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August 26, 2022

Ms. A. Shonta Dunston
Chief Clerk
North Carolina Utilities Commission
430 N. Salisbury Street
Room 5063
Raleigh, NC 27603

Re: In the Matter of
Village of Bald Head Island v. Bald Head Island Transportation, Inc.
and Bald Head Island Limited, LLC
NCUC Docket No. A-41, Sub 21
Reply in Support of Motion to Compel Response of Complainant to Second Data Requests

Dear Ms. Dunston:

On behalf of Bald Head Island Transportation, Inc. and Bald Head Island Limited, LLC, I herewith submit the attached Reply in Support of Motion to Compel Response of Complainant to Second Data Requests.

Thank you in advance for your assistance with this filing. If you should have any questions concerning this submittal, please contact me.

Sincerely,

A handwritten signature in black ink that reads 'Brad M. Risinger'.

Brad M. Risinger

pbb

A Pennsylvania Limited Liability Partnership

California Colorado Delaware District of Columbia Florida Georgia Illinois Minnesota
Nevada New Jersey New York North Carolina Pennsylvania South Carolina Texas Washington

Ms. A. Shonta Dunston
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Enclosure

cc: All Parties and Counsel of Record
Zeke Creech – NC Public Staff
Lucy Edmondson – NC Public Staff
Jessica Heironimus – NC Public Staff

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,)	REPLY IN SUPPORT OF MOTION TO COMPEL RESPONSE OF COMPLAINANT TO SECOND DATA REQUESTS
v.)	
BALD HEAD ISLAND TRANSPORTATION, INC. and BALD HEAD ISLAND LIMITED, LLC,)	
Respondents.)	
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In its Complaint, the Village of Bald Head Island (“Village” or “Complainant”) styles itself as a “potential purchaser” of the assets it seeks to have the North Carolina Utilities Commission (“Commission”) regulate. Cmpl., ¶ 43. Then, in a filing, the Village asserted that it “possesses contractual rights with respect” to those assets, and others, as a result of a Right of First Refusal Agreement (“ROFR”). *Complainant’s Motion to Join Necessary Party*, at 2, fn. 1. The Second Data Requests for which responses are sought reasonably asks factual questions that underlie this claim.

The Village asserts that by introducing its alleged “contractual rights” in the assets at issue in the docket it “did not raise the right of first refusal as an issue in this case.” Response, at 3 (emphasis in original). It suggests that it may invoke issues about the assets in question in the docket but shield the facts underlying them from discovery. The Response proposes a “pick and choose” metric to discovery under Rule 26 that is far afield from its well-settled purposes.

The Village proposes a discovery scope that is narrowly tailored to fit snugly around its theory of the case. But it would leave little room for the defenses and case theories of the Respondents. The Respondents seek to develop information regarding the assets at issue *in the docket* and the facts underlying the Village's stated interests in them. Moreover, while the Village may certainly assert there is no connection between 1) its efforts to seek new regulation of Bald Head Island Limited's parking and barge operations and 2) their proposed sale to a party other than the Village, there is a more than reasonable basis to enforce the very limited, factual discovery sought here. If a purpose of this docket is to dissuade a potential asset purchaser, as Respondents are surely entitled to at least investigate through discovery, then the viability of the Village's asserted "contractual rights" is a relevant part of that story.

Complainant's desire to curtail discovery to that which fits with its case design and theory may be understandable, but it is unsupported. *See e.g., Window World of Baton Rouge, LLC v. Window World, Inc.*, 2018 WL 4649493 (N.C. Super. Sept. 26, 2018), *reconsideration denied*, 2019 WL 396844 (N.C. Super. Jan. 25, 2019) ("As a general matter, a party cannot withhold requested information 'on grounds that it does not agree with [the requesting party's] theory of the case.'" (quoting *AtI Indus. Automation, Inc. v. Applied Robotics, Inc.*, 2014 WL 3729408, at *4 (M.D.N.C. July 25, 2014)); *Remsberg v. Docupak*, No. 3:12-CV-41, 2012 WL 13028302, at *2 (N.D.W.Va. Sept. 25, 2012) ("The Defendant is not limited in its discovery to only the Plaintiff's theories of the case; thus, it is entitled to discover any evidence which might have a relevant bearing to its defense."); *Sentis Grp., Inc. v. Shell Oil Co.*, 763 F.3d 919, 926 (8th Cir. 2014) ("It matters not for the purpose of discovery which side's theory of the case might ultimately be proven correct.

What matters is that each side is entitled to pursue intelligible theories of the case and Plaintiffs cannot, by their sole insistence, declare evidence undiscoverable and irrelevant merely because it does not fit into their own theory of the case.”); Wright, Miller, & Kane, 8B *Federal Practice & Procedure*, § 2168 (3d ed. 2001) (“A party may base interrogatories on its theory of the case.”).

Data Requests 2-1, 2-2 and 2-3 seek admission of facts that bear on the Village’s asserted “contractual rights.” They do not seek any theories of Complainant’s case or mental impressions of its counsel. They do not seek a window into opposing counsel’s views about those “contractual rights” or how they might be presented or argued in this or any other proceeding. They simply seek admissions about whether events that relate to those alleged “contractual rights” occurred, and whether those “rights” – whatever the Village may later argue they are or are not – were subject to an expiration date at their inception.

Respondents respectfully request that the Commission grant their Motion to Compel.

Respectfully submitted, this 26th day of August, 2022.

FOX ROTHSCHILD LLP



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*Attorneys for Bald Head Island
Transportation, Inc. and Bald Head Island
Limited, LLC*

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served the attached REPLY IN SUPPORT OF MOTION TO COMPEL RESPONSE OF COMPLAINANT TO SECOND DATA REQUESTS in the above-captioned case, which was filed on this day by electronic mail to the parties of record, counsel of record or by depositing a copy in the United States Postal Service in a postage-prepaid envelope, addressed as follows:

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<p>David Ferrell Nexsen Pruet 4141 Parkdale Avenue Suite 200 Raleigh, NC 27612 dferrell@nexsenpruet.com</p> <p><i>Attorneys for SharpVue Capital, LLC</i></p>	

This the 26th day of August, 2022.

A handwritten signature in blue ink that reads "Brad Risinger". The signature is written in a cursive style.

Bradley M. Risinger