

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

**SURREBUTTAL TESTIMONY OF
JACK HARMON
PRESIDENT, ARROW LAUNCH SERVICE, INC.
FILED IN ACCORDANCE WITH NOTICE OF REVISED
PROCEDURAL SCHEDULE AND NOTICE OF EVIDENTIARY
HEARING DATED DECEMBER 29, 2016**

January 26, 2017

1 **Q: Pursuant to the ruling of the administrative law judge on December 23, 2016, have**
2 **you now reviewed Mr. Esch’s rebuttal testimony (Exhibit No. ____ (RSE-7T))**
3 **regarding the submission of evidence about any alleged inability to adequately**
4 **serve your customers?**

5 A: Yes I have.

6 **Q: What are some of your observations about that testimony at Ex. No. ____ (RSE-**
7 **7T) pages 11 and 12?**

8 A: Well first, I note that the applicant’s repeated description and assertion of Exhibit No.
9 ____ (RSE-8) (“the Crowley Supporting Shipper Statement”) as “rebuttal” is not true.
10 The statement indicates it was in fact dated Monday, October 31, 2016. Our response
11 testimony was not filed or served until Tuesday afternoon, November 1, 2016. Thus,
12 there is no way this could be referred to as “rebuttal” since the statement was drafted
13 well before the filing of our response testimony, unless the applicant is somehow
14 clairvoyant.

15 **Q: Have you also confirmed this chronology in other fashion?**

16 A: Yes, through data request response timelines provided by MEI.

17 **Q: Mr. Esch, in his now ostensibly, mis-labeled “rebuttal” testimony, asserts that one**
18 **of your customers is not satisfied with Arrow’s service, correct?**

19 A: Yes, Mr. Esch alludes to the Crowley shipper support statement (Exhibit No. ____ (RSE-
20 8)) as constituting that dissatisfaction.

21 **Q: Do you agree that Ex. No. ____ (RSE-8), “directly refutes,” as Mr. Esch testifies**
22 **your assertion that Arrow’s service is fully satisfactory and not in any fashion**
23 **underserving the market?**

24 A: Absolutely not. To begin with, Arrow is never named in the statement. While Mr.
25 Esch uses Crowley’s description of its operations as operating on a 24 hour basis to
infer that Arrow is unavailable, he takes a huge leap in his conclusions where he says at

1 lines 15-17, p. 12 that “[d]espite Arrow’s contention that it holds itself out as a
2 reliable around-the-clock service provider, Arrow is currently unable to meet the
3 around-the-clock demands of one of the largest shipping companies in the Puget
4 Sound.” There is a huge omission of fact here.

5 **Q: What do you mean by that?**

6 A: Well, the first three sentences in the support statement that MEI and Esch rely on here
7 in their testimony quoted above do not refer to any present service circumstance or
8 deficiency. They only simply sketch out the parameters of service and what Crowley’s
9 requirements are and never suggest those needs are not being met until the next
10 sentence.

11 **Q: What is that next sentence?**

12 A: Immediately after the above sentences, it announces “[t]his need is not currently being
13 met.” However, there is no predicate whatsoever to that broad conclusion. How then is
14 this conclusion in a vacuum demonstrating that our company has not or is not capable
15 of meeting Crowley’s around-the-clock, 24/7/365 requirements which we have been
16 absolutely able to serve?

17 **Q: Have you in fact reviewed any of Crowley’s orders in the June, 2015 to May 31,
18 2016 interval to determine if Arrow has ever been unavailable to meet the round-
19 the-clock needs of Crowley?**

20 A: Yes. In preparing to file this response testimony my staff and I personally reviewed all
21 932 invoices (of which 52 were exclusively for late payment charges) issued by Arrow
22 to Crowley in that time period, as well as order logs, and other communications
23 between Arrow and Crowley. In that review, I found numerous instances of short-
24 notice requests at all times of the day and night, which were accommodated in a timely
25 (24/7/365) manner. In fact, while preparing this testimony, something occurred which
serves as a great example of the type of around-the-clock service Arrow provides. On

1 Sunday, January 22, 2017 at 2:00 a.m., I was working as the on-duty Dispatcher when I
2 received a call from a Puget Sound Pilot regarding his scheduled job on the Crowley
3 ATB Commitment. The Pilot told me he was scheduled to ride out with Arrow at 4:00
4 a.m. and wanted to be picked up at Pier 46. This meant Arrow's crew would need to be
5 on-board and ready to depart to Pier 46 at 3:15 a.m. The Pilot called back and
6 requested that instead he be picked up at 3:30 a.m. Following our mantra of "early is
7 on time, and on time is late," Arrow was at Pier 46 ready for him to board by 3:20 a.m.
8 The timing of the trip or Arrow's arrival was nothing unusual, as Arrow provides on-
9 time service at all times of the day. The reason I raise this particular instance is that we
10 had no record Crowley had never called to schedule the job in the first place. Crowley
11 later confirmed it simply forgot to notify us, turning what should have been scheduled
12 early morning service into "on demand" service. Much like last Sunday, Arrow has
13 frequently been asked by Crowley to be ready on short notice and Arrow has dutifully
14 fulfilled those requests.

