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BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In re Application of
MEI NORTHWEST LLC
For a Certificate of Public Convenience and
Necessity to Operate Vessels in Furnishing
Passenger Ferry Service

Docket TS-160479

**CROSS-ANSWERING TESTIMONY OF
JACK HARMON
PRESIDENT, ARROW LAUNCH SERVICE, INC.**

December 5, 2016

1 **I. INTRODUCTION**

2 **Q: Please state your name, position at Arrow Launch Service, Inc., and business**
3 **address.**

4 A: My name is Jack Harmon and I am and have been an owner of Arrow Launch Service,
5 Inc. (“Arrow”) for the past 27 years. My business address is 830 Boathaven Drive Port
6 Angeles, Washington 98362.

7 **II. PURPOSE OF TESTIMONY**

8 **Q: What is the purpose of your testimony?**

9 A. The purpose of my testimony is to respond, on behalf of Arrow Launch Service, Inc, to
10 the testimony of Scott Sevall, Regulatory Analyst with the WUTC, which was filed on
11 November 1, 2016. Specifically, I am responding to points raised within his testimony
12 regarding the fitness of MEI Northwest LLC (“MEI”) to receive a certificate of public
13 convenience and necessity, the WUTC’s investigation into Arrow’s service, and his
14 testimony regarding the overlapping application of MEI.

15 **III. FINANCIAL FITNESS OF MEI**

16 **Q: I take it then you have read the Testimony of Scott Sevall filed on November 1,**
17 **2016?**

18 A. Yes, I have read his testimony repeatedly now.

19 **Q: Mr. Sevall testified he concluded MEI had the financial resources to operate the**
20 **service proposed by MEI in its application for a certificate of public convenience**
21 **and necessity. Do you take issue with any of the steps he describes in reaching his**
22 **conclusion?**

23 A. Based on the testimony that was filed, I do. It is indeed difficult to determine from his
24 testimony what specific actions he took to investigate and verify the validity of the
25 information and representations provided by MEI in its application. However, if he did
no more investigation than what is described in his testimony, I find it unfortunate that

1 such a minimal inquiry was performed of MEI's fitness, which would then ultimately
2 serve as the basis for opinions offered by the witness.

3 **Q: What do you believe Mr. Sevall might have investigated that it appears he did not?**

4 A. On the financial front, to start, it appears Mr. Sevall took MEI's cash on-hand of
5 \$300,000 at face value without doing anything to confirm that the cash deposit exists.
6 Rather than accept that representation as correct, in my view the better approach would
7 be to confirm the balance through documentation by the Applicant from the financial
8 institution at which it is deposited.

9 **Q: Do you take issue with any other aspects of Mr. Sevall's investigation of MEI's**
10 **financial fitness?**

11 A. Yes. Meaning no disrespect to staff, I disagree with his acceptance of MEI's projected
12 income and expenses in their pro forma. As I addressed in my testimony filed on
13 November 1, 2016, there are several expense items which appear to me to be materially
14 understated and which merit further investigation or due diligence and analysis by the
15 witness. I also question the work done to investigate the projected revenue. As I
16 indicated in my testimony of November 1, 2016, there has been a substantial year-over-
17 year decrease in ships entering the Puget Sound over the past several years, which we
18 believe is likely to be accelerated in the years ahead. Additionally, none of that seems
19 to have been evaluated to any significant degree given the potential sizeable losses that
20 might be experienced by all providers in the aftermath of an overlapping certificate
21 grant.

22 **IV. ADEQUACY OF EXISTING SERVICE**

23 **Q: Mr. Sevall also testified regarding whether Arrow had ever failed or refused to**
24 **provide reasonable and adequate service. Specifically, he testified he did not find**
25 **any record at the UTC of Arrow ever failing or refusing to provide service. Can**
you comment on his testimony?

1 A. Yes. Again, I am also not aware of any instance in which Arrow has ever failed or
2 refused to provide service. Of more importance is the fact that Arrow has never
3 received any notification from the WUTC, or any customer, noting the existence of a
4 complaint or any need for modification or improvement to Arrow's service levels.

