

**STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH**

DOCKET NO. A-41, SUB 22

In the Matter of	)	
Joint Application of Bald Head Island	)	<b>REPLY IN SUPPORT OF MOTION TO COMPEL RESPONSES OF SHARPVUE CAPITAL, LLC TO SECOND DATA REQUESTS</b>
Transportation, Inc., and Bald Head	)	
Island Ferry Transportation, LLC, for	)	
Approval of Transfer of Common Carrier	)	
Certificate to Bald Head Island Ferry	)	
Transportation, LLC, and Permission to	)	
Pledge Assets	)	
	)	

Pursuant to Rule R1-7, the Village of Bald Head Island (the “Village”), by and through its undersigned counsel, hereby files this reply to SharpVue Capital, LLC’s (“SharpVue’s”) Response to the Village of Bald Head Island’s Motion to Compel Responses to Second Data Requests filed in this proceeding on September 20, 2022 (“Response”).<sup>1</sup>

In its Response, SharpVue provides supplemental responses to a number of data requests subject to the Village’s Motion to Compel and as to other requests SharpVue asserts objects and other arguments against providing the requested information. In light of SharpVue’s supplemental responses, the Village offers this reply to assist the Commission in identifying the issues actually in dispute.

SharpVue has supplemented its responses to Data Requests 2-3, 2-4, 2-17, 2-18, 2-24, and 2-28, and the Village no longer seeks to compel any further response from SharpVue regarding these Requests (but it reserves all rights to explore these responses

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<sup>1</sup> SharpVue’s response was served on counsel for the Village at approximately 11:30 pm on September 19, 2022, but was filed in the docket on September 20, 2022.

further in future data requests). As discussed below, however, SharpVue has not supplemented or still does not adequately respond to a number of the Village's Requests and, as to these requests, and order compelling responses should issue.

### **SharpVue's General Objections**

As the Village noted in its Motion, although SharpVue did not fully respond to many of the Village's requests, it also did not object to many of the Village's requests. In its supplemental responses, SharpVue falls back on its general objections and attempts to raise new objections for the first time. *See* Supplemental Response 2-21.

However, such "general objections" are impermissible and of no effect. *See, e.g., Sessions v. Sloane*, 248 N.C. App. 370, 381, 789 S.E.2d 844, 853 (2016) ("A blanket, general objection is considered to be frivolous or insubstantial."). This principle has long been recognized in practice before the Commission. *See In re Bellsouth Telecomms., Inc.*, N.C.U.C. Docket No. P-55, Sub 1841 2012 WL 2951441, at \*2 (July 13, 2012) ("[T]he legal insufficiency of 'general' or blanket objections . . . is well-settled under North Carolina law governing the conduct of discovery.").

Accordingly, SharpVue has waived any objections not raised in its initial responses. *Hairston v. Hairston*, 209 N.C. App. 750, 709 S.E.2d 601 (Table), 2011 WL 532774, at \*2 (2011) (failure to state objections to discovery requests waives objection). SharpVue cannot rectify its failure to object to the Village's requests by pointing back to its general objections or raising new objections at this late stage.

### **Data Requests 2-11 and 2-19**

SharpVue contends that it cannot respond to Data Requests 2-11 and 2-19 because the requests “seek specific details about future hypothetical projects or expenses that would not be available or determined until a specific future project or expense presents itself.” Response at 4. SharpVue misunderstands the Requests.

In its Application, SharpVue claims that it “has the financial capital and resources to support . . . needed capital improvements,” Application ¶ 36, and that it “has the financial resources to support and enhance the Ferry Operations and Tram Operations, including accommodating anticipated growth in ridership.” Application ¶ 27. Accordingly, Requests 2-11 and 2-19 ask SharpVue to identify the facts supporting SharpVue’s claims.

As an initial matter, SharpVue did not object to these Requests. Therefore, SharpVue has waived any objection and must respond to the Village’s Requests in full. *Hairston*, 2011 WL 532774, at \*2.

Further, the Requests are highly relevant because they seek information supporting SharpVue’s allegations in its Application. If SharpVue truly cannot determine how it would “support needed capital improvements” or “support and enhance” the ferry and tram—as it claims in its Response—then it should amend the Application to remove its claims that it has adequate financial resources for these projects. But if SharpVue intends to leave those claims in its Application, then it must disclose any facts supporting its claims.

