.

During the course of the Rate Case, we had numerous discussions and negotiations with the Public Staff, and specifically with its Accounting Division, head, Jim Hoard. Those negotiations resulted in various revisions to the rate base calculations, but we were able to reach an agreement and stipulation of settlement with the Public Staff and all of the intervenors prior to the hearing. All of the parties, including the Village of Bald Head Island, agreed that the rate base value of all assets used and useful in the provision of the regulated utility service upon which the rates were based was \$3,943,335, and, likewise, the Commission found in its Order that the value of all assets used and useful were \$3,943,335.

At no time – in the initial application, in the negotiations with the Public Staff, in the Stipulation of Settlement, or in the Commission's final order -- did the rate base of assets ever include any assets that were part of the parking or barge businesses lines conducted by BHIL.

In the almost thirty years that parking has been provided by BHIL -- both at Indigo Plantation and, more recently, at Deep Point -- parking facilities have never been considered by the Commission to be part of the regulated rate base of BHIT, and parking assets have never been part of the rate base of BHIT on which rates were calculated. Accordingly, rates for BHIT have

never included recovery of a rate of return on the property used for parking, depreciation expenses of improvements on that property, or property taxes paid.

Any prospective inclusion of parking and/or barge assets into the rate base of the regulated utility would pose concerns for BHIL and BHIT, and for the public. First, there would be the matter of the form of inclusion -- lease or ownership; either would create a higher rate base and/or higher cost of service which would require new, higher ferry rates. One would need to evaluate how parking and barge revenue would be applied in rate design to satisfy that requirement along with the determination of how parking and barge assets would be assigned. How would assets that are newly part of rate base be valued. If services were on a first-come, first-served basis, what would be the consideration of parking locations and availability on revenue generation? And how would barge capacity and usage affect the overall financials? Hypothetically, with multiple revenue streams from unrelated operating sources with different cost structures and different operating requirements, determining the rates for the different standalone services for customer requirements would be a more complicated rate design process if it required the division and allocation of the parking and barge function assets and expenses. I have not undertaken that analysis, nor is it broached by the Complaint.

For all of these reasons, I do not believe it is appropriate, now, after almost thirty years of BHIL providing parking and barge services with assets that have been purchased, utilized, and accounted for distinct and separate from BHIT's ferry and tram utility services -- and never considered by the Commission to be used and useful in the provision of BHIT's utility services -- to consider them to be subject to Commission regulation.

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Testimony Summary of Shirley A. Mayfield has been served by electronic mail, hand delivery, or by depositing a copy of same in the United States Mail, postage prepaid, properly addressed to parties and counsel of record as shown on the Commission's Service List in docket A-41, Sub 21, and has also been provided to Commission's Counsel and to the appropriate members of the NC Public Staff.

This 11th day of October, 2022.

/s/ *M. Gray Styers, Jr.*

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

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1 MR. STYERS: The witness is now
2 available for cross examination.

3 CHAIR MITCHELL: All right.
4 Mr. Ferrell?

5 MR. FERRELL: No questions.

6 COMMISSIONER BROWN-BLAND: The Village?

7 MR. SCHAUER: Thank you.

8 CROSS EXAMINATION BY MR. SCHAUER:

9 Q. Good afternoon. My name is Craig Schauer.
10 Represent the Village.

11 Ms. Mayfield, I'd like to ask you a few
12 questions about your Exhibit D to your testimony. Do
13 you have that with you?

14 A. I believe I do. D?

15 Q. D.

16 COMMISSIONER BROWN-BLAND: Mr. Schauer,
17 while she finds it, just make sure you stay in the
18 mic as well.

19 MR. SCHAUER: Yes.

20 MR. STYERS: That was -- I'm sorry,
21 Mr. Schauer, that was exhibit?

22 MR. SCHAUER: D.

23 MR. STYERS: D. Okay. Yes.

24 Q. This is the application that Bald Head Island

1 Transportation filed in 1993; is that correct?

2 A. Yes.

3 Q. Okay. I want to look at page 2 where it
4 discusses regular schedules, or I guess fixed routes;
5 do you see that part?

6 A. (Witness peruses document.)

7 Q. I guess it says -- it's a little confusing,
8 but on Exhibit D it says Exhibit A; do you see that?

9 A. Okay. I do.

10 Q. Okay. It says one route is from Indigo
11 Plantation, and then a second route is from 704 East
12 Moore Street; do you see that?

13 A. Uh-huh.

14 Q. Do you know, in 1993 when it filed for the
15 application, was the ferry operating from both 704 East
16 Moore Street and Indigo Plantation from the start?

17 A. I honestly don't know. I wasn't there in
18 '93. I know they used Moore Street, but I don't know
19 if that was for the ferry as well.

20 Q. Okay. Do you know whether or not they were
21 operating from Indigo Plantation at that time?

22 A. No.

23 Q. Okay. But you do know they were using Moore
24 Street?

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1 A. At one time Moore Street was used, yes.

2 Q. And that was for the ferry operation?

3 A. Yes, I believe so.

4 Q. And was there any parking provided as part of
5 the operation or the on-boarding and off-boarding of
6 the ferry at 704 East Moore Street?

7 A. I'm really not sure. I believe there would
8 have been, but I don't know that.

9 Q. But do you know whether or not it was, you
10 know, land owned by Limited or Transportation versus
11 just public?

12 A. Moore Street -- Moore Street was owned by
13 Limited at one time.

14 Q. Okay. Do you know whether or not they owned
15 parking associated with the dock --

16 A. No.

17 Q. -- at Moore Street?

18 A. No.

19 Q. Okay. No further questions.

20 COMMISSIONER BROWN-BLAND: All right.
21 Mr. Higgins?

22 MR. HIGGINS: Yes, ma'am.

23 CROSS EXAMINATION BY MR. HIGGINS:

24 Q. Good afternoon, Ms. Mayfield. Dan Higgins

1 for the Bald Head Island Club.

2 Do you have your testimony with you?

3 A. I do.

4 Q. Okay. Would you look at page 11, please?

5 Beginning on line 6 and 7 you -- I'm sorry, wrong
6 reference. Beginning on line 11 you make reference to
7 the fact that there are issues that -- Limited would
8 contend there are issues about valuation if these
9 assets -- if the parking and barge were regulated. And
10 one of the points you make is that improvements have
11 been depreciated, but Limited has been allowed no
12 recovery on those.

13 Do you see what I'm talking about?

14 A. I do.

15 Q. You're not saying that parking and barge
16 operations haven't been profitable since 2009, are you?

17 A. No, I'm not.

18 Q. Has parking and barge -- has parking revenue
19 exceeded expenses annually since 2009?

20 A. Yes.

21 Q. And has barge revenue exceeded operating
22 expenses since 2009?

23 A. Yes.

24 Q. Turn, if you would, to page 13, please.

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1 You -- and I'm looking at the sentence that begins on
2 line 6. I'm going to read it for you. You -- well, as
3 a predicate to that, you speak before about what you
4 perceive to be the complexity of potentially the
5 Commission's tasks for setting rates for parking and
6 barge operations. And you make the statement,
7 beginning on page 13, line 6, that this complexity
8 underscores how and why parking, barge, and ferry tram
9 are separate businesses and should be treated
10 differently from a regulatory perspective.

11 So your testimony is that it would be too
12 complicated for this Commission to set rates if parking
13 and barge operations were regulated?

14 A. My testimony isn't to say that it would be
15 too complicated for the Commission. What I'm really
16 saying there is you have three independent businesses.
17 You have transportation, you have parking, you have
18 barge, and each of those have different measurements.
19 You have different locations, you have different
20 customers. The process becomes more complex, yes.

21 Q. So you're probably aware that this Commission
22 regulates, for example, Duke Energy Progress and Duke
23 Energy Carolinas?

24 A. I am.

1 Q. And they are large enterprises that have
2 billions of billions of dollars of investment in
3 multiple operations in multiple locations and the
4 Commission is capable of setting rates for them?

5 A. Uh-huh. I'm aware.

6 Q. So can we agree that the Commission would be
7 capable of setting rates if it decided to regulate the
8 parking and barge operations?

9 A. I think we can agree that that's possible.
10 But I think another thing that we need to keep in mind
11 is that you're also currently looking at a regulated
12 utility and unregulated business -- nonregulated
13 businesses.

14 Q. I understand. Yes, ma'am. The predicate for
15 my question is, if the Commission did decide to
16 regulate.

17 A. Uh-huh.

18 Q. No further questions. Thank you.

19 COMMISSIONER BROWN-BLAND: Redirect?

20 MR. STYERS: Yes. I don't have much to
21 redirect on, but I actually may have just a little
22 bit.

23 REDIRECT EXAMINATION BY MR. STYERS:

24 Q. You talked -- in response to Mr. Higgins'

1 questions, you talked about separate and distinct.

2 A. Uh-huh.

3 Q. Could you elaborate more what you meant by
4 saying that they are separate and distinct from a
5 financial perspective?

6 A. Limited treats the transportation company,
7 parking, and barge as distinct, separate operations.
8 Their books are maintained separately, they're operated
9 separately. They have -- while they may have some
10 similar customer bases, they also have very different
11 needs within their individual businesses.

12 Q. And there are some affiliate transactions
13 between different entities --

14 A. Yes.

15 Q. -- that are both owned by Limited, are there
16 not? But how -- but Mr. O'Donnell described those as
17 being intertwined.

18 Would you agree with that characterization
19 and -- would you agree with that characterization?

20 A. No. That's not the terminology I would have
21 used.

22 Q. So explain a little bit about, you know, what
23 you do, in terms of cost allocation and cost division
24 to ensure that the companies are kept completely

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1 separate and distinct.

2 A. There is actually -- you can probably
3 categorize the expenses in three categories. You have
4 direct, that are coming in direct to any of the
5 businesses; you have split, which are very distinct
6 expenses that is clearly identifiable which operation
7 they may go to, although they may be on one invoice;
8 and then you have what we would utilize in allocation
9 to spread those costs over the using parties, because
10 it isn't specific to their function.

11 Q. And you understand that your -- the ferry
12 operation's finances are subject to audit by the Public
13 Staff and the Commission?

14 A. Yes, I am.

15 Q. And you make sure that the costs are properly
16 allocated and those functions are kept financially
17 distinct?

18 A. Well, it's important for us, through --
19 through the Commission, through the Public Staff, that
20 we maintain the regulated entity separately and
21 identifiable, but we also have the other operations
22 that certainly ownership's also interested in seeing.
23 It's not just transportation.

24 MR. STYERS: No further questions on

1 redirect.

2 COMMISSIONER BROWN-BLAND: Questions by
3 Commission? Commissioner Clodfelter?

4 EXAMINATION BY COMMISSIONER CLODFELTER:

5 Q. Ms. Mayfield, good afternoon.

6 A. Good afternoon.

7 Q. I want to ask you just a couple of really
8 quick questions about Exhibit B to your testimony.
9 This is the first time since I've been on the
10 Commission that I've had to look at one of the
11 quarterly reports and dig into it, so I want to be sure
12 I understand what I'm reading, okay?

13 A. Yes, sir.

14 Q. Okay. So you have the -- that's the
15 March 31, 2022, report?

16 A. Uh-huh. I have that.

17 Q. And so, on page 2, under the operating
18 expenses, there is a line item called facilities lease.
19 Is that the lease payment for the terminal
20 facilities?

21 A. Yes, sir.

22 Q. Okay. Does it cover anything else, other
23 than the terminal?

24 A. It covers -- the facilities lease covers the

1 terminal and the -- part of the marine maintenance --
2 the marine maintenance building, the facility, the Deep
3 Point terminal. It also is gonna cover part of the
4 bulkhead area, part of the entry channel area, and it
5 also covers part of the road access.

6 Q. So those last items, everything after the
7 terminal, are those all allocations among the different
8 departments, so that BHIT here would carry a portion of
9 the total expense in that line item, would include a
10 portion of the total expense for those facilities, and
11 then some other portion would then be allocated to the
12 other operations, the other departments? Is that
13 correct?

14 A. The amount you see here is, indeed, BHIT's
15 allocated portion.

16 Q. That's what I was trying to ask, and I wasn't
17 asking it very clearly.

18 So the allocable share, say, of the access
19 roads and the maintenance facility that is allocable to
20 the barge operation, those would show up on the barge's
21 statements?

22 A. Uh-huh. That's accurate.

23 Q. All right. Now that I understand what that
24 line item means, flip back to the first page, and there

1 is an entry under operating expenses there that is
2 called the Deep Point allocation, and tell me what that
3 includes. I -- as I say, this is the first time I've
4 had to look at these in depth.

5 A. These are additional expenses related to what
6 we consider to be the landlord account. These have
7 nothing to do with the lease. These are for the
8 maintenance of the entire campus there, and they are
9 allocated amongst the users of that campus. And this
10 might be landscaping on the grounds. It might be some
11 of the electrical bills. But they are allocated both
12 to transportation, to the landlord, itself, as well as
13 to shipping and receiving, marine maintenance, all of
14 the facilities on the campus.

15 Q. So there is an allocation of that item across
16 all the departments as well?

17 A. Yes, sir.

18 Q. Thank you.

19 A. Okay. Thank you.

20 COMMISSIONER BROWN-BLAND: Commissioner
21 Duffley?

22 EXAMINATION BY COMMISSIONER DUFFLEY:

23 Q. Good afternoon.

24 A. Good afternoon.

1 Q. If you could help me understand -- just, in a
2 hypothetical that these three different businesses were
3 owned by three different entities, how would this
4 allocation of expenses occur?

5 A. Let me just make sure I understood your
6 question.

7 Q. Sure.

8 A. If the three different operations, which
9 we're talking transportation, parking, and barge, were
10 owned by three separate entities?

11 Q. Correct.

12 A. I think it would be -- it would still be done
13 the way we do it today. You would have one pot of
14 expenses. There would be an allocation basis for each
15 of those line items, and then you would allocate it
16 across to those individual entities. It would be much
17 like it is now.

18 Q. Okay. Thank you.

19 A. Uh-huh.

20 EXAMINATION BY COMMISSIONER CLODFELTER:

21 Q. Let me just follow up on that, because
22 Commissioner Duffley's question reminded me that I
23 didn't ask everything I needed to know.

24 A. Okay.

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1 Q. What's the allocation basis for the Deep
2 Point allocation?

3 A. It depends. There is an entire list of about
4 20 items, 22 items, some of it's head count, some of
5 it's square footage, some of it's usage.

6 Q. Depending on the character of expense?

7 A. Yes, sir.

8 Q. That's probably more than I needed to know.
9 Thank you.

10 COMMISSIONER BROWN-BLAND: Commissioner
11 McKissick?

12 EXAMINATION BY COMMISSIONER MCKISSICK:

13 Q. This is a follow-up on Commissioner Duffley's
14 question about the allocation if there were three
15 separate entities.

16 The way I assume you answered it is if they
17 were three separate entities that were somehow related.
18 I mean, like -- but if they were freestanding,
19 independently owned by three different corporations,
20 did not have any relationship with each other --

21 A. How would I handle that?

22 Q. -- how would you do that? Rather than, like,
23 each being related entities that might be separate
24 subsidiaries. So wouldn't that be completely

1 different?

2 A. Well, I don't think so --

3 Q. Okay.

4 A. -- Commissioner McKissick. I think what you
5 could do in that case, there would need to be an
6 agreement between those entities before they were using
7 that facility. And in that case, you would, indeed,
8 continue to do those allocations. And on the island,
9 amongst businesses on the island, for example, it has
10 been easier for the garbage company to send one bill,
11 and then the bills get allocated across different
12 entities that may be within the same building.

13 So I think it would be an agreement up front,
14 and then you could still do it with an allocation. Or
15 you could certainly just developed -- just develop some
16 type of additional fee for the use of the property to
17 cover that.

18 Q. So what you're envisioning is some kind of
19 cost-sharing agreement --

20 A. Yes, sir.

21 Q. -- that would have to be put into operation?

22 A. Yes, sir.

23 Q. And the allocations which I see reflected
24 here today, how are they established? I mean, what

1 criteria were used to make the appropriation between
2 the separate entities that exist?

3 A. When I first went to work for Bald Head in
4 2001, we were working out of the Indigo Plantation
5 terminal. During that time, Deep Point was built.
6 Everyone moved in to Deep Point. Although the ferry
7 was already regulated -- the ferry was regulated at
8 that time, and you had to be very specific with the
9 expenses that were coded to Bald Head Island
10 Transportation. So there were allocations in place to
11 be sure that the transportation company picked up their
12 share of those expenses.

13 When the operation moved from Indigo
14 Plantation to Deep Point, the allocation was expanded
15 and rebuilt, and then, during the 2010 rate case,
16 Mr. Horde audited the allocation process.

17 Q. I see. And what were your responsibilities
18 at that point in time back when Deep Point became
19 operational, when you moved there from Indigo
20 Plantation?

21 A. I was hired as the chief financial officer.
22 That's been my role since I've been with Bald Head.

23 Q. The entire period of time?

24 A. Yes, sir.

1 Q. Do you recall what the actual capital
2 investment was in Deep Point?

3 A. For the total facility?

4 Q. Uh-huh.

5 A. For the total facility at Deep Point I want
6 to say it's \$28 million.

7 Q. About \$28 million or so?

8 A. Yes, sir.

9 Q. Okay. Thank you.

10 A. Uh-huh. Yes, sir.

11 EXAMINATION BY COMMISSIONER BROWN-BLAND:

12 Q. Ms. Mayfield, I have some questions for you
13 that our staff prepared and wanted to make sure we
14 covered. So bear with me, and a straightforward
15 answer, concise as you can do, would be helpful. But
16 would you agree that the ferry services have been
17 running at a loss year over year when they're
18 considered separately and if the revenues from the
19 other services owned by Limited are not considered?

20 A. The ferry services have been running at a
21 loss. Most recently, at a break-even, probably, EBITA,
22 but yes, they have been running at a loss.

23 Q. And do you know or have an opinion as to,
24 under that circumstance, why the regulated entity

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1 didn't come back in for a rate case?

2 A. Actually, I do. And I was surprised, in
3 Mr. O'Donnell's rebuttal, when he indicated he had
4 theorized that it was because we were -- or Bald Head
5 Island Limited was trying to protect the parking
6 imputation. And in all honesty, we never talked about
7 that or thought about it that way. What happened, in
8 about 2016, through the rate case, we were due to come
9 back in for audit. We met with the Public Staff. We
10 had submitted the Bald Head Island Transportation
11 Authority with the legislation -- legislature, and we
12 were hoping that was going to be passed and requested
13 that we not come in for audit at that time. We would
14 like to focus on the Authority, which we expected to
15 have completed by 2018, 2019. The Public Staff, at the
16 time, was also extremely busy, and they felt like the
17 Authority was gonna be a good resolution, good
18 opportunity for us, and they agreed, and we did not
19 come back in for audit at that time.

20 Q. And the legislative discussions began when?

21 A. I want to say it was maybe '16, or it may
22 have been late '15. I'm not sure off the top of my
23 head. '15, '16, ma'am.

24 Q. So between the effective date of the 2010

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1 rate case order up until those discussions began, would
2 your answer be the same as to whether or not the
3 utility had been operating at a loss and the same
4 reason even then as to not coming back?

5 A. I'm sorry, could you repeat that question?

6 Q. So between, say, let's say 2010 and 2014, was
7 the regulated entity losing money or operating at a
8 loss?

9 A. Yes, it was.

10 Q. And up until that time, is your answer still
11 the same, that you were contemplating these activities,
12 and therefore, still did not come back in that interim
13 time?

14 A. Yes, ma'am.

15 Q. All right. And you've testified that the
16 assets of the unregulated entities owned by Limited are
17 managed totally separately from the ferry and the tram
18 assets that are regulated.

19 If that's the case, would you contend that
20 it's significant, from a business perspective, or what
21 is the significance of the parent company contributing
22 or imputing revenue -- revenues to an affiliate?

23 A. Are you asking me -- let me just make sure I
24 understand what the question is. Are you asking me

1 if -- what would be the significance of this imputing
2 the parking revenue to Transportation? Is that --

3 Q. Of the parent company doing that.

4 A. Why? Okay. All right. I can explain that.
5 During the rate case, Transportation requested a \$28
6 general fare ticket after our calculations. The Public
7 Staff just immediately told us that that was gonna be
8 rate shock and we were not gonna get that ticket. So
9 we began negotiating to try to figure out where we were
10 going to end up with the revenue on the transportation.

11 Ultimately, after a great deal of
12 negotiation, we ended up agreeing with the Public Staff
13 at \$23. But even at \$23 we had deficit revenue. We
14 were not breaking even. So there was a three-prong
15 approach to solve that problem.

16 One was we went back and looked at expenses
17 and made adjustments. We were about \$897,000 short on
18 the bottom line. We went back and looked at expenses
19 and came up with about, I don't know, \$250,000. At the
20 time, too, there had been an agreement between Limited
21 and the Village for the holding of parking fees. And
22 Mr. Horde went and did a calculation on the imputation
23 of parking to make up part of the deficit as well. And
24 then lastly, there was still a deficit in the revenue,

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1 and it was determined that it was intervenor
2 settlement. And it was funds that the developer gave
3 to the process. And it was about \$142,000.

4 Q. Okay. Now, to ask again about the Indigo
5 Plantation area, it appears that there are four parking
6 lots located there from where the ferry used to depart.

7 Is that where the plantation marina is
8 located?

9 A. Yes, ma'am.

10 Q. The Indigo Plantation?

11 A. It is.

12 Q. When the ferry used to depart from there, did
13 it own the land on which the terminal or the office was
14 situated?

15 A. Transportation did not. Bald Head Island
16 Limited owned the land.

17 Q. All right. And Limited leased that land
18 to --

19 A. Yeah.

20 Q. -- Indigo?

21 A. Yes, ma'am. The initial lease with
22 Transportation included Indigo and the island. And
23 then there was an amendment done later when Deep Point
24 was built that moved it from the island, and Deep Point

1 from Indigo.

2 Q. And Limited owned that land. Did they own
3 land that was used for the parking lots at that time?

4 A. Yes, ma'am.

5 Q. Okay. And were they ever in rate base?

6 A. No. No.

7 Q. And when Indigo Plantation was in service,
8 did the Trans- -- the Transportation charge a fee for
9 the parking?

10 A. Yes.

11 Q. All right. And those lots, they're no longer
12 in service, or are they?

13 A. The lots are still there. They're not
14 currently being used for our parking, although there
15 have been opportunities for us to use the lots to
16 assist some of the other -- like, the Bald Head Island
17 Club at one point, but they could be used.

18 Q. What are they being use for today?

19 A. Right now, today, they're -- they're land
20 sitting there. The lots are still there.

21 Q. And when they were in use, can you just
22 estimate the amount of acreage or the number of
23 vehicles that could be served?

24 A. I want to say the number of vehicles was

1 probably 11- or 1,200.

2 Q. And do those lots have some waterfront
3 acreage?

4 A. Some of the lots may have.

5 Q. All right. And Limited still owns that; is
6 that correct?

7 A. Yes.

8 Q. All right.

9 A. Uh-huh.

10 Q. Were those lots ever used for anything else,
11 other than parking?

12 A. Not at this time.

13 Q. Have they been --

14 A. No, ma'am.

15 Q. -- that you recall?

16 A. Uh-uh. Not that I know of.

17 (Pause.)

18 Q. And I'm correct that a switch to Deep Point
19 was to increase the parking area and have more spaces
20 available for parking; is that correct?

21 A. Well, the move to Deep Point was actually a
22 long-term plan, both to do a new terminal and to expand
23 parking.

24 Q. Did it provide a more convenient ferry route?

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1 Was that part of the consideration?

2 A. You know, it was a little -- I don't think
3 so. The ferry route from Indigo was not a difficult
4 route. Either route was just one turn and then across
5 the waterway.

6 Q. All right. And then when the purchase was
7 made and the concept of a ferry base was put into play,
8 why was it decided that Limited, rather than the
9 regulated Transportation, would own and control the
10 entire property assets?

11 A. Because Transportation was not in a position
12 at the time to purchase those assets, and at one time,
13 Limited owned the vessels as well.

14 Q. And that applied to the terminal as well?

15 A. Yes.

16 Q. All right. Was there benefit to Limited in
17 doing it that way?

18 A. Well, to answer your question, I think the
19 benefit to Limited was to have the upgraded facilities
20 available in the transportation company for the -- for
21 the customers. I don't know that there was, like --
22 there may have been some tax benefit and depreciation,
23 but I don't think they would have built that scope of
24 facility for the tax benefit at that time.

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1 Q. And you don't think -- kind of going back to
2 the question, but you don't think it was feasible for
3 Transportation to have purchased --

4 A. No.

5 Q. -- the terminal or the parking facility?

6 A. It was not. In fact, those discussions were
7 held with the Public Staff several years before that
8 when they started leasing Indigo and Bald Head Island
9 and the vessels at the time. We worked through those
10 leases with the Public Staff.

11 Q. All right. Is -- is there any significance
12 to the fact that Limited controls the access from the
13 public road to the transportation ferry services, to
14 your understanding?

15 A. No. I mean, I've heard that testimony back
16 and forth today, but I would have to agree with the
17 testimony I've heard that says you have the access
18 easements, the road was put there to support the
19 facility, and I don't think -- at this point, Limited
20 is just still the owner of that property.

21 COMMISSIONER BROWN-BLAND: Thank you.

22 Commissioner Duffley?

23 EXAMINATION BY COMMISSIONER DUFFLEY:

24 Q. Just one question about the leases that --

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1 Limited owns Deep Point, obviously, and leases to
2 Transportation.

3 A. Uh-huh.

4 Q. How long is that lease and when does the
5 lease expire?

6 A. It was an original -- I believe it's a
7 five-year lease, but it's -- it's renewable every five
8 years, unless the parties give written notice.

9 Q. Okay. And do you know when the current
10 iteration expires? What year?

11 A. I'm not -- don't quote me on this. I can
12 find out for you, but I think it's probably two -- two
13 more years in the current iteration.

14 Q. And are there separate leases for Deep Point
15 and then the terminal on the island?

16 A. No. They're all in one lease.

17 Q. Okay. Thank you.

18 A. Uh-huh.

19 COMMISSIONER BROWN-BLAND: All right.

20 Any questions on Commission's questions? Oh,

21 Commissioner McKissick?

22 EXAMINATION BY COMMISSIONER MCKISSICK:

23 Q. Just one quick question, and maybe you can
24 help with this.

1 Is Limited in the process now of entering
2 into a contract or agreement option, anything, related
3 to the Indigo property?

4 A. Let me think about that. There is an
5 agreement. I'm not sure if all the contracts have been
6 signed. Mr. Paul would be the person to answer that
7 question for you.

8 Q. He would be the one to answer that question?

9 A. Yes, sir.

10 Q. Okay. And I -- would you happen to know what
11 the use of that property might be if it were sold?

12 A. I -- I believe that is really still under
13 consideration.

14 Q. Okay. Thank you.

15 A. Certainly.

16 COMMISSIONER BROWN-BLAND: All right.

17 Mr. Ferrell, do you have questions?

18 MR. FERRELL: No questions.

19 COMMISSIONER BROWN-BLAND: The Village?

20 MR. SCHAUER: Yes, I do. Thank you.

21 EXAMINATION BY MR. SCHAUER:

22 Q. So, Ms. Mayfield, I just want to understand
23 the negotiations you had with the Public Staff about
24 the 2010 rate case.

1 A. Uh-huh.

2 Q. So you originally requested \$28 and then
3 settled on \$23; am I correct?

4 A. Correct.

5 Q. But the \$23 price resulted in a roughly
6 \$90,000 shortfall?

7 A. \$897,000.

8 Q. \$897,000, okay. Wow. So I miswrote that.

9 Okay. And to try to close that shortfall, I
10 think you said you made an adjustment of \$25,000 in
11 expenses; is that right?

12 A. No. I believe it was closer to 250.

13 Q. Okay. I wrote all these numbers wrong.
14 Okay, 250. Thank you.

15 And then another way to close the gap was
16 what you called an intervenor -- intervenor settlement?

17 A. Uh-huh.

18 Q. And what was that? Can you explain that?

19 A. That was \$142,000. That was what was needed
20 to -- after the reduction of various expense line items
21 that we were granted and after the imputation on the
22 parking dollars, there was still a shortfall, and that
23 was -- I think, in Mr. Horde's paperwork, he labels it
24 miscellaneous revenue.