5 **Q: Is it significant to you that the WUTC never gave notice to Arrow of any**
6 **complaint or particular need to modify service levels?**

7 A. It is. As I understand it, so long as Arrow provides reasonable and adequate service
8 and does not fail or refuse to do so, overlapping certificates of public convenience and
9 necessity cannot be issued. Further, an overlapping certificate cannot be issued for new
10 service in the same territory without notice and a hearing afforded Arrow along with an
11 opportunity to provide that service. It is also significant to me because Arrow
12 undertakes constant internal and external evaluation of its service in order to meet
13 customer needs and makes enhancements and improvements to Arrow's fleet and
14 practices whenever practicable, including by purchasing additional vessels and
15 equipment as we previously testified.

16 **Q: Though he concluded there was no evidence of Arrow failing to provide**
17 **reasonable or adequate service and no proof that Arrow's customers felt**
18 **constrained in offering service evaluations, Mr. Sevall concluded there was some**
19 **factual support for MEI's allegation that a single, unidentified customer was**
20 **"dissatisfied." Can you comment on that statement?**

21 A. I find Mr. Sevall's statement deeply concerning for a number of reasons. For one,
22 Arrow goes to great lengths to provide excellent customer service to all of its
23 customers, encourages feedback, and if there had been a negative experience meriting
24 any form of "dissatisfaction" we would certainly like to know what we could do to
25 improve. Additionally, if any customer has a complaint which has any bearing on the
reasonableness or adequacy of service provided by Arrow, I believe it is detrimental to

1 Arrow's basic due process rights for the UTC's staff to fail to address what that
2 complaint was, who made it, whether it related to regulated or nonregulated service,
3 pricing, invoicing practices, etc, and instead, in a conclusory manner, offer that it
4 "provides some factual support" for MEI's allegation which is certainly a loaded
5 reference by implication. If Arrow is to be provided an opportunity to respond to the
6 anonymous allegation, to which I believe it has a right, more specific information might
7 have been provided by Mr. Sevall.

8 V. OVERLAPPING CERTIFICATES

9 **Q: Mr. Sevall also testified as to what he believed would be the impact on launch**
10 **service in the Puget Sound of granting an overlapping application. Do you any**
11 **take issue with his conclusions?**

12 A. I do. Mr. Sevall states "the introduction of limited competition would, by definition,
13 introduce customer choice." While Mr. Sevall did not exactly say so, I strongly
14 disagree that there has been any lack of innovation or efforts to improve regulated
15 launch service. As I stated in my testimony, and as corroborated by Arrow's customer
16 witness testimony, Arrow constantly strives to ensure its customers are satisfied by
17 periodically reaching out and asking for feedback and by continually evaluating
18 demand for service and working to anticipate that demand by adding to its fleet before
19 there is a need or service vacuum, keeping its fleet well maintained and in the water.
20 Arrow endeavors to offer and maintain excellent customer service, not only because it
21 is our mission to do so, but also because Arrow is keenly aware of what is required
22 under Washington law to maintain its certificate of public convenience and necessity.
23 Arrow's investments in infrastructure, equipment, personnel training and acquisition of
24 its vessels and equipment have been made, in part, in reliance upon its understanding of
25 the explicit condition in Washington law that if Arrow does not fail to provide
reasonable and adequate service, that investment would be preserved.

1 **Q. Did you happen to review Mr. Sevall’s Exhibit No. ___ (SS-2), and the cases he**
2 **cited in support of the possibility that overlapping certificates could be issued?**

3 **A:** Yes I did. I both read the exhibit and read completely the approximate 13 or so
4 proposed (Initial) and Final Orders referenced there.

5 **Q. Can you tell us, generally, your response to that review and analysis of those**
6 **orders referenced in Exhibit No. ___ (SS-2)?**

7 **A.** Yes. That was a classic “trip down memory lane” to the extent that the orders and
8 exhibits were all from approximately four decades ago and followed the original
9 establishment of Commission jurisdiction over launch service activity. A perfect
10 example is in 1977, as reflected in the Island Mariner case that is attached in Exhibit
11 No. ___(SS-3) to Mr. Sevall’s testimony. Many of the cases reflected the flurry of
12 activity to “grandfather in” operating rights following that decision and to memorialize
13 vested operations under law that pre-dated those decisions in recognizing existing
14 launch service operations as, for instance, Order S.B.C. No. 379 of Lavina Longstaff,
15 Application B-266 (Sept. 1979). And to be frank, after a thorough review of the facts
16 in each order referenced in Exhibit No. ___(SS-2), I do not find any supporting
17 evidence for Mr. Sevall’s conclusion that a basis exists for issuance of an overlapping
18 certificate.