### Data Request 2-21

This request seeks specification on how SharpVue allocates the purchase price set out in the purchase agreement (which includes assets that are NOT subject to the assignment application) among the assets to be acquired in the transaction proposed in this proceeding. This is a standard inquiry in every assignment proceeding – the parties and the Commission have an interest in knowing how much is being paid for the regulated assets.

SharpVue did not object to these requests and, therefore, has waived any objection and must respond. *Hairston*, 2011 WL 532774, at \*2. And as discussed above, SharpVue’s belated attempt to invoke its general objections is insufficient under North Carolina law. *See In re Bellsouth Telecomms., Inc.*, 2012 WL 2951441, at \*2.

But even if SharpVue had timely raised its objections, none is compelling. SharpVue first argues that the Village is not entitled to the information because the Village wants to buy BHIT and BHIL’s assets. Response at 6. But SharpVue overlooks a simple solution: if it is truly worried about the Village’s use of the information, it can designate the documents as “attorneys’ eyes only” – a classification permitted in the Confidentiality Agreement negotiated between the parties. Indeed, attorneys-eyes-only designations are frequently used in situations involving the disclosure of confidential information to competitors. *Addison Whitney, LLC v. Cashion*, No. 17 CVS 1956, 2020 NCBC 48 ¶ 69 (N.C. Super. June 10, 2020) (recognizing that attorneys-eyes-only designations are a “routine feature” of civil litigation and parties often use the designation to protect “trade secrets or other confidential information, and especially sensitive material”).

Second, SharpVue argues that the information is not relevant because this is not a rate case. Response at 7. But the manner in which SharpVue arrived at the purchase price is highly relevant to the value of the assets in issue, the protection of ratepayers from adverse impacts of the transaction, and whether the transaction should be approved. Although the Village raised these arguments in its motion, SharpVue does not respond to them other than to state that SharpVue will not seek a rate case for a least one year. *Compare* Motion at 8-9, *with* Response at 7. But SharpVue’s claim that it will not seek a rate case for at least one year does not obviate the Village’s concerns or in any way diminish the importance of this information to the transfer proceeding.

In the alternative, SharpVue asks the Commission to issue a protective order allowing SharpVue to withhold the requested information. SharpVue has not met its burden of showing that a protective order is warranted here. *Out of the Box Devs., LLC v. LogicBit Corp.*, No. 10 CVS 8327, 2014 NCBC 7, ¶ 14 (N.C. Super. Ct. Mar. 20, 2014) (party seeking confidentiality designation bears burden of showing need for such designation). SharpVue has not shown that withholding the requested information is necessary to avoid harm by its disclosure. *See* Charles A. Wright et al., *Federal Practice and Procedure* § 2043 (3d ed. Apr. 2022 Update) (discussing nearly identical federal rule and explaining “the moving party must also show good cause for restricting dissemination on the ground that it would be harmed by its disclosure”). Although SharpVue expresses general indignation that the Village is also trying to purchase the ferry assets and is thus—in SharpVue’s mind—“not entitled” to the information, SharpVue does not explain how it would be harmed by the Village’s discovery of these facts. In actuality, the likelihood of harm is slim. SharpVue has already entered into an APA for the purchase of the assets,

and the Village—a local governmental entity—is not a regular competitor of SharpVue. Thus, there is little harm to SharpVue’s disclosure, and the information is highly relevant to the proceedings. And to the extent SharpVue is concerned about the Village, it can produce the documents as designated for attorneys’ eyes only.

To be clear: SharpVue failed to object to the Village’s Request 2-21, and thus has waived the arguments it raises in its responsive brief. But as discussed above, even if it had timely raised its objections, SharpVue’s arguments would still fail. SharpVue should therefore be compelled to respond to this Request in full – including, as specified in the request, an explanation of “how SharpVue has valued the individual components of the transaction and [ ] all documents relating to the valuation of these components.” If SharpVue does not know how much it is paying for the assets at issue in this proceeding, it should say so.

#### **Data Requests 2-24, 2-25, and 2-27**

Data Request 2-24 seeks information about the investors in the SharpVue entities. SharpVue initially refused to disclose any information about its investors, but now has provided supplemental responses identifying the cities in which the investors are located and the amount of their investment. For present purposes, the Village is satisfied with this supplemental response – subject to the right to pursue additional discovery concerning these matters should it become necessary.