1 Q. Okay. And that revenue came from the
2 developer?

3 A. Uh-huh.

4 Q. I guess they just put money into the ferry?

5 A. Yes.

6 Q. Okay. And then you already mentioned the
7 third way you closed the shortfall, and that was the
8 imputation of about half a million dollars from
9 parking?

10 A. Uh-huh.

11 Q. So coming out of the 2010 rate case, I mean,
12 you -- there was still a shortfall of roughly half a
13 million dollars a year, absent the imputation and the
14 developer funds, correct?

15 A. Right. Around 400, yes.

16 Q. And so why did BHIT not come in for a rate
17 case for the next 12 years to try to close that gap?

18 A. I think -- well, first of all, I think it --
19 the context is helpful to understand. Rate cases, at
20 least from where I was sitting, are extremely difficult
21 and extremely time consuming. We did not expect that
22 we would be back in for at least two or three years.
23 And the Public Staff indicated that they would not want
24 to see us before three or four, I believe it was.

1 So -- and by that time -- by the time we got
2 to that point, we were already working on the
3 legislature -- the legislation for the Authority. When
4 it came time for the audit, which would have either
5 made the decision we should go in or we should not go
6 in, we truly believed the Authority was going to be
7 approved and we were going to be through that timeline
8 in 18 months to two years. Our focus at that point was
9 the Authority.

10 Q. And the Authority legislation was around
11 2016?

12 A. That was when we probably began that. I
13 believe it was '17, perhaps.

14 Q. Okay. But along -- during those 12 years,
15 there was nothing preventing Transportation from
16 seeking a rate increase?

17 A. No. Other than our time being focused in
18 other areas at the time.

19 Q. All right. No further questions.

20 COMMISSIONER BROWN-BLAND: Mr. Higgins?

21 MR. HIGGINS: Yes. Thank you, ma'am.

22 EXAMINATION BY MR. HIGGINS:

23 Q. Ms. Mayfield, just to follow up on counsel's
24 question. So, if I understand you right, it's your

1 testimony that, through the various adjustments you
2 talked about in connection with the 2010 rate case,
3 when you reduced expense by \$250,000 and Mr. Horde
4 calculated the imputation from parking revenues, and
5 then Limited contributed \$142,000, that got
6 Transportation to break even?

7 A. I believe that was -- it got Transportation
8 to about a \$300,000 bottom line.

9 Q. \$300,000 what?

10 A. Bottom line.

11 Q. Meaning what, \$300,000 projected in that
12 revenue?

13 A. Yes.

14 Q. So Limited puts in \$142,000, so without that,
15 the bottom line would have been 300 minus 142?

16 A. Right.

17 Q. \$160,000?

18 A. Uh-huh. Yeah.

19 Q. And that's what the settlement agreement
20 accomplished?

21 A. It accomplished \$300,000 to the bottom line,
22 8.33 percent return, which is what the Public Staff was
23 focused on, was the 8.33 percent return.

24 Q. Thank you.

1 COMMISSIONER BROWN-BLAND: Mr. Styers?

2 MR. STYERS: Just a few. Thank you.

3 EXAMINATION BY MR. STYERS:

4 Q. So you responded to questions from
5 Mr. McKissick about allocation, and you said Mr. Horde
6 worked with the -- audited and worked with the
7 allocation of cost in that 2010 rate case?

8 A. Yes.

9 Q. So that was to come up with the
10 cost-of-service calculation for that rate case process?

11 A. Uh-huh. Uh-huh.

12 Q. And so all these expenses back and forth were
13 part of the cost-of-service calculations that you and
14 Mr. Horde worked through with the Public Staff,
15 correct?

16 A. Yes.

17 Q. And pretty much those cost allocation
18 metrics, criteria, methodology that you mentioned with
19 Commissioner Clodfelter, those were put in place by --
20 with you and the Public Staff, and you've followed them
21 ever since 2010?

22 A. Correct.

23 Q. So those allocation appointments were now
24 metrics, methodology you followed since the rate case

1 and your work with the Public Staff on that?

2 A. Uh-huh.

3 Q. I don't want you to relive the nightmare of
4 the 2010 rate case, but it may come as a shock to this
5 Commission that that was a fairly contentious rate
6 case, was it not?

7 A. It was.

8 Q. That was an extraordinarily expensive rate
9 case, was it not?

10 A. It was.

11 Q. Subject to check, one of the most expensive
12 rate cases probably as a percentage of the overall
13 revenue of the utility in the history of this
14 Commission.

15 MR. HIGGINS: Do we have to put
16 Mr. Styers under oath?

17 Q. With Mr. Higgins and myself and an army of --
18 room full of other lawyers; that's exactly right.

19 COMMISSIONER BROWN-BLAND: I believe
20 you're testifying now.

21 MR. STYERS: Withdrawn.

22 Q. Did Bald Head Island Limited --
23 Transportation have any desire to come back any time
24 soon after that experience to have another rate case?

1 A. No. I tried to delicately say that we did
2 not.

3 Q. But you knew that you were not gonna be
4 making money?

5 A. Yeah, we did know that.

6 Q. So you -- so the audit provision for the
7 Public Staff in five or six years was something you
8 were actually looking forward to at that point?

9 A. Uh-huh.

10 Q. Now, Mr. Mitchell died in July of 2013, did
11 he not?

12 A. He did.

13 Q. So, at that point, the estate had other
14 issues regarding the -- starting the liquidation of the
15 Mitchell estate?

16 A. Correct.

17 Q. And that included trying to find a solution
18 to sell Bald Head Island Limited's assets?

19 A. Correct.

20 Q. Okay. And so shortly thereafter, there was a
21 lot of brainstorming and effort to try to find a buyer
22 and how it was to be liquidated?

23 A. Yes.

24 Q. And that was then -- when we had the meeting

1 with the Public Staff in 2015 -- late 2015, that was
2 all on the table at that point?

3 A. Uh-huh.

4 Q. And what -- when you explained to the Public
5 Staff that you were in the process of trying to find a
6 buyer and working towards that solution, what was the
7 Public Staff's response?

8 A. The Public Staff indicated that they were --
9 they were happy that we were looking for a resolution
10 for the companies. They also indicated they were
11 extremely busy at the time. And if I'm not mistaken,
12 Duke was back on the calendar, but I can't -- I don't
13 know that for sure. So -- and because we thought that
14 we had a solution that was going to come through in the
15 next 18 months to 2 years, they were glad for us to
16 delay that.

17 Q. Did -- you were asked questions about the
18 imputation.

19 Was Bald Head Island Limited -- excuse me,
20 Bald Head Island Transportation, was the imputation
21 consistent with their legal position about parking in
22 that settlement stipulation?

23 A. Yes.

24 Q. Okay.

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1 MR. STYERS: Let me hand -- I've got an
2 exhibit that goes to this question. You were
3 asking about the imputation, and so I'd like to
4 approach the witness and distribute an exhibit.
5 Mr. Risinger, help me here.

6 (Pause.)

7 Q. So I would hand you not the order but
8 stipulation that was filed in the -- in that rate case,
9 in that contentious rate case, and I'll turn your
10 attention to page number 4, Roman numeral number 3 at
11 the top. Section C talks about -- of that stipulation
12 talks about stipulation -- I mean imputation and
13 parking facilities and so forth.

14 Roman numeral 3 says -- if you'll read with
15 me, it says, does it not, "The ratemaking treatments
16 that are subject to §(ii)(c)(1) and (ii)(c)(2)
17 immediately above are contrary to BHIT's legal position
18 and proceeding," and it speaks for itself. And that if
19 this settlement wasn't accepted, BHIT preserved the
20 right to appeal the Commission's decision in the rate
21 case, and arguing that the Commission's jurisdiction --
22 to repute revenue was beyond its jurisdiction.

23 So, in fact, its position -- it was very
24 reluctantly that BHIT agreed to that imputation; is

1 that correct?

2 A. That's correct.

3 Q. Yeah. But in order to try to avoid a
4 hearing, after all that we had gone through, you agreed
5 to the settlement nevertheless?

6 A. That's true.

7 MR. STYERS: I would ask that this be
8 marked as Mayfield Redirect Exhibit 1.

9 COMMISSIONER BROWN-BLAND: This is
10 questions on Commission's questions.

11 MR. STYERS: So --

12 COMMISSIONER BROWN-BLAND: Mayfield
13 Questions on Commission's Questions --

14 MR. STYERS: Understood, but there was
15 questions about the imputation. Thank you.

16 COMMISSIONER BROWN-BLAND: -- Exhibit
17 Number 1.

18 MR. STYERS: Okay. On the Commission's
19 Questions Exhibit 1.

20 (Mayfield Questions on Commission's
21 Questions Exhibit Number 1 was marked
22 for identification.)

23 Q. Also, I will -- and I'm not gonna take the
24 time. KWO Cross Exhibit 5 was actually the order in

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1 the rate case, which they have taken judicial notice.

2 Your memory is very good, Ms. Mayfield.

3 Do you remember that there was a provision of
4 that order that says any gain or loss of sale or lease
5 of parking facility owned by BHIL shall not be
6 assigned, credited, or attributed for ratemaking
7 purposes to BHIT?

8 A. Uh-huh. Yes.

9 Q. That was in the Commission's order in the
10 rate case?

11 A. It was.

12 Q. Further acknowledging the separateness of the
13 assets for parking from the BHIT operations?

14 A. (No response.)

15 Q. So once you met with the Public Staff and
16 they encouraged you to continue to work on the sale of
17 the assets, then that has been the focus of Bald Head
18 Island Limited's intention for the six or seven years
19 since then, has it not?

20 A. It has been. I mean, truly, the focus has
21 been to initially work with the Authority, which we
22 continued to think would be finalized in the next year
23 or the next 18 months, and it continued in that path,
24 and now currently with SharpVue.

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1 MR. STYERS: No further questions.

2 COMMISSIONER BROWN-BLAND: All right.

3 I'll entertain your motions.

4 MR. STYERS: We would ask, at this time,
5 to move into evidence the exhibits that were
6 attached to Ms. -- filed concurrently with
7 Ms. Mayfield's prefiled direct testimony be
8 admitted into evidence along with Mayfield Exhibit
9 on the Commission's Questions Number 1.

10 COMMISSIONER BROWN-BLAND: That motion
11 is granted.

12 (Mayfield Exhibits A through D and
13 Mayfield Questions on Commission's
14 Questions Exhibit Number 1 were admitted
15 into evidence.)

16 COMMISSIONER BROWN-BLAND: And,
17 Ms. Mayfield, you may step down.

18 THE WITNESS: Thank you.

19 COMMISSIONER BROWN-BLAND: You may be
20 excused.

21 MR. STYERS: At this time, Bald Head
22 Island Limited and Bald Head Island Transportation
23 would call Mr. Chad Paul as our next witness.

24 Whereupon,

1 CHARLES A. PAUL, III,
2 having first been duly sworn, was examined
3 and testified as follows:

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

6 DIRECT EXAMINATION BY MR. STYERS:

7 Q. Please state your name, address, and
8 employment position for the record?

9 A. Charles A. Paul, III. Office address is 6
10 Marina Wynd, Bald Head Island, North Carolina. I'm the
11 CEO and manager of Bald Head Island Limited, and I'm
12 the president of Bald Head Island Transportation.

13 Q. Have you caused to be prefiled in this docket
14 direct testimony consisting of 21 pages in question and
15 answer format?

16 A. Yes, sir.

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

19 A. Yes, sir.

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

23 A. I would, with two corrections and one
24 clarification.

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1 Q. Okay. So, would you please -- you said you
2 have corrections. Would you please identify where
3 those corrections are in your prefiled testimony?

4 A. On page 20, line 1, Mr. Mitchell died
5 July 26, 2013. His funeral was in August, but he died
6 in July, not August. Working back to page 11, one
7 clarification so that everybody recognizes, line 19,
8 directly across from Highway 211. Highway 211, at that
9 point in time, becomes Ferry Road. There is no address
10 on -- like, we're at 1301 Ferry Road, even though Ferry
11 Rode is 211, there is no way to address the address on
12 211. I want to make sure we understand, that's one and
13 the same.

14 Q. So strike Highway 211 and insert Ferry Road?

15 A. Yes, sir. Then on line 3, it should say
16 "have historically been reduced," we add the words "in
17 real rate terms." So the words "in real rate terms"
18 need to be -- follow after the word "reduced."

19 Q. With those corrections, were there 12
20 exhibits identified in and filed concurrently with your
21 direct testimony?

22 A. Yes, sir.

23 Q. Are those exhibits true and accurate in
24 representing what they purport to represent, to the

1 best of your knowledge?

2 A. Yes, sir.

3 MR. STYERS: At this time, Madam
4 Commissioner, we would move admission into evidence
5 the prefiled direct testimony of Mr. Charles Paul,
6 consisting of 21 pages in question and answer
7 format as corrected, and ask that the 12 exhibits
8 attached thereto be identified as labeled with that
9 prefiled testimony.

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

12 (Paul Exhibits 1 through 12 were
13 identified as they were marked when
14 prefiled.)

15 (Whereupon, the prefiled direct
16 testimony of Charles A. Paul, III was
17 copied into the record as if given
18 orally from the stand.)
19
20
21
22
23
24

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. A-41, SUB 21

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of

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

**PUBLIC / REDACTED
DIRECT TESTIMONY OF
CHARLES A. "CHAD" PAUL, III**

September 8, 2022

1 **Q. Please state your name, occupation, and business address.**

2 **A.** My name is Charles A. "Chad" Paul, III. I am the President of Bald Head Island
3 Transportation, Inc. ("BHIT"). I also serve as Chief Executive Officer and a
4 Manager of Bald Head Island Limited LLC ("BHIL"), BHIT's parent company.
5 My business address is 6 Marina Wynd, Bald Head Island, North Carolina 28461-
6 5073.

7 **Q. Please describe your educational and professional background.**

8 **A.** I have a B.A. degree in economics from Holy Cross and a Master's degree from the
9 Harvard University Graduate School of Business Administration. Before joining
10 BHIL and BHIT in 2010, I worked for JP Morgan Chase, Salomon Brothers, and
11 Arnolt Partners. I am also a managing partner of Harbor Island Partners, LLC, a
12 private equity investment partnership that invests in a diverse mix of industry and
13 product services company holdings.

14 **Q. Can you describe what BHIL and BHIT do?**

15 **A.** BHIL was formed by George P. Mitchell to purchase Bald Head Island out of
16 receivership in 1983. Bald Head is the southernmost barrier island in North
17 Carolina. It sits at the mouth of the Cape Fear River and the Atlantic Ocean just
18 off the coast of Southport, North Carolina. It has 12,000 acres of beach, marsh, and
19 maritime forest.

20 Mr. Mitchell created BHIL in part to ensure that Bald Head was developed in a
21 responsible and sustainable manner to preserve the island's natural environment.
22 In furtherance of this mission, BHIL set aside 10,000 acres as a permanent nature
23 reserve which will remain undeveloped. To this day, Bald Head remains accessible

only by boat, and once on the Island, transportation is largely restricted to trams, golf carts, bicycles, and pedestrian traffic. Gasoline-engine vehicles are strictly regulated by the Village of Bald Head Island and allowed for the tram, construction activities, deliveries of equipment and suppliers, and other commercial services on the island (e.g. garbage pick-up, etc.)

To ensure that property owners, residents, employees, and the public have reliable and safe access to the island, BHIL formed BHIT to operate the passenger ferry and on-island tram system in 1993 and obtained final authority for its operations from this Commission in 1995. BHIT owns four passenger ferries that transport passengers between Southport and Bald Head Island. BHIT also owns 23 tram units that transport passengers on the Island to and from the Island Terminal and their final destination. BHIL also owns the ferry terminals in Southport and on the Island and leases them to BHIT pursuant to the 2010 Rate Case order. The ownership structure of these entities is reflected, below, in Figure 1:



Figure 1

Q. Are the regulated and non-regulated entities under BHIL's corporate umbrella operated separately and distinctly?

1 A. Very much so. The financial books of BHIT, the BHIL Parking Department, and
2 the BHIL Tug & Freight Barge Department are kept, maintained, and audited
3 separately. Additionally, each operation has its own vertically integrated employee
4 base to include employees, managers, and senior managers. An exception to this
5 structure is inter-company services provided by BHIT's Marine Maintenance that
6 also provide services to the barge and tugboat operated by BHIL, careful allocations
7 of costs and expenses among benefitted entities are honored and accounted for
8 pursuant to Commission practice and guidelines.

9 Q. **Could you describe the changes that are occurring with regard to BHIL and**
10 **BHIT ownership and operation of these infrastructure assets?**

11 A. George Mitchell died in July 2013. Since that time, BHIL and BHIT have
12 continued to operate under the umbrella of his Estate, but that Estate is moving
13 toward settlement and closure. The Mitchell family is not in a position to continue
14 operations of BHIL and BHIT in perpetuity, and the decision was made to divest
15 the remaining assets.

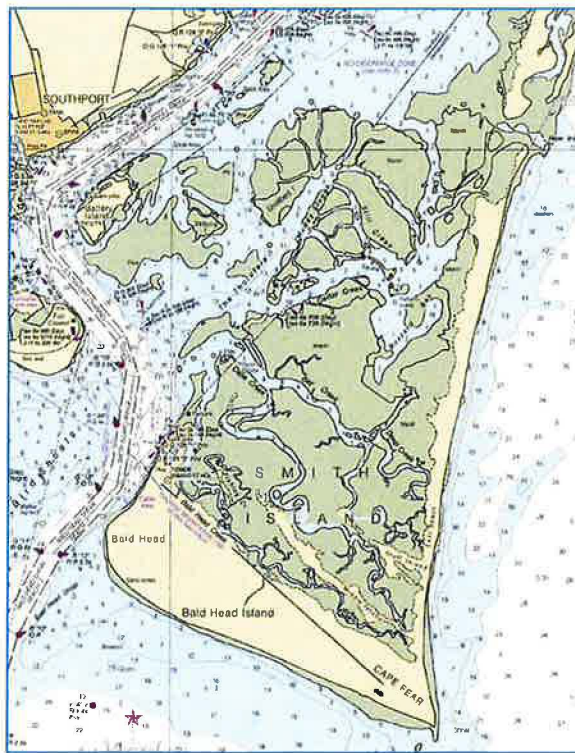
16 To that end, BHIL and BHIT entered into an Asset Purchase Agreement ("APA")
17 to sell most of their remaining operations and some real estate assets on or
18 associated with Bald Head Island to an affiliate of SharpVue Capital, LLC
19 ("SharpVue"), a North Carolina limited liability company, and its affiliates on May
20 17, 2022 (the "SharpVue Transaction").

21 SharpVue is seeking approval, in a separate docket before the Commission, to
22 receive the Certificate of Common Carrier Authority issued by this Commission in

1 1995 pursuant to which BHIT has been operating the passenger ferries and trams
2 under the Commission's jurisdiction.

3 **Q. Can you describe the ferry and tram services that are operated pursuant to**
4 **the Common Carrier Authority granted to BHIT by the Commission?**

5 **A.** BHIT owns and operates four passenger ferries (the "Ferries") that travel between
6 the Deep Point Terminal in Southport and the Island Terminal on Bald Head Island.
7 To visually illustrate the route that the ferries take between Southport and the
8 Island, Figure 2 shows the vessel's nautical route (*see Exhibit 1*):



9
10 **Figure 2**

11 The schedules for the Ferries are approved by the Commission. The current
12 schedule was approved in Commission Docket No. A-41, Sub 18. While the ferry

1 service runs 365 days per year, BHIT rotates and utilizes the individual ferries to
2 provide safe and reliable service to passengers as cost-effectively as practicable.

3 Ferry ticket prices have only been raised once since 1993 – almost 30 years ago.

4 The one rate case was in NCUC Docket No. A-41, Sub 7, in 2010. BHIT sells all
5 ferry ticket classes at the Deep Point Terminal and one-way-return tickets at the
6 Island Terminal. Pursuant to 2010 Rate Case declarations, certain ticket
7 classifications include baggage and tram service to and from the on-Island terminal
8 and the passenger's ultimate destination on the island. To provide the on-island
9 tram service, BHIT owns 23 tram units that are comprised of a truck driven by a
10 BHIT employee and an attached passenger trailer. Passengers' belongings are
11 transported in the truck's bed. Each unit is subject to routine inspection and
12 maintenance, and each truck has a useful life of about 7 to 10 years while the
13 passenger trailers have a useful life of about 20-25 years.

14 Employee and contractor ferry tickets do not include tram service on the island.
15 The passengers utilizing those tickets either walk to their destinations (which are
16 often near the on-island terminal), are picked up at the terminal by their employer,
17 or travel by a BHIT-operated tram shuttle to the Contractor Services location.

18 **Q. Who typically uses the ferry and tram services?**

19 **A.** Bald Head Island is comprised of a mix of residential, commercial, and resort
20 facilities. The ferries serve residents; both overnight and day-trip visitors;
21 construction, maintenance, and custodial contractors; and employees of local
22 employers, including commercial businesses, the Bald Head Island Club, and the

Village of Bald Head, and BHIL itself. In 2021, BHIT transported over 373,000 passengers, and its ferries made over 8,000 round trips. (See Exhibit 2). About 40 percent of passengers traveled on general fare tickets which allows them to utilize on-island tram service.

Q. Can you describe the parking services that BHIL provides which are not regulated by the Commission but are a subject of this hearing?

A. Since the 2009 opening of the Deep Point Terminal, BHIL has provided parking in lots that are adjacent or near the terminal. BHIL still owns and controls the parking lots at Indigo Plantation (the original mainland ferry terminal) and could utilize them for parking overflow from Deep Point, but to date has not needed to do so. Figure 3, below, provides a visual snapshot of currently available parking near Deep Point and identifies its four key levels: Premium, General, Contractor and Employee (see Exhibit 3):

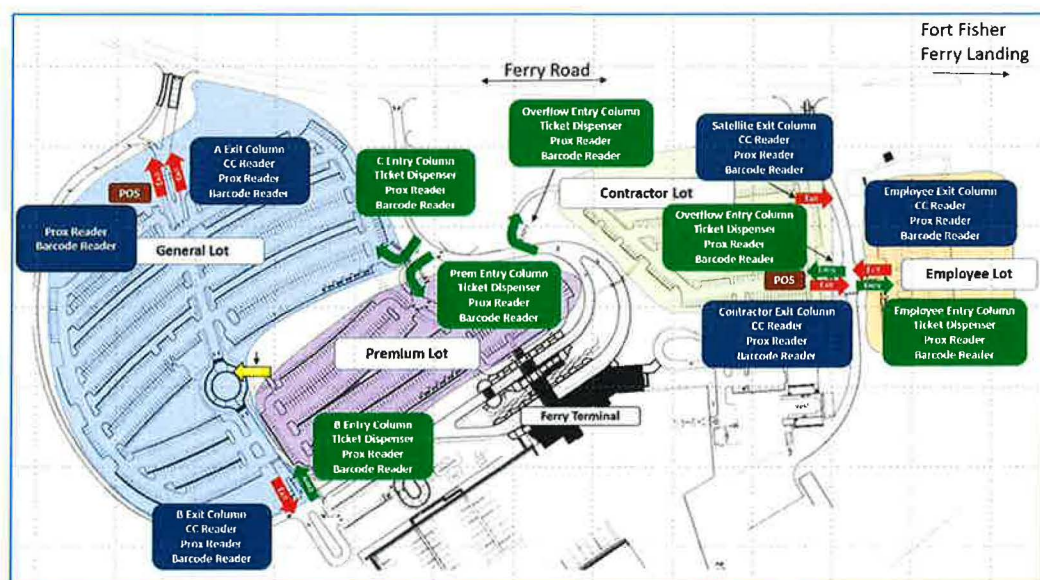
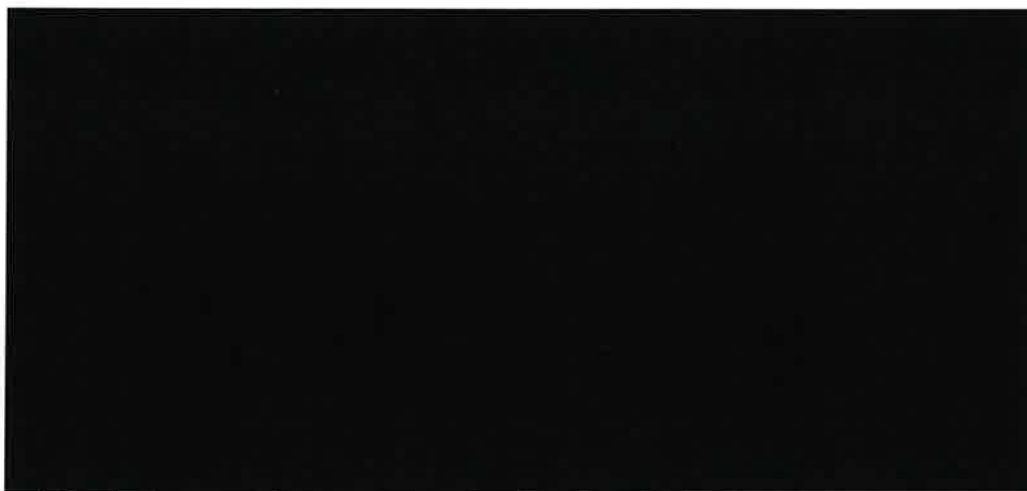


Figure 3

1
2
3
4
5
6
7
8

Q: How many parking spaces are currently available at Deep Point?

A: There are currently [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]
paved/striped parking spots and additional gravel spots that bring that total to
[BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] The breakdown
of those spots among the various parking levels is shown in Figure 4 (see Exhibit
4): [BEGIN CONFIDENTIAL]



*(a) Lot also used by employees in winter and as
overflow lot during summer.*

9

10 [END CONFIDENTIAL]

11

Figure 4

12 **Q. Are the parking lots utilized at a relatively constant rate through the calendar**
13 **year?**

1 A. No, there is wide variance in parking utilization depending upon the season. The
2 most recent full-year data is reflected, below, in Figure 5 (*see* Exhibit 5), and it is
3 exemplary of the year-to-year utilization that BHIL's parking operation
4 experiences. In 2021, for instance, the only lot to reach its capacity was the General
5 Lot in June and July, when vacation visitors to the Island are most common. Excess
6 demand was met through gravel and grass parking and through flexible use of
7 excess capacity in the other lots. The Premium Lot, where Islanders who spend
8 longer periods on the Island tend to park, only exceeded [BEGIN
9 CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] of its capacity during June
10 and July. The same applied to the Employee Lot, where it's likely seasonal
11 employees for Island businesses pushed utilization above [BEGIN
12 CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] only for June and July. In the
13 contractor lot, parking was near to or exceeded [BEGIN CONFIDENTIAL] [REDACTED]
14 [END CONFIDENTIAL] of its capacity from June through October, as builders
15 and renovators took advantage of seasonal opportunities. [BEGIN
16 CONFIDENTIAL]



[END CONFIDENTIAL]

Figure 5

Q. What does it currently cost for consumers to parking in the varying lots?

A. Current parking fees are reflected in Figure 6 (*see* Exhibit 6), below:

DEEP POINT PARKING RATES				
Class	Premium	General (a)	Contractor	Employee
Annual Pass	\$1,350.00	\$1,200.00	\$700.00	\$650.00
General Daily	n/a	\$12.00	n/a	n/a
Contractor Daily	n/a	n/a	\$10.00	n/a
QR Exit Pass Coupon	n/a	n/a	\$6.00	\$6.00

(a) First 2-hours free.

Figure 6

Q. Could you explain the reasons for the differences in the parking fees?

A. As one might see at airports and other transportation hubs, the Premium Lot is located nearest to the Deep Point Terminal and has a slightly elevated cost for its annual pass versus the General Lot. In addition to its annual pass option, the

1 General Lot has a \$12 daily ticket option that would typically be used by vacation
2 visitors to the Island and day-trippers. Fees in the Contractor and Employee lots
3 have historically been reduced in recognition of the important role that these
4 individuals play in advancing the interests of the Island and improving the
5 experience for visitors to the Island. In addition to reduced annual-rate parking,
6 contractors have a reduced daily rate and each of the lots have an "exit pass" coupon
7 option that allows parkers to use the lot at half of the General Lot rate.