19 **Q. Was that time almost four decades ago for issuing launch certificates different in**
20 **your mind from the present?**

21 **A:** Absolutely.

22 **Q. In what ways?**

23 **A:** Well first, now there obviously is not a group of existing providers scrambling to be
24 issued regulated certificates in a “land grab,” as is the case when an industry first comes
25 under regulation. Second, in none of the cases that I have reviewed in Exhibit No. ___
(SS-2) was there an established, existing certificate holder who had built up

1 infrastructure and resources in a historic regulated launch service under its certificate
2 who was an “existing provider” and who could meet the test under RCW 81.84.020 to
3 show that it had not “failed or refused” to provide satisfactory service to the
4 Commission. At most, there was a newly-issued certificated incumbent objecting to a
5 subsequent application where there was no built-up, historic regulated launch service
6 with sufficient equipment and resources to cover the newly-applied for territory which
7 is decidedly different than in 2016.

8 **Q. Do you have any further distinctions to draw that would contrast the time and**
9 **context of the cases noted in Exhibits No. ___ (SS-2) and ___ (SS-3)?**

10 A: Yes. There is a huge contrast in shipping activity between the late 1970’s and 40 or so
11 years later, today. As I noted in my Testimony in Exhibit No. ____ (JLH-1T), pages 4,
12 3-14, the volume of marine activity has dropped dramatically over the last 25-plus
13 years. The late 1980’s was the height of the boom in Alaska pipeline production and
14 oil shipments via tanker from Valdez to the refineries in Puget Sound. Since then, after
15 the Exxon Valdez incident, and the growth of oil trains and Bakken Shield oil drilling
16 activity in the Midwest particularly, the number of oil shipments into Puget Sound has
17 plunged. Mergers in the tanker and ship service industries have also drastically cut
18 both the volume of shipments and the number of prospective customers, all a reflection
19 of this plunge in demand.

20 **Q. Did you point to any sources for those diminishing trends in your direct**
21 **testimony?**

22 A. Yes. In my responsive direct testimony both in my capacity as a launch company
23 owner and operator since 1989 and my role as a member of the board of the Puget
24 Sound Marine Exchange, I relayed first-hand knowledge and backup statistics for that
25 detrimental decline in shipping volume which has adversely impacted our launch
business over the years, and particularly, in the last five or so years. In fact, Alyeska

1 Pipeline Co.'s own website documents this dramatic decline in production and
2 throughput which, in turn, causes the substantial decrease in oil shipments to Puget
3 Sound Refineries. *See*, alyeskapipeline.com.

4 **Q. Did you then draw further parallels between launch activities at the chronological
5 backdrop of Exhibit No. ___ (SS-2) and Exhibit No. ___ (SS-3) and today?**

6 A. Yes. There could be far more room for error in authorizing overlapping certificates in
7 the late-1970's during the "grandfather" era compared to the present. Especially today
8 in the absence of any established inability of "refusal or failure" to provide adequate
9 service, the damage of overlap without any showing of need for new service, let alone,
10 documented failure/refusal to provide adequate service, is greatly magnified. As noted,
11 customer demand is down significantly for regulated launch service in the past few
12 years. Yet, customer requirements for increased insurance liability limits coupled with
13 demands for higher vessel quality and safety standards significantly increase launch
14 company costs while simultaneously customers are utilizing our services less and less.
15 For Arrow Launch this is a "cruel irony." Ignoring that trend and simply authorizing
16 competition because it "feels good," not only contradicts all the assumptions for
17 regulated service upon which we have built our operations over the last 27 years (which
18 has strictly controlled our allowed operating profits in that interval), but jeopardizes all
19 future growth and investment if that "new competition for competition's sake" metric is
20 what we can now expect.

21 **Q. Do you have any other thoughts about your analysis of Exhibits No. ___ (SS-2)
22 and ___ (SS-3)?**

23 A. Yes. I really find the exhibits and their rather casual conclusions exist more in a
24 theoretical vacuum. That state of detachment might be neutral as academic theory if it
25 were not for such a direct, consequential impact on Arrow, its ownership, employees
and our future. We simply have not failed or refused to provide anything but timely,

1 efficient, responsive and superior service and without any showing to the contrary, we
2 cannot fathom how duplicating, unnecessary, wasteful and potentially destructive
3 overlap could be authorized.