Data Request 2-25 seeks information relating to the “co-investors” in Pelican Legacy Holdings, LLC. SharpVue has refused to provide any information relating to such investors, other than to reference the same information provided in response to Data

Request 2-24 regarding investors in SharpVue. To the extent that there are co-investors in Pelican Legacy Holdings, LLC, SharpVue should identify those investors.

Data Request 2-27 seeks information relating to the ownership structure of the SharpVue affiliates. SharpVue's supplemental response merely refers to the same list of investors provided in response to Data Request 2-24 but does not directly respond to the request seeking disclosure of the ownership of the various entities. The ownership structure of the utility is directly relevant to the Application, and SharpVue should be required to respond.

In the alternative, SharpVue asks the Commission to issue a protective order allowing SharpVue to withhold the identities of its investors. SharpVue has not met its burden of showing that a protective order is warranted here. *Out of the Box Devs., LLC*, 2014 NCBC 7, ¶ 14. SharpVue has not identified any harm that would result from the disclosure of the ownership structure of its affiliates. And, to the extent that such ownership structure entails the disclosure of highly confidential information, SharpVue has not explained why a confidentiality designation, or at most, an attorneys-eyes-only designation, would not suffice.

For the reasons set forth in the Motion and herein, SharpVue should be required to provide responses to Data Requests 2-25 and 2-27.

### **Data Request 2-16**

In this request, the Village sought information relating to the acquisition premium to be paid by SharpVue for the assets at issue in this proceeding. SharpVue itself raised the issue of the acquisition premium in its Application, asserting that it would need seek

recovery of any such premium. Yet SharpVue refuses to respond to the Village's request seeking information about the premium.

Again, SharpVue's objections are too late. SharpVue did not object to these requests and, therefore, has waived any objection and must respond. *Hairston*, 2011 WL 532774, at \*2. SharpVue's response should be compelled on this basis alone.

Moreover, SharpVue's belated objections are not compelling. Despite the fact that the Application expressly references an acquisition premium, SharpVue contends that the acquisition premium is not relevant because SharpVue did not actually say that it was paying an acquisition premium. *Compare* Application ¶ 37, *with* Response at 10.

Calculation of the acquisition premium is a mathematical computation involving information solely in SharpVue's possession. This premium is an issue in nearly every certificate assignment proceeding, and SharpVue should be required to respond to this request.

#### **North Carolina Rule of Civil Procedure 37(a)(2)**

Finally, SharpVue faults the Village for not certifying that the Village had met and conferred with SharpVue about its discovery responses, and notes that the Village filed its motion to compel two days after SharpVue provided its responses. Response at 1. In support, SharpVue cites North Carolina Rule of Civil Procedure 37(a)(2). *Id.*

To be clear, the expeditious procedural timelines in this case dictate the pace of filings, and the Procedural Order mandated that the Village file its motion within two days. Order Scheduling Hearing, Establishing Procedural Deadlines, and Requiring Public Notice at 2 ¶ 6. In apparent recognition of the tight timelines involved, the Procedural



Order does not require parties to meet and confer before filing a motion to compel. Compare *id.*, with *In re Time Warner Cable Se., LLC*, Order Establishing Procedural Schedules and Scheduling Hearings, N.C.U.C. Docket No. EC-39, Sub 70 2016 WL 7447618, at \*5 (Dec. 22, 2016) (ordering that parties meet and confer before filing objections). Indeed, when a case’s procedural order does not require parties to meet and confer before filing objections, parties typically do not include a Rule 37(a)(2) certification. See, e.g., *In re Village of Bald Head Island v. Bad Head Island Transp., Inc.*, Motion to Compel Response Of Complainant to Second Bald Head Island Data Requests, N.C.U.C. Docket No. A-41, Sub 21 (Aug. 24, 2022).

In any event, the Village *did* tell SharpVue’s counsel that it had a number of issues with SharpVue’s responses and objections, invited further conversation, and identified specific issues with a subset of responses. See Exhibit 1 (Correspondence between counsel for the Village and SharpVue). Further, the Village consented to SharpVue’s request for a five-day extension of time to respond. Despite this additional time, SharpVue did not take the Village up on its invitation to discuss—contrary to its claim that it “would have been glad to discuss.” Response at 2.

WHEREFORE, the Village respectfully requests that the Commission grant its Motion to Compel and order SharpVue to provide complete responses to Data Requests 2-11, 2-16, 2-19, 2-21, 2-25, and 2-27.