8 **Q. What is the history of parking rates at Deep Point since 2009?**

9 **A.** The only increases since 2009 were \$1 increases in 2019 and 2021 to the cost of
10 "daily" parking in the General Parking lot). As is demonstrated in Exhibit 7,
11 parking rates have increased well less than inflation since 2009.

12
13 **Q. The direct testimony filed by the Village in this docket appears to emphasize**
14 **that there are no alternatives for ferry passengers to parking at BHIL's**
15 **parking facilities at Deep Point; how do you respond to that argument?**

16 **A.** I am pleased that the high quality and reasonable pricing of parking services offered
17 by BHIL has resulted in competitors not pursuing off-site alternatives. Over the
18 years, property has been available for purchase in and around Southport -- and, in-
19 fact, directly across Highway 211 from Deep Point -- that could have been
20 purchased and used by a parking competitor (via a shuttle-served lot or walk-to,
21 off-site parking lot, as exists for other ferry operations around the country, as
22 discussed in the direct testimony of James Leonard), yet no one has come forward

1 to develop such an alternative parking option, so, therefore, to date, there are not
2 any other, currently existing, permanent parking facilities for ferry passengers. But
3 that doesn't mean that there couldn't be in the future.

4 **Q. Is public access to the terminal available to potential competitive parking**
5 **providers (or anyone else)?**

6 A. Yes. No payment is required, no gate needs to be opened, and no other barriers
7 exist for shuttles, carpools, buses, or any other vehicles to reach the entrance to the
8 ferry terminal at Deep Point. In this respect, access is very similar to that at an
9 airport or train station. Generally, if there are multiple ferry passengers in any
10 vehicle (a personal car or otherwise), those passengers and their luggage are
11 dropped off at the entrance to the terminal, and then the driver of the vehicle
12 proceeds to the parking lot, but the driver could leave the terminal area altogether
13 without parking, and, again, without making any payment or opening any gates –
14 again, similar to access at an airport or train station.

15 **Q. Are there examples of private, off-site parking for other ferry, airport and**
16 **train passengers?**

17 A. Yes. James Leonard is familiar with other ferry operations around the country, so
18 I will simply reference his testimony regarding ferries. Based upon my own
19 experience and observations, Fast Park, which started as a subsidiary of Parking
20 Company of America, provides parking at the RDU Airport, in addition, according
21 to their website, to parking at airports in Albuquerque, Atlanta, Austin, Baltimore-
22 BWI (two facilities), Cincinnati-CVG, Cleveland (two facilities), Houston-IAH,

1 Houston-Hobby, Indianapolis, Memphis, Milwaukee, Orlando, and Tucson. Train
2 passengers leaving from Raleigh Union Station can park at a number of downtown
3 Raleigh parking decks, but my observation is that they generally park at The Dillon
4 building parking deck located across the street from the station.

5 **Q. Can you describe the barge services that BHIL provides which are not**
6 **regulated by the Commission but are a subject of this hearing?**

7 **A.** BHIL operates a freight barge transporting vehicles across the Cape Fear River
8 between Southport and Bald Head Island. It is a 100-foot steel deck barge that
9 carries vehicles of varying sizes, including supply and construction trucks, and
10 large highway trucks. The barge is pushed by a tugboat on its trips between the
11 mainland and the Island. The operation of the barge, including its equipment, is
12 discussed in the Direct Testimony of James W. Fulton, Jr. For those not familiar
13 with how these barges operate, Figure 7, below, shows the barge being pushed by
14 its tugboat in an image that also appears at www.bhibarge.com along with other
15 photos of the barge and tugboat in operation:



Figure 7

1
2 **Q. Can you please describe the nature of the barge's business activity?**

3 **A.** As Figure 7 depicts, the *Brandon Randall* transports vehicles. Because of the
4 Village of Bald Head Island's strict limitation on the operation of internal
5 combustion engine (ICE) vehicles on the Island, only those vehicles with a Village-
6 issued ICE permit may be transported on the barge. As a roll-on/roll-off barge, the
7 barge is essentially a link in the transportation journey of its vehicles – whose trips
8 neither begin nor end with the barge – but instead originate with their owners and
9 end to perform tasks or deliver items to the Island or the mainland.

10 **Q. What relationship does the barge operation have to the vehicles it transports**
11 **or the materials, if any, that each transported vehicle contains?**

12 **A.** The only connection between BHIL's barge operation and the vehicles it transports
13 is that BHIL rents space on the barge's deck on the basis of every 6 lane-feet
14 occupied by a vehicle. The barge can accommodate about 110,700 lane feet of
15 vehicles on each crossing. There are no variable charges based on what cargo, if
16 any, that a particular vehicle carries. The BHIL barge operation does not take
17 custody or possession of any cargo carried in a vehicle, nor does it take an inventory
18 of such cargo.

19 **Q. Is the barge operation utilized at or near its capacity?**

20 **A.** No, as shown in Figure 8 (*see* Exhibit 8), below, the highest annualized capacity
21 that the barge has reached since 2015 is approximately [BEGIN
22 CONFIDENTIAL] [REDACTED]:

1

2

3 [END CONFIDENTIAL]

4

Figure 8

5 Q. Is the barge utilized at a relatively constant rate through the calendar year?

6 A. While there is substantial capacity for barge traffic to increase, its level of
7 utilization throughout the year is more consistent than, for example, BHIT's ferry
8 operation. We believe this is due to the barge's business being centered around
9 freight – including groceries, dry goods, gasoline and heating oils – as well as
10 construction, road and infrastructure improvement. While barge traffic increases
11 in the summer months when there are more visitors on the island that make use of
12 the basic supplies the barge conveys, our data shows that the barge has a roughly
13 eight-month cycle of heavier activity that runs from March through October. The
14 most recent full-year data is reflected, below, in Figure 9 (*see* Exhibit 9): [BEGIN
15 CONFIDENTIAL]

16

17 [END CONFIDENTIAL]

18

Figure 9

1 This is exemplary of the year-to-year utilization that the BHIL barge operation
2 experiences, though it is fair to note that there have been some anomalous months
3 during, for example, the COVID pandemic and during hurricanes that have
4 impacted the Island. Barge utilization can also be expressed, below, in Figure 10,
5 in a way that extends the reporting range to 2005 through 2021 (*see* Exhibit 10):
6 **[BEGIN CONFIDENTIAL]**



7
8 **[END CONFIDENTIAL]**

9 **Figure 10**

10 **Q. What does it currently cost to transport a vehicle on the barge?**

11 **A.** The barge currently charges \$60.00 per 6-foot length; a chart that summarizes the
12 rates by 6-foot lengths, and provides examples of application to types of vehicles,
13 is attached as Exhibit 11. From 2006 until July 2019, the barge rate was \$50.00 per
14 6-foot length and then moved to \$55.00 per 6-foot length in July 2019, and moved
15 to \$60 per 6-foot length in June 2021.

16 **Q. Is the barge a passenger vessel?**

1 A. No. A driver is allowed to stay with the vehicle during the barge trip, but that
2 individual is not charged a fee for riding and must ride within the cab of the vehicle.
3 Within the appropriate federal regulations, up to 12 non-crew personnel may be on
4 the barge during its transit.

5 Q. Does BHIL believe that the barge engages in activity that should subject it to
6 regulation as a “common carrier” by the Commission?

7 A. As explained more fully in Mr. Fulton’s testimony, the BHIL freight barge does not
8 engage in the type of point-to-point movement of household goods (“HHG”) that
9 the Commission regulates as “common carriers.” That regulatory scheme, as
10 applied by the Commission, regulates those in the business of door-to-door, HHG
11 movement that commences at the original HHG location and ends at the owner’s
12 new residence. The Commission promulgates and enforces a variety of consumer
13 protection measures that relate, among other things, to timing, pricing, and handling
14 concerns that arise when an owner relocates to a new residence. The barge, on the
15 other hand, is a link in an intermodal chain of transportation services that can
16 provide underlying assistance to an HHG-regulated mover. Thus, if a family
17 relocated its residence to Bald Head Island, an HHG mover that is responsible for
18 moving the family’s belongings from their prior residence to their new Island home
19 could drive its truck onto the barge in Southport and off it on the Island to continue
20 its trip to the owner’s new home. The HHG mover would be the entity subject to
21 the Commission’s regulations, not the barge.

1 **Q. Are the assets which underlie the parking and barge businesses of BHIL a part**
2 **of the rate base of the regulated ferry and tram utility?**

3 **A.** No. The Commission's order that decided the ferry and tram's last Rate Case in
4 2010 (Docket No. A-41, Sub 7) approved a rate base value of used and useful assets
5 that did not include assets connected with either BHIL's parking or barge
6 businesses.

7 **Q. In relation to the issues of this docket, what has been the consequence to BHIL**
8 **and BHIT of how the ferry and tram rate base was established in the 2010**
9 **Rate Case?**

10 **A.** To us, the "consequence" has been that there was *no* consequence in that the rate
11 base post-2010 continued as it had before: by not including any assets of BHIL in
12 that calculation. Thus, for more than twelve (12) years the rates of the ferry and
13 tram were *not* based upon the net operating cost of service or a rate of return on
14 parking or barge assets. There has never been a valuation or rate of return
15 established for the parking and barge assets in any ratemaking process pursuant to
16 N.C.G.S. § 62-133(b)(1)-(4).

17 **Q. The settlement of the 2010 Rate Case for the ferry and tram included an**
18 **imputation of \$523,097 of parking revenues from BHIL's parking business to**
19 **the ferry and tram rate base. Does that have any bearing on the issues in this**
20 **docket?**

21 **A.** By the terms of the Commission's order resolving the Rate Case, it does not. The
22 order specifies that the imputation is only for the purposes of that Rate Case. It was

1 not a statement about any purported connection between BHIL's parking and
2 BHIT's ferry and tram businesses. The imputation was agreed upon to meet the
3 required revenue target that would result in a ferry ticket rate the Public Staff and
4 the intervenors (to include the Village of Bald Head Island) would accept.

5 **Q. Does the Village request for the Commission to now regulate the parking and**
6 **barge businesses raise concerns for BHIL about the existing rate base of the**
7 **ferry and tram?**

8 **A.** Our concern is that those parking and barge assets have depreciated over the past
9 11-plus years and that depreciation has not been part of the cost of service for the
10 setting of any rates. To regulate those assets now is to change the rules in the middle
11 of the game.

12 While we understand and appreciate the Commission's statement in ruling upon the
13 Motion to Dismiss of BHIL and BHIT that the Commission is only deciding
14 *whether* to exert regulatory authority over the parking and barge businesses, and
15 that Complainant has not sought to set or modify any rates, we urge the Commission
16 to reserve for a future Rate Case any consideration of the status, basis, or value of
17 any assets it might choose to regulate anew, or newly place into the ferry and tram
18 rate base.

19 **Q. The Commission's examination of BHIL's parking and barge businesses come**
20 **at a time when those assets are under contract for sale to SharpVue Capital,**
21 **LLC. Can you describe how the SharpVue Transaction came about?**

- 1 A. Ever since the death of Mr. Mitchell in August 2013, it has been common
2 knowledge the day was coming when BHIL and BHIT would have to be wound
3 down and we have been planning for a transfer of the ferry and tram operations for
4 several years. In 2017, the North Carolina General Assembly passed legislation
5 authorizing the creation of regional ferry transportation public authorities that could
6 purchase private ferry operations. (Prior to the passage of this legislation, I had met
7 with then-Governor Pat McCrory and his budget director Lee Roberts to discuss
8 the pending legislation. The City of Southport, Brunswick County, and the Village
9 of Bald Head Island passed resolutions supporting the legislation, which was passed
10 unanimously by both the House and the Senate and signed into law by Governor
11 Cooper.) After passage of the authorizing legislation, The City of Southport,
12 Brunswick County, and the Village of Bald Head Island also unanimously passed
13 resolutions to create the Bald Head Island Transportation Authority ("Authority"),
14 which was chartered as an agency of the State in 2017.
- 15 BHIL and BHIT negotiated an agreement to sell the ferry system as well as BHIL's
16 parking and barge businesses to the Authority, but the Authority was unable to get
17 the necessary approval for the financing of the purchase from the Local
18 Government Commission. At that point, we had no choice but to begin actively
19 pursuing other options to ensure that the services would continue uninterrupted as
20 BHIL and BHIT wind down operations. *See* Exhibit 12.
- 21 **Q. Do you anticipate that the transaction with SharpVue will have any negative**
22 **impact on passengers?**

1 A. No; not at all. One of the most important things that convinced us that SharpVue
2 was the right partner is that it already has committed to keeping the management
3 team and employees in place. We anticipate that the day after the transaction closes,
4 it will be business as usual and our passengers, parkers and barge users will not
5 notice any difference. Most importantly, SharpVue's purchase will allow the ferry
6 and tram services to keep operating even as BHIT and BHIL wind down their
7 operations so that the public will continue to have safe and reliable access to the
8 island.

9 **Q. Will you have any continued involvement in the ferry and tram operations at**
10 **Bald Head Island following the SharpVue Transaction?**

11 A. Yes. I have reached an agreement with SharpVue to stay on as CEO and manager
12 for up to thirty-six (36) months.

13 **Q. To the best of your knowledge, will SharpVue seek approval for new or**
14 **changed rates as a result of the SharpVue Transaction?**

15 A. No. SharpVue has said it will not request any rate changes because of the SharpVue
16 Transaction itself unless there is a significant change in the regulatory status or rate
17 base of the regulated utility. It has also committed not to evaluate the need for any
18 rate changes for at least a year, and any rate changes that may be considered in the
19 future will be based on operational and financial factors unrelated to the
20 Transaction.

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

22 A. Yes, at this time.

1 Q. Mr. Paul, did you prepare a summary of your
2 prefiled testimony that has been filed with this
3 docket?

4 A. Yes, I did.

5 Q. If you were to -- and so that would be the
6 summary you would present to the Commission at this
7 time if presented orally under oath?

8 A. Yes, I would.

9 MR. STYERS: Okay. Madam Commissioner,
10 I would ask that the summary previously filed in
11 this docket also now be admitted into evidence in
12 the record.

13 COMMISSIONER BROWN-BLAND: That motion
14 is also allowed. I want to go back to your
15 exhibits for just a minute. You indicated there
16 were 12? Commission seems to have 11.

17 THE WITNESS: The 12th exhibit would
18 have been the press release. I have the 12th on
19 mine.

20 MR. STYERS: Actually, I have the 12th
21 as well. It's possible that it did not get filed.
22 Not likely, but it was simply a press release
23 announcing the sale of SharpVue.

24 COMMISSIONER BROWN-BLAND: All right.

1 Check -- check the record to be sure that it's in.

2 I will still receive it and admit it as 12.

3 MR. STYERS: And if it hasn't been
4 admitted, I think it's been served on all parties,
5 but we'll make sure it's admitted into the record.
6 Thank you.

7 COMMISSIONER BROWN-BLAND: All right.
8 The summary is received, to be sure.

9 (Whereupon, the prefiled summary
10 testimony of Charles A. Paul, III was
11 copied into the record as if given
12 orally from the stand.)
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DOCKET NO. A-41, SUB 21

In the Matter of:

Respondents.

**TESTIMONY SUMMARY
OF
CHARLES A. “CHAD” PAUL, III
ON BEHALF OF
RESPONDENTS**

Charles A. “Chad” Paul, III Testimony Summary**Docket No. A-41, Sub 21**

My name is Charles A. “Chad” Paul, III. I am the President of Bald Head Island Transportation, Inc. (“BHIT”). I also serve as Chief Executive Officer and a Manager of Bald Head Island Limited LLC (“BHIL”), BHIT’s parent company.

BHIL formed BHIT to operate the passenger ferry and on-island tram system in 1993 and obtained final authority for its operations from this Commission in 1995. The schedules for the Ferries are approved by the Commission. Ferry ticket prices have only been raised once – in 2010 -- since 1993. That one rate case was in NCUC Docket No. A-41, Sub 7.. BHIT sells all ferry ticket classes at the Deep Point Terminal and one-way-return tickets at the Island Terminal.

Certain ticket classifications include baggage and tram service to and from the on-Island terminal and the passenger’s ultimate destination on the island. To provide the on-island tram service, BHIT owns and operates 23 tram units that are comprised of a truck driven by a BHIT employee and an attached passenger trailer. Passengers’ belongings are transported in the truck’s bed to their final designation on the island.

In 2021, BHIT transported over 373,000 passengers, and its ferries made over 16,000 voyages. About 40 percent of passengers traveled on general fare tickets which allows them to utilize on-island tram service.

BHIL also owns the ferry terminals in Southport, NC (at Deep Point) and on the Island and leases them to BHIT pursuant to lease terms that were part of the financial data that served as the basis of the 2010 Rate Case order. Adjacent or near to the ferry terminal in Southport, NC, BHIL owns and operates parking lots, which are the subject of this proceeding. There are 1,955

paved/striped parking spots and an additional 347 gravel spots that bring that total to 2,302. Currently, general daily parking cost \$12.00 per day; contactors pay \$10 per day or they (and employees) can use a QR Exit Pass for \$6.00. We also offer Annual Passes ranging in price from \$1,350 for Premium lots immediately next to terminal to \$650 per year in the Employee lot. The only parking price increases since 2009 were \$1 increases in 2019 and 2021 to the cost of “daily” parking in the General Parking Lot; Annual Premium Lot prices increased from \$1,200 to \$1,350 in 2022; and General Annual Lot prices increased from \$1,000 to \$1,100 in 2022. Parking lot price increases have stayed well-below the rate of inflation since 2009.

I have heard the Village’s witnesses testify there are currently no alternatives for ferry passengers to parking at BHIL’s parking facilities at Deep Point, but, that is because of the high quality and reasonable pricing of parking services offered by BHIL. Potential competitors have not entered the market to pursue adjacent or off-site alternatives. Over the years, property has been available for purchase in and around Southport -- and, in-fact, directly across the street from Deep Point, and adjacent to the NC State operated Fort Fisher Ferry, on Ferry Road -- that could have been purchased and used by a parking competitor (via a shuttle-served lot or walk-to, off-site parking lot, as exists for other ferry operations around the country), yet no one has come forward to develop such an alternative parking option, so, therefore, to date, I’ll acknowledge there are not any other, currently existing, permanent parking facilities for ferry passengers. But that doesn’t mean that there couldn’t be in the future.

I would also like to mention that public access to the Deep Point terminal is available to potential competitive parking providers. No payment is required, no gate needs to be opened, and no other barriers exist for shuttles, carpools, buses, or any other vehicles to reach the entrance to the ferry terminal at Deep Point. In this respect, access is very similar to that at an airport or train

station. Generally, if there are multiple ferry passengers in any vehicle (a personal car or otherwise), those passengers and their luggage are dropped off at the entrance to the terminal, and then the driver of the vehicle proceeds to the parking lot, but the driver could leave the terminal area altogether without parking, and, again, without making any payment or opening any gates – again, similar to access at an airport or train station.

With regards to the barge, as explained in more detail by Woody Fulton, BHIL operates a freight barge transporting vehicles across the Cape Fear River between Southport and Bald Head Island. It is a 100-foot steel deck barge that carries vehicles of varying sizes, including supply and construction trucks, and large highway trucks. The barge is pushed by a tugboat on its voyages between the mainland and the Island.

The only connection between BHIL's barge operation and the vehicles it transports is that BHIL rents space on the barge's deck on the basis of every 6 lane-feet occupied by a vehicle. The barge can accommodate about 110,700 lane feet of vehicles on each crossing. The barge currently charges \$60.00 per 6-foot length. From 2006 until July 2019, the barge rate was \$50.00 per 6-foot length and then moved to \$55.00 per 6-foot length in July 2019, and moved to \$60 per 6-foot length in June 2021. Because the barge has never been regulated by the Commission and its rates have never been set by the Commission, there has never been a fuel surcharge to help recover the cost of rising fuel prices. As explained by Mr. Fulton, the BHIL barge operation does not take custody or possession of any cargo carried in a vehicle, nor does it take an inventory of such cargo. There are no variable charges based on what cargo, if any, that a particular vehicle carries.

The assets utilized by the parking and barge businesses of BHIL have never been part of the rate base of the regulated ferry and tram utility. The Commission's order that decided the ferry and tram's last Rate Case in 2010 (Docket No. A-41, Sub 7) approved a rate base value of used

and useful assets that did not include assets connected with either BHIL's parking or barge businesses. As explained by Ms. Mayfield, the financial books of BHIT, the BHIL Parking Department, and the BHIL Tug & Freight Barge Department are kept, maintained, and audited separately. Additionally, each operation has its own vertically integrated personnel base of employees, managers, and senior managers. The regulated and non-regulated entities under BHIL's corporate umbrella are operated separately and distinctly.

I would like to conclude by briefly summarizing our transaction with SharpVue Capital, since that is the catalyst for this docket: Ever since the death of Mr. Mitchell in July 2013, it has been common knowledge the day was coming when BHIL and BHIT would have to be wound down and we have been planning for a transfer of the ferry and tram operations for several years, since at least 2015. In 2017, the North Carolina General Assembly passed legislation authorizing the creation of regional ferry transportation public authorities that could purchase private ferry operations. BHIL and BHIT worked cooperatively with the NC General Assembly, City of Southport, Brunswick County, and the Village of Bald Head Island in their creation of the Bald Head Island Transportation Authority, whose purpose was to purchase the assets. BHIL and BHIT negotiated an agreement to sell the regulated ferry and tram system as well as BHIL's parking and barge businesses to the Authority, but – as is well documented -- the Authority was unable to secure the necessary approval for the financing of the purchase from the Local Government Commission. At that point, BHIL and BHIT had no choice but to begin actively pursuing other options to ensure that the services would continue uninterrupted as BHIL and BHIT wound down operations, and we secured an agreement with SharpVue Capital to purchase the assets.

One of the reasons we felt that SharpVue was the penultimate purchaser and steward of the operations and assets was its commitment to keeping the management team and employees in place

and we knew the transaction would have no negative impact on passengers. We anticipate that the day after the transaction closes, it will be business as usual, and our passengers, parkers and barge users will not notice any difference. Most importantly, SharpVue's purchase will allow the ferry and tram services to keep operating even as BHIT and BHIL wind down their operations so that the public will continue to have safe and reliable access to the island.

Therefore, there is no reason to change the regulatory status of our barge or parking operations, and we ask that the complaint be dismissed and the relief requested by the Village be denied.

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Testimony Summary of Charles A. “Chad” Paul, III has been served by electronic mail, hand delivery, or by depositing a copy of same in the United States Mail, postage prepaid, properly addressed to parties and counsel of record as shown on the Commission’s Service List in docket A-41, Sub 21, and has also been provided to Commission’s Counsel and to the appropriate members of the NC Public Staff.

This 11th day of October, 2022.

/s/ *M. Gray Styers, Jr.*

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

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

3 COMMISSIONER BROWN-BLAND: All right.
4 Mr. Ferrell?

5 MR. FERRELL: No questions.

6 COMMISSIONER BROWN-BLAND: The Village?

7 MR. TRATHEN: Yes. Thank you.

8 CROSS EXAMINATION BY MR. TRATHEN:

9 Q. Mr. Paul, I'm Marcus Trathen, counsel for the
10 Village. We've had the pleasure of meeting before, I
11 believe.

12 A. Yes, sir.

13 Q. So I have a few questions for you, and they
14 are mainly trying to tamp down some issues that have
15 come up, so jumping around just a little bit. There
16 have been a number of questions with respect to Indigo
17 Plantation. Let's maybe go ahead and take care of that
18 first.

19 My understanding is -- first of all, Limited
20 is the owner of Indigo Plantation, correct?

21 A. Limited is Indigo -- is the owner of Indigo
22 Plantation. The Indigo Plantation and marina
23 designation consists of 30 acres that reside within the
24 city limits of Southport, and there is an additional

1 roughly 360 acres that are adjacent that reside in the
2 county of Brunswick County.

3 Q. Okay.

4 A. So the original ferry resided on -- and the
5 parking lots resided on the 30 acres in the city of
6 Southport.

7 Q. Okay. And am I correct that you are working
8 with a developer by the name of East West Partners to
9 develop that property?

10 A. Yes, sir. We did withdraw our application
11 from the City of Southport about a month ago. So we
12 have withdrawn our application.

13 Q. Okay. And that application would have
14 covered the entirety of the 30 plus the 160 that you
15 just described?

16 A. The 30 plus the 3- -- the 3- -- yeah, to make
17 it 400 acres, yes. All combined, yes.

18 Q. All right. And it was a residential
19 development; was that the purpose of the application?

20 A. Residential. We had planned 80,000 square
21 feet of commercial as well over there.

22 Q. And my understanding is there was some
23 questions, in particular, from the City with respect to
24 the density of the proposed development?

1 A. Yes. The issue boiled down to, is that the
2 land -- the majority of the land lies within the
3 county, with -- that is, in the extraterrestrial [sic]
4 jurisdiction of the City of Southport, and the issue
5 boils down to that land is zoned R20. And clearly, for
6 us to annex and voluntarily annex into the city, there
7 needs to be a better revenue computation for the lot
8 yield to -- in order to -- for going into the city,
9 because we'll pick up all the city services, additional
10 electric, and -- like that, so there is some balance
11 there. The City needs more time. Their city manager
12 has recently announced that he's leaving, and their
13 head of planning left about two months ago. So they
14 need some time to, kind of, sort things out.

15 Q. Sure. And the plan, as submitted -- I
16 understand it's been withdrawn or maybe denied or some
17 iteration --

18 A. Yes, sir. Call it the plan.

19 Q. -- of that -- gotcha.

20 The plan did not involve continuation of the
21 parking facilities for use by Deep Point or the Bald
22 Head Island ferry?

23 A. No, sir. They are zoned -- today, they are
24 zoned PUD commercial for parking lot use, but the plan

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1 would be, in 10 years, that those are condominiums. I
2 reflected a call -- a discussion here, old Indigo Lot B
3 sits right on the water, and old Indigo Lot A has
4 partial stuff on the water. C and D are not on the
5 water.

6 Q. Okay. And although you've withdrawn this
7 permit application, I take it from the tenor of your
8 responses that you're continuing to pursue development
9 of this property and you're hopeful of developing it?

10 A. Yes, sir.

11 Q. Okay. Now, changing topics, there were some
12 discussions with respect to access to the Deep Point
13 over the roads, and I think everybody agrees that the
14 access roads -- and I don't have the number -- the road
15 numbers, but the access roads to the terminal are --
16 that's private property owned by Limited, correct?

17 A. They are privately owned roads, but they are
18 fully recorded easements across those roads. In
19 addition, in the lease with the Utilities Commission
20 from 2010, there is an exhibit to that lease. That
21 lease specifically defines what's in that lease.
22 Specifically defined in that lease, for the benefit of
23 the utility, are the roadways for the upper and lower
24 terminal and all the exits.

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1 I did -- I thought this question was coming.
2 I did have Krishna go get the big maps that are over
3 there and that define everything in that, and those
4 roadways are in the lease for Bald Head Island
5 Transportation. There were several easements recorded
6 in 2000- -- January of 2000 that Mr. Gardner and the
7 mayor would have known about, because they were
8 recorded on behalf of the Authority, so that, in fact,
9 the property could all be subdivided and all of the
10 tenants, to include the third-party restaurant tenants,
11 the third-party marina tenants, the third-party tenant
12 called the Bald Head Island Club at their shipping and
13 receiving location would have complete access to those
14 roads. So on all of their leases that we have with all
15 of these tenants, it's presumed that they could get to
16 their property without having to worry about it being
17 tolled.

18 MR. STYERS: Correction for the record.

19 It's 2020, Mr. Paul.

20 THE WITNESS: Sorry, 2020.

21 Q. So let me unpack that a bit.

22 So, first of all, with regards to the leases,
23 you're referring to the intercompany leases between
24 Limited and Transportation, correct?

1 A. That is one of the leases, yes, that I'm
2 referring to.

3 Q. Okay.

4 A. We also have 88 marina -- marina leases.

5 Q. Well, with respect to the issue that we're
6 discussing now.

7 A. Yes, we have a 20- -- we have a lease that
8 was approved by this body that is \$1,252,708, and that
9 lease is the second largest expense in Bald Head Island
10 Transportation. That lease and all the imputation for
11 it was fully vetted by Public Staff. And within that
12 lease there is several exhibits to include a layout of
13 all of the facilities and what -- you know, what closet
14 is being totally 100 percent used by Bald Head Island
15 Transportation and what office might be used by real
16 estate sales folks, to break up exactly what it is in
17 that lease, and what's exactly in that lease includes
18 the upper and lower terminal access roads.