15 **Q: Did that invoice review reveal any consistent pattern on Arrow's part?**

16 A: Yes, in that voluminous review, I found that our services were absolutely offered and
17 provided to Crowley consistently on a 24/7/365 basis and no service delays were ever
18 documented or otherwise identified by the billing invoice, order logs or any other
19 independent communication from or to Crowley.

20 **Q: Did you also identify any complaints by Crowley to Arrow in that review**
21 **regarding lack of availability or service?**

22 A: No, again, absolutely not.

23 **Q: Does this also pertain to alleged delays in transporting tanker crews or otherwise**
24 **causing Crowley or its customers to run behind schedule?**

25 A: Yes, I have never been contacted, informed by critique or complained to by Crowley
about any alleged delays caused to them or their customers by Arrow. Moreover, I

1 have never found where Arrow has been charged for demurrage/delay damages by
2 Crowley, much less where they have sought reimbursement from Arrow for delays or
3 such penalty claims, which would be the best corroboration of the existence of any
4 delays.

5 **Q: Mr. Esch, at Exhibit No. ___ (RSE-7T) p. 13, attempts to buttress his original**
6 **testimony about service availability alleged limitation while acknowledging the**
7 **fact your fleet in Anacortes and other areas is far larger than he originally**
8 **testified. What is your response to the vessel availability issue on which he**
9 **expressly doubles down in claiming it “doesn’t change his opinion?”**

10 A: I would doubt the Commission would ever be swayed by an *applicant’s* testimony on
11 the adequacy of existing service. We would presume any certificate applicant would
12 never gauge the market “overserved” or even “adequately served” in applying for
13 authority. Thus, Mr. Esch’s opinion surveying the market should be thoroughly
14 discounted accordingly as self-serving, to say the least.

15 **Q: The final section of Mr. Esch’s rebuttal testimony and the Crowley shipper**
16 **support statement (Ex. No. ___ (RSE-8)) deal with the authorization of an**
17 **additional launch provider and the applicant’s view about the impact of an**
18 **additional provider in the Puget Sound area. Do you have any responsive**
19 **thoughts as well on this topic?**

20 A: Yes, a number of reactions to this particular premise. First, the applicant’s testimony
21 appears to erroneously equate the number of providers with increased launch coverage.
22 This is not necessarily true. For instance, if an existing provider is negatively impacted
23 by the authorization of overlapping authority and has to reduce its operating fleet to
24 adjust for a material decrease in demand for its services, then the number of available
25 units could remain static while the number of launch certificate holders increases under
this scenario.

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Q: But what about Mr. Esch’s reference to “untapped potential in the market?”

A: I found this to be one of the flimsiest declaratory statements in his testimony. This appears to be a classic “build it and they will come” justification for granting an application on unspecified future need. In other words, this apparently is also an admission that there is an absence of need shown here but that we should trust him that the market can absorb another provider based on future need. Untapped potential is thus code for “failure to prove need” in my view. And surely, if there were an unmet need for service on the scale of what Mr. Esch estimates, any failure to meet that need would have resulted in a complaint to the Commission.

Q: Does Mr. Esch tie this broad conclusion to any statement in Ex. No. ___ (RSE-8)?

A: Yes, at lines 22-23 of p. 15 of Ex. No. ___(RSE-7T), Mr. Esch claims that this statement about being “less able” to provide reliable timely, cost-effective service” “illustrates that there is a currently unmet need for services ...”

Q: What is your response to this conclusion?

A: First of all, let’s be clear. There is no specific illustrative example in the testimony filed by the applicant or for that matter the “rebuttal witness” here of any inability by Arrow to provide “reliable, timely and cost-effective service.” In other words, there is no proof that we have ever failed in this regard. Instead, there is considerable testimony not just from me, our three customer witnesses but also from the staff that there is no evidence of service deficiency, let alone complaint from Crowley (or any other customer) about our service. While Mr. Esch attempts to divert attention from this reality by repeatedly noting alleged conversations with unnamed prospective customers to the contrary, he did not ever link that with any concrete, documented complaint or failure.

1 **Q: Does Mr. Esch refer to any other source for his conclusion that the market would**
2 **support another entrant?**

3 A: Yes, the informal telephonic survey staff witness Mr. Sevall alluded to in his testimony.

4 **Q: Where is this reference in Mr. Esch's testimony?**

5 A: At lines 24-26, p. 15 and lines 1-4 of p. 16 of (Ex. No. ___ (RSE-7T).

6 **Q: Do you agree with Mr. Esch's characterization of the results of that informal staff**
7 **survey in his rebuttal testimony?**

8 A: Obviously not. Mr. Esch needs to reread that testimony more closely in my view.
9 Rather than 66% of the six polled customers "supporting an additional service
10 provider," what the staff telephone survey actually found instead was that five out of
11 six (83%) had no issues with Arrow. While three of those five might have been
12 receptive to more competition (which customers in all industries are typically
13 supportive of in concept), only one of those customers (which the record will identify
14 as Crowley) had anything but favorable comments. In fact, that survey also
15 corroborated that there was "no Commission record of failed or refused service by
16 Arrow Launch." (Ex. No. ___ (SS-1T), p. 6, line 3).

