

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. A-41, SUB 21

VILLAGE OF BALD HEAD ISLAND,)	
Complainant,)	
)	
v.)	REBUTTAL TESTIMONY OF
)	KEVIN W. O'DONNELL, CFA
)	ON BEHALF OF
BALD HEAD ISLAND TRANSPORTATION,)	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 Kevin W. O'Donnell, CFA

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 Kevin W. O'Donnell. I am President of Nova Energy Consultants, Inc.
3 My business address is 1350 SE Maynard Rd., Suite 101, Cary, North Carolina
4 27511.

5
6 Q. DID YOU PREVIOUSLY FILE DIRECT TESTIMONY IN THIS
7 PROCEEDING?

8 A. Yes.

9
10 Q. PLEASE BRIEFLY SUMMARIZE YOUR REBUTTAL TESTIMONY.

11 A. My testimony to responds to several points raised in the testimony submitted by
12 Shirley A. Mayfield on behalf of Bald Head Island Transportation, Inc. ("BHIT")
13 and Bald Head Island Limited, LLC ("Limited") (collectively, "Respondents") in
14 this proceeding.

15 First, I note generally that Ms. Mayfield does not dispute the basic financial
16 analysis set forth in my Direct Testimony showing that [BEGIN

1 **CONFIDENTIAL]** [REDACTED]

2 [REDACTED]

3 [REDACTED] **[END CONFIDENTIAL]** Ms. Mayfield also does not

4 dispute the logical inference set out in my Direct Testimony – specifically, that

5 Limited may have been avoiding filing a rate case for fear that it might result in

6 regulation of the entirety of its transportation operations.

7 Second, I respond to Ms. Mayfield’s claim that, should the Commission

8 grant the Village’s Complaint, the additional regulated assets would be valued for

9 rate making purposes based on market value – rather than book value.

10 Third, I respond to Ms. Mayfield’s reference to the 2010 rate case and its

11 significance to this proceeding.

12 Finally, based on new information provided by Respondents, I update my

13 prior testimony estimating the rate of return for the combined transportation

14 operations using the net book value from financial records provided in response to

15 our data requests. Under my revised calculations, the combined rate of return is an

16 extremely healthy **[BEGIN CONFIDENTIAL]** [REDACTED] **[END**

17 **CONFIDENTIAL]**

18

19 **Q. CAN YOU SUMMARIZE THE KEY POINTS FROM MS. MAYFIELD’S**

20 **TESTIMONY?**

21 A. Yes. Ms. Mayfield discusses the stipulation in the 2010 rate case, asserts that the

22 agreed-upon rate base did not include assets associated with the parking and barge

1 businesses, and argues that real estate assets associated with parking have never
 2 been included in BHIT’s rate base. Further, she raises concerns about the potential
 3 complexity of setting rates for a combined entity and suggests that the inclusion of
 4 additional assets in rate base might raise concerns for the consuming public.
 5 Finally, she discusses issues relating to valuation of assets and suggests that the
 6 parking and barge assets should be included in rate base at their “fair market value,”
 7 based on third party valuations conducted in connection with the potential sale of
 8 those assets.

9
 10 **Q. DOES MS. MAYFIELD DISPUTE THE FINANCIAL ANALYSIS SET**
 11 **FORTH IN YOUR DIRECT TESTIMONY?**

12 **A. No, she does not. Ms. Mayfield does not contest [BEGIN CONFIDENTIAL]**
 13 [REDACTED]
 14 [REDACTED]
 15 [REDACTED]
 16 [REDACTED]
 17 [REDACTED]
 18 [REDACTED]¹ **[END**
 19 **CONFIDENTIAL]**

1 [REDACTED]
 [REDACTED]
 [REDACTED]

1 Additionally, I note that Ms. Mayfield also does not dispute the logical
 2 inference I discussed in my Direct Testimony – specifically, that Limited may have
 3 been avoiding filing a rate case seeking to increase revenues for its ferry business
 4 for fear that the proceeding might result in regulation of the entirety of its
 5 transportation operations. In fact her extended discussion of the valuation issues
 6 surrounding the SharpVue transaction tends to confirm my point.

7
 8 **Q. WHAT IS YOUR RESPONSE TO MS. MAYFIELD’S CONTENTION**
 9 **THAT ASSETS SHOULD BE PLACED IN RATE BASE BASED ON “FAIR**
 10 **MARKET VALUE”?**

11 A. When a utility files a rate case, it must comply with the filing requirements of
 12 Commission Rule R-17 which, in part, requires the filing of details surrounding the
 13 original cost of an assets.² Specifically, Commission Rule R1-17 states as follows
 14 as a filing requirement for original cost:

15 A statement or exhibit showing the original cost of all property of
 16 the applicant used or useful in the public service to which such
 17 proposed increased rates relate. If the original cost of any such
 18 property cannot be accurately determined, such facts should be
 19 stated and the best estimate of the original cost given. In case such
 20 property consists of plants or facilities which have been devoted to
 21 the public use by some other person, municipality, or utility, and
 22 subsequently purchased by the applicant, the purchase price of such
 23 plants or facilities must be shown, and also the original cost and
 24 accrued depreciation at the time of purchase must be shown, if
 25 known. (underline added)

² I am aware of the General Assembly’s enactment of G.S. § 62-133.1A, which provides a mechanism by which government-owned water and wastewater systems can be acquired and the assets placed into rate base at “fair value.” However, this statute is the exception, not the rule, and is intended to address a specific public policy concern involving the acquisition by a private entity of an existing publicly owned water or wastewater system.