19 Q. Okay. The complete -- your testimony is that
20 those leases incorporate the entirety of those access
21 roads back to the road that leads to the state ferry?

22 A. The lease starts -- the lease that is covered
23 within the utility that is part of that lease, that is
24 part of the imputation of the -- or part of the

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1 agreement on the \$1,252,708, in terms of the allocation
2 for the cost that Mr. McKissick talked about, that
3 starts right where the marina entrance is. So you've
4 been to the --

5 Q. Sure.

6 A. So if you come into the main entrance, and
7 you go around the archway to the west, and you come up
8 and you come back like you are now level with the
9 water, to the right is where the entrance is to the
10 marina and the marina parking area. Do you know where
11 I'm talking about? Right there -- right there is where
12 the lease for Bald Head Island Transportation starts
13 for those roads, and they follow all the way out to the
14 exit.

15 Q. Okay. Well, the leases will speak for
16 themselves. They have been filed with the Commission.
17 Been through them myself.

18 And they speak for themselves; do you agree
19 with that?

20 A. Yes, sir.

21 Q. If they cover the access roads, it will say
22 it in the lease?

23 A. Correct. And the easements --

24 Q. Now, with respect to the --

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1 A. -- the easements will also verify that the
2 easements that have been recorded are for the benefit
3 of those tenants.

4 Q. Okay. So the easements -- tell me who the
5 easements are in favor of?

6 A. The easements are in favor of Bald Head -- of
7 the -- if we go to subdivide that property up, it's
8 based on those tenants that are there now. We could
9 get you the book and page number for all those
10 easements. Those easements, again, were recorded in
11 January of 2020 in anticipation of the Bald Head Island
12 Transportation Authority.

13 Q. So does that include -- is there an easement
14 to BHIT?

15 A. I'm not sure how they recorded it at that
16 time, but it would -- that would be my guess; yes, sir.

17 Q. You're not sure?

18 A. I'm not sure, but it would have been for the
19 benefit of that lease.

20 Q. Okay. Now, I want to go back to -- you were
21 here for Mr. Roberts' testimony, correct?

22 A. Yes, sir.

23 Q. I want to go back to something that he
24 testified to, and just want to make sure there is no

1 misunderstanding.

2 He was asked about whether issues relating to
3 the stipulation -- whether the stipulation had been
4 vetted or discussed with the Village; do you recall
5 those questions?

6 A. Whether the stipulation, itself, had been
7 discussed with the Village?

8 Q. The issues addressed in the stipulation,
9 whether that had been discussed with the Village, and
10 he said he referenced that there were three meetings in
11 Brooks Pierce offices where Limited was also present
12 where those matters were discussed; do you recall that
13 testimony?

14 A. I do recall Mr. Roberts referencing the three
15 meetings that I attended with the Village.

16 Q. Okay. And I was there as well?

17 A. Yes, sir.

18 Q. Okay. And I just want to make sure that
19 there was no confusion about that.

20 And I don't want to go into what all was
21 discussed, but I just want to clarify that matters
22 relating to the stipulation -- the issues addressed in
23 the stipulation that was filed and discussed in the
24 testimony filed by Mr. Roberts in this proceeding, that

1 was never discussed in those meetings, was it?

2 A. I believe those meetings were part of a 308
3 NDA. So I would suggest that they may or may not have
4 been discussed in those meetings. I don't know if I'm
5 permitted to say that, but I would just suggest, before
6 those meetings, those stipulations were fully disclosed
7 and fully discussed with the entire island community,
8 with the two Bald Head Island association meetings we
9 had. Clearly stated, it's videotaped. Mr. Roberts
10 went on record in front of everybody in the community
11 and said the \$527,000 in imputation, we anticipate that
12 will stay in. He also indicated that he would provide
13 parking, and he also indicated that he would provide --
14 and it would grow at inflation.

15 So whether it was especially discussed with
16 the Village in those three meetings or not, it was
17 fully -- it's been fully disclosed. I don't know how
18 we can provide any more clarity. We have -- we have a
19 third-party buyer who's willing to step into the shoes
20 of Limited as is. We wanted to avoid this situation.
21 Stepping into the shoes of Limited as is, that means,
22 in Sub 22, we're not having a rate case. It's do you
23 take the transportation, subject to what happened in
24 the 2010 rate case? The answer is yes. In all of

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1 this -- in its entirety. The lease, the computation,
2 everything.

3 Q. All right. So I told you I was gonna jump
4 around. Next topic.

5 A. Yes, sir.

6 Q. No parking signs. There are no parking signs
7 up and down the road outside of Deep Point, correct?

8 A. Yes. The City of Southport, I believe, had
9 those installed; yes, sir.

10 Q. And why was that?

11 A. Because they had folks parking that were
12 clearly using our facility as well as the state Fort
13 Fisher facility on that, because they're 100 yards down
14 the road from us. And there were cars that were
15 parking there, and those signs were put up.

16 Q. Okay. Tram service.

17 There are 23 trams, I believe that you stated
18 in your testimony?

19 A. Yes. There are 23 trams and, I believe, 24
20 trucks now, but yes.

21 Q. Okay.

22 A. We've got a truck that drives the tram.

23 Q. And these are the vehicles that are used to
24 take passengers and their belongings to and from the

1 on-island dock?

2 A. Yes. They leave the on-island terminal and
3 go to the drop-off and/or pickup and bring back to the
4 terminal. That's their primary route.

5 Q. And it's your understanding that's the
6 Commission's regulation of the ferry-regulation of the
7 tram service?

8 A. Absolutely.

9 Q. And the Commission effectively establishes
10 the prices for the tram and treats its revenue as
11 regulated revenue, correct?

12 A. Yes. But there is very little tram revenue.
13 The tram revenue is actually combined into certain
14 ticket classes. That's how that's regulated. We don't
15 really have -- you can't walk up and buy, necessarily,
16 a tram ticket for just a ride on the tram.

17 Q. So the tram is considered an ancillary
18 service to the ferry, correct?

19 A. I would say it's fully incorporated into
20 the -- into the system. It's not ancillary. It is --
21 it is fully regulated. It's incorporated into the
22 system. It's always been designed to be that way; yes,
23 sir.

24 Q. Okay. Well, it's not a boat?

1 A. It's not a boat.

2 Q. Okay. So it's a different modality, but
3 nonetheless, it's considered as part of the entirety of
4 the regulated --

5 A. It's part of the entire regulated piece.
6 It's not ancillary. I would not consider it an
7 ancillary business. It is -- it is the business of
8 running the utility.

9 Q. Okay. So -- so it's integral to the ferry
10 service?

11 A. It's important to the ferry service; yes,
12 sir.

13 Q. Okay. So assume that SharpVue acquires the
14 barge assets and then subsequently sells the parking
15 lot to be replaced and substituted with something
16 completely different, let's say a hotel. Let's assume
17 that and -- for purposes of this hypothetical.

18 Is it your belief, at that point, the
19 Commission could require SharpVue to construct a new
20 parking lot to serve the ferry?

21 A. Subject to the stipulations that we provided
22 yesterday, the answer would be no.

23 Q. Okay.

24 A. The parking lot is not a regulated utility.

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1 The barge is not a regulated utility. I know we want
2 to try to go back in history and create a regulated
3 utility situation for valuation purposes, but that
4 didn't occur. That history is not real.

5 Q. If you would turn to page 12 of your
6 testimony, please.

7 A. (Witness complies.)

8 Q. Okay. So I'm interested in your comments
9 with respect to Fast Park, lines 18 through 20, "Based
10 upon my own experience and observations, Fast Park,
11 which started as a subsidiary of Parking Company of
12 America, provides parking at RDU Airport," in addition
13 to some other airports.

14 So it sounds like you have done some
15 investigation, and it's your position that Fast Park
16 provides and controls the parking at RDU Airport?

17 A. No. I think the reference is there that
18 that's not regulated parking lots. I don't believe
19 that those parking lots are regulated by this body.
20 They may own those lots. They may be the service
21 provider of those lots. The point being is, we have
22 struggled mightily to try and find anywhere in the
23 country a parking lot that's been regulated by anybody
24 so that we could actually do the analysis that

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1 Mr. Clodfelter said to compare what the regulations
2 would be to see if we're lined up to run the business.
3 So I think -- this is just an example, off the hip.
4 Over here at Union Station, people that are gonna use
5 the train depot are gonna probably use that parking
6 deck. That parking deck -- I don't believe we've
7 looked into it -- is not regulated. Now, they could go
8 down the street to other parking, yes. There is
9 competition, but they're gonna use that deck.

10 MR. TRATHEN: Can we approach with an
11 exhibit?

12 COMMISSIONER BROWN-BLAND: You may.

13 (Pause.)

14 MR. TRATHEN: If we could mark this
15 Village Paul Cross Exam Exhibit Number 1.

16 COMMISSIONER BROWN-BLAND: It will be so
17 identified.

18 (Village Paul Cross Examination Exhibit
19 Number 1 was marked for identification.)

20 Q. Okay. I promise -- there is a lot of paper
21 here. We're not gonna go through all of this.

22 So this -- the first page I'll represent to
23 you is a response from the general counsel of the RDU
24 Authority to me in response to public records request.

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1 Do you see where it says that in the first
2 sentence of this letter?

3 A. Yes, I do.

4 Q. Okay. And do you see that it says that she's
5 the general counsel of the Authority, and you see that
6 it says that, under legislative enactments, the
7 Authority governs the airport; do you see that?

8 A. Yes I, do.

9 Q. And then she says that the Authority is a
10 local government entity public authority established by
11 the General Assembly. And then she says a referenced
12 legislation is attached to the letter.

13 Do you see that?

14 A. Yes, I do.

15 Q. Okay. Second, she says that the Authority
16 controls, develops, and maintains, operates the public
17 parking at the airport, both the parking garage
18 facilities between the main airport and terminals and
19 the economy parking lots at the airport; do you see
20 that?

21 A. I do.

22 Q. And she says, the Authority establishes the
23 rates charged in parking facilities through an annual
24 budget process; do you see that?

1 A. I do.

2 Q. And then she says, attached is the relevant
3 portion of their budget showing establishment of
4 parking rates; do you see that?

5 A. I do.

6 Q. And finally she says that their budget is
7 subject to Chapter 159 of the General Statutes,
8 includes public participation of budget development
9 approval process; do you see that?

10 A. I would assume that that means they have to
11 follow LGC guidelines, yes.

12 Q. Yes. And if you would turn -- so the second
13 page, looks like this is where she's got a series of
14 statutes, as forecast in her letter, providing for the
15 statutory authorization of this authority, but just to
16 direct your attention to the last two pages, which --
17 or three pages, which is the attachment with the budget
18 document that she referenced in her letter.

19 If you would go to the next-to-last page, do
20 you see a reference to public parking?

21 A. Yes, I do.

22 Q. With a daily maximum for the various lots?

23 A. Yes, I do.

24 Q. Okay. Do you have any reason to dispute

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1 anything that's in this letter?

2 A. No, I don't. I think it's a great letter. I
3 think it's a great example of why the authority idea
4 was -- I'm sure that our lawyers looked at this as an
5 example of why the authority process was the correct
6 process that we were -- we worked with all of these
7 items on pages 2 through however. They walk and talk
8 and look just like Senate bill 391 that was passed to
9 create the Bald Head Island Transportation Authority.

10 Q. And, in fact, that statute that you're
11 referring to includes parking within the authorized
12 authority -- well, I'm using the "authority" twice, but
13 the Authority is given the ability to operate the
14 parking lot, correct?

15 A. Yes, it is.

16 Q. It's given the power to set rates?

17 A. Yes, it does.

18 Q. General Assembly recognized that parking was
19 essential to the operation --

20 A. Correct.

21 Q. -- of the ferry in that statutory?

22 A. Correct.

23 Q. Okay. And with respect to RDU, it's clear
24 from this letter that RDU, in fact, regulates the

1 parking rates at the airport?

2 A. The Authority regulates the parking.

3 Q. Yes.

4 A. They determine what the rates are. It's not
5 based on this body or this building determine what
6 rates are, and I would suggest that those rates have
7 got nothing to do with a rate base accounting analysis
8 on how those rates are determined.

9 I think that you pointed out in the back
10 here, under the second page where you highlighted
11 public parking, I notice those rates. Those rates, I
12 am most certain, at \$26 a day -- or \$23 a day, are not
13 tied to a regulatory rate of return as required by this
14 body in that analysis. This is just their competition.
15 They're paying for a service. People to park in the
16 airport in the premier lot, they're paying for a
17 service. They are not running an ROI -- I do not
18 believe they are running an ROI off of a regulatory
19 rate base to drive down the value over the next
20 40 years so that, in 40 years, the parking rate is
21 zero. My guess is the parking rate in 40 years for
22 daily maximum is probably more like \$50 or \$60.

23 Q. Your testimony, at page 12, lines 19 --
24 beginning of 19 is inaccurate with respect to RDU

1 Airport, is it not?

2 A. I don't know if Fast Park operates -- they
3 might have -- Fast Park may operate them as a
4 third-party vendor. I don't know that. So that would
5 be incorrect. Yes, sir, if that is the case, I did not
6 -- I did not mean to lead to believe that Fast Park
7 owned those lots. The question is, I believe that that
8 Parking Company of America or Fast Park may actually
9 manage those lots. Don't know.

10 Q. That's not what this letter says. Is says
11 RDU Authority controls, develops, maintains, and
12 operates the public parking facilities.

13 Do you dispute that?

14 A. No. If that's what the letter says, that's
15 what the letter says. I'm just looking at it and said
16 that would have been what I would have said, so this
17 would be -- if this is what this is and that's the
18 case, then that -- that is a misstatement on line 20
19 that Parking Company of America does not operate as a
20 third-party operator. Most municipalities and most
21 authorities do have a third-party operator. So I
22 misspoke.

23 MR. STYERS: Mr. Paul will just testify
24 to what he knows.

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1 MR. TRATHEN: Well, he said, "Based on
2 my own experience and observations." Anyway,
3 point's made. We can move on.

4 THE WITNESS: I can suggest where we got
5 that information is that we are looking into
6 parking software, and we would have, without
7 question, utilized, as a reference to look into
8 vendors for parking software for Deep Point.
9 Parking Company of America was definitely one of
10 those vendors, and we did visit a lot of their
11 operations, and I believe one of my colleagues
12 actually did come to the RDU Airport, and that's
13 where I would have thought that came from.

14 MR. TRATHEN: May we approach with
15 another exhibit, please?

16 COMMISSIONER BROWN-BLAND: You may.

17 (Pause.)

18 MR. TRATHEN: Madam Chair, this is an
19 exhibit that's actually already in evidence. This
20 is Mr. Wight's Exhibit JAW 6. I was just handing
21 it out for the convenience of the witnesses and the
22 parties to look at. Should we just keep the
23 existing --

24 COMMISSIONER BROWN-BLAND: Yes.

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1 MR. TRATHEN: -- designation, or should
2 I re- --

3 COMMISSIONER BROWN-BLAND: Yes. And
4 just reference it as it's identified.

5 MR. TRATHEN: Okay.

6 Q. This has been marked as confidential. I
7 don't think anything that I'm gonna ask is
8 confidential, given where we stand now, but I'm asking
9 counsel to let me know if --

10 A. Just going through it real quick,
11 Mr. Trathen. Hold on one second. Let me just make
12 sure.

13 (Witness peruses document.)

14 Q. And I promise you, I only have a few pages
15 that I'd like to direct your attention. I have no
16 intention of going through the entire document.

17 A. Okay. The only thing I would say would be
18 confidential if we have anything in here -- I don't
19 recall if we have anything specific to named employee
20 matters, in terms of their salary and personnel. That
21 would be the only thing I would want to be
22 confidential.

23 Q. I recall that, and I have no interest in
24 exploring that with you.

1 So, Mr. Paul, you have in front of you
2 Exhibit JAW 6. Can you explain what this is?

3 A. This document we -- we -- I put together,
4 with the assistance with Ms. Mayfield and one other
5 colleague, in August of -- 17, 2021. This document
6 would have been the base document with maybe one or two
7 changes, but I don't believe so. I believe this is the
8 base document that I used to begin my formal
9 discussions with SharpVue Capital, as well as a handful
10 of other private equity buyers.

11 Q. If you could turn to slide 5, please. Page 5
12 of 76.

13 A. Yes, sir.

14 Q. Island location. I just want to direct your
15 attention here to the last couple of sentences.
16 "Throughout its history, everything necessary to
17 sustain human endeavor on Bald Head Island arrived by
18 some sort of vessel crossing the river. Today,
19 visitors of the island, employees, and contractors
20 working on the island, island property owners all
21 arrive via a privately owned but publicly regulated
22 fleet of commercial ferries."

23 A. And highlighted privately owned but publicly
24 regulated, so it was very clear. There are probably

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1 three items in here discussed -- very clear to
2 everybody in the world, the ferry and the trams are
3 privately owned but publicly regulated by this body.
4 And you'll also see, when we get to other items in
5 here, relative to the transportation -- I mean, as it
6 relates to the parking and the barge, there would be
7 major hedgers throughout here that say nonregulated.
8 So we very clearly, throughout this document, say
9 what's regulated and what's not.

10 Q. Yes. And I was just going to draw your
11 attention to the first sentence that I read there,
12 everything necessary to sustain human endeavor on Bald
13 Head Island has come and is coming through the
14 transportation facilities that your company provides;
15 is that right?

16 A. I think it's -- human endeavor, that's really
17 a reference to the 1900s, but yes, we can -- we can --
18 we can suggest that I agree with you that the majority
19 of -- whether it be humans or material -- is coming to
20 the island via water. And right now we are the single
21 service provider for that, insomuch as we have been the
22 single service provider for that since the Mitchells
23 bought the island in 1983.

24 Q. If you could turn to page 12, please. This

1 is executive summary. The top part talks about service
2 consolidation, integrating transportation logistics
3 systems, and then the first -- and I'm just, kind of,
4 paraphrasing, trying to move this along. People come
5 to Bald Head Island, need a place to park their
6 vehicles on the mainland. The passenger ferry ride
7 across the Cape Fear River may need the tram service.

8 Do you see that?

9 A. Yes, I do. I took that -- I helped draft
10 that. That's taken directly from the bond offering
11 document for the Authority.

12 Q. And then down below, the linkage most
13 essential for sustained viability is composed of the
14 primary -- the passenger ferries, tug and freight barge
15 system, supplemented by the parking operations.

16 A. And the island tram service. Yes, those four
17 components.

18 Q. Okay. And then you say consolidating and
19 integrating these operations into a single entity
20 simplifies a governing structure -- excuse me -- future
21 of governance, strategy planning, funding, and
22 operation.

23 So seems to me that you're describing the
24 benefits of a consolidated operation here; is that

1 correct?

2 A. Yeah, the benefits that we have now. But
3 again, these two paragraphs came directly from the Bald
4 Head Island Transportation Authority bond ref- -- bond
5 memorandum.

6 Q. And these -- you agree with everything here?

7 A. I would agree that the goal would be to try
8 to create some integrated interoperable capability
9 without having to do all the machinations that
10 Ms. Mayfield needs to do every day. That that would be
11 a wonderful thing. But we'll see if we are able to do
12 that.

13 Q. If I could turn your attention, please, to
14 page 29.

15 A. 29?

16 Q. Yes, page 29.

17 A. Yes, sir.

18 Q. All right. And I think the first -- the
19 first line, BHIT is historically operated as a net
20 taxable loss since regulation began in 1993. Sounds
21 consistent with what Ms. Mayfield was saying.

22 A. Yes. On that -- again, going back then,
23 there's EBITA, cash flow, and then net taxable loss,
24 but that would be correct.

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1 Q. Okay. And then you describe the 2010 rate
2 case, and you say that you're referencing the mainland
3 parking facility and operation, and you say it's
4 extremely profitable, when judged to be adjunct to the
5 ferry transportation service. Then you describe the
6 imputation that occurred in that case.

7 And then you say that the Commission had no
8 interest in regulating the parking, no precedent in
9 North Carolina; i.e., Charlotte-Douglas Airport, RDU,
10 RBC Center -- Centennial Authority does not have
11 regulated parking operations; do you see that?

12 A. Yes, I do.

13 Q. Okay. So with respect to the no interest, I
14 mean, the order does include a price gap for parking,
15 correct?

16 A. It basically imputes the \$523,725.

17 Q. But also, you can't raise prices; it's in the
18 order, you can't raise parking rates?

19 A. Let's review that. That's great that you
20 brought that up. So everybody wants to know why we
21 just didn't write a check for \$667,000. We wrote a
22 check for \$124,000 from -- from the developer and
23 Limited, why not write just the 667 and just call the
24 523 basically a donation from the parent?

1 In that same order you're talking about,
2 there is a letter that is referenced in that order
3 dated April of 2009. That letter dated April 2009 is
4 between Mayor Lambert and my former predecessor boss,
5 Mr. Kent Mitchell. Recall that Bald Head Island
6 Limited moved officially to Deep Point -- in
7 June of 2009 is when we began service operations, in
8 June of 2009. We'd been building Deep Point for two
9 years. Getting ready to announce we're moving to Deep
10 Point. Gonna move to 1,955 striped spaces from
11 basically 1,000-plus. I think it's 533 spaces
12 difference between here and Indigo.

13 Mr. Lambert was concerned that Mr. Mitchell
14 would take advantage of the move, and so Mr. Mitchell,
15 without the Utilities Commission, entered into a side
16 agreement with Mr. Lambert in April of 2009, months
17 before this body got finished doing what it's doing in
18 December, and I would suggest, my recollection -- I was
19 on the board of the Mitchells at the time. I took the
20 role of CEO, unfortunately, almost to the day 12 years
21 ago, and I signed Mr. Finley 's order. But the notion
22 of where -- where did the idea of imputed parking come
23 from, it came from that letter. And in that letter,
24 Mr. Mitchell indicated that he would not raise the

1 daily rate greater than inflation until 2016. And I
2 would suggest we didn't raise the rates until
3 July of 2019.

4 So if there's a big mystery -- and there's a
5 lot more people here. This is like a big reunion of
6 the 2010 with Mr. Higgins and Mr. Fulton and Mr.
7 Wright. That's very simple. That's where the idea
8 came from from imputed parking. It's in the order.
9 There is a signed letter April 2009, way before.
10 That's why parking, in my opinion, was imputed, because
11 there was a way not to have \$667,000 given.

12 Q. Okay. So --

13 A. But that's where the agreement to not raise
14 rates at the parking lot was a third-party separate
15 agreement between Limited, as the owner of the parking
16 lot, and the mayor, Mr. Lambert, of the Village of Bald
17 Island at that time, 2009, not to raise the rates
18 greater than inflation until 2016. I believe, in the
19 order -- the letter indicated the general rate. I
20 believe the order talks about some other rates too,
21 whether it be the premium parking lot or some other
22 lots that we have that would also apply to those lots,
23 not just the general lot.

24 Q. So the order, itself, says BHIL agrees not to

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1 increase the price of seasonal/nonseasonal daily
2 parking rates currently in effect in any one 12-month
3 period in an amount greater than inflation. It goes on
4 through December 31, 2016.

5 That's in the order; you're not denying that?

6 A. No, I'm not, but that's -- that reads exactly
7 to the exhibit of the letter that's also in the order
8 as Exhibit T.

9 Q. There was a separate provision that deals
10 with the letter.

11 A. Okay.

12 Q. Do you recall that? There's two different
13 provisions dealing with parking.

14 A. Correct.

15 Q. The one I just read --

16 A. Uh-huh.

17 Q. -- and then the second one, which you're
18 alluding to, which deals with annual parking patrons.
19 That's also in the order, and it says that Limited has
20 agreed to honor that pre-existing letter and extend the
21 term of that commitment consistent with the daily
22 parking commitment.

23 A. Correct.

24 Q. Do you recall that?

1 A. Yes, sir.

2 Q. Okay. In addition, in the order, it required
3 Limited to provide notice to the Commission prior to
4 any sale of the parking facilities?

5 A. Yes. The 90-day notice, correct. That
6 was -- that was also in there.

7 Q. Okay. Now, with respect to your reference to
8 the airports and all that, do you have any basis for
9 believing that the Commission would have regulatory
10 authority over another governmental body?

11 A. No, I would not.

12 Q. Okay. And these are all governmental bodies,
13 right?

14 A. RBC Centennial Authority is a statutory body
15 created by the legislature imputed with statutory
16 powers. The Charlotte-Douglas is owned by the City of
17 Charlotte, but I'm unaware of this body regulating any
18 parking lot anywhere around those --

19 Q. But those parking lots are regulated by the
20 government.

21 A. No, they are not regulated.

22 Q. They are regulated by the government.

23 A. They are owned and controlled by the
24 Authority that maintains a service rate for parking in

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1 those facilities. It's not regulated in the sense of
2 this body and what we were talking about.

3 Q. And if a citizen goes to the airport and they
4 don't like the rate, there is a process by which they
5 can petition the government to have that rate changed,
6 correct?

7 A. They can petition the Authority to try and
8 have the rate changed.

9 Q. Okay. Now, with respect to the last sentence
10 here, the Utilities Commission has never sought to
11 regulate tug and freight barge.

12 You've never asked the Commission whether or
13 not the tug and the freight barge is subject to
14 regulation, have you?

15 A. No, because they've never come to say that
16 they're gonna regulate it.

17 Q. So it's the Commission's obligation to go out
18 and --

19 A. No, it's not.

20 Q. -- find out whether or not you need a
21 certificate?

22 A. No. We have -- we don't need a CPN for that
23 vessel, because it is a -- it is classified as a tug
24 and freight barge by the U.S. Coast Guard. And I would

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1 suggest that, as we pointed out in Mr. Fulton's cross,
2 the majority of those vessels and those items that you
3 talked about today, all of those ferries that transport
4 what you talked about -- Morrisville, the other two you
5 did -- I would suggest that every one of those ferries
6 is regulated by the U.S. Coast Guard as a T-class
7 ferry, not as a tug and freight barge. So I would
8 suggest that the language in the legislation that's
9 all -- the language in the law that talks about what a
10 person is versus what a passenger, what a tug and
11 freight barge requirement is versus a T-class
12 ferryboat, that stuff coming from the federal
13 government, that's what we're supposed to follow.

14 Q. So --

15 A. That's what we're supposed to -- that's the
16 definition. The definition of a person there, I would
17 suggest, is the same definition of a person here. A
18 passenger in that legislation would probably be a
19 passenger here. I have not had -- I have been working
20 with the Coast Guard a long time. I have not had any
21 issues where there is any misunderstanding between what
22 the federal Coast Guard regulations are as it relates
23 to what this body's rules and regulations are.

24 Q. So let me be clear with respect to your

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1 reference to federal regulations and the barge.

2 So I asked Mr. Fulton, your witness with
3 respect to the barge, whether or not the determination
4 of regulation is a matter of state law, and he said
5 yes, it's a matter of state law.

6 You just referenced federal regulations and
7 said -- if I -- you know, correct me if I'm wrong, but
8 what I heard you say is the Commission's got to follow
9 the federal regulations, but we can --

10 A. No, I didn't say that. I said the
11 definitions.

12 Q. Let me finish my question. Let me finish my
13 question.

14 We can debate about what the regulations say,
15 and I think we will, but is it your contention that the
16 federal regulations preempt the Commission's authority
17 in this regard?

18 A. No, they do not preempt the Commission's
19 authority.

20 Q. Thank you. Now, if you would turn, please,
21 to slide 44.

22 A. (Witness complies.)

23 Q. And the -- really, the only thing I want to
24 highlight here is, again, your highlighting to

1 potential acquirers of this system that parking is
2 highly -- excuse me, a very profitable operation.

3 Do you see that in the first sentence?

4 A. Yes.

5 Q. And if you just flip over to the next page,
6 in fact, you've got this graph showing the line going
7 up in a pretty dramatic fashion, in terms of parking
8 operations revenues -- excuse me, income through 2019;
9 do you see that?

10 A. Yes.

11 Q. Okay. If you'll bear with me one second.
12 Thank you, Mr. Paul. That's all I have.

13 A. Thank you, Mr. Trathen.

14 CROSS EXAMINATION BY MR. HIGGINS:

15 Q. Mr. Paul, Dan Higgins for the Bald Head
16 Island Club. Good afternoon.

17 A. How are you, Mr. Higgins?

18 Q. I'm all right. How are you.

19 You suggested in your testimony filed in
20 September that the lots at Indigo Plantation could be
21 used for overflow parking; do you recall that?