This 21st day of September, 2022.

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

**CERTIFICATE OF SERVICE**

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

This the 21st day of September, 2022.

By: /s/ Marcus Trathen

# EXHIBIT 1

## FIRST EMAIL 9-12-22 @ 9:22 PM



Mon 9/12/2022 9:22 PM

Marcus W. Trathen

RE: A-41, Sub 22 [IWOV-NPRAL1.FID467989]

To 'Ferrell, David P.'

Cc Amanda Hawkins; Craig Schauer

David:

I've taken a quick look at your clients responses to the Second Data Requests. Just wanted to give you a heads up that we are going to have some concerns with some of the objections and responses.

A few things right off the bat.

First, we asked specifically for Exhibit F to the Joint Application – and your response was that we already have it. You may be correct about that – and probably are – but could you either produce it as requested or give us the document number where it was previously produced?

Second, we asked for all documents produced in Sub 21. And your response was that we already have them. This is true, but those documents were produced under a confidentiality agreement that says that we can't use them in Sub 22. So what I was hoping was that you would agree to modify the Sub 21 agreement to make clear we could also use those documents in Sub 22. Otherwise, we'd ask you to produce all those documents again in Sub 22, as requested, so we can use them in this proceeding if needed. You may think of some other way of getting to the same place.

Third, in #18 you provided a list of infrastructure projects, but you didn't provide the other information about these projects we requested, specifically: "specify SharpVue's role in such project, identify the extent of any ownership interest in such projects, and the dates SharpVue acquired and disposed of any interest in such projects." Please let us know if your client is willing to fully answer that question or whether we would need to file a motion to compel.

Fourth, in #28, your client's response is not responsive to the question asked. Is your client willing to provide the documents requested or is this one where we'd need to file a motion to compel?

There are some other issues that are more obvious where you all just asserted objections that we will likely pursue. But the items above seemed areas where maybe there was a miscommunication that could be worked through. I realize the response deadlines are very tight – we are struggling with them too – and we appreciate your efforts to provide a timely response.

Please let us know your thoughts on the above items.

Thanks very much.

[Marcus W. Trathen](#)



t: 919.839.0300

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P.O. Box 1800 (27602)

**SECOND EMAIL**  
**9-14-22 @ 12:09 PM**



Wed 9/14/2022 12:09 PM

Marcus W. Trathen

Second Data Responses (A-41, Sub 22)

To: 'Ferrell, David P.'

David:

Looking further at your client's responses to the Villages Second Data Requests in Docket A-41, Sub 22, I see the following response for question 21:

21. Specify how SharpVue allocates the purchase price among the assets to be purchased in the Transaction and how it proposes to allocate the purchase price among the acquired assets at closing. If SharpVue contends that it has not allocated the purchase price among the assets, explain how SharpVue has valued the individual components of the transaction and provide all documents relating to the valuation of these components.

**RESPONSE: Of the \$67.7M purchase price, \$56M is allocated to ferry, tram, parking, and barge. Otherwise, SharpVue has not completed such an analysis but will do so at the time of closing under the APA.**

Your client did not provide any documents supporting the \$56M number referenced in your response, although our data request sought "all documents relating to the valuation of these components". Am I correct in assuming that there are no documents to produce showing how this \$56M was calculated or where it comes from?

Thanks very much.

[Marcus W. Trathen](#)



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**THIRD EMAIL**  
**9-14-22 @ 4:42 PM**






Wed 9/14/2022 4:42 PM

Marcus W. Trathen

A-41, Sub 22 - VBHI Motion to Compel

To 'Ferrell, David P.'

Cc Craig Schauer; Amanda Hawkins; 'Jo Anne Sanford'

 VBHI Motion to Compel, 9.14.22, A-41, Sub 22 -- CONFIDENTIAL VERSION.pdf 696 KB
 VBHI Motion to Compel, 9.14.22, A-41, Sub 22 - PUBLIC VERSION.pdf 1 MB
 Transmittal Letter.pdf

David:

Attached is a service copy of VBHI's motion to compel (Confidential and Public versions) with regards to SharpVue's responses to the second data responses. As you know, our deadline for seeking relief was today. I'm still hopeful that we could work some of these out. Would be happy to discuss further if helpful.

-Best regards.

[Marcus W. Trathen](#)



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