

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

MEI NORTHWEST LLC'S MOTION TO  
ALLOW SHIPPER SUPPORT WITNESS  
MARC AIKIN TO APPEAR  
TELEPHONICALLY

**I. MOTION FOR TELEPHONIC WITNESS  
APPEARANCE**

1. Pursuant to WAC 480-07-375(1)(b) and (d), MEI Northwest, LLC ("MEI") moves the Commission for an order allowing Marc Aikin of Crowley Petroleum Services, Inc. ("Crowley") to appear telephonically during the evidentiary hearing currently scheduled for January 5 and 6, 2017.

**II. PROCEDURAL AND FACTUAL BACKGROUND**

2. On October 4, 2016, MEI submitted its direct prefiled testimony to the Commission and all parties. Arrow Launch Services, Inc. ("Arrow") submitted its response to MEI's testimony on November 2, 2016.
3. MEI testified in its direct testimony that a number of its customers told MEI that Arrow was underserving the region and that these customers were afraid to speak out for fear of reprisal. Arrow's reply testimony denied the existence of such customers and called MEI's testimony self-serving.

4. MEI filed its rebuttal to Arrow on December 5, 2016, and included a shipper support statement from Marc Aikin of Crowley in its rebuttal testimony. The shipper support statement directly rebutted Arrow's claims that MEI could not provide evidence of shipper need and support in the Puget Sound.

5. Because this evidence refutes Arrow's case, and because it directly rebuts Arrow's claim that it adequately serves the region, Arrow filed a motion to strike Exhibit No. \_\_\_ (RSE-8), Crowley's support statement, and any mention of the statement in MEI's rebuttal testimony.

6. Arrow primarily argues that this evidence should be stricken because Arrow will suffer prejudice if the shipper support statement and related testimony are admitted into evidence. Arrow argues in its Motion to Strike that it is being deprived of its due process right to respond to Crowley's support statement.

7. The purpose of this motion is to provide Arrow with an opportunity to cross-examine the Crowley representative who signed the shipper support statement, Mr. Aikin. If Arrow has the opportunity to cross-examine Mr. Aikin and challenge his testimony at the hearing, it cannot consistently claim that it is unfairly prejudiced by his appearance. Accordingly, the Commission should afford Arrow the opportunity to cross-examine Mr. Aikin by allowing him to appear telephonically.

### **III. ARGUMENT**

8. The presiding officer in a contested proceeding has the authority to issue an order allowing witnesses to appear telephonically. *See Benton Cty. v. BNSF Railway Co.*, Order 05 Allowing Witnesses to Appear by Telephone Conference Call, Docket TR-100572 (Dec. 2010) (contested petition to construct highway-rail grade crossing).

9. MEI requests that the Commission enter an order in this case allowing Mr. Aikin to appear telephonically so that he can be subject to cross-examination by Arrow, as well as questioned by Administrative Law Judge Freidlander.
10. Mr. Aikin's physical presence at the hearing should not be required. He is not a party to this case and is being called only as a witness to rebut inaccurate claims made by Arrow in its reply testimony. Mr. Aikin is subject to other professional obligations at the time of the hearing that prevent him from traveling to Olympia. His statement is brief and any cross-examination by Arrow should also be relatively brief. Requiring a non-party to travel to Olympia for a brief cross-examination is unnecessary and should not be required.
11. The Commission frequently grants motions for telephonic testimony—even over the objections of other parties. *See, e.g., Stevens v. Rosario Utils., LLC*, Fifth Supplemental Order, Docket No. UW-011320 (Aug. 2002) (granting motion for 4 complainant witnesses to appear telephonically over objection of respondent and intervenor). And the credibility of a witnesses can be assessed irrespective of whether he testifies in person or via telephone. *See id.* (motion for telephonic testimony granted despite argument that it is difficult to assess the credibility of a witness testifying by telephone).
12. Arrow alleges that it is unfair to permit Mr. Aikin's testimony but to deprive Arrow of the opportunity to respond. For this reason, MEI moves the Commission to allow Mr. Aikin to testify telephonically and thereby eliminate any potential unfair prejudice to Arrow.

#### IV. CONCLUSION

13. It is within the presiding officer's authority to allow witnesses to appear telephonically. MEI therefore requests that Mr. Aikin be allowed to testify telephonically at the hearing so

that he can be subject to cross-examination by Arrow.

DATED: DECEMBER 16, 2016

BULLIVANT HOUSER BAILEY PC

By   
\_\_\_\_\_

Daniel R. Bentson, WSBA #36825

Attorney for MEI Northwest, LLC

Docket TS-160479  
CERTIFICATE OF SERVICE

I hereby certify that on December 16, 2016, I caused to be served the original of the foregoing document to the following address via FedEx to:

Steven V. King, Executive Director and Secretary  
Washington Utilities and Transportation Commission  
Attn.: Records Center  
P.O. Box 47250  
1300 S. Evergreen Park Dr. SW  
Olympia, WA 98504-7250

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

***For Arrow Launch Service, Inc.:***

David W. Wiley  
Williams, Kastner & Gibbs, PLLC  
Two Union Square  
601 Union Street, Suite 4100  
Seattle, WA 98101-2380  
Phone: (206) 628-6600  
Email: [dwiley@williamskastner.com](mailto:dwiley@williamskastner.com)

***For Washington Utilities and Transportation Commission Staff:***

Julian Beattie  
Office of the Attorney General  
Utilities and Transportation Division  
1400 S. Evergreen Park Drive SW  
P.O. Box 40128  
Olympia, WA 98504-0128  
Phone: (360) 664-1225  
Email: [jbeattie@utc.wa.gov](mailto:jbeattie@utc.wa.gov)

***For Pacific Cruises Northwest, LLC:***

Captain Drew M. Schmidt  
President  
Pacific Cruises Northwest, Inc.  
355 Harris Avenue, Suite 104  
Bellingham, WA 98225  
Phone: (360) 738-8099  
Email: [drew@whales.com](mailto:drew@whales.com)

***Administrative Law Judge:***

Judge Marguerite E. Friedlander  
Washington Utilities and Transportation Commission  
Email: [mfriedla@utc.wa.gov](mailto:mfriedla@utc.wa.gov)

Signed at Seattle, Washington this 16<sup>th</sup> day of December, 2016.



---

Freida Mason, Legal Assistant  
Bullivant Houser Bailey PC  
Email: [Freida.Mason@bullivant.com](mailto:Freida.Mason@bullivant.com)

4829-5327-1102.1