22 A. In September, yes, I do recall that.

23 Q. And if I'm correct, that's never actually
24 been done since Deep Point opened in 2009?

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1 A. No, it's never been done. We did -- we did
2 work with the Bald Head Island Club -- and you might
3 remember, Mr. Higgins -- about '15, I think. The Club
4 was looking to host a PGA event, and there would have
5 been massive amounts of day-trippers, and how to
6 organize that, and the idea was, could we use those
7 lots to ferry people over by bus to take them. But
8 that is the only time we've ever talked to anybody
9 about doing that; yes, sir.

10 Q. And that didn't happen?

11 A. That did not happen.

12 Q. And my understanding, to follow from
13 Mr. Trathen, is that Limited actually now has -- I'm
14 not sure of the right term, but I'm just gonna call it
15 a permit to develop -- has an existing permit to
16 develop the Indigo property for residential development
17 for about 800 homes or so?

18 A. We filed for a PUD in an annexation piece.
19 We do not have -- we do not have that done. We did not
20 do that, but I would suggest, where you're headed, it
21 is not anticipated that those lots would be available
22 for remote parking.

23 Q. Thank you. Thanks for getting us there.

24 Now, you heard Mr. Styers' testimony as to

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1 the rigors of the 2010 rate case?

2 A. Yes, sir, I think I had -- I think I had the
3 pleasure of meeting you on -- via phone on the last
4 day, yes. Most of the blood had been spilled by then,
5 so I was fortunate.

6 Q. Well, the day is not done.

7 Isn't it also true that the imputation of the
8 \$525,000 of parking revenue in that case was also a
9 product of the fact that the intervenors in the rate
10 case had requested and were advocating that the
11 Commission regulate the parking operations?

12 A. Yes.

13 Q. With regard -- well, strike that.

14 Turn to, if you would, your Exhibit 12, and,
15 unfortunately, this is the Exhibit 12 you don't have.
16 This is the press release.

17 COMMISSIONER BROWN-BLAND: I just want
18 to state for the record that the Commission does
19 have it on its system. We just didn't have it with
20 us. So it's filed.

21 MR. STYERS: Oh, good. So it's been
22 filed?

23 COMMISSIONER BROWN-BLAND: Yes.

24 MR. STYERS: Okay.

1 Q. And do you have it, Mr. Paul?

2 A. Yes, sir, I do.

3 Q. And this is a press release issued on --
4 well, I'm not sure when -- May 31, 2022?

5 A. Yes, sir.

6 Q. Okay. And so that quotes you, in the second
7 paragraph, as saying that -- describing the proposed --
8 the proposed transaction with SharpVue that -- and I'm
9 quoting -- this agreement transitions them, referring
10 to the infrastructure operations and assets, to a
11 reputable and experienced owner and operator with deep
12 ties to North Carolina, said Chad Paul.

13 That's you, correct?

14 A. Yes, sir.

15 Q. And that's what you said?

16 A. Yup.

17 Q. Now, the proposed purchaser of the ferry
18 transportation is an entity called, if I'm right, Bald
19 Head Island Ferry Transportation, Inc.; is that right?

20 A. Transportation, LLC.

21 Q. LLC, sorry.

22 A. Yes, sir.

23 Q. That's a brand new entity, isn't it?

24 A. That will be a brand new entity.

1 Q. Does it exist now?

2 A. I believe the entity exists, but I don't
3 believe it exists in that name. I'm not sure. They
4 may have changed the name, but it is anticipated that
5 that would be the name.

6 Q. If it exists at this point, it's an empty
7 shell?

8 A. It's an empty shell.

9 Q. Okay. So what reputation does it have at
10 this time?

11 A. It would have no reputation, other than the
12 people that are standing it up.

13 Q. And what experience does it have, in terms of
14 operating a ferry system at this time?

15 A. That entity has nothing in it, so it does not
16 have any experience in operating it.

17 Q. And the parking operations are proposed to be
18 conveyed to a different entity called, if I'm right,
19 Pelican Logistics, LLC?

20 A. Yes, sir.

21 Q. And do you also understand that to be a newly
22 created entity?

23 A. Newly created entity. I don't think it has
24 anything in it. It's a shell.

1 Q. Just a shell. Does it have any reputation at
2 this time?

3 A. No, sir. Only the people that stood it up.

4 Q. Does it have any experience in operating
5 parking facilities?

6 A. No, it does not.

7 Q. So your statement that these assets would
8 be -- was that these assets would be transferred to a
9 reputable and experienced owner and operator. That's
10 not really the case, is it?

11 A. I would suggest that you're parsing words,
12 but yes, that would be the truth. But I would just
13 suggest that the owner -- the owner of those entities
14 is -- are controlled by SharpVue, which has a very,
15 very good reputation in the communities that it works
16 in.

17 Q. That may well be true.

18 SharpVue is not an experienced operator of
19 ferry systems, is it?

20 A. No, but they will have all of the employees
21 and all the management team going forward with that.

22 Q. Just talking about what you said in your
23 press release.

24 A. Yes, sir.

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1 Q. It's not an experienced -- SharpVue is not an
2 experienced operator of barge operations?

3 A. No, it is not.

4 Q. I don't have any other questions. Thank you,
5 sir.

6 A. Thank you, sir.

7 COMMISSIONER BROWN-BLAND: All right.
8 Redirect?

9 MR. STYERS: Can we just take a
10 five-minute recess before we start? I know we're
11 trying to get -- we've been going at it for now
12 two -- over two hours, so just to get -- I want to
13 be as organized and as quick as possible, and five
14 minutes would be helpful.

15 COMMISSIONER BROWN-BLAND: Come back on
16 the record at 3:55.

17 MR. STYERS: Thank you.

18 (At this time, a recess was taken from
19 3:47 p.m. to 3:56 p.m.)

20 COMMISSIONER BROWN-BLAND: All right.
21 Let's come back on the record. We're on redirect.

22 MR. STYERS: And while we have been on
23 recess, I have tried to facilitate by distributing
24 some exhibits that I want to ask Mr. Paul to

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1 identify, if I may. May I, perhaps -- to
2 facilitate that, may I actually approach the
3 witness and at least have him identify those
4 exhibits in order while I'm standing at the witness
5 stand with that microphone, if I may?

6 COMMISSIONER BROWN-BLAND: You may.

7 MR. STYERS: Thank you.

8 REDIRECT EXAMINATION BY MR. STYERS:

9 Q. Mr. Paul, there have been several questions
10 and discussions over the last two days about ensuring
11 access to the ferry terminal. So I'd like to hand you
12 a document that's a narrative legal document that's
13 been filed in the Brunswick County Register of Deeds
14 offices, the heading of which states "Declaration of
15 Easement for Deep Point Marina," and ask that that be
16 identified as CAP Redirect Exhibit 1A, if I may, and
17 ask if you recognize that, Mr. Paul?

18 A. (Witness peruses document.)

19 Yes. This is the master filing for Deep
20 Point only, the Deep Point property only, that I
21 executed in January of 2020 to provide the easements
22 across all of the park- -- across all of the access
23 roads at Deep Point.

24 COMMISSIONER BROWN-BLAND: It will be

1 identified as CAP Redirect Exhibit 1A.

2 (CAP Redirect Exhibit 1A was marked for
3 identification.)

4 Q. I'd like to hand you a related exhibit that
5 appears to be surveys, and, in fact, the heading on the
6 right-hand side is "Subdivision Survey for Bald Head
7 Island Limited, LLC," filed in map cabinet 119, page 1,
8 and ask that that be identified as Paul Redirect
9 Exhibit 1B, surveys.

10 COMMISSIONER BROWN-BLAND: All right.

11 It will be identified as CAP Redirect Exhibit 1B.

12 I mean -- yes, 1B.

13 (CAP Redirect Exhibit 1B was marked for
14 identification.)

15 Q. And ask if you recognize that, Mr. Paul, as
16 related to 1A.

17 A. Yes. This is -- these are all the overlay
18 maps defining all of the areas of Deep Point to ensure
19 that those areas have access to that -- have access to
20 those roadways.

21 Q. Certainly, you're not a lawyer, but the
22 intent of your executing those easements were to ensure
23 that any future separate owner of the -- or separate
24 tenants or lessees of the terminal have access to the

1 public road; is that correct?

2 A. Yes. Not only that, I am a developer, so I
3 deal with this quite a lot. If you look at the
4 right-hand side, you can see two columns at the top.
5 That is exactly how many items are referenced in the
6 ALTA survey to provide that -- those easements. And
7 that would be very extensive relative to anything else
8 filed, but those are all the reference points in the
9 document.

10 Q. Is your understanding of the significance of
11 those documents to provide -- ensure public access to
12 the ferry terminal and the areas around it?

13 A. Yes.

14 Q. And that was actually executed in
15 contemplation of the Authority purchasing the assets?

16 A. That's exactly why it was recorded.

17 Q. Next I'll hand you a colored map with the
18 letters A, B, C, D, E in different colors of areas and
19 ask that that be identified as CAP Redirect Exhibit 2,
20 and ask if you recognize -- this is the map with the
21 letters A, B, C, D, E, and ask if you recognize that,
22 Mr. Paul.

23 A. Yes, I do recognize this. This is one of
24 several documents like this that is attached to the

1 2010 ratified lease between Bald Head Island
2 Transportation and Bald Head Island Limited. And as
3 you can see, the pink area is the roadway that is part
4 of that lease to include the upper terminal road and
5 the lower terminal road with access back out onto Ferry
6 Road.

7 COMMISSIONER BROWN-BLAND: All right.

8 This document will be identified as CAP Redirect
9 Exhibit 2.

10 MR. STYERS: Thank you.

11 (CAP Redirect Exhibit 2 was marked for
12 identification.)

13 Q. And that is attached to the ferry terminal
14 lease?

15 A. Yes. And I had Krishna bring the other
16 documents as well as that one in the big form if
17 someone on the Commission wants to take a look at it.

18 Q. Is it your understanding that the lease, with
19 that exhibit, also provides a contractual leasehold
20 right to public access for the ferry operations to the
21 public? Correct?

22 A. Not only to the -- just the ferry
23 transportation company, but to all the other tenants as
24 well.

1 Q. Including the barge as well?

2 A. Including the barge, including the shipping
3 and receiving facility that's operated by the Bald Head
4 Island Club, including all the slip owners.

5 Q. There has been discussion -- a good bit of
6 discussion about the 106 acres across -- directly
7 across Ferry Road.

8 So just to make sure that -- and what it
9 looks like and what the sign is, so I'd ask -- I'd like
10 to hand you two documents that are reproductions of
11 photographs and ask you if you recognize first what
12 those photographs are, Mr. Paul. Do you recognize what
13 they are?

14 A. I do recognize them, and these are -- these
15 are actually brand new signs. These are the signs that
16 Ms. Gilbert has relative to the 106 acres across the
17 street from the entrance to Deep Point.

18 Q. Before you go further --

19 MR. STYERS: Having identified that he
20 recognizes those, I'd ask that those two
21 photographs, the one from a distance be identified
22 as CAP Redirect Exhibit 3, and then the close-up of
23 that sign being CAP Redirect Exhibit 4.

24 COMMISSIONER BROWN-BLAND: They will be

1 so identified.

2 (CAP Redirect Exhibits 3 and 4 were
3 marked for identification.)

4 Q. And is that sign directly across from the
5 entrance into Deep Point parking lot?

6 A. One sign, it might be 20 feet to the west of
7 one entrance. The other one is at the start of the
8 street where you turn to come down Ferry Road.

9 Q. And approximately when was that sign put up,
10 if you know?

11 A. Okay. This -- this is a new sign, and my
12 guess, after discussions here today, so probably went
13 and put it in the back of their car so they could buy
14 the property, but this property -- my understanding is
15 this property has been on the market over a decade, and
16 I think it's actually gone under contract a couple of
17 times. I do -- I do believe right now it is under
18 contract, though. They're working to try to get their
19 entitlements.

20 Q. Outside of the property that the sign shown
21 on Redirect Exhibits 3 and 4 is on, is there other
22 undeveloped property on the north side of Southport?

23 A. That's where the most undeveloped property
24 availability is, across from -- on that side of

1 Southport, yes.

2 Q. And what -- both on the water and off of the
3 water?

4 A. Most of it is off the water.

5 Q. Okay. And is there undeveloped property
6 within a five-minute drive?

7 A. Yes. We have -- we have three and a half
8 acres within a five-minute drive.

9 Q. Given the availability of property that could
10 be purchased within a five-minute drive -- and we've
11 established that there is no current parking lots that
12 are immediately now competitors -- you know, why hasn't
13 there been competition for parking facilities?

14 A. Because the service and the price for the
15 lots that we have relative to the unit demand that's
16 available has not required anybody to do that. I would
17 suggest anybody that's come in to create a secondary
18 parking lot operation, shuttle, or buy this property
19 and walk across the street, is taking a big chance on
20 the fact that there is enough unit demand to support
21 that, and I would suggest right now, other than a
22 handful of times during of year, the unit demand is not
23 there.

24 Q. There's been testimony that a barge landing

1 on the island is somehow associated with or part of the
2 ferry terminal; is that the case, on the island?

3 A. No, it is not. It is across -- it's across
4 the way from the ferry terminal, and it's serviced by
5 the barge access road. The ferry terminal is serviced
6 by the ferry access road.

7 Q. And the island barge landing is adjacent to,
8 in essence, a public street in --

9 MR. TRATHEN: Madam Chair, if I could
10 just interject here. I don't recall asking any
11 questions about the barge landing. It seems like
12 we're doing some re- -- some direct as opposed to
13 redirect.

14 MR. STYERS: Again, there was a lot of
15 questions. I'm trying to -- who exactly asked
16 them, I'm trying to stay within the scope of the
17 cross.

18 COMMISSIONER BROWN-BLAND: I don't
19 recall questions on the barge either, so I'll
20 sustain.

21 Q. There were questions by Mr. Higgins regarding
22 your press release --

23 A. Yes.

24 Q. -- on Exhibit 12. I mean, Exhibit 12 to your

1 testimony. Let me refer you to the prefiled testimony
2 of Lee Roberts. These have already been admitted, and
3 there is an Exhibit A to that prefiled testimony that's
4 the proposed organizational structure.

5 MR. STYERS: And I'll just ask a few
6 questions from right here when he's looking at
7 that.

8 Q. That Exhibit A from Lee Roberts, that has the
9 operating entities at the bottom that Mr. Higgins was
10 referring to, does it not?

11 A. Yes, sir.

12 Q. But it shows that the ultimate owner of that
13 structure is SharpVue Capital?

14 A. Yes, sir.

15 Q. And SharpVue Capital was the owner you were
16 referring to in that question, was it not?

17 A. Yes, sir.

18 Q. Okay.

19 (Pause.)

20 Q. The project pelican confidential memorandum
21 that Mr. Trathen was referencing to, you said a lot of
22 this information had come out of the bond offering to
23 Bald Head Island Transportation Authority?

24 A. Yes. This information would have come from

1 primarily, really, three documents. One would have
2 been any of the financing memorandums, which would have
3 served as the foundation for the bond offering
4 memorandums.

5 Q. And the bond offering memorandum was part of
6 the information that was in the financing application
7 to the Local Government Commission, was it not?

8 A. Yes, sir.

9 Q. Okay. So this type of information would
10 have -- this type of information would have been before
11 the LGC and its consideration?

12 A. Yes, sir.

13 Q. Okay. Did the Authority provide other
14 information to the LGC as part of that consideration of
15 the bond -- the financing approval by the LGC?

16 A. Yes.

17 MR. HIGGINS: Madam Commissioner, I've
18 got to impose the same interjection that
19 Mr. Trathen did. We didn't ask this witness any
20 questions about the Authority or the financing
21 prospects with the LGC or anything else.

22 COMMISSIONER BROWN-BLAND: I'll sustain.

23 MR. STYERS: Okay.

24 Q. Mr. Higgins did ask you about, again, your

1 Exhibit Number 12, with -- contents of Exhibit
2 Number 12, which was the press release.

3 When you -- and you said, in your answer on
4 redirect, SharpVue was stepping in the shoes of Bald
5 Head Island Limited?

6 A. Yes, sir.

7 Q. Would you, you know, elaborate on, you know,
8 what you see as that meaning for the operations serving
9 the customers of Bald Head Island, that Bald Head
10 Island Limited is stepping in their shoes and what
11 implications that has?

12 A. So what the implications are is that SharpVue
13 is purchasing not just the ferry, tram, barge, parking
14 operations. SharpVue is purchasing all of the
15 remaining operations of the Mitchell family, or
16 Limited, to include the shipping/receiving operation;
17 to include the marina operations on the island; include
18 the marina operations at Deep Point; to include the
19 on-island, God forbid, parking operation that maybe
20 they'll come and try to have regulated, that operation
21 as well; and several commercial pieces of property.

22 Q. They will -- they will have the same position
23 that the Mitchells have had historically for the last
24 30 years on the island?

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1 A. Yeah. And when they close, they will have a
2 greater investment on the island and off the island
3 than the Mitchells will have when it's done.

4 MR. STYERS: No further redirect at this
5 time.

6 COMMISSIONER BROWN-BLAND: All right.
7 Questions by the Commission?

8 (No response.)

9 COMMISSIONER BROWN-BLAND: All right.

10 MR. TRATHEN: Madam Chair, if it would
11 be possible to indulge me for just one minute.
12 This redirect exhibit, this easement, is new to the
13 document. We filed testimony with regards to the
14 access issue. They did not file any counter
15 testimony. They interjected this new document in a
16 way that I've not had an opportunity to respond to.
17 If you just -- I'd request that -- two questions of
18 this witness with this new document. We served
19 discovery, they didn't provide any information, and
20 now this has come up in a way which we don't have
21 an opportunity to respond to.

22 COMMISSIONER BROWN-BLAND: Mr. Trathen,
23 I think this document speaks for itself. It's a
24 public record, and I'm not inclined to indulge you

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1 on this.

2 MR. TRATHEN: That's fine. We'll just
3 deal with this in briefing.

4 COMMISSIONER BROWN-BLAND: Thank you.
5 So I'll entertain motions.

6 MR. STYERS: We would ask that the 12
7 exhibits that were attached to the prefiled
8 testimony of Charles Paul be admitted into evidence
9 in the transcript in this docket, as well as
10 Redirect Exhibits 1A, 1B, 2, 3, and 4.

11 COMMISSIONER BROWN-BLAND: That motion
12 is allowed, and those exhibits will be received
13 into evidence.

14 (Paul Exhibits 1 through 12 and CAP
15 Redirect Exhibits 1A, 1B, and 2 through
16 4 were admitted into evidence.)

17 MR. TRATHEN: The Village would move
18 into evidence its one redirect -- one cross
19 examination exhibit. The other document was
20 already in evidence.

21 COMMISSIONER BROWN-BLAND: That motion
22 is allowed as well.

23 (Village Paul Cross Examination Exhibit
24 Number 1 was admitted into evidence.)

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1 COMMISSIONER BROWN-BLAND: Mr. Paul, you
2 may be excused.

3 THE WITNESS: Thank you, Madam Chair.

4 COMMISSIONER BROWN-BLAND: I believe
5 that completes the Respondents' case.

6 MR. STYERS: That concludes the
7 Respondents' case at this point, Commissioner.

8 COMMISSIONER BROWN-BLAND: All right.
9 Back to the Village on rebuttal.

10 MR. TRATHEN: Thank you. Village would
11 call Scott Gardner.

12 COMMISSIONER BROWN-BLAND: Mr. Gardner,
13 you remain under oath, so I don't need to swear you
14 in again.

15 Whereupon,

16 SCOTT GARDNER,
17 having previously been duly sworn, was examined
18 and testified as follows:

19 DIRECT EXAMINATION BY MR. TRATHEN:

20 Q. Mr. Gardner, welcome back. Would you please
21 state your name and address for the record?

22 A. Scott Gardner, 429 South Bald Head Lane, Bald
23 Head Island.

24 Q. Are you the same Scott Gardner that offered

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1 direct testimony in this proceeding?

2 A. Yes.

3 Q. And did you cause to be filed rebuttal
4 testimony consisting of 19 pages and 2 exhibits?

5 A. Yes.

6 Q. Do you have any corrections to your
7 testimony?

8 A. I do not.

9 Q. If I asked you the questions in these
10 prefiled submissions today, would your answers be the
11 same?

12 A. Yes.

13 Q. Did you cause to be filed a summary of your
14 rebuttal testimony?

15 A. I did.

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

18 A. Yes.

19 MR. TRATHEN: Madam Chair, I'd ask that
20 Mr. Gardner's rebuttal testimony be copied into the
21 record as if orally given from the stand and
22 corresponding exhibits be marked for identification
23 as set out in his prefiled submission.

24 COMMISSIONER BROWN-BLAND: That motion

1 is allowed.

2 (Gardner Exhibits 1 and 2 were
3 identified as they were marked when
4 prefiled.)

5 (Whereupon, the prefiled rebuttal
6 testimony of Scott Gardner was copied
7 into the record as if given orally from
8 the stand.)

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. A-41, SUB 21

VILLAGE OF BALD HEAD ISLAND,)	
Complainant,)	
)	
v.)	REBUTTAL TESTIMONY OF
)	SCOTT T. GARDNER
)	ON BEHALF OF
BALD HEAD ISLAND TRANSPORTATION,)	VILLAGE OF BALD HEAD
INC., BALD HEAD ISLAND LIMITED, LLC,)	ISLAND
and SHARPVUE CAPITAL, LLC,)	
Respondents.)	

OFFICIAL COPY

Sept 23 2022

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION**DOCKET NO. A-41, SUB 21****Rebuttal Testimony of Scott T. Gardner****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 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 NC 28461.

6

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

9 A. Yes.

10

11 **Q. PLEASE PROVIDE A SUMMARY OF YOUR REBUTTAL TESTIMONY.**

12 A. In my rebuttal testimony, I try to provide high-level responses to the testimony filed
13 by Bald Head Island Limited, LLC and Bald Head Island Transportation, Inc.,
14 (which, unless I specifically indicate otherwise, I will collectively refer to as
15 “Limited”). I do the same for the testimony filed by the Bald Head Association,
16 the testimony filed by the Bald Head Island Club, and the initial comments filed by

1 the Public Staff. I emphasize in my rebuttal testimony how the parking and barge
2 operations are critical components of the combined transportation operation serving
3 the Island and that the loss of any of these components will have serious adverse
4 consequences for the Island, its citizens, and others that depend on the viability of
5 the community and wish to enjoy its many and unique natural attributes.

6
7 **Q. WHAT ARE YOUR GENERAL OBSERVATIONS ON THE TESTIMONY**
8 **FILED BY LIMITED IN THIS PROCEEDING?**

9 A. Limited submitted testimony of three of its employees—Charles (“Chad”) Paul,
10 III, Shirley Mayfield, and James W. Fulton, Jr. It also submitted testimony of James
11 Leonard, who is with Mercator International, a consulting firm hired by Limited to
12 provide due diligence and valuation assistance in connection with Limited’s efforts
13 to sell the transportation assets and then later by the Bald Head Island
14 Transportation Authority to support its proposed acquisition of those assets.

15 The theme of Mr. Paul’s and Ms. Mayfield’s testimony seems to be that
16 Limited has historically operated the barge and parking businesses as functionally
17 distinct from the regulated ferry operation so it would be unfair to now treat them
18 as regulated assets. I fundamentally disagree with this contention and believe it
19 misconstrues the fairness argument. Rather, unfairness would be found in allowing
20 Limited to dismantle the integrated transportation system that served to promote
21 and sustain development and investment interests for the past twenty years, now
22 that those development goals are no longer essential to Limited’s investment plans.

1 It seems that all parties agree that the Commission has never issued a ruling
2 on the regulatory status of the parking and barge assets, and the testimony of
3 Dr. Wright on behalf of the Village provides ample basis for concluding that these
4 assets should be subject to the regulatory authority of the Commission. The fact
5 that Limited may have organized its affairs in a manner that suited its purposes does
6 not, as far as I am aware, immunize those affairs from regulatory oversight. This
7 is particularly true in light of the well-known view among a majority of the Island
8 population that these assets should be regulated.

9 Mr. Fulton focuses his testimony on the barge—arguing that it does not
10 provide the sort of “end-to-end” moving service that is typically subject to the
11 Commission’s regulatory oversight. From my layperson’s standpoint, this is a
12 distinction without a difference. The barge transports household and many other
13 types of essential goods, food and staples, in addition to persons driving service
14 vehicles, towing trailers and the like. The Village’s witness Dr. Wright speaks to
15 this issue in more detail.

16 Finally, Mr. Leonard provides a factual description of the parking operation
17 and compares the Deep Point parking and ferry operations to those in a number of
18 other states. Mr. Leonard concedes that the parking and ferry operations are
19 “commercially complementary” (at 22), that “the past economic success of the
20 parking operation can be linked to the existence and usage of a ferry system” (at
21 23), and that it is important that the Commission, in this case, “ensure that parking
22 is available *either* at the terminal or in convenient community locations, and that

1 independent parking operators be allowed to access the market” (at 25).
2 Dr. Wright, for the Village, provides a more comprehensive response to this
3 testimony.

4
5 **Q. DID YOU FIND ANYTHING MISSING FROM LIMITED’S TESTIMONY?**

6 A. Yes. There was no alternative “convenient community location” for parking
7 identified. Similarly, there was no “independent parking operator” identified nor
8 any plan that “it be allowed to access the market.” Also, I did not see any serious
9 consideration of the public interest. Limited’s witnesses do not seriously dispute
10 that the ferry, parking and barge are indispensable and inter-related components of
11 the transportation system, that each is operated currently as a monopoly service
12 without any practical or functional alternative, and that the consolidated system is
13 critically importance to the future success of the Island in every respect. Without
14 access to the ferry, parking and the barge, the Island will cease to exist and function
15 in its current form—I do not believe that Limited’s witnesses would dispute that. I
16 acknowledge that this statement may sound “alarmist” in nature, but it is critically
17 important that we acknowledge what is at stake here.

18 In the face of the overwhelming public interest in ensuring the continued
19 availability of a comprehensive transportation system providing access by the
20 public to the Island, Limited’s witnesses seem to take the position that the Village
21 should “hope” or “trust” that things will turn out OK if the assets are not subject to
22 the authority of a governmental regulatory body. This is a convenient position for

1 Limited, as it is in its current economic self-interest to take that position. And that
2 position was not wholly unreasonable where the developer was the owner of the
3 transportation assets and economically motivated to ensure fair and reasonable,
4 ubiquitous access to the Island in support of its larger developmental efforts. But
5 a new owner—such as a private equity firm with no experience as a utility
6 operator—will not have the same built-in economic incentive to promote the
7 interests of the Island as opposed to its own economic interests.
8

9 **Q. DID YOU REVIEW THE DIRECT TESTIMONY SUBMITTED BY ALAN**
10 **BRIGGS ON BEHALF OF THE BALD HEAD ASSOCIATION?**

11 A. Yes, I did.
12

13 **Q. WHAT IS THE BALD HEAD ASSOCIATION?**

14 A. The Bald Head Association—also known as the BHA—is the island’s property
15 association. Almost all of the island’s property owners are members of the BHA,
16 myself included.
17

18 **Q. WHAT IS YOUR RESPONSE TO MR. BRIGGS’S TESTIMONY?**

19 A. Mr. Briggs acknowledges (at page 3 of his testimony) the central premise of the
20 Village’s petition—that the “ferry, tram, barge and parking amenities” are
21 “essential” services to the Island. While Mr. Briggs, speaking for the BHA Board,
22 does not specifically state a position on the Village’s petition, he attaches to his

1 testimony a survey of BHA members that shows overwhelming support for
2 regulation of parking and the barge by the Commission.

3
4 **Q. ARE YOU AWARE OF THE SURVEY THAT BHA CONDUCTED?**

5 A. Yes, I am very familiar with this, having received it myself as a BHA member.
6 The survey was sent by BHA to its members and asked whether they thought the
7 Commission should regulate fares for the parking lot and barge. Although I do not
8 agree that this is the technically precise framing of this proceeding, members were
9 asked to respond yes, no, or elect that they did not have an opinion or did not have
10 enough information to form an opinion. Members were also invited to share any
11 additional, narrative thoughts on this issue.

