

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. A-41, SUB 21

VILLAGE OF BALD HEAD ISLAND,)	
Complainant,)	
)	
v.)	REBUTTAL TESTIMONY OF
)	DR. JULIUS A. WRIGHT
)	ON BEHALF OF
BALD HEAD ISLAND TRANSPORTATION,)	THE VILLAGE OF BALD HEAD
INC., BALD HEAD ISLAND LIMITED, LLC,)	ISLAND
and SHARPVUE CAPITAL, LLC.)	
Respondents.)	

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.

21
22

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.*
- 18 • A second North Carolina Ferry, Davis Shore Ferry Services, provides
19 *passenger and vehicle service on the same ferry and having a Common*
20 *Carrier Certificate from the NCUC – See Rebuttal Exhibit JAW-2, Docket*
21 *No. A-65, Sub 0.*
- 22 • A third North Carolina Ferry, Morehead Ferry Service, provides *passenger*

1 *and vehicle service on the same ferry and having a Common Carrier*
2 *Certificate from the NCUC* – See Rebuttal Exhibit JAW-3, Docket No. A-
3 76, Sub 0.

- 4 • A forth North Carolina Ferry, Morris Marina ferry, provides *passenger and*
5 *vehicle service on the same ferry and having a Common Carrier*
6 *Certificate from the NCUC* – See Rebuttal Exhibit JAW-4, Docket No. A-
7 26, Sub 4.
- 8 • Several NC-Department-of-Transportation-run ferries, including those to
9 Cedar Island, Ocracoke, Swan Quarter, and Fort Fisher (with one
10 exception), carry both passengers and vehicles of all sizes. See Rebuttal
11 Exhibit JAW-5.
- 12 • As one example of ferry services outside the state, Rebuttal Exhibit JAW-6
13 provides tariff sheets from a Rhode Island ferry between Bristol and
14 Prudence Island, and this tariff clearly shows that both passengers and
15 vehicles of all sizes ride the same ferry.
- 16 • *Thirty percent of the ferry services* surveyed by Mr. Leonard (Leonard
17 Direct Testimony Table J) *allow both passengers and vehicles, including*
18 *trucks*, on the same ferry. See Rebuttal Exhibit JAW-7.0.

19 In summary, Mr. Fulton’s claim that the Bald Head Island barge service
20 (transporting vehicles and their driver passengers) is somehow different from
21 services provided by other ferries, is simply wrong. The fact that the Village issues
22 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

- 1 • The parking facility would not have been built without the passenger ferry.

2 In sum, all of these issues and any arguments Limited and others may bring forward
3 will be under consideration when the subject of this property’s valuation is ripe for
4 consideration. Mr. O’Donnell, an expert regulatory financial consultant, addresses
5 this issue further in his Rebuttal Testimony.

6

7 **V. RESPONSE TO JAMES LEONARD’S DIRECT TESTIMONY**

8 **Q. WHAT COMMENTS IN MR. LEONARD’S DIRECT TESTIMONY DO**
9 **WISH TO ADDRESS?**

10 A. There are two basic issues I wish to address related to Mr. Leonard’s testimony.
11 The first relates to several comments he makes about the Deep Point parking
12 facilities. The second deals with his representation of other ferry services’ parking
13 and regulation.

14 **Q. WHAT IS YOUR FIRST CONCERN REGARDING MR. LEONARD’S**
15 **COMMENTS REGARDING THE DEEP POINT PARKING FACILITY?**

16 A. First, in a discussion that I assume is one reason for his conclusion (page 25, line
17 4-5) that “*it would seem reasonable that the Commission not regulate parking,*” on
18 page 21, lines 9-13, he states: “*The scheduling and operational complexity,*
19 *importance of operational execution and need for highly trained staff, capital*
20 *requirements and maintenance requirements, the revenue streams, safety risks for*
21 *people and assets, etc. of ferry operations are quite different than for parking*
22 *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 42 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 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.
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.

1

2

VII. OTHER CONSIDERATIONS

3

Q. DO YOU HAVE ANY OTHER COMMENTS YOU WOULD LIKE TO MAKE REGARDING THE TESTIMONIES AND STATEMENTS FROM THE OTHER PARTIES TO THIS PROCEEDING?

4

5

6

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.

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Q. DOES THIS COMPLETE YOUR REBUTTAL TESTIMONY?

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A. Yes.