

**STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH**

DOCKET NO. A-41, SUB 22

In the Matter of	)	
Joint Application of Bald Head Island	)	
Transportation, Inc., Bald Head Island	)	
Limited, LLC, and Bald Head Island	)	
Ferry Transportation, LLC, for Approval	)	<b>THE VILLAGE’S REPLY</b>
of Transfer of Common Carrier	)	<b>REGARDING MOTION TO</b>
Certificate to Bald Head Island Ferry	)	<b>HOLD PROCEEDING IN</b>
Transportation, LLC, and Permission to	)	<b>ABEYANCE</b>
Pledge Assets	)	

The Village of Bald Head Island (the “Village”) submits this short reply to the responses filed by Bald Head Island Transportation, Inc. (“BHIT”), Bald Head Island Limited, LLC (“BHIL”), Bald Head Island Ferry Transportation, LLC (“BHIFT”) (collectively, “Applicants”), and the Public Staff to the Village’s Motion to Hold Proceeding in Abeyance and Request for Expedited Ruling on the Motion.

First, BHIL and BHIT ask that the Commission “adhere to its previously issued orders,” BHIL/BHIT Resp. at 7, as if their appeal of the Sub 21 Order has no relevance to the transfer of the transportation assets to a new owner. In reality, they are seeking to break the link between the order on regulation and the determination on transfer of those same assets, when, under the Commission’s Sub 21 Order, the matters are factually, logically, and legally intertwined. And their own arguments concede the consequences of their strategy: if the Sub 21 Order is reversed, then SharpVue can operate the parking and barge assets with “flexibility.” BHIL/BHIT Resp. at 5. “Flexibility” is a euphemism for the ability to operate, sell, and encumber the operations free from regulatory oversight otherwise necessary to protect the public, notwithstanding the Commission’s factual

conclusions that the parking and barge operations are “necessary components of a single, holistic transportation service,” Sub 21 Order at 17. Applicants’ appeal seeks to undermine the very proceeding they seek to rush through, and BHIL and BHIT offer no substantive response to the Village’s specific examples of the varied ways the appeal could potentially result in concrete prejudice to the Commission’s determinations and the parties’ interests in the transfer proceeding. Applicants cannot have their cake and eat it too.

Second, BHIL’s and BHIT’s argument that “the Commission’s authority will remain the same regardless of whether the assets are owned by BHIL or by SharpVue”, BHIL/BHIT Resp. at 4, misses the point. If the Commission allows a transfer and the Sub 21 Order is later overturned, the Commission will have lost its ability to evaluate the transaction in light of whatever guidance is provided by the appellate court, craft conditions necessary to protect the public interest, and otherwise to evaluate whether the public is protected as much as possible from potential costs and risks of the merger (as is required under the statutory standard applied by the Commission).

Third, there is no need to gamble on the future of the transportation system. Applicants are not harmed by an abeyance. The Applicants’ complete application has been pending before the Commission for only 16 days. BHIL and BHIT do not claim cognizable injury from a delay. Instead, they claim that “the responsibilities of operating the [regulated] assets in question” gives them to “the right” to have a transfer proceeding upon request. BHIL/BHIT Resp. at 9. But the Commission, not the parties, controls the pace

and manner in which a proceeding is adjudicated, and many transfer proceedings—particularly complicated and contested matters—take a year or more to resolve.<sup>1</sup>

Likewise, SharpVue (i.e., BHIFT), has offered no evidence of harm. SharpVue references the availability of financing and the potential that current investors might suffer from “deal fatigue,” *see* SharpVue Resp. at 2, but it does not claim that financing would be unavailable if the transfer is delayed. And while SharpVue seeks to deflect the import of the assertions in the ROFR Complaint that Applicants cannot close the transaction until that parallel Superior Court litigation is resolved, SharpVue Resp., 2 n.1, SharpVue *does not dispute* that the transaction will be otherwise delayed because of that litigation. SharpVue executed the Asset Purchase Agreement *after* the Village had initiated the Sub 21 proceedings and, now, has elected to prolong the resolution of those issues with its appeal. SharpVue cannot cast self-inflicted wounds as being harmed.

Finally, the Public Staff, while not taking a formal position on an abeyance, has noted that a delay would eliminate the risk of wasted time and resources and would allow the Public Staff to conduct its intended review of the proposed transaction (which it estimates will take 120 days). *See* Public Staff Resp. at 3–4. While the Public Staff notes that an abeyance might be imprudent if it harmed service quality, they have no opinion on whether a delay might do so here. *Id.* at 3. Tellingly, BHIL and BHIT, the operators of the transportation system, made never a mention of a delay causing operational issues—their only objection is that an abeyance (due to their appeal) prevents them from closing the deal

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<sup>1</sup> *See, e.g.,* Frontier Natural Gas, Docket No. G-40, Sub 160 (Nov. 22, 2021) (299 days to decision); Carolina Water Service, Docket No. W-354, Sub 242 (June 18, 2001) (319 days to decision); Etowah Sewer Company, Docket No. W-933, Sub 12 (filed Oct. 8, 2020) (remains pending); Crosby Utilities, Docket No. W-992, Sub 8 (filed Oct. 22, 2020) (remains pending); Total Environmental Solutions, Docket No. W-1328, Sub 10 (filed June 7, 2021) (remains pending).

as quickly as they would like. The Village, comprised for full-time residents on the Island who are stewards of the Island's resources and the elected representatives of the public most impacted by the matters in issue, have come to the conclusion that an abeyance of the proceeding is in the public's best interest. To this point, it is relevant that SharpVue has made no commitment to improve service, has offered no plan for capital improvements, and, as a private equity firm, has no inherent experience or competence in managing utility assets. In other words, SharpVue's application proposes nothing more than continuation of existing service utilizing existing management.

Having elected to "let the courts figure it out," the Applicants should pursue the path they have chosen.

This 9th day of February, 2023.



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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing THE VILLAGE'S REPLY REGARDING MOTION TO HOLD PROCEEDING IN ABEYANCE MOTION has been served this day upon all parties of record in this proceeding, or their legal counsel, by electronic mail or by delivery to the United States Post Office, first-class postage pre-paid.

This the 9th day of February, 2023.

By: /s/ Marcus Trathen