1 There is a strong financial reason for the above-stated Commission rule. It is
2 intended to prevent consumers from double paying for the same utility asset.
3 Placing assets in rate base at market value would, essentially, turn the keys to
4 regulation of utility rates to arbitrage specialists that would buy and sell assets on
5 an endless basis and force consumers to pay higher and higher rates for assets for
6 which they have already paid.

7

8 **Q. CAN YOU PROVIDE AN EXAMPLE THAT ILLUSTRATES THIS**
9 **CONCERN?**

10 A. Yes. Suppose Duke owned a generating plant that was constructed for \$100 million
11 30 years ago. Today, however, the plant is fully depreciated but Duke puts the plant
12 on the market and it is sold to a merchant plant operator, which operates the plant
13 for a year and then sells it back to Duke for \$50 million. Under Ms. Mayfield's
14 contention, Duke would then be allowed to put the plant in rate base for \$50 million,
15 even though consumers have already paid for the plant once. In this example,
16 consumers would pay for the plant twice, thereby driving their rates upward and
17 effectively allowing the utility to arbitrage the utility ratemaking process to obtain
18 excessive profits. To avoid situations like this, the Commission has typically only
19 allowed the original cost of the plant investment less depreciation or the net book
20 value for purchases of regulated or non-regulated assets.

21 Ms. Mayfield's proposal in this case would be, indeed, a highly dangerous
22 precedent in that it will have lasting implications for many years to come for a

1 variety of different utilities.

2

3 **Q. MS. MAYFIELD STATES THAT THE LAND USED FOR PARKING HAS**
4 **BECOME INCREASINGLY VALUABLE OVER TIME AND SHOULD,**
5 **THEREFORE, BE INCLUDED IN RATE BASE AT MARKET VALUE AS**
6 **OPPOSED TO BOOK VALUE. DO YOU AGREE WITH HER**
7 **CONTENTION?**

8 A. No. First off, it is important to acknowledge that the property at issue has been used
9 since inception in support of the utility operation and owned by an affiliate of the
10 utility. This is not analogous to the acquisition of non-utility property from an
11 unrelated seller. Here the property in question has always been used and useful in
12 support of the regulated operations. Moreover, the valuation of the parking
13 operation referred to by Ms. Mayfield was based on the cash flow generated from
14 the parking operation and assumptions concerning the future recovery of the cash
15 flow – it was not a pure valuation of the land itself. For example, Mercator
16 International, a financial valuation firm, valued the parking asset at [BEGIN
17 CONFIDENTIAL] [REDACTED]
18 [REDACTED]
19 [REDACTED]³ [END CONFIDENTIAL] Hence, for
20 all these reasons, the regulatory basis for Ms. Mayfield’s claim for the inclusion of

³ [REDACTED]
[REDACTED]

1 the parking assets at market value is fundamentally flawed.

2

3 **Q. HAVE THE PARKING AND BARGE ASSETS OF LIMITED BEEN PAID**
4 **FOR IN THE PAST BY CONSUMERS?**

5 A. Yes, they have. While the parking and barge operations have not been regulated to
6 date, the fees set by the entities have allowed Limited to already receive the value
7 of those assets many times over via extremely healthy returns on those assets. It is
8 little wonder, therefore, that the market value of the parking and barge operations
9 is so much greater than that of net book value.

10

11 **Q. IS YOUR CONCERN IN THE EXAMPLE ABOVE ABOUT RATEPAYERS**
12 **PAYING TWICE FOR THE SAME ASSET RELEVANT HERE?**

13 A. Yes, particularly for parking. The same people who are buying ferry tickets (i.e.,
14 ratepayers) are paying for parking. Despite the fact that the parking assets have
15 not formally deemed to be a component of the regulated operation, as a practical
16 matter utility ratepayers have been paying for this asset.

17

18 **Q. WOULD IT BE YOUR RECOMMENDATION TO THE VILLAGE TO**
19 **OPPOSE MS. MAYFIELD'S RECOMMENDATION TO USE THE**
20 **MARKET VALUE OF ASSETS IN THE RATE BASE IF THE BARGE AND**
21 **PARKING WERE ULTIMATELY REGULATED?**

22 A. Absolutely. The evidence in this proceeding supports the conclusion that the barge

1 and parking operations are integrally linked to the operation of the ferry and that all
2 three business units collectively represent a transportation monopoly. Under these
3 circumstances, Limited should not be permitted to “game” the regulatory process
4 by seeking to recover “fair market value” for what are, effectively, captive
5 ratepayers that have been utilizing the assets as part of the regulated ferry
6 operations. If the Commission permits this sort of regulatory gamesmanship here,
7 it will invite every other utility to organize its property holdings in a similar fashion
8 in hopes that they too will be able to arbitrage recovery of an inflated valuation of
9 utility property from ratepayers.