12
13 **Q. WHAT WERE THE RESULTS OF THE BHA SURVEY?**

14 A. BHA members—meaning the island’s property owners—indicated by a strong
15 majority that they support the Commission’s involvement in overseeing the parking
16 and barge business operations. Of over 500 respondents, 71.5% said that the
17 Commission should regulate parking and the barge (and another 13% said they
18 didn’t have an opinion or didn’t have enough information at this time). By Bald
19 Head Island standards—where oftentimes issues can be divided by a handful of
20 votes—this is an overwhelming endorsement of regulation. This further confirms
21 to me what I have been hearing from citizens and stakeholders in the community,
22 which is how vitally important this issue is to the Island.

1 It is not obvious to me why the six-member Board of Directors has not taken
2 a formal position in this proceeding, when the Board's membership
3 overwhelmingly has indicated its support for the petition. That said, I respect and
4 welcome BHA's involvement in this proceeding.

5
6 **Q. WERE ANY OF THE SPECIFIC COMMENTS MADE BY THE SURVEY**
7 **RESPONDENTS INDICATIVE OF THE SENTIMENT THAT IS BEING**
8 **EXPRESSED TO YOU BY THE COMMUNITY?**

9 A. Yes. Many respondents expressed concerns about a private entity having
10 unregulated control of these assets. Some of the responses that particularly
11 resonated with me were:

- 12 • "My concern is a private owner will increase costs for profitability
13 purposes, and since property owners/visitors have no alternative to the
14 private owner they will be forced to pay the higher costs. The NCUC can
15 protect property owner/visitors from the monopoly power of the private
16 owner to keep costs fair and reasonable."
17
- 18 • "We have no guarantees on how long the SharpVue will own the system
19 before selling it to another group. We could get rate increases every time it
20 changes ownership. The cost is high now for the home owners."
21
- 22 • "We are not sure of the priorities of the new owners with regards to
23 reasonable profits vers[u]s the needs of the frequent users."
24
- 25 • "If the owners of the BHI transportation system do not have a vested interest
26 in the viability of the island that the system serves there is no incentive to
27 run the system in a manner that is fair to BOTH the owners of the system
28 AND the island that it serves. What if the new owner wants to sell off the
29 more lucrative portion of the system? Then what will be left will have to
30 fend for itself; will it do so in a manner that remains fair to the homeowners,

1 businesses and many workers whose current livelihood is based on working
2 on the island.”

3 In short, property owners seem especially concerned about a third party who has no
4 vested interest in the Island taking over the ferry system. As one member pointed
5 out, we have no idea how long SharpVue will hold onto these assets.

6
7 **Q. DOES THE VILLAGE HAVE SIMILAR CONCERNS ABOUT THE**
8 **ACQUISITION OF UNREGULATED, BUT ESSENTIAL, ASSETS BY A**
9 **PRIVATE EQUITY FIRM?**

10 A. Absolutely. This is a central concern of the Village which has arisen subsequent to
11 filing the petition. SharpVue has stated that they seek to hold the assets “long
12 term”—but it is not clear what this term means to a private equity firm that has a
13 business model devoted to monetizing assets over a defined period of time. To my
14 understanding, the holding period for a private equity investment can be three to
15 five years. Regardless, if SharpVue is the owner, it is inevitable that the assets will
16 be sold again, whether it is 3 years, 5 years, or 10 years, and each new owner could
17 bring a new set of challenges for the Island, particularly if the assets are sold and
18 managed separately. Such an outcome would almost certainly have negative
19 consequences for the property owners, business owners, visitors, and workers on
20 the Island.

21 It is unfortunate that the developer—seeking to exit its involvement with
22 the Island—seems to be focused on maximizing its financial return rather than
23 ensuring the long term success of the Island. In my view, this approach is

1 inconsistent with the developer's past stewardship of the Island.

2
3 **Q. WERE THERE OTHER PARTICULAR BHA SURVEY COMMENTS**
4 **THAT SHOULD BE HIGHLIGHTED?**

5 A. Yes, other respondents expressed concern about the fact that the transportation
6 system is a monopoly:

- 7 • "It's a monopoly! Why shouldn't it be regulated?"
8
9 • "The entire BHI transportation system is a commercially-owned monopoly
10 and should be regulated as such. BHI property owners would be protected
11 against monopoly price abuse and a new commercial owner could get on
12 with making much needed improvements to the quality of BHI
13 transportation services."
14
15 • "The parking and barge are monopolies no real alternative for BHI
16 owners. Rates should be regulated and limited to costs plus a reasonable
17 return on investment."

18 Generally, homeowners recognize that because ferry riders must park and leave
19 their cars at the ferry terminal, the parking facilities are integral to the ferry. And
20 whoever owns the ferry system has the potential to abuse that authority without
21 oversight. Similarly, homeowners recognize that the barge is the only means to
22 transport goods or obtain home services, such as HVAC installation or repair.

23
24 **Q. DID BHA MEMBERS VOICE CONCERNS ABOUT SERVICE QUALITY**
25 **ISSUES THAT COULD WORSEN IN AN UNREGULATED**
26 **ENVIRONMENT?**

27 A. Yes. I noted several responses that were concerned about the quality of service

1 recently, especially since the Mitchell family decided to divest and sell its assets.

2 For example:

- 3 • “I have not been happy with service since this sale. Would appreciate more
4 reliability/consistency associated with ferry service. Considering sale of
5 property.”
6
- 7 • “Since the death of George Mitchell and the virtual abandonment of the
8 properties on Bald Head Island, the ferry has been poorly [*sic*], the terminal
9 has been inadequately maintained.”
10
- 11 • “OH MY!! Sharpvue said they'll carry on services as already in place. That
12 means late ferries, broken down trams, not enough island parking and
13 luggage handling.”

14 This is not the first time I have heard concerns about the service quality of the ferry
15 system. Now that George Mitchell has passed away and the Mitchell Estate is
16 seeking to divest itself of the transportation system, there have been a number of
17 service issues that have arisen that could indicate the quality of service has gone
18 downhill. Homeowners are concerned that the poor quality of the ferry system will
19 discourage visitors from coming to the island, and will ultimately hurt the island's
20 economy.
21

22 **Q. DID YOU ATTEND THE JULY 27, 2022 INFORMATIONAL MEETING**
23 **WITH SHARPVUE REFERRED TO IN MR. BRIGGS'S TESTIMONY?**

24 A. Yes. For the most part, I agree with Mr. Briggs's summary of the meeting. But one
25 thing he did not mention was that Lee Roberts, speaking for SharpVue, suggested
26 to the Association members that there was a “decent chance” that rates would
27 increase if the Commission exercised regulatory authority over parking and the

1 barge because of the increased value of the post-transaction assets being included
2 in rate base.¹ This has been a central theme of Limited's and SharpVue's messaging
3 to the Islanders on this topic—that they would be better off without regulation
4 because rates might go up.

5
6 **Q. WHAT IS YOUR RESPONSE TO THE CONCERN THAT RATES MIGHT**
7 **GO UP IF THE COMMISSION REGULATES THE ASSETS?**

8 A. I would observe that this comment seems to have been made without any actual
9 regulatory analysis of the issue and under the assumption, which the Village's
10 advisors contest, that the assets would come into rate base at what SharpVue has
11 agreed to pay for them, rather than book or historic value.

12 In any event, I think everyone understands that, in a regulated environment,
13 rates may go up or they may go down. But the point of regulation is that that there
14 is a determination of fairness and appropriateness, for ratepayers and the utility,
15 based on established ratemaking law and precedent and rather than rates being set
16 by an unregulated owner at “the most that people will pay” for a monopoly service.

17 Furthermore, the issue of rates is not even the principal concern here
18 (although, obviously it is important). The main concern is that if the assets are not
19 kept together—if they are sold off in piece parts to the highest bidder—there may
20 not be any way to put “Humpty Dumpty back together again.” What I mean by this
21 is that everyone seems to agree that the barge, parking and ferry assets are

¹ Attached as Rebuttal Exhibit STG-1 is an excerpted transcript of this exchange.

1 indispensable to the Island, that they have historically been operated for the benefit
2 of the Island as part of an integrated transportation system, and that each is a
3 monopoly service that has no existing substitute nor any practical competitive
4 alternative. If they are separated and sold off independently as stand-alone financial
5 assets without any attendant regulatory obligations, the entirety of the
6 transportation system could collapse—or at least be seriously and significantly
7 impaired. There are real world consequences of this—consequences which I have
8 tried to articulate in my direct and rebuttal testimony—including the risk of
9 stranded investment by folks who have made commitments to the Island relying on
10 the prospect of continued public access on reasonable terms and conditions.

11 The opportunity to address this is now—before the assets are sold. Once
12 they are sold, we would be concerned about the near-term damage to access and to
13 investment. Further, I do not know how or if the Commission could later decide
14 that the assets are subject to regulation and should be subject to public interest
15 requirements.

16

17 **Q. HAVE YOU REVIEWED THE CONSUMER POSITION STATEMENT**
18 **SUBMITTED BY ROBERT BLAU AND PAUL CAREY IN THIS**
19 **PROCEEDING?**

20 **A.** Yes, and I have attached these comments for the convenience of the Commission
21 to my rebuttal testimony as Rebuttal Exhibit STG-2.

22

1 **Q. WHO ARE MR. BLAU AND MR. CAREY?**

2 A. They are citizens and residents of Bald Head Island. They have been very active
3 in the public discussion concerning the sale of the transportation system over the
4 last few years.

5
6 **Q. WHAT SHOULD THE COMMISSION TAKE AWAY FROM THE**
7 **LETTER FILED BY MR. BLAU AND MR. CAREY?**

8 A. The letter is worthy of note because it is a sophisticated, well-written analysis that
9 resonates with and amplifies many of the survey comments I discussed above.
10 Further, the letter is based on a detailed analysis of financial information made
11 publicly available in connection with the possible sale to BHITA. I understand
12 from the document itself that Mr. Blau is a CFA, which helps to explain the
13 sophistication of the analysis.

14 Based on their analysis of publicly available Mercator International reports
15 prepared for Limited and BHTA, Mr. Blau and Mr. Carey reach three main
16 conclusions. **First**, that the parking, barge and ferry operations “constitute an
17 integrated, commercially-owned local monopoly that provides essential services to
18 one geographic market: the community of Bald Head Island.” (at 3) **Second**, “that
19 earnings on BHIL’s unregulated parking and barge operations are: 1) well in excess
20 of earnings derived from its regulated passenger ferry, 2) excessive and indicative
21 of monopoly pricing abuse, and 3) responsible for very high market valuations that
22 both BHITA and SharpVue placed on the System.” (*Id.*) **Third**, that “if the

1 System's parking and barge services remain unregulated, captive users of those
2 services will end up paying for a disproportionately large amount of the System's
3 purchase price" and "there [] is ample reason to believe that if the System's
4 unregulated parking and barge operations are transferred to another commercial
5 operator, like SharpVue, both will likely be sold off to an owner/operator(s) with
6 no financial interest in the regulated passenger ferry." (*Id.*)

7 The basic premise of this analysis is that, given the proposed valuation of
8 the assets in question, if the SharpVue transaction proceeds without resolution of
9 the regulatory question, there will be a strong economic incentive and pressure to
10 monetize the assets on a piecemeal basis, with ratepayers (i.e., particularly those
11 buying ferry tickets and paying for parking) ultimately paying for the inflated
12 valuation.

13 This analysis is consistent with common concerns I have heard from citizens
14 and stakeholders of the Island.
15

16 **Q. DID YOU REVIEW THE TESTIMONY OF DAVID SAWYER FOR THE**
17 **BALD HEAD ISLAND CLUB?**

18 A. Yes, I did.
19

20 **Q. WHAT WERE THE MAIN POINTS MADE BY MR. SAWYER?**

21 A. Mr. Sawyer made a number of compelling points that are largely aligned with my
22 direct testimony. As Mr. Sawyer noted, the parking facilities are "inseparable and

1 indispensable” to the use of the ferry. As Mr. Sawyer put it, it would be “nearly
2 impossible to ride the ferry to the island if you can’t park your car.” Mr. Sawyer
3 also noted that the barge is integral to the ferry system, as it is the only way to
4 transport supplies, including household goods, to the island.

5 Further, Mr. Sawyer’s testimony illustrates how the costs of the
6 transportation system as a whole exerts a large effect on the island’s businesses,
7 and without regulation, sharp changes could have huge effects on the island’s
8 employers. For example, Mr. Sawyer testifies that the BHI Club spent nearly two
9 hundred thousand dollars on parking last year. If a new owner were allowed
10 unchecked authority to change parking and barge rates, the effects on the island’s
11 employers could be devastating.

12 Finally, Mr. Sawyer also noted the importance of regulation on service
13 quality. As the number of transportation system users grow, the owner of those
14 assets will need to expand the facilities and make much needed improvements.
15 Again, in the absence of regulatory oversight, there is no assurance that such
16 improvements will be made or that they will be made consistent with the public
17 interest and necessity.

18
19 **Q. WHAT IS YOUR RESPONSE TO THE CLUB’S TESTIMONY?**

20 A. I agree with it. Mr. Sawyer’s testimony illustrates the practical concerns faced by
21 the island’s employers regarding future access, on reasonable terms and conditions,
22 to all components of the integrated transportation system.

1 **Q. DID YOU REVIEW THE PUBLIC STAFF’S INITIAL COMMENTS?**

2 A. I did.

3

4 **Q. DO YOU HAVE ANY RESPONSE TO THOSE COMMENTS?**

5 A. The Public Staff’s comments are largely directed to legal issues. I am not a lawyer,
6 so I will not address those points.

7 However, as regards the parking issue, I do read the Public Staff’s
8 comments as supportive of regulation, at least to an extent. The Public Staff’s
9 comments seem primarily concerned with the Commission setting parking rates,
10 but they generally acknowledge that the central importance of the terminal parking
11 and the essential nature of that to the ferry operation. The comments also suggest
12 that the Commission should retain authority to “ensure that BHIT provides
13 adequate parking at a reasonable rate to provide adequate service to its customers.”
14 (at 8)

15 As regards the barge, the Public Staff takes the position that the barge does
16 not fall within the Commission’s existing regulation of intrastate movers of
17 household goods. I do not believe that position is inconsistent with the Village’s
18 position—certainly we do not contend that the barge service is identical to the folks
19 that drive in a truck up to your house and move your belongings from one place to
20 another. I would just emphasize that, from a lawyerperson’s standpoint, it is
21 indisputable that the barge is used to carry both persons (i.e., drivers of vehicles)
22 and household goods to the Island. However the Commission reads the scope of

1 its authority over these issues, I urge the Commission to consider that the barge is
2 indispensable to the Island, the service provided is a monopoly service, and that no
3 one has articulated any feasible alternative that does not involve utilizing assets
4 owned by Limited.

5
6 **Q. DO YOU HAVE ANY CONCLUDING REMARKS?**

7 A. I am grateful for the Commission's time and attention to this matter. As evidenced
8 by the testimony so far, there are many different ways for the Commission to
9 oversee the transportation system. For example, Mr. Blau and Mr. Carey have
10 suggested a relatively hands-off way for the Commission to regulate the
11 transportation system. Other witnesses, like Mr. Sawyer, have advocated for the
12 Commission to be more involved in regulation. But it is clear that some oversight
13 of the transportation system, including the parking facilities and the barge, is
14 necessary.

15 From my perspective, the critical request is that the Commission
16 definitively declare now, before the transportation assets are conveyed, what is
17 apparent to all those who use and depend on the transportation—that parking, barge
18 and the ferry are all part of a unified system that is subject to the Commission's
19 oversight and authority; that the parking and barge assets cannot be conveyed
20 without the permission of the Commission; and that the revenues from the parking
21 and barge operations must be allocated to the ferry utility operation and/or that the

1 parking and barge operations are subject to the Commission's direct supervision
2 and control.

3

4 **Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?**

5 A. Yes.

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

3 COMMISSIONER BROWN-BLAND: That motion
4 is likewise allowed.

5 (Whereupon, the prefiled summary
6 testimony of Scott Gardner was copied
7 into the record as if given orally from
8 the stand.)
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**Summary of the Rebuttal Testimony of Scott Gardner
On Behalf of the Village of Bald Head Island**

In my rebuttal testimony, I respond to specific portions of Respondents' and Intervenor's testimony.

Regarding Mr. Paul's and Ms. Mayfield's testimony, they seem to argue it would be unfair to now regulate the parking facilities and barge. As I explain in my rebuttal testimony, I disagree; it would be unfair to allow Limited to dismantle the integrated transportation system now that it is no longer interested in the Island's development.

I briefly address Mr. Fulton's testimony that the barge does not provide the sort of "end-to-end" moving service typically subject to the Commission's regulation. In my view, this distinction is immaterial. The barge transports household and other essential goods, and persons driving service vehicles or towing trailers.

I also briefly address Mr. Leonard's description of the parking operation, noting that Mr. Leonard concedes that the parking and ferry operations are "commercially complementary" and that the Commission should to "ensure that parking is available."

I note in my rebuttal testimony that I was surprised that Limited's testimony did not discuss parking alternatives in any detail, or seriously consider the public interest. In the face of the overwhelming public interest in ensuring the continued availability of a comprehensive transportation system providing access by the public to the Island, Limited's witnesses seem to take the position that the Village should "hope" or "trust" that things will turn out OK if the assets are not subject to the authority of a governmental regulatory body. The Village does not believe this is a reasonable position in light of the developer's exit from the Island.

I also discuss the testimony filed by Mr. Briggs on behalf of the Bald Head Association. Mr. Briggs attached a survey of BHA members, who indicated by a strong majority—71.5%—that they support the Commission’s oversight. Survey respondents also expressed concerns about a private entity having unregulated control of these assets; the ferry system being a monopoly; and the declining quality of service.

I also reviewed the comments filed by two Island residents, Mr. Blau and Mr. Carey. The basic conclusion of their analysis is that, given the proposed valuation of the assets in question, if the SharpVue transaction proceeds without resolution of the regulatory question, there will be a strong economic incentive to monetize the assets on a piecemeal basis, with ratepayers ultimately paying the price. These comments are consistent with the concerns expressed to me by many Island stakeholders.

I briefly address the testimony of Mr. Sawyer on behalf of the Bald Head Island Club, whose testimony illustrates the effect of transportation costs on the Island’s businesses. Mr. Sawyer also noted the importance of regulation on service quality.

Finally, I address the Public Staff’s comments. The Public Staff generally seem to agree that the Commission should ensure parking is available at a reasonable rate. As for the barge, I would emphasize that, from my standpoint, it is indisputable that the barge is used to carry both persons (i.e., vehicle drivers) and household goods to the Island, and I urge the Commission to consider that the barge is indispensable to the Island, it is a monopoly service, and there is no feasible alternative to the barge that does not involve utilizing assets owned by Limited.

Finally, I observe that witnesses have presented many different ways for the Commission to oversee the transportation system. From my perspective, the critical

request is that the Commission definitively declare now, before the transportation assets are conveyed, that parking, barge and the ferry are all part of a unified system that is subject to the Commission's oversight and authority; that the parking and barge assets cannot be conveyed without the Commission's permission; and that the revenues from the parking and barge operations must be allocated to the ferry utility operation and/or that the parking and barge operations are subject to the Commission's direct supervision and control.

This concludes the summary of my Rebuttal Testimony.

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

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

5 MR. HIGGINS: I don't have any questions
6 for Mr. Gardner.

7 COMMISSIONER BROWN-BLAND: All right.
8 BHIT?

9 MR. RISINGER: We have no questions for
10 Mr. Gardner.

11 COMMISSIONER BROWN-BLAND: Mr. Ferrell?

12 MR. FERRELL: No questions.

13 COMMISSIONER BROWN-BLAND: All right.
14 Any questions from the Commission on rebuttal?

15 (No response.)

16 COMMISSIONER BROWN-BLAND: Well, now,
17 Mr. Gardner, seems like you -- let me hold on and
18 get my motions.

19 MR. TRATHEN: Yes, thank you. The
20 Village would move into evidence Mr. Gardner's two
21 prefiled exhibits.

22 COMMISSIONER BROWN-BLAND: All right.
23 Without objection, that motion will be allowed.
24 And now, Mr. Gardner, you may be excused.

1 THE WITNESS: Thank you.

2 (Gardner Exhibits 1 and 2 were admitted
3 into evidence.)

4 MR. TRATHEN: The Village would call to
5 the stand Dr. Julius Wright.

6 COMMISSIONER BROWN-BLAND: Dr. Wright,
7 you're no stranger to that seat, and you still
8 remain under oath.

9 THE WITNESS: Thank you, ma'am. I just
10 hope I do as good as the last witness.

11 COMMISSIONER BROWN-BLAND: Somehow I
12 don't think you will have the same fate.

13 Whereupon,

14 DR. JULIUS WRIGHT,
15 having previously been duly sworn, was examined
16 and testified as follows:

17 DIRECT EXAMINATION BY MR. TRATHEN:

18 Q. Good afternoon, Dr. Wright. Please state
19 your name and address for the record?

20 A. Julius A. Wright, 6 Overlook Drive,
21 Cartersville, Georgia.

22 Q. And are you the same Dr. Julius Wright that
23 offered direct testimony in this proceeding?

24 A. Yes.

1 Q. Did you cause to be filed rebuttal testimony
2 consisting of 29 pages and 7 exhibits with one of those
3 exhibits having 33 subparts?

4 A. Yes.

5 MR. TRATHEN: Madam Chair, I would note
6 that Dr. Wright submitted an errata on October 11th
7 to his rebuttal testimony that made corrections to
8 pages 12, 13, 23, and 28 of his rebuttal testimony.

9 Q. Dr. Wright, do you have any additional
10 corrections that need to be made to your rebuttal
11 testimony, other than what's contained in the errata?

12 A. Not that I recall.

13 Q. Okay. And if I asked you the questions in
14 these prefiled submissions today, as corrected, would
15 your answers be the same?

16 A. Yes.

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

19 A. Yes, I did.

20 Q. And is the summary accurate to the best of
21 your information and belief?

22 A. Yes.

23 MR. TRATHEN: Madam Chair, I'd ask that
24 Dr. Wright's rebuttal testimony be copied into the

1 record as corrected as if orally given from the
2 stand, and the corresponding exhibits be marked for
3 identification and set out in his prefiled
4 submission.

5 COMMISSIONER BROWN-BLAND: That motion
6 is allowed.

7 (Rebuttal Exhibits JAW-1 through JAW-7
8 were identified as they were marked when
9 prefiled.)

10 (Whereupon, the prefiled rebuttal
11 testimony of Dr. Julius Wright was
12 copied into the record as if given
13 orally from the stand.)
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**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. A-41, SUB 21

<p>VILLAGE OF BALD HEAD ISLAND,</p> <p style="padding-left: 40px;">Complainant,</p> <p style="padding-left: 80px;">v.</p> <p>BALD HEAD ISLAND TRANSPORTATION,</p> <p>INC., BALD HEAD ISLAND LIMITED, LLC,</p> <p>and SHARPVUE CAPITAL, LLC.</p> <p style="padding-left: 40px;">Respondents.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>REBUTTAL TESTIMONY OF</p> <p>DR. JULIUS A. WRIGHT</p> <p>ON BEHALF OF</p> <p>THE VILLAGE OF BALD HEAD</p> <p>ISLAND</p>
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Sept 28 2022

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION**DOCKET NO. A-41, SUB 21****Rebuttal Testimony of Dr. Julius A. Wright****On Behalf of the Village of Bald Head Island****September 28, 2022****I. INTRODUCTION AND PURPOSE**

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

3 A. Julius A. Wright, Managing Partner, J. A. Wright & Associates, LLC, 6 Overlook
4 Way, Cartersville GA, 30121.

5 **Q. ARE YOU THE SAME JULIUS A. WRIGHT WHO PROVIDED DIRECT**
6 **TESTIMONY ON BEHALF OF THE VILLAGE OF BALD HEAD ISLAND**
7 **(THE “VILLAGE” OR “VBHI”)?**

8 A. Yes.

9 **Q. PLEASE DISCUSS THE PURPOSE OF YOUR REBUTTAL TESTIMONY.**

10 A. I respond to various issues raised in the direct testimonies of Chad Paul, Shirley
11 Mayfield, James Fulton, and James Leonard. I also am responding to the initial
12 comments filed in this docket by the Public Staff.

13 **Q. PLEASE SUMMARIZE YOUR REBUTTAL TESTIMONY.**

14 A. ***First***, in response to Mr. Paul, I point out that his testimony confirms my direct

1 testimony in that that there is no alternative parking available to the riders of the
2 Bald Head Island ferry at Deep Point – a point which is driven home by the fact
3 that the terminal, and the access roads thereto, are situated on private property
4 owned by Limited.

5 *Next*, I respond to Mr. Fulton’s testimony concerning the barge by
6 explaining that the intrastate household goods (“HHG”) authority he refers to only
7 pertains to motor carriers, which would not include boats; that he fails to address
8 the express statutory authority applicable to water transportation; and that the
9 Commission has previously granted certificates to other water transportation
10 companies that offer vehicle transportation services that are functionally identical
11 to those offered by Limited’s barge.

12 *Third*, I respond to Ms. Mayfield’s concern about the potential complexity
13 of setting parking or barge rates by noting that the Commission and the Public Staff
14 have both the experience and resources to deal with these issues. I also respond to
15 Ms. Mayfield’s concerns over the valuation of the parking facilities should they be
16 regulated by explaining that (i) this is an issue that this Commission would address
17 after a decision on the regulatory status of the assets is issued, and (ii) the
18 Commission’s historic approach, which is supported by a number of public policy
19 considerations here, is to value assets based on the lower of acquisition or original
20 costs.

21 *Fourth*, I respond to Mr. Leonard’s inventory of ferry and parking
22 operations in other states by supplementing his analysis with additional information

1 supporting my original conclusions that (i) the Bald Head Island transportation
2 issue raises unique issues that call for regulation of the entirety of the enterprise,
3 (ii) that the evidence shows the critical linkage between ferries and parking and that
4 the availability of alternative parking (or lack thereof, as is the case here) is
5 typically a key differentiator with other services, and (iii) there are several examples
6 of the assertion of regulatory authority over parking, contrary to Mr. Leonard's
7 assertions. Further, I note that Mr. Leonard's own testimony that the Commission
8 should "*ensure that parking is available*" corroborates my claim that parking is an
9 indispensable, ancillary service within the Commission's authority.

10 ***Fifth***, in response to the comments submitted by the Public Staff, I agree
11 with their conclusion that parking is "*critical for most Bald Head Island ferry*
12 *passengers*" as well as the Public Staff's conclusion (similar to Mr. Leonard's) that
13 the Commission should "*ensure that ferry customers are protected through*
14 *adequate parking at reasonable rates* [emphases added]."

15 ***Finally***, I observe that BHIT's tram service is provided as a part of the
16 passenger ferry's current operations. This service is an integral component of the
17 transportation services provided by the utility, just like the parking and barge
18 businesses, and the same rationale which subjects that service to regulation would
19 support the regulation of other essential components of the overall transportation
20 service.

1 **II. RESPONSE TO CHAD PAUL’S DIRECT TESTIMONY**

2 **Q. WHAT COMMENTS IN MR. PAUL’S DIRECT TESTIMONY DO YOU**
3 **WISH TO ADDRESS?**

4 A. I am responding to specific comments in his testimony regarding the parking
5 facilities at Deep Point.

6 **Q. WHAT DOES MR. PAUL SAY REGARDING THE DEEP POINT**
7 **PARKING FACILITIES?**

8 A. Actually, Mr. Paul confirms my testimony that there is no other parking option
9 available, at this time, to the riders of the Bald Head Island ferry at Deep Point. Mr.
10 Paul states that *“to date, there are not any other, currently existing, **permanent***
11 ***parking facilities for ferry passengers.** [emphasis added] (page 12, lines 1-3).”* He
12 also states, *“Over the years, property has been available for purchase in and*
13 *around Southport -- and, in- fact, directly across Highway 211 from Deep Point --*
14 *that could have been purchased and used by a parking competitor (via a shuttle-*
15 *served lot or walk-to, off-site parking lot, as exists for other ferry operations around*
16 *the country, as discussed in the direct testimony of James Leonard), **yet no one has***
17 ***come forward** [emphasis added] (page 11, lines 12-22).”* In summary, Mr.
18 Paul confirms my testimony that, at this time, there is simply no other parking
19 available to the riders of the ferry at Deep Point.