17 **Q: On that basis, what are your conclusions about the staff survey and its bearing on**
18 **whether a new entrant ought to be authorized in this market?**

19 A: Again, there is nothing in that staff testimony directed to analysis of whether the market
20 should accommodate another provider, and the staff is careful not to allow any such
21 conclusion. There is also nothing in that informal survey demonstrating a service
22 failure or inadequacy whatsoever, even to the alleged "dissatisfaction" now attributed to
23 Crowley. Based on the survey and Mr. Sevall's initial testimony of a complete absence
24 at the Commission of records demonstrating service deficiencies or complaints, 100%
25 of the surveyed customers must have received the service they requested.

1 **Q: Getting back to the conclusion of the Crowley shipper testimony and entry in the**
2 **regulated launch marketplace, which we just alluded to in the shortcomings you**
3 **identify in Mr. Esch’s rebuttal testimony, what are your thoughts about the last**
4 **two sentences in Ex. No. ____ (RSE-8), relative to the market and pricing impacts?**

5 A: First of all, when Mr. Aikin says that lack of authorization of an overlapping provider
6 “would ultimately impact[s] the retail market” while very flattering to the role and
7 position of launch service in the petroleum market, it is a stretch to suggest regulated
8 launch service in the Puget Sound has any nexus to retail gasoline pump prices
9 regionally, nationally or internationally. While we would never accept service delays
10 or deficiencies in the services we daily provide our customers, it is a bit of a leap for us
11 to suggest, for instance, that our excellent service record has contributed to stabilizing
12 or lowering retail gasoline prices in the marketplace.

13 **Q: What about Mr. Aikin’s closing consideration that allowing another company**
14 **would “lower the price charged to all customers in the area and would cause the**
15 **current service provider to improve its performance?”**

16 A: I have a number of responses. First, regarding the lowering of prices to all regulated
17 customers in the tariffed area, perhaps Mr. Aikin is unaware that the applicant, in its
18 filing, coincidentally proposes rates identical to those currently assessed by Arrow
19 Launch under its Commission-approved tariff. Crowley also may not be familiar with
20 the operating ratio methodology by which the Commission establishes rates for the
21 commercial ferry industry. As we noted in our original testimony from Weldon T.
22 Burton, under that methodology, authorization of overlapping service could well
23 depress operating revenues and increase incremental operating costs for Arrow Launch,
24 posing the risk of higher rates for service in other areas of Puget Sound in which
25 Crowley requires regulated launch service. Finally, staff in its testimony, projects a
negative income for MEI during its first twelve months of operation. This could well

1 result in MEI necessitating rate relief through tariff increases, nullifying any beneficial
2 impact Mr. Aikin envisions on pricing due to an overlapping certificate.

3 **Q: And finally, what about the concluding concept advanced by Mr. Aikin in the**
4 **form shipper support statement that you would naturally improve and enhance**
5 **your regulated service if the Commission were to authorize overlapping authority**
6 **by issuing MEI a certificate?**

7 A: Whether or not MEI is successful or not in its application will have no bearing on the
8 quality, caliber and focus on service Arrow has or will provide all its customers. We
9 can assure the Commission that whether or not this application were ever filed, we
10 have, are and always will be fixated on proactive, efficient and timely launch services
11 and as described above, have never failed or refused to provide that consistency of
12 service to each and every one of our customers.

13 **Q. Does this conclude your surrebuttal testimony?**

14 A. Yes, it does.

2 CERTIFICATE OF SERVICE

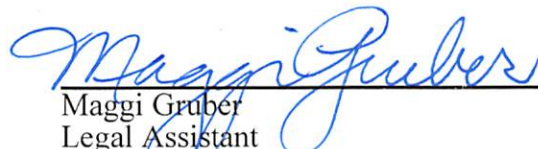
3 I certify that on January 26, 2017, I caused to be served the original and one copy of the
4 foregoing document to the following address via FedEx to:

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 <i>For Washington Utilities and Transportation Commission Staff:</i> 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: jbeattie@utc.wa.gov</p>	<p><i>For MEI Northwest, LLC:</i> Mr. Dan Bentson Bullivant, Houser, Bailey, PC 1700 Seventh Ave, Suite 1810 Seattle, WA 98101 Email: dan.bentson@bullivant.com</p>
<p>17 <i>For Pacific Cruises Northwest, LLC:</i> 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><i>Administrative Law Judge</i> Judge Marguerite E. Friedlander Washington Utilities and Transportation Commission Email: mfriedla@utc.wa.gov</p>

21
22 Signed at Seattle, Washington this 26th day of January, 2017.

23 
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25 Legal Assistant
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