4 **Q: Finally, do you have any comments on the policy recommendations included by**
5 **Mr. Sevall at the end of his testimony?**

6 A: Yes. The issue here is not really policy-driven as I understand it, but factual and legal
7 for the Commission to make based on the record. In other words, there is not a pending
8 rulemaking or notice of inquiry where the Commission is attempting to potentially
9 reinterpret the commercial ferry statute. Obviously, the issue of whether overlapping
10 certificates should be issued in the regulated commercial ferry industry in this
11 proceeding, as I indicated, is a factual and legal one, not an abstract policy premise.

12 **Q: What did you think about staff's reference to common carriage in the trucking**
13 **industry operating "under competitive conditions while still requiring regulatory**
14 **oversight of rates and charges?"**

15 A: I thought that was rather an "apples to oranges" comparison to the extent that in 1980 at
16 the federal level and in 1994 at the state level, trucking regulation was eliminated for
17 "price, routes or service." Launch and commercial ferries are obviously vastly different
18 than trucks, and in Washington, commercial ferries, for a number of historical as well
19 as navigational reasons including potential conflict with the Washington State ferry
20 routes, do not operate in "competitive conditions." I also don't believe that Mr.
21 Sevall's testimony takes into account the Washington State Supreme Court's historic
22 interpretation of RCW 81.84 about which I have been informed by counsel. Everyone
23 typically has a preference for "more competition" in America, but in this regulated
24 industry, there are very important impacts to consider in evaluating 24/7/365-day
25 launch service which is far more comparable to energy service in that arena than it is to
motor carrier transportation.

1 **Q: Did you note that the staff nevertheless qualified its pronouncements on**
2 **overlapping certificates and increased competition with the caveat that it still**
3 **needs to review the evidentiary record?**

4 A: Yes. And that at least made me hopeful that staff was not now advocating for a change
5 in law here on its own.

6 **Q: Do you have any other thoughts regarding Mr. Sevall's testimony?**

7 A: Yes. I could not help but notice a disproportionate emphasis on review of our service,
8 including the highly unusual staff-initiated survey of existing customers and their
9 response and a far less developed focus and analysis of what the staff believes MEI
10 would be bringing to the marketplace, both operationally and financially, through its
11 case in chief testimony. I would also note that the staff omits acknowledging that not
12 one supporting shipper was included in applicant's case in chief which means there is
13 no independent evidence to support any need for service in the requested territory.

14 **Q: Does this conclude your cross-answering testimony for now?**

15 A: It does.
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2 CERTIFICATE OF SERVICE


3 I certify that on December 5, 2016, I caused to be served the original of the foregoing
4 document to the following address via FedEx to:

5 Steven V. King, Executive Director and Secretary
6 Washington Utilities and Transportation Commission
7 Attn: Records Center
8 PO Box 47250
9 1300 S. Evergreen Park Dr. SW
10 Olympia, WA 98504-7250

11 I further certify that I have also provided to the Washington Utilities and Transportation
12 Commission's Secretary an official electronic file containing the foregoing document via the
13 WUTC web portal; and served a copy via email to the following parties:

<p>12 For Washington Utilities and Transportation Commission Staff: 13 Julian Beattie 14 Office of the Attorney General 15 Utilities and Transportation Division 16 1400 S. Evergreen Park Drive SW 17 P.O. Box 40128 18 Olympia, WA 98504-0128 19 Phone: (360) 664-1225 20 Email: ibeattie@utc.wa.gov</p>	<p>For MEI Northwest, LLC: Mr. Dan Bentson Bullivant, Houser, Bailey, PC 1700 Seventh Ave, Suite 1810 Seattle, WA 98101 Email: dan.bentson@bullivant.com</p>
<p>17 For Pacific Cruises Northwest, LLC: 18 Captain Drew M. Schmidt 19 President 20 Pacific Cruises Northwest, Inc. 355 Harris Avenue, Suite 104 Bellingham, WA 98225 Phone: (360) 738-8099 Email: drew@whales.com</p>	<p>Administrative Law Judge Judge Marguerite E. Friedlander Washington Utilities and Transportation Commission Email: mfriedla@utc.wa.gov</p>

21
22 Signed at Seattle, Washington this 5th day of December 2016.

23 
24 Maggi Gruber
25 Legal Assistant
Williams Kastner & Gibbs PLLC
mgruber@williamskastner.com