20 **Q. DO YOU HAVE ANY OTHER COMMENTS REGARDING MR. PAUL’S**
21 **DIRECT TESTIMONY RELATED TO THE DEEP POINT PARKING**
22 **FACILITY?**

1 A. Yes. He states that access to the Deep Point terminal is available to anyone, such
2 as customers using a competitive parking option, should one ever be built (page 12,
3 lines 6-9). Limited has confirmed in discovery, however, that it owns all of the
4 land up to the state road that adjoins the property, including the access roads to the
5 Deep Point parking facilities, ferry terminal, and barge. Consequently, these access
6 roads are private, not public roads. This means that if someone set up a competitive
7 parking service, contrary to Mr. Paul's claim, Limited could, theoretically, refuse
8 those other parking facilities' customers access to the terminal or charge them an
9 extra fee to access the terminal.

10

11 **III. RESPONSE TO JAMES FULTON'S DIRECT TESTIMONY**

12 **Q. WHAT DO YOU WISH TO ADDRESS REGARDING MR. FULTON'S**
13 **DIRECT TESTIMONY?**

14 A. Mr. Fulton's direct testimony discusses the Deep Point barge operation and why
15 Limited does not believe this service should be regulated. Generally speaking, he
16 makes two points regarding this matter. First, that the barge service does not meet
17 the regulatory standard for regulation applicable to intrastate carriers of household
18 goods. Second, that the barge service is not like a car ferry services people might
19 have experienced in other parts of the country.

20 **Q. PLEASE DISCUSS YOUR CONCERNS WITH MR. FULTON'S**
21 **TESTIMONY REGARDING COMMON CARRIERS OF HOUSEHOLD**
22 **GOODS.**

1 A. In his direct testimony (page 9, lines 4-9), Mr. Fulton appears to limit any
2 regulatory authority by this Commission by suggesting the barge service can only
3 be regulated if it falls under the regulations related to intrastate household goods
4 (“HHG”) and what is termed the Maximum Rate Tariff. I have several concerns
5 with this. **First**, the regulations that he refers to are specific to motor carriers (i.e.,
6 common carriers by motor vehicle).¹ Due to the pervasive nature of the service,
7 and the Commission’s long history in regulating it, a fairly detailed regulatory
8 regime exists for intrastate motor vehicle carriers of household goods. No one is
9 claiming that the barge is a motor carrier as defined under these regulations – as a
10 boat is obviously not a motor carrier. No such similar detailed regulatory regime
11 has been established for common carriers of persons or household goods by boat
12 (see G.S. 62-3(6)). **Second**, Mr. Fulton ignores the fact that – regardless of the
13 transport of household goods – the barge transports persons, which is independently
14 a source of regulatory authority. **Finally**, Mr. Fulton completely fails to address
15 the regulatory parameters and laws I discuss in my direct testimony under which I
16 believe the barge should be regulated. In my direct testimony I provide conditions
17 under which I believe this Commission can and should assert regulatory jurisdiction
18 over the barge service – by declaring the barge service a “common carrier” of
19 persons or household goods, by recognizing the barge service as a monopoly
20 providing indispensable services to the residents of the Island, and/or by
21 recognizing the service as integral component of or ancillary to the Deep Point ferry

¹ See G.S. 62-3(17); Commission Rule R2-1 *et seq.* (“Motor Carriers”).

1 passenger service.

2 **Q. BRIEFLY DISCUSS THE COMMON CARRIER STATUTES THAT YOU**
3 **SUGGEST ARE ONE AVENUE BY WHICH THIS COMMISSION CAN**
4 **ASSERT REGULATORY AUTHORITY OVER THE BARGE SERVICE.**

5 A. As I explain in my direct testimony beginning on page 40, line 21, G.S. § 62-3(6)
6 defines a “common carrier” to mean “*any person, other than a carrier by rail,*
7 *which holds itself out to the general public to engage in transportation of persons*
8 *or household goods for compensation, including transportation by bus, truck, boat*
9 *or other conveyance, except as exempted in G.S. 62-260 [emphasis added].”* G.S.
10 § 62-3(23)a.4 goes on to define “*transporting persons or household goods by motor*
11 *vehicles or any other form of transportation for the public for compensation,*
12 *except motor carriers exempted in G.S. 62-260, carriers by rail, and carriers by air*
13 *Transporting persons or household goods by motor vehicles or any other form of*
14 *transportation for the public for compensation, except motor carriers exempted in*
15 *G.S. 62-260, carriers by rail, and carriers by air [emphasis added].”* As I explain
16 more fully in my direct testimony, it seems clear that the barge service provides
17 service to the public, it is engaged in transporting both household goods and persons
18 (the drivers of the trucks and other vehicles) by boat, and the barge service receives
19 compensation for its services. By meeting all three of these conditions it seems
20 clear that this Commission could easily conclude that the barge service is a common
21 carrier service subject to its regulatory jurisdiction.

22 Additionally, under G.S. § 62-262(a), “*no person shall engage in the*

1 *transportation of passengers or household goods in intrastate commerce unless*
2 *such person shall have applied to and obtained from the Commission a certificate*
3 *authorizing such operations. . . [emphasis added].”* Under this statute, this
4 Commission regulates both passenger ferries and motor vehicles transporting
5 household goods.² It seems clear that this Commission has the authority to regulate
6 ferries that transport vehicles, household goods, and passengers.

7 Finally, I would like to point out that this Commission, with the approval of
8 the Public Staff, has granted a Common Carrier certification to at least four
9 different ferry services in North Carolina that carry both passengers and vehicles,
10 including trucks of all different sizes carrying all types of goods, and these
11 passengers and vehicles are carried on the same ferry boat. *See* Rebuttal Exhibits
12 JAW-7.1, -7.2, -7.3, and -7.4. If these other ferry services and their rates for both
13 passengers and vehicles of all types and sizes can be regulated under the common
14 carrier statutes, it would be inconsistent to now declare a similar service to Bald
15 Head Island as being exempt from such a designation. I perceive no distinction
16 between these services that is grounded in the actual language of the statutes at
17 issue. It is not apparent why a service truck loaded onto a ferry to the Cape Lookout
18 National Seashore (e.g., the Davis Ferry or the Morris Marina Ferry) would fall
19 within the Commission’s regulatory authority while a service truck loaded onto the

² *See* Docket No. A-38, Sub 6, Public Staff Petition for Order to Show Cause (January 7, 2004), at 1 (¶ 2) (“The Commission has no rules specifically governing the operation of ferryboat utilities, and it has customarily regulated them in the same manner as motor carriers, under Chapter 2 of the Commission’s Rules and Regulations. . . . In orders granting applications for ferryboat certificates in recent years, the Commission has referenced Rule R2-15 and G.S. 62-262(e), a statutory provision relating to motor carriers.”).

1 barge to Bald Head Island would not.

2 **Q. IN HIS DIRECT TESTIMONY DOES MR. FULTON IN ANY WAY**
3 **ADDRESS OR REBUT THE COMMON CARRIER ANALYSIS**
4 **PRESENTED IN YOUR DIRECT TESTIMONY?**

5 A. No. Mr. Fulton does not dispute that the service is open to the general public (or a
6 subset thereof with ICE permits from the Village), that the barge transports persons
7 and household goods, and that the service is provided for compensation. Instead,
8 he seems to make a strawman argument—that the barge is not a motor vehicle
9 carrier of HHG.

10 **Q. PLEASE DISCUSS THE SECOND REASON THAT YOU SUGGEST THIS**
11 **COMMISSION COULD USE TO ASSERT REGULATORY AUTHORITY**
12 **OVER THE BARGE SERVICE.**

13 A. As I explain in my direct testimony beginning on page 46, line 12, and continuing
14 on the next page, the barge service is (1) a monopoly service with no other way for
15 the public to transport large household goods or delivery vehicles to get to the
16 Island and (2) that the passenger ferry and the barge service are dependent on and
17 support each other's use of the Island. Moreover, it is indisputable that the barge
18 service is the only way, at this time, to get vehicles (like service vehicles) and many
19 types of goods and services to the Island. Simply put, absent the barge service or
20 some similar functioning replacement service, it will be difficult for residents to
21 continue to live on the Island as many services require vehicles, large equipment,
22 and bulky supplies (concrete, lumber, furniture, appliances, various types of repair

1 and other building materials) that would, for the most part, be otherwise impossible
2 to obtain. Also, because many of the goods and services related to construction,
3 moving household goods, and for day-to-day living are carried by the barge, the
4 barge is a really a complementary service to the passenger ferry and vice versa. By
5 complementary I mean that absent the barge service or a replacement there will
6 likely be no passenger ferry, and absent the passenger ferry there is little if any need
7 for the barge service. Therefore, to regulate the passenger service while leaving the
8 barge as an unregulated monopoly puts those who visit, live, or work on the Island
9 as virtual prisoners to potentially unreasonable monopoly demands by the barge
10 operator. In fact, it would not be unreasonable for the Commission, as in the case
11 of parking, and, presumably, as in the case of the tram operation, to declare the
12 barge service as an ancillary service subject to this Commission's jurisdiction.

13 **Q. IN HIS DIRECT TESTIMONY DOES MR. FULTON IN ANY WAY**
14 **ADDRESS OR REBUT THIS CO-DEPENDENCY AND MONOPOLY**
15 **ARGUMENT IN YOUR DIRECT TESTIMONY?**

16 A. No, he does not. Additionally, I would reemphasize the point I made previously:
17 Limited is the owner of all the access roads to the Deep Point parking facilities,
18 ferry terminal, and barge. As these roads are privately owned, unlike most ferries
19 that I am familiar with that adjoin public property, there is no public right of access
20 here and the owner of the parking facilities (i.e., Limited) could discriminate against
21 competitive parking by limiting access, imposing extra fees, or otherwise. This is
22 just another illustration of how unique the present situation is and how the notion

1 of a competitive parking operation at this time is not tethered to reality.

2 **Q. PLEASE DISCUSS YOUR CONCERN WITH MR. FULTON'S**
 3 **TESTIMONY REGARDING HIS CLAIM THAT THE BARGE SERVICE IS**
 4 **NOT USED IN A MANNER THAT PEOPLE MAY HAVE EXPERIENCED**
 5 **IN OTHER PARTS OF THE COUNTRY.**

6 A. In his direct testimony (page 6, lines 15-17), Mr. Fulton is asked, "*So, the barge*
 7 *cannot be used in a manner that many people might have experienced with car*
 8 *ferries that operate in various parts of the country?*" Mr. Fulton answers, "*That's*
 9 *correct.*" I am not sure what Mr. Fulton means with this question and answer
 10 because he doesn't explain why the barge service is different from other ferry
 11 services. What I can say is that there are many instances where ferry services
 12 transport vehicles of all types, including trucks and moving vans, along with cars
 13 and passengers, and all on the same ferry boat. Consider the following examples:

- 14 • A North Carolina Ferry, Cape Lookout Cabins and Camps, provides
 15 *passenger and vehicle service on the same ferry and having a Common*
 16 *Carrier Certificate from the NCUC – See Rebuttal Exhibit JAW-1, Docket*
 17 *No. A-66, Sub 0 and Sub 2. (This provider appears to offer two separate routes*
 18 *with passenger and vehicle service under this certificate.)*
- 19 • A second North Carolina Ferry, Davis Shore Ferry Services, provides
 20 *passenger and vehicle service on the same ferry and having a Common*
 21 *Carrier Certificate from the NCUC – See Rebuttal Exhibit JAW-2, Docket*
 22 *No. A-65, Sub 0.*
- 23 • ~~A third North Carolina Ferry, Morehead Ferry Service, provides passenger~~

~~and vehicle service on the same ferry and having a Common Carrier
Certificate from the NCUC – See Rebuttal Exhibit JAW-3, Docket No. A-
76, Sub 0.~~

- A ~~forth~~^{third} North Carolina Ferry, Morris Marina ferry, provides *passenger and vehicle service on the same ferry and having a Common Carrier Certificate from the NCUC – See Rebuttal Exhibit JAW-4, Docket No. A-26, Sub 4.*
- Several NC-Department-of-Transportation-run ferries, including those to Cedar Island, Ocracoke, Swan Quarter, and Fort Fisher (with one exception), carry both passengers and vehicles of all sizes. *See Rebuttal Exhibit JAW-5.*
- As one example of ferry services outside the state, Rebuttal Exhibit JAW-6 provides tariff sheets from a Rhode Island ferry between Bristol and Prudence Island, and this tariff clearly shows that both passengers and vehicles of all sizes ride the same ferry.
- *Thirty percent of the ferry services* surveyed by Mr. Leonard (Leonard Direct Testimony Table J) *allow both passengers and vehicles, including trucks*, on the same ferry. *See Rebuttal Exhibit JAW-7.0.*

In summary, Mr. Fulton's claim that the Bald Head Island barge service (transporting vehicles and their driver passengers) is somehow different from services provided by other ferries, is simply wrong. The fact that the Village issues permits for vehicle usage on the Island has no effect on the nature of the barge's

1 transportation service. And while using a barge rather than a self-powered ferry
2 may be a less common means of providing this service, I would not consider the
3 provision of a vehicle and passenger ferry service under a regulated tariff as unusual
4 and the North Carolina statutes do not distinguish between self-propelled boats and
5 boats that are pushed or pulled.
6

7 **IV. RESPONSE TO SHIRLEY MAYFIELD'S DIRECT TESTIMONY**

8 **Q. WHAT DO YOU WISH TO ADDRESS FROM MS. MAYFIELD'S DIRECT**
9 **TESTIMONY?**

10 A. There are two points. The first relates to her comments regarding the potential
11 complexity should the Commission decide to add the barge and parking services as
12 a part of the regulated services. The second issue is related to her discussion on the
13 valuation of the parking facilities should the Commission decide to make these
14 facilities a regulated service.

15 **Q. WHAT IS YOUR CONCERN REGARDING MS. MAYFIELD'S**
16 **COMMENTS REGARDING THE COMPLEXITY ASSOCIATED WITH A**
17 **COMMISSION DECISION TO REGULATE THE PARKING AND BARGE**
18 **SERVICES?**

19 A. In her direct testimony on page 10, lines 5-10, she states, "*Hypothetically, with*
20 *multiple revenue streams from disparate sources with different cost structures, it*
21 *would be a much more complicated rate design process to determine the rates for*
22 *various, different services for various, different classes of customers (not to*

1 *mention the allocation of the parking and barge function assets and expenses*
2 *between ferry and non-ferry customers).” While I agree the addition of the barge*
3 *and parking services adds some complexity to the accounting and rate design*
4 *elements of the overall regulated services, this Commission, its Staff, and the Public*
5 *Staff have significant experience in dealing with regulated enterprises that have*
6 *many different income streams, many different cost allocation issues, and many*
7 *different types of tariffed services.*

8 **Q. WHAT IS YOUR ISSUE WITH RESPECT TO MS. MAYFIELD’S**
9 **COMMENTS REGARDING THE VALUATION OF THE PARKING**
10 **FACILITIES SHOULD THE COMMISSION DECIDE TO REGULATE**
11 **THIS SERVICE?**

12 A. In her direct testimony (page 12, lines 4-12), Ms. Mayfield states “*However,*
13 *witnesses for the Village have suggested in discovery that only the net book value*
14 *of the land (as currently carried by BHIL) should be included in the utility's rate*
15 *base. In essence, the Village suggests that BHIT or SharpVue acquire or lease*
16 *extremely valuable land to make the Village’s newly imagined regulatory regime*
17 *possible, but only be allowed to recover rates, and a reasonable rate of return,*
18 *calculated off of a historical book value that dates to 1996.” First, I would say this*
19 *is an issue that this Commission must address after they have decided whether the*
20 *parking service should be regulated and, as such, it remains an open question. What*
21 *I would also observe is that the valuation of the parking facilities presents an*
22 *interesting, possibly unique situation for the Commission.*

1 Let me explain. Usually, when, a regulated utility is acquiring goods or
2 services from an affiliate of the same holding company, as is the case with the
3 parking facilities and the Deep Point Ferry, those goods and services are generally
4 acquired, and if necessary placed into rate base, at (1) the original cost less
5 depreciation or (2) the market value, whichever is less. The reason for this
6 regulatory policy is to prevent affiliates of a holding company from selling goods
7 or services to a regulated affiliate of the same holding company at an inflated
8 value.

9 I would add that the valuation of the parking facilities presents various
10 public policy considerations that should be considered at the appropriate time,
11 including:

- 12 • The parking facility and land were acquired to service the regulated
13 passenger ferry,
- 14 • The owners of the parking facility have agreed for years to tie the parking
15 revenues to the passenger service revenues by imputing a portion of the
16 parking revenues to the ferry service as a means to reduce the regulated
17 rates of the passenger ferry,
- 18 • The same ratepayers that pay regulated ferry rates also pay the parking fees
19 and, in this regard, have created the value (i.e., the revenue stream) which
20 Limited is now seeking to monetize,
- 21 • The owners of the parking facility and the regulated affiliate are both under
22 the same holding company, and

- The parking facility would not have been built without the passenger ferry.

In sum, all of these issues and any arguments Limited and others may bring forward will be under consideration when the subject of this property's valuation is ripe for consideration. Mr. O'Donnell, an expert regulatory financial consultant, addresses this issue further in his Rebuttal Testimony.

V. RESPONSE TO JAMES LEONARD'S DIRECT TESTIMONY

Q. WHAT COMMENTS IN MR. LEONARD'S DIRECT TESTIMONY DO WISH TO ADDRESS?

A. There are two basic issues I wish to address related to Mr. Leonard's testimony. The first relates to several comments he makes about the Deep Point parking facilities. The second deals with his representation of other ferry services' parking and regulation.

Q. WHAT IS YOUR FIRST CONCERN REGARDING MR. LEONARD'S COMMENTS REGARDING THE DEEP POINT PARKING FACILITY?

A. First, in a discussion that I assume is one reason for his conclusion (page 25, line 4-5) that "*it would seem reasonable that the Commission not regulate parking,*" on page 21, lines 9-13, he states: "*The scheduling and operational complexity, importance of operational execution and need for highly trained staff, capital requirements and maintenance requirements, the revenue streams, safety risks for people and assets, etc. of ferry operations are quite different than for parking operations, so I would not consider them to be similar businesses* [emphasis

1 added].”

2 I have no idea why this “*similar businesses*” idea is relevant to whether the
3 parking service should be regulated. There are many different services found in
4 almost every regulated utility that I would term are not “similar businesses,” yet all
5 these various utility operations are regulated. For example, preparing an electric
6 bill and operating an electric generating facility are in essence, two very different
7 businesses that complement and are critical to the functioning of the other. The
8 same holds true for installing power lines versus operating an electric generating
9 facility. They are not similar businesses but each supports and is critical to the
10 other. More directly on point, the tram that takes passengers and their belongings
11 from the Bald Head Island marina to their destination is dissimilar to the waterborne
12 ferry, but they are both regulated by the Commission as integral components of the
13 same service. Likewise, the parking facility and the passenger ferry are different
14 businesses but complementary to each other and each is necessary for the other to
15 continue operation at this time.

16 **Q. DO YOU HAVE ANY OTHER COMMENTS RELATED TO**
17 **MR. LEONARD’S TESTIMONY REGARDING THE DEEP POINT**
18 **PARKING FACILITY?**

19 A. Yes. On page 25, lines 4-7, Mr. Leonard states “*it would seem reasonable that the*
20 *Commission not regulate parking, but rather that it ensure that parking is available*
21 *either at the terminal or in convenient community locations, and that independent*
22 *parking operators be allowed to access the market.*” I believe this statement

1 demonstrates three things. **First**, it actually corroborates my belief that parking is
2 an essential service to the riders of the Deep Point passenger ferry, otherwise, why
3 would it be necessary for the Commission to “*ensure that parking is available*
4 *either at the terminal or in convenient community locations*”? **Second**, I have no
5 idea how the Commission can “*not regulate parking, but rather that it ensure that*
6 *parking is available.*” Based on my experience, I don’t know how this Commission
7 could, short of regulation, require or ensure that parking is available to Deep Point
8 ferry passengers – particularly if parking is owned by an affiliate or a third party
9 non-affiliate. **Third**, assuming in the future the current parking lot is sold and
10 turned into condos, Mr. Leonard apparently believes that at such future date this
11 Commission can and should somehow order the still-regulated passenger ferry to
12 go out and purchase land and build a parking facility. This begs the question, since
13 he already concedes the parking is necessary for passenger ferry operations, why
14 doesn’t he simply support keeping the current parking facility which is closer to the
15 ferry terminal and likely much cheaper than any new future parking facility?

16 **Q. DO YOU HAVE ANY OTHER COMMENTS RELATED TO**
17 **MR. LEONARD’S TESTIMONY REGARDING THE DEEP POINT**
18 **PARKING FACILITY?**

19 A. Yes. Mr. Leonard states, “*I think it is fair to conclude that the Deep Point parking*
20 *lot is not a natural monopoly, and that alternative parking can develop if in the*
21 *future there is inadequacy or dissatisfaction with the Deep Point parking lot (page*
22 *28, lines 9-12).*” **First**, I am not aware that anyone has said that the Deep Point

1 parking facility is a natural monopoly, and I would agree it is not. But this has
2 nothing to do with the fact that at this time the Deep Point parking facility is the
3 only provider of an essential service that has no current substitutes, which makes it
4 a de facto monopoly. **Second**, I do not dispute that, as a theoretical matter,
5 alternative and competitive parking facilities could be built in the future, but (i) the
6 undisputed fact is that at this time there are zero alternative parking facilities for
7 the customers of the Deep Point passenger ferry service, and (ii) there are
8 numerous, serious impediments to the development of such alternatives, the cost of
9 acquiring additional real estate and the challenge of finding suitable real estate, and
10 the additional cost of “busing” passengers from a remote lot to the terminal,
11 especially for a service which is seasonal in nature.

12 **Q. WHAT IS YOUR CONCERN WITH MR. LEONARD’S DIRECT**
13 **TESTIMONY DISCUSSING PARKING AND REGULATION AT OTHER**
14 **FERRY OPERATIONS AROUND THE COUNTRY?**

15 A. Beginning on page 21, line 14 and on the following two pages, Mr. Leonard begins
16 a discussion related to the availability, cost, and any regulatory authority over the
17 parking available at numerous ferries around the United States. In his discussion
18 he concludes that parking rates vary from free up to \$45/night. He states that “*we*
19 *found no evidence that parking rates were being regulated in any ferry market*
20 *(page 23, lines 9-12).*” Furthermore, in his Direct Testimony in Exhibit J he
21 provides a list of the ferries he surveyed and his survey results.

22 My concern is twofold. For starters, none of the examples he cites in

1 Exhibit J are directly analogous to the facts and circumstances presented with the
2 Bald Head Island ferry. Otherwise put, to get to Bald Head Island, a visitor must
3 use the ferry and its parking facilities. Mr. Leonard's examples are distinguishable
4 because (i) visitors can bring their car; (ii) visitors have ample parking alternatives
5 nearby; (iii) the ferry in almost every example is easily accessible by public
6 transportation; and/or (iv) there are other ways (e.g., other ferries, planes, or roads)
7 to access the ferry destination. Mr. Leonard's failure to identify another ferry and
8 associated parking operation directly comparable to Bald Head's highlights the
9 unique circumstances presented here.

10 In the end, Mr. Leonard simply concludes from his review of out-of-state
11 ferry and parking arrangements that "*passenger ferries exist in a variety of settings.*
12 (page 22, lines 6-7)." That, of course, is true, but the fact that other ferries operate
13 differently under different circumstances has no bearing on the Commission's
14 authority to regulate parking in this proceeding.

15 Further, the examples Mr. Leonard cites are dissimilar to the Bald Head
16 ferry. For example, on page 22, lines 7-10, he notes that "*the ferries serving*
17 *Catalina Island in California, Fire Island, in New York, and some of the Rhode*
18 *Island-based ferries that serve Block Island operate with no parking at all that is*
19 *controlled or offered by the ferry operator.*"; see also Leonard Testimony page 23,
20 lines 16-24 (citing Catalina Express as example of third-party operated parking).
21 But this argument is misleading because each of these ferries is located in an urban
22 area with ample nearby parking.

1 For example, the Catalina Island ferries, located outside of Los Angeles,
2 each have more than 6 parking lots within a 3-mile radius, and nearly as many
3 within a 0.3-mile radius. *See* Rebuttal Exhibit JAW-7.26, 7.27. Likewise, the Fire
4 Island ferries, located on Long Island, New York, each have several parking lots
5 nearby; further, Fire Island is also accessible by car for those who do not want to
6 take the ferry. *See* Rebuttal Exhibit JAW-7.14, 7.15, 7.17. Similarly, the Rhode
7 Island ferries he references are located in urban areas with numerous parking
8 options—including free municipal lots—nearby. *See* Rebuttal Exhibit JAW-7.11,
9 7.13.

10 The examples cited by Mr. Leonard are replete with these sort of
11 distinctions that he fails to address. As a result, his Exhibit J provides an incomplete
12 and inaccurate picture of the various parking options which are available. To wit,
13 I reviewed each of the examples discussed by Mr. Leonard in Exhibit J and the
14 overall results of my review are tabulated in Rebuttal Exhibit JAW-7.0, and the
15 individual surveys are found in Rebuttal Exhibits JAW-7.1 thru -7.33.

16 **Q. CAN YOU SUMMARIZE YOUR FINDINGS?**

17 **A.** Yes. JAW Rebuttal Table 1 summaries my findings.

[remainder of page intentionally blank]

JAW REBUTTAL TABLE 1: Ferry Service Parking Survey Results					
Ferry terminal	A	B	C	D	E
	Is parking provided at the terminal or very close (across street usually) by ferry or municipality?	Average number of parking facilities within approximately 300 yards ³ of the ferry terminal* –	Average of number of parking facilities less than 3 miles away**	The number of ferry services that provide parking instructions and/or directions to parking on its web site	Are ferry terminal parking rates regulated?
Deep Point Terminal	yes	1	1	1 out of 1	no
41 Ferry Services surveyed by Mr. Leonard	Yes, for 36 out of 41 at terminal; 4 more that have close-by municipal parking, and 2 don't have "terminal parking" but provides a free shuttle service to parking and offer valet service	> 2.6	>4.9	All but one	Some - approximately 11 out of <u>42</u> <u>41</u> are, either by state, a state authorized authority, or a municipality

* This is the approximate distance from the Deep Point Terminal to the back of the Deep Point parking lot.

** Indigo Plantation, mentioned as an alternative parking facility, is a 3.6 mile drive from the Deep Point terminal.

1 JAW Rebuttal Table 1 provides additional information that better highlights the
 2 relevance (or lack thereof) of the out-of-state ferry and parking examples cited by
 3 Mr. Leonard in his Exhibit J. In fact, with the additional information summarized
 4 in Table 1, it is evident that many of Mr. Leonard's examples actually support the
 5 conclusions of my Direct Testimony.

6 The key takeaways from my analysis are:

7 (1) As shown in JAW Rebuttal Table 1, Columns B and C, the Deep Point

³ It is difficult to calculate an exact number because several of the ferry terminal web sites just said "several" parking facilities or just used plural terms to indicate what I would term "walking distance" parking.