10

11 **Q. MS. MAYFIELD DISCUSSES THE 2010 RATE CASE AND MAKES THE**
12 **POINT THAT THE PARKING ASSETS WERE NOT INCLUDED IN RATE**
13 **BASE. DO YOU BELIEVE HER STATEMENT ON THIS MATTER BEARS**
14 **ANY SIGNIFICANCE IN THE CURRENT CASE?**

15 A. No. The Commission’s order in the 2010 rate case did not address the issue of
16 whether or not the barge and parking operations should be regulated. As a result, I
17 fail to see how Ms. Mayfield’s statement in this regard has any meaning at all to
18 this case.

19 Moreover, her statement fails to recognize the reality of what the
20 Commission approved in its 2010 rate case order. I have examined the Public
21 Staff’s workpapers from the 2010 rate case, and it is clear from those workpapers
22 that the Public Staff developed the revenue imputation from the parking facilities

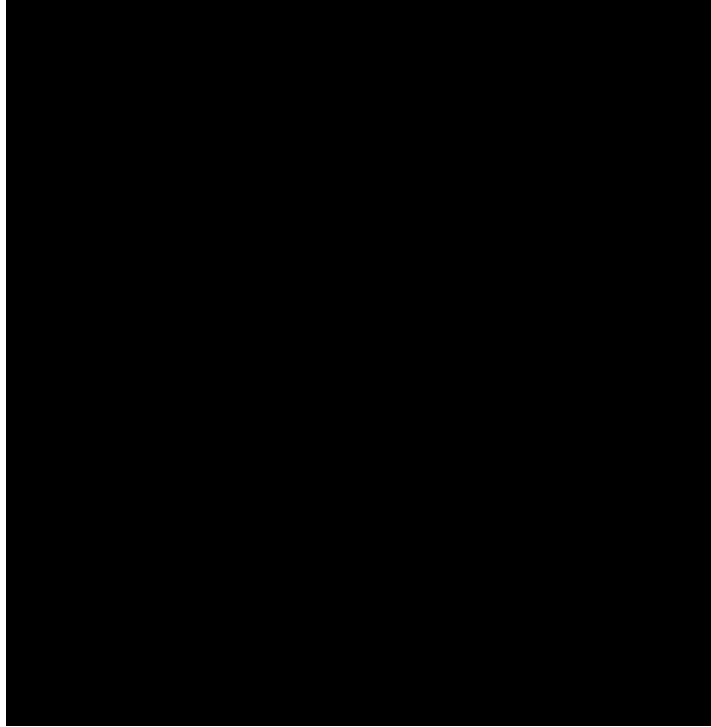
1 based on an evaluation of the parking operation *as if it were a regulated asset*.⁴ In
2 other words, although BHIT’s rate base was not changed to include the parking
3 assets due to the stipulation of the parties – the stipulation effectively created the
4 same (or an approximate) result by analyzing the parking business as if it were
5 regulated. This adjustment to the regulated revenue requirement has been in place
6 for the last 12 years and is a practical recognition that parking revenues should be
7 attributed to the overall regulated ferry operation. My financial analysis set forth
8 herein would indicate that the 2010 revenue imputation substantially undervalues
9 the revenues that would be imputed if calculated on the same basis using current
10 financial data.

11 [BEGIN CONFIDENTIAL]

12 Q. [REDACTED]
13 [REDACTED]
14 A. [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]

4 [REDACTED]
[REDACTED]

Table 1: Updated and Revised Consolidated Operations Rate of Return



1	[Redacted]
2	[Redacted]
3	[Redacted]
4	[Redacted]
5	[Redacted]
6	[Redacted]
7	[Redacted]
8	[Redacted]
9	[Redacted]

1 Q. [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 A. [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8
9 Q. [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 A. [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20

1 Q. [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 A. [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13
14 Q. [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 A. [REDACTED]
18 [REDACTED]
19
20 Q. [REDACTED]
21 [REDACTED]

1 A. [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8
9 Q. [REDACTED]
10 [REDACTED]
11 A. [REDACTED]
12
13 Q. [REDACTED]
14 [REDACTED]
15 [REDACTED].
16 A. [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]

1

[REDACTED]

2

[REDACTED]

3

[REDACTED]

4

[REDACTED]

5

[END CONFIDENTIAL]

6

7

Q. DOES THIS COMPLETE YOUR REBUTTAL TESTIMONY?

8

A. Yes.

EXHIBIT KWO-3 TGDWVCN"
Intentionally Omitted
CONFIDENTIAL MATERIALS

EXHIBIT KWO-2 TGDWVCN"
Intentionally Omitted
CONFIDENTIAL MATERIALS