1 parking is a monopoly while every one of these other ferry services have
2 on average, greater than 2.6 parking options within walking distance
3 (measured by equivalency to the outer limit of the Deep Point lot), and
4 more than 4.9 parking options closer than what has been proposed as an
5 alternative to the Deep Point parking facility (Indigo Plantation). This
6 is why these other ferry service parking options can be competitive and
7 also why the Deep Point parking should be regulated;

- 8
- 9 (2) The examples cited by Mr. Leonard show the prevalence of parking
10 facilities located *at the ferry terminal itself* (see Table 1, Column A).
11 And the availability of parking options are highlighted on the web sites
12 of nearly every ferry service (Table 1, Column D). These facts illustrate
13 how important and closely tied parking services are to all of these
14 ferries' transportation operations. This critical link, along with the fact
15 that there are no other parking options at the Deep Point ferry terminal,
16 supports my conclusion that the Deep Point parking should be deemed
17 an ancillary regulated service.
- 18
- 19 (3) Contrary to Mr. Leonard's finding, several of the examples he cites
20 include ferries with associated parking that is subject to regulation by a
21 government authority. See Table 1, Column E. I provide further detail
22 on these operations in my Rebuttal Exhibit JAW-7.0, where I show that
23 parking rates at several of the ferry/parking operations cited in Mr.
24 Leonard's Exhibit J are regulated by an authority appointed by the state
25 legislature (Steamship Authority), by a municipality, or in one case, by
26 a state Department of Transportation (which is similar to the NCDOT
27 ferry system).
- 28
- 29 (4) Almost all of the ferries cited in Exhibit J travel to locations that are
30 accessible by other means. For example, the Bay State Ferry to
31 Provincetown, the ferries to Fire Island, the Key West Ferry to Ft.
32 Myers, the Washington State Ferry from Seattle to Bainbridge Island,
33 and the ferries to Victoria BC all travel to locations that are accessible
34 by cars. Some of these ferries are merely a novelty for tourists; others
35 are merely more convenient. But unlike Bald Head Island, which
36 depends on the ferry to access the mainland, nearly every example
37 Mr. Leonard cites in Exhibit J does not depend on ferry access.
- 38
- 39 (5) A third of Mr. Leonard's examples (13 ferries) allow passengers to bring
40 their vehicles. These ferries are unlike the Bald Head ferry, which
41 requires visitors to leave their cars at the ferry terminal because gas-
42 powered vehicles are not allowed on the Island. Thus, unlike the Bald
43 Head parking facilities, the parking facilities for these 13 ferries are not
44 integral to the ferry because a passenger who does not want to pay to

1 use the ferry terminal parking facilities can simply bring his vehicle with
2 him.
3

4 (6) Many of the ferries Mr. Leonard cites are located in urban areas with
5 ample parking alternatives. For example, eleven of the ferries Mr.
6 Leonard cites have more than six parking alternatives within three
7 miles. Thus, these parking facilities have many competitors, keeping
8 pricing low. These ferries are unlike the Bald Head ferry because the
9 Bald Head ferry terminal's remote location forces ferry riders to use the
10 parking facilities at the terminal.
11

12 (7) Four of Mr. Leonard's examples involve Canadian ferries. *See* Rebuttal
13 Exhibit JAW 7.30 through 7.33. Mr. Leonard has not shown that
14 Canadian ferries are subject to similar regulations as North Carolina
15 ferries.

16 As a final note, there is no obvious rhyme or reason as to why Mr. Leonard
17 included these 41 ferries in Exhibit J. As I have already discussed, these ferries
18 bear no similarities to the Bald Head ferry. Nor is it an exhaustive list of ferries
19 around the country; for example, there are seven other ferry systems in Washington
20 that Mr. Leonard ignores.⁴ Mr. Leonard appears to have chosen the Washington
21 State ferries he included in Exhibit J (the San Juan Islands and Bainbridge Island
22 ferries) at random.

23 Although, in a footnote to Exhibit J, Mr. Leonard claims that he "*included*
24 *ferry operation serving island communities . . . or communities with limited over-*
25 *the-road access*" and excluded those that "*simply act as short-cuts for highway*
26 *routes,*" this statement does not appear to be accurate. For example, Mr. Leonard
27 included many ferries that access locations accessible by car and plane, including

⁴ See Other Ferry Systems, *Washington States Dept. of Transp.*,
<https://wsdot.wa.gov/travel/washington-state-ferries/ferries-and-terminals/other-ferry-systems> (last
visited Sept. 27, 2022).

1 Provincetown, Fire Island, Key West, Seattle/Bainbridge Island, and Victoria,
2 Canada. These ferries bear no similarity to Bald Head Island, which is *exclusively*
3 accessible by car. Mr. Leonard's analysis is thus arbitrary and should be discredited
4 for this additional reason.

5
6 **VI. RESPONSE TO PUBLIC STAFF'S COMMENTS**

7 **Q. DO YOU HAVE ANY RESPONSE RELATED TO THE COMMENTS**
8 **FILED BY THE PUBLIC STAFF?**

9 A. Yes, I would like to address their comments about the parking facility and the barge
10 service common carrier issue.

11 **Q. PLEASE ADDRESS YOUR CONCERNS REGARDING THEIR**
12 **COMMENTS ON THE PARKING FACILITY.**

13 A. First, in their comments on page 5, the first full paragraph, the Public Staff supports
14 my direct testimony stating that "*ferry passengers must park and leave their*
15 *vehicles to board the ferry to Bald Head Island. As such, availability of parking is*
16 *critical for most Bald Head Island ferry passengers as it would be nearly impossible*
17 *for customers to use the ferry without an adequate amount of parking offered at*
18 *reasonable rates.*" I agree, which is why the parking should be regulated at this
19 time.

20 The Public Staff goes on to state, at page 5, that, "*Nonetheless, requiring*
21 *that the utility provide this service does not require the Commission to approve or*
22 *regulate the specific terms and conditions of the parking service or include*

1 *particular assets in rate base, as long as the parking is adequate and reasonably*
2 *priced. However, it does warrant Commission scrutiny to ensure that ferry*
3 *customers are protected through adequate parking at reasonable rates.* [emphasis
4 added].” I have no idea how the Commission can perform the highlighted
5 functions, ensuring that parking is adequate and reasonably priced, short of
6 regulation of the parking facilities as is being requested.

7 **Q. DO YOU HAVE OTHER CONCERNS REGARDING THEIR COMMENTS**
8 **ON THE PARKING FACILITY?**

9 A. Yes, and this deals with the ancillary services argument I put forth and my yellow
10 pages example in my direct testimony. On page 8 the Public Staff states, “*While*
11 *the courts have found ancillary services such as telephone yellow pages to be*
12 *unregulated, it nonetheless has deemed some level of oversight short of regulation*
13 *by the Commission to be appropriate. The same approach is appropriate in this*
14 *case.*” There are a couple of points to be made here. First, the yellow pages
15 unregulated affiliate was still owned by BellSouth or by the General Telephone
16 holding company, and so long as this was the case the NCUC still had some
17 regulatory tools, if not jurisdiction, over the conduct of the still-regulated
18 BellSouth and its affiliated yellow pages. However, if the parking and/or barge
19 service is sold to someone other than the owner of the passenger ferry, there will
20 no longer be any corporate ties between the parking and passenger ferry, which
21 may be argued to sever any NCUC regulatory oversight or revenue sharing
22 mechanism. Second, the yellow pages were a fraction of the revenues of the

1 typical telephone service and while the yellow pages were an important service,
2 they were not an essential service on which the provision of actual
3 telecommunications were dependent. But, as the Public Staff has admitted, the
4 provision of parking is an essential service upon which the passenger ferry is
5 dependent— absent parking, the passenger ferry will shut down (at least until other
6 parking services are offered). In addition, the net revenues in issue from the
7 parking operation greatly exceed those of the regulated entity.

8 **Q. WHAT WOULD YOU LIKE TO ADDRESS REGARDING THE PUBLIC**
9 **STAFF'S COMMENTS ON THE BARGE SERVICE?**

10 A. On pages 8-11, the Public Staff appears to present the argument that the barge
11 service is not a common carrier because it doesn't fall under the scope of the
12 regulated services prescribed under the Maximum Rate Tariff No. 1. While I
13 cannot offer a legal opinion on this issue, in my earlier comments contained herein
14 I pointed out that this Commission, with the approval of the Public Staff, has
15 granted a Common Carrier certification to at least ~~four~~ ^{three} different ferry services in
16 North Carolina that carry both passengers and vehicles, including trucks of all
17 different sizes carrying all types of goods, and these passengers and vehicles are
18 carried on the same ferry boat. ~~See Rebuttal Exhibits JAW-7.1, -7.2, -7.3, and -7.4.~~ ^{JAW-1, -2, and -4.}
19 As I stated earlier, if these other ferry services and their rates for both passengers
20 and vehicles of all types and sizes can be regulated under the common carrier
21 statutes, it is inconsistent to now declare a similar service to Bald Head Island
22 exempt from such a designation.

VII. OTHER CONSIDERATIONS

Q. DO YOU HAVE ANY OTHER COMMENTS YOU WOULD LIKE TO MAKE REGARDING THE TESTIMONIES AND STATEMENTS FROM THE OTHER PARTIES TO THIS PROCEEDING?

A. Yes, I would like to address one other point related to other parties' comments about the parking facility and the barge service. At the current time, the tram service is provided as a part of the passenger ferry's current operations. I recognize this service is a necessary service, but similar to the parking facilities and the barge service there is no reason that the tram service should be part of the regulated service, so why is it? I believe the simple fact is that all parties recognize that the tram service is basically an indispensable ancillary service, that while it could be competitive, the fact is that there is no competitive alternative available at this time. Nor is there likely to ever be a competitive alternative. Thus the tram service is regulated, which all parties in this docket simply accept, but the similarly indispensable with no competitive option parking and barge services are not regulated. In this situation I fail to understand the logic that deems it appropriate to regulate the tram service while leaving the parking and barge services unregulated.

Q. DOES THIS COMPLETE YOUR REBUTTAL TESTIMONY?

A. Yes.

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

3 THE WITNESS: And that motion is allowed
4 as well. The summary is entered into evidence.

5 (Whereupon, the prefiled summary of
6 rebuttal testimony of Dr. Julius Wright
7 was copied into the record as if given
8 orally from the stand.)
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**Summary of the Rebuttal Testimony of Dr. Julius A. Wright
On Behalf of the Village of Bald Head Island**

In my Rebuttal Testimony I respond to various issues raised in the Direct Testimonies of Chad Paul, Shirley Mayfield, James Fulton, and James Leonard. I also respond to the initial comments filed in this docket by the Public Staff.

In response to Mr. Paul, I point out that his testimony confirms there is no alternative parking available to ferry riders. I also rebut Mr. Paul's claim that the Deep Point terminal is accessible to anyone, including customers using a theoretical competitive parking facility, by pointing out that Limited owns all of the property surrounding terminal, including all access roads, and could restrict access to a competitors' customers.

As for Mr. Fulton's Direct Testimony, I respond to his argument that Limited's barge service does not meet the common carrier provisions under the Maximum Rate Tariff by explaining that the authority he cites only pertains to motor carriers, which would not include boats. Mr. Fulton also fails to address several points I made in my Direct Testimony, including the common carrier regulatory provisions pertaining to water transportation; that the barge also transports persons; that the barge is a monopoly service; or that this Commission has granted common carrier certificates to other functionally identical water transportation companies offering vehicle transportation services.

Finally, Mr. Fulton claims that the barge is used differently from other car ferry operations. But ferries often transport vehicles, including trucks, along with non-vehicle related passengers. These include ferries regulated by this Commission, ferries operated by the North Carolina Department of Transportation, and ferry systems across the country.

In response to Ms. Mayfield's concerns about the complexity of regulating the

parking facilities, I explain that this Commission and the Public Staff have the experience and resources to deal with these issues. As for Ms. Mayfield's concerns about the valuation of the parking facilities, I respond by explaining that (1) this issue is properly addressed *after* the Commission's decision on the regulatory status of the assets, and (2) the Commission's historic approach, supported by public policy considerations, is to value affiliated assets based on the lower of acquisition or original costs.

I next respond to several points in Mr. Leonard's Direct testimony. First, he states that the parking should not be regulated because it is not a "similar business" to the regulated passenger ferry operations. "Similarity" has no bearing on whether a service should be regulated. In fact, there are many facets of regulated utilities that are not similar, such as electric industry billing departments and operating a generation station, but are still necessary for the provision of the overall regulated electric service and both are regulated.

Second, I note that Mr. Leonard corroborates my opinion that parking is essential to the ferry: he states that the Commission should "ensure that parking is available." Although Mr. Leonard is against regulation, I do not know how the Commission could otherwise ensure parking availability, and Mr. Leonard does not offer any examples.

Finally, Mr. Leonard's Direct Testimony provides a survey and list of other passenger ferry services around the country. Upon closer examination, however, the ferry services in Mr. Leonard's survey are different from the Bald Head Island ferry service in that (1) unlike Deep Point's one parking option, all of his surveyed ferry services have multiple parking options, (2) unlike Bald Head Island, which is only accessible by the ferry, almost all of the ferry service destinations Mr. Leonard surveyed have multiple ways to reach them, such as via alternative ferry services, plane, or even by car; and (3) several of

the ferry systems Mr. Leonard surveys do have parking that is regulated.

With respect to the comments of the Public Staff, my Rebuttal Testimony addresses a couple points. First, I agree with the Public Staff that “availability of parking is critical for most Bald Head Island ferry passengers” and that this Commission should ensure that adequate parking is available at reasonable rates. But I disagree with the Public Staff’s conclusion that Commission regulation is unnecessary. Again, I have no idea how the Commission can ensure that parking is adequate and reasonably priced short of regulation.

I also address the Public Staff’s comments regarding the yellow pages. Although the yellow pages were an affiliate, they were still owned by the regulated telephone holding company, which afforded the Commission regulatory authority over their conduct, including their revenues. Here, if the parking and/or barge service are sold to someone other than the owner of the ferry, there will not be any connection between the regulated ferry and the unregulated parking facilities.

As for the barge service, the Public Staff argues that the barge service is not a common carrier because it does not fall under the scope of the regulated services prescribed under the Maximum Rate Tariff No. 1. But this Commission, with the Public Staff’s approval, has granted a Common Carrier certification to several ferry services carrying both passengers and vehicles, including trucks of all different sizes. It seems inconsistent to conclude that the similar Bald Head Island barge is not a common carrier.

One last point I make in my Rebuttal Testimony is that all parties on the docket seem to accept that the tram service is subject to regulation. If it is appropriate to regulate the tram service—an ancillary service that could be competitive, but does not currently have a competitor—then the parking and barge services should be regulated as well.

This concludes the summary of my Rebuttal Testimony.

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

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

5 MR. HIGGINS: I don't have any cross
6 examination questions for Dr. Wright. Thank you,
7 ma'am.

8 COMMISSIONER BROWN-BLAND: All right.
9 BHIT?

10 MR. RISINGER: Dr. Wright, you're almost
11 gonna get as lucky as Mr. Gardner. I just have a
12 couple.

13 CROSS EXAMINATION BY MR. RISINGER:

14 Q. You talked in your direct testimony and, as
15 well, regarding your JAW 7 exhibit where you examined
16 other ferry operations.

17 The only rebuttal question I have from your
18 rebuttal testimony about that is, when -- first, did
19 you gather all the data for JAW-7 yourself?

20 A. Yes. Well, I gathered it, and I gave it to
21 the attorneys, and they had a mapping thing that,
22 instead of using the maps that I had, they were able to
23 draw circles on it. So they used my data, but they
24 added some circles to make it much clearer. I can

1 explain a little more if you want me to, but.

2 Q. I wouldn't understand if you tried to explain
3 the mapping function, but I don't have any questions
4 about the mapping part.

5 A. Okay.

6 Q. Dr. Wright, when you encountered a
7 jurisdiction on your list for analysis, and that
8 jurisdiction was, itself, participating in the
9 marketplace for parking by offering municipal parking
10 that was within the zone you drew around the ferry, do
11 you recall that there were some of those where that
12 service was provided by a municipality?

13 A. Yes.

14 Q. When that was the case, in a particular
15 example, did you count that as a jurisdiction where
16 parking was regulated because the municipality was one
17 of the offerers of it?

18 A. I think I -- yes, I did. That would -- and I
19 think I designated it so in my final exhibit. It would
20 say municipal parking.

21 Q. And the only other question I have on your
22 rebuttal, Dr. Wright, is you gave an example in your
23 rebuttal regarding four other ferry services in
24 North Carolina that were passenger and vehicle ferries?

1 A. There were actually three, but one of them
2 ran two ferries, so it was -- but there were three
3 common carriers certificates, but four ferry services,
4 if that makes sense. Plus the North Carolina DOT
5 ferries also carry both passengers and vehicles, some
6 of them.

7 Q. Fair correction. And the only question I
8 have about those is, simply the fact that they carry
9 passengers would have required them to get a
10 certificate from the Commission, true?

11 A. I think the way the common carrier statute
12 reads -- and let me be very careful here. It reads
13 that -- and it's in my rebuttal on page 8, quoting
14 G.S. §62-36.

15 "Any person, other than a carrier by rail,
16 which holds itself out to the general public to engage
17 in transportation of persons or household goods, one or
18 the other, for compensation, including transportation
19 by bus, truck, boat, or other conveyance, except unless
20 they're exempted," it goes on to say that they are
21 transporting persons or household goods by motor
22 vehicles or any other form of transportation. That's
23 what becomes a common carrier. You don't have to be a
24 self-propelled ferry, you don't have to be a barge

1 service, you don't get exempted, you know, for various
2 things. It says by any form of transportation.

3 So having served and having to interpret the
4 laws that we were given, the way I read it -- and I'm
5 very simpleminded in this -- I ask myself, well, do
6 they fall under that statute as a common carrier. So I
7 hope that answers your question how I looked at it.

8 Q. That's fair.

9 COMMISSIONER BROWN-BLAND: Mr. Risinger,
10 you need a microphone. And it's not because we
11 don't -- we don't hear you, but it's also on
12 streaming.

13 Q. Sorry. Dr. Wright, as part of your work, did
14 you do anything to observe the operations of the ferry
15 operated by Limited?

16 A. Yes. I actually scheduled some time when I
17 came up here to Raleigh for my deposition. I knew I
18 was coming, and I lived in Wilmington for a number of
19 years, still have some friends down there, so I called
20 them, and right after I got out of my deposition I
21 drove down, spent the night in Wilmington, and then
22 myself and this friend and his wife, we drove down to
23 Southport, went to the Deep Point facility, rode the
24 ferry over, toured the island. We borrowed a golf cart

1 and toured the island and rode back. Then I drove over
2 to Indigo Plantation. We drove through Southport,
3 bought some ice cream and stuff, and -- just to get a
4 feel for the area, because I hadn't been down there in
5 a number of years, probably 15 years or so. I may have
6 been down there during the 2010 hearing, I just didn't
7 remember that. I did remember playing golf down there
8 before 2010. So yes, I did visit and actually rode on
9 your facility or your ferries.

10 Q. But not the park, you rode on the ferry?

11 A. We drove over there to the extent we could
12 look at it, you know, and then we actually passed the
13 barge on the way.

14 Q. And did you observe any of the barge's
15 operations during your tour?

16 A. Just passing it as we were going on the
17 water. That's all I recall. Just, you know, seeing --
18 seeing the barge and seeing the trucks on it.

19 Q. I think I saw that you have been with us all
20 day.

21 Were you here when Mr. Fulton testified?

22 A. Yes.

23 Q. All right. Is there anything about
24 Mr. Fulton's descriptions of how the barge -- the

1 Limited barge operates that you would dispute based on
2 your analysis in this case?

3 A. No. I think he was correct that they load
4 trucks and vans and they carry household goods in those
5 trucks and vans and various things, food, and I have no
6 reason to dispute that.

7 MR. RISINGER: We have no further
8 questions at this time.

9 MR. FERRELL: No questions from me.

10 COMMISSIONER BROWN-BLAND: All right.
11 Redirect?

12 MR. TRATHEN: Yes.

13 REDIRECT EXAMINATION BY MR. TRATHEN:

14 Q. Dr. Wright, with respect to the last question
15 with regards to Mr. Fulton's testimony, counsel asked
16 if you had anything -- any disputes with respect to his
17 description of the facility.

18 You are -- I understood you to agree with his
19 description, but you agreement, that was limited to the
20 operational portion of his testimony, correct?

21 A. That's correct. And let me just be clear. I
22 heard all the discussion about, well, is it a freight
23 or is it not freight, is it a barge, is it a boat, or
24 whatever. If you read that common carrier General

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1 Statute as I just did a minute ago, it says any form of
2 transportation. It doesn't just limit it to a
3 self-propelled ferry. It says any form -- other form
4 of transportation. And it doesn't have to be that the
5 barge -- I heard all the discussion about, well, is it
6 a person or is it a passenger. Read the General
7 Statute, and it says it's transportation of persons or
8 household goods. You don't have to transport both.
9 You can transport one or the other. And you can do it
10 by bus, truck, boat, or other conveyance, and any other
11 form of transportation. You can do it by canoe, I
12 guess, and you can fall under the common carrier
13 statute.

14 So as I look at it, it's quite clear. You
15 know, if it's -- if it looks like a duck, swims like a
16 duck, and quacks like a duck, it's probably a duck.
17 And that's how I looked at this, and I said, gee. So I
18 heard his testimony and how he talked about how the
19 barge was used. You know, I don't have any dispute
20 there. But whether it falls under the common carrier
21 statutes that you ladies and gentlemen are looking at,
22 I think it's clearly -- clearly that it does, without
23 question.

24 MR. TRATHEN: That's all I have.

1 COMMISSIONER BROWN-BLAND: All right.

2 Questions from the Commission?

3 (No response.)

4 EXAMINATION BY COMMISSIONER BROWN-BLAND:

5 Q. Dr. Wright, just briefly. In your rebuttal
6 testimony, you discuss the ferry examples, and I wanted
7 to ask you, could you tell us a little bit more about
8 those ferries? Like, you heard the discussion this
9 morning, and what specific scenario or set of
10 circumstances you would contend would be most analogous
11 to what we're dealing with in the Bald Head situation?

12 A. Well, let me segregate it into two different
13 groups. There were 41 ferry examples in Mr. Leonard's
14 testimony, so I went back and looked at those, because
15 I was curious how they treated parking. That was
16 really why I was looking at those to start off with.
17 And what you find out when you look at these examples
18 and you start pulling them up on the internet, you have
19 to look at, okay, where does a barge originate and
20 where is it going, and ask the question, well, what
21 parking is available there. And when I looked at those
22 examples, there was nothing really -- real analogous to
23 Bald Head Island. Some of those examples -- we talked
24 about Catalina Island, we're going to Catalina Island.

1 I mean, that's right off Los Angeles. So the barges
2 are leaving from Los Angeles. And I've been to Long
3 Beach. It's a big urban area. There's parking
4 everywhere around that thing. The Catalina Island
5 ferry does not offer parking, but it's everywhere
6 around it. And all one has to do is go on the
7 internet, and these barge services actually tell you
8 where the parking is.

9 So when I did that, I found out, well, all of
10 these other barge services, they don't just have one
11 parking spot and that's it. I mean, the average had, I
12 think, 2.6 parking lots within 300 yards, and I used
13 that, because that's how long the Bald Head parking lot
14 is from the outermost parts of it. I figured, okay,
15 let's see how many parking areas are as close as the
16 Bald Head lot. Well, that was one measure. And then
17 how many parking areas were closer than Indigo
18 Plantation, which the other side is offered as an
19 alternative. And I think the average number of parking
20 lots closer to the Indigo Plantation was, like, right
21 at five. So we're sitting here with one.

22 Secondly, we looked -- I looked at these
23 other areas and asked is there any other way to get to
24 this place. We talked about Key West. Well, you can

1 drive to Key West, you can fly to Key West. You can
2 take the Fort Myers ferry, which is one that
3 Mr. Leonard had on his list, and -- but there were
4 other ways to get there.

5 So when I looked at all of these, there were
6 none that were quite comparable to Bald Head Island.
7 So that's the one group, that group of 41. None of
8 them were exactly comparable. And, certainly, none
9 were sitting there with only one parking lot available.

10 Second is you asked about -- or we talked
11 about the North Carolina ferry systems. There are --
12 in my rebuttal, I point out three other common carrier
13 certified ferries that carry both trucks and
14 passengers, and if you look on my Rebuttal Exhibit 1,
15 for example, is one of those, and that's the Cape
16 Lookout Cabins and Camps. In that ferry system, you
17 can reserve to carry a truck, and they have various
18 size trucks. And then if you look on my exhibit
19 Rebuttal Exhibit 2, that's the Davis Shore ferry.
20 Again, they carry various size trucks, and I actually
21 have a listing of their trucks, JAW Rebuttal Exhibit --
22 I'm sorry, Rebuttal Exhibit JAW 2, page 7. There's a
23 list of the types of trucks they carry, under 20 feet,
24 over 20 feet, to 24 feet, so different prices. And I

1 also called these ferry services and I asked, well, do
2 you charge for a truck, and I asked the lady, "If I
3 bring my pickup truck, do I just pay for my pickup
4 truck or do I have to pay for a passenger?" And they
5 said, "Well, you pay for a passenger too."

6 So in the three examples of North Carolina
7 ferry systems, you pay a passenger fee and you will pay
8 a fee for your truck. Now, Bald Head doesn't charge
9 for the passenger. But what they didn't tell you is, I
10 compared the prices of these other ferry services, and
11 Cabins and Camps, if I drive my pickup truck there, for
12 me and my truck, it's \$138. I'm sorry, \$128. They
13 charge \$180. For the Davis ferries, it's \$101; \$16 for
14 me, \$85 for my pickup. They charge \$180. Closest I
15 can figure. For Morris Marina, they charge me \$18,
16 \$125 for my truck. That's \$143. They charge \$180. I
17 go up to a larger size and I get the same type of price
18 differential. So from that I assume, well, maybe
19 they've got the charge for the passenger, you know,
20 included in their ticket price, because they're
21 charging more than anybody -- any of these other three
22 ferries that are giving the same service.

23 And I looked at the mileage that the ferries
24 were running. Davis is running about four miles. I

1 think the barge runs four to five miles, so it's not a
2 difference in the length of the trip. So I looked at
3 these and I said these ferry systems are much like the
4 barge system. You drive your truck on, you ride over,
5 you drive your truck off. You have household goods,
6 you can have a truck that's carrying stuff from Home
7 Depot or whatever you have in there. So it's really
8 much the -- it's pretty much the identical system.
9 It's just their barge is pushed by a tug boat and these
10 are self-propelled boats, but go back to the law. It
11 doesn't differentiate by that, the North Carolina law.
12 And I don't know that the federal law impedes your
13 jurisdiction in any way.

14 And finally, the North Carolina ferry system,
15 they actually price like Bald Head barge system prices.
16 I talked to the people at Fort Fisher. They said, "You
17 drive your pickup truck onto our barge, we're gonna
18 charge you one fee." I said, "What if I got a friend
19 with me?" "You're gonna get one fee. You don't have
20 to buy a separate ticket for the passenger." So they
21 charge just like the Bald Head barge service charges,
22 and that the North Carolina DOT ferry system. I hope
23 that answers -- I tried to be as complete as possible.

24 Q. Thank you for that.

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1 COMMISSIONER BROWN-BLAND: Questions on
2 Commission's questions?

3 Mr. Higgins?

4 MR. HIGGINS: No, ma'am.

5 COMMISSIONER BROWN-BLAND: BHIT?

6 MR. RISINGER: No.

7 COMMISSIONER BROWN-BLAND: All right.

8 Well, Mr. Risinger was very truthful. You almost
9 had the same fate.

10 THE WITNESS: Surprises me too, Madam.

11 COMMISSIONER BROWN-BLAND: All right.

12 I'll entertain motions.

13 MR. TRATHEN: So, yes, the Village would
14 ask that the exhibits to the rebuttal testimony of
15 Dr. Wright be entered into evidence.

16 COMMISSIONER BROWN-BLAND: All right.

17 Without objection, that motion is allowed.

18 (Rebuttal Exhibits JAW-1 through JAW-7
19 were admitted into evidence.)

20 COMMISSIONER BROWN-BLAND: There is
21 nothing else for this witness. Now you may be
22 excused.

23 THE WITNESS: Thank you, ma'am.

24 COMMISSIONER BROWN-BLAND: All right.

1 The Commission would ask that proposed briefs and
2 orders be filed within two weeks of the
3 availability of the transcript. Is that
4 acceptable?

5 MR. STYERS: It is.

6 COMMISSIONER BROWN-BLAND: All right.
7 Anything else to come before the Commission at this
8 time?

9 MR. TRATHEN: Not from the Village.

10 COMMISSIONER BROWN-BLAND: All right.
11 Well, thank you, gentlemen, and Ms. Hawkins. Thank
12 you very much. We will be adjourned.

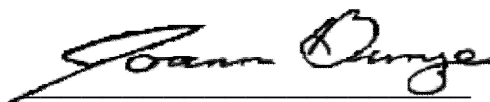
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14 (The hearing was adjourned at 4:37 p.m.)
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CERTIFICATE OF REPORTER

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 19th day of October, 2022.



JOANN BUNZE, RPR

Notary Public #200707300112

