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1 BEFORE THE WASHINGTON

2 UTILITIES AND TRANSPORTATION COMMISSION

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4 In re Application of )

)

5 MEI NORTHWEST LLC )

) Docket No. TS-160479

6 For a Certificate of Public )

Convenience and Necessity to )

7 Operate Vessels in Furnishing )

Passenger Ferry Service )

8 )

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10 EVIDENTIARY HEARING

11 Volume III, Pages 50 - 332

12 ADMINISTRATIVE LAW JUDGE MARGUERITE E. FRIEDLANDER

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14

9:30 a.m.

15

February 14, 2017

16

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1 OLYMPIA, WASHINGTON; FEBRUARY 14, 2017

2 9:30 A.M.

3

4 JUDGE FRIEDLANDER: Good morning. My

5 name is Judge Friedlander, I am presiding over this

6 matter. We are here before the Washington Utilities

7 and Transportation Commission on February 14th, 2017.

8 We are here for an evidentiary hearing in Docket

9 TS-160479, which is an application filed by MEI

10 Northwest, LLC, for a Certificate of Public

11 Convenience and Necessity to Operate Vessels in

12 Furnishing Passenger Ferry Service.

13 My plan today is to take appearances, address

14 any procedural issues, including admission of the

15 prefiled testimony and exhibits, and then swear in the

16 witnesses.

17 We will begin appearances today with MEI.

18 MR. BENTSON: Dan Bentson, Your Honor,

19 for MEI.

20 JUDGE FRIEDLANDER: Okay.

21 And could you spell your last name, include

22 your title, and who you brought with you.

23 MR. BENTSON: Yes. My last name is

24 spelled B-E-N-T-S-O-N. I am an attorney at Bullivant

25 Houser Bailey, and I brought Mr. Troy Esch, E-S-C-H,

0061

1 who is a principal of MEI Northwest.

2 JUDGE FRIEDLANDER: Okay. Thank you.

3 MR. BENTSON: My microphone is now on.

4 JUDGE FRIEDLANDER: Okay. Great. Thank

5 you.

6 Appearing today on behalf of Arrow?

7 MR. WILEY: Yes, Your Honor. David W.

8 Wiley, I am an attorney representing Arrow, and with

9 me today is my colleague, Blair I. Fassburg,

10 F-A-S-S-B-U-R-G. We are with the law firm of Williams

11 Kastner, 601 Union Street, Suite 4100, Seattle,

12 representing Arrow Launch Service, Inc.

13 JUDGE FRIEDLANDER: Okay. Thank you.

14 Appearing today on behalf of Staff?

15 MR. BEATTIE: Julian Beattie,

16 B-E-A-T-T-I-E, the Washington State Attorney General's

17 Office, representing Commission Staff.

18 JUDGE FRIEDLANDER: Thank you.

19 Appearing today on behalf of Pacific Cruises

20 Northwest?

21 MS. ENDEJAN: Good morning, Your Honor.

22 Thank you.

23 Judith Endejan, spelled E-N-D-E-J-A-N. I am

24 with Gary Schubert Barer, 1191 Second Avenue, Seattle,

25 Washington 98121. I represent Captain Drew Schmidt

0062

1 and Pacific Cruises Northwest, Inc.

2 JUDGE FRIEDLANDER: Okay. Thank you.

3 Is there anyone on the conference bridge or in

4 person who would like to put in an appearance today as

5 well?

6 Hearing nothing. I have handed out an exhibit

7 list and all of the parties have that before them. At

8 this time I would like to consider admission of all

9 the prefiled exhibits unless any of the parties has an

10 objection to the exhibits.

11 MR. WILEY: Yes, Your Honor, we do. I

12 will let my colleague talk about RSE-1T and RSE-7T.

13 JUDGE FRIEDLANDER: All right. Thank

14 you.

15 Mr. Fassburg.

16 MR. FASSBURG: Good morning, Your Honor.

17 I think you specifically asked about the

18 exhibits. Both with respect to 1T and 7T, as well as,

19 I think it's RSE-5 and 6, we do have objections. In

20 order to make it simple for Your Honor, we have

21 actually written them out in what we will file today.

22 So we have written objections to page and

23 lines of Mr. Esch's testimony on the basis of hearsay,

24 as well as with respect to the Exhibits RSE-5 and 6,

25 which were purported to be a lawsuit filed, I believe,

0063

1 16 or 17 years ago. Our objection to that is that it

2 is outside of the test period and therefore

3 irrelevant.

4 JUDGE FRIEDLANDER: So Arrow is

5 objecting to Exhibits RSE-1T and RSE-5 and 6?

6 MR. FASSBURG: As well as RSE-7T. Of

7 course, Your Honor, that is as to specific portions of

8 the testimony, not as to all of it.

9 JUDGE FRIEDLANDER: Okay. All right.

10 I would like to hear MEI on this matter.

11 MR. BENTSON: Well, I think, first of

12 all, Your Honor, to the extent they have written

13 materials and a motion on this, these -- both the

14 prefiled testimony and these exhibits were filed

15 months ago, and that could have been brought up

16 earlier so that we would have a fair chance to

17 respond. To the extent the Court is going to rule

18 based on written motions, we would request a

19 sufficient continuance so that we would be able to

20 respond in like kind to the arguments raised in those

21 briefs.

22 Second of all, this is -- the purpose of this

23 hearing is not -- the rules of evidence are relaxed,

24 and so to the extent Mr. Esch, in his testimony,

25 provides some hearsay evidence, as do all of the -- as

0064

1 do all of the prefiled testimonies that I have

2 observed in this case, that's the -- the purpose of

3 this hearing is not to strictly enforce the rules of

4 the evidence, it's to develop a substantial record so

5 that the Commission can make an informed decision

6 about MEI's certificate application.

7 With respect to the lawsuit, the test period,

8 I think it goes directly -- those lawsuit papers are

9 publicly filed documents. The Court could take

10 judicial notice of them just for that fact. They are

11 available on PACER, a federal ECF filing service.

12 Whether or not they occur outside the time line, they

13 run directly contrary -- assertions in those pleadings

14 run directly contrary to statements made by Mr. Harmon

15 in his prefiled testimony and so they are essentially

16 MEI's case.

17 For those reasons we oppose the objections,

18 but again we request sufficient time to respond to

19 their written materials if the Court is going to

20 consider them.

21 JUDGE FRIEDLANDER: Thank you so much.

22 Mr. Fassburg, why don't you hand around the

23 explicit portions --

24 MR. FASSBURG: Sure.

25 JUDGE FRIEDLANDER: -- that Arrow is

0065

1 objecting to.

2 MR. FASSBURG: Sure.

3 And for the record, Your Honor, we aren't

4 filing a motion. We are entitled to make objections

5 at the hearing to the admission of testimony based

6 upon the rules of evidence.

7 I will go ahead and pass these out before I

8 continue. I have the original copy for yourself.

9 JUDGE FRIEDLANDER: Thank you.

10 Actually, if you could just give me a copy and

11 then file the original and one with the records center

12 downstairs.

13 MR. FASSBURG: Certainly.

14 JUDGE FRIEDLANDER: Thank you.

15 So my question will be why wasn't this

16 presented to the Commission prior to the day of the

17 hearing?

18 It looks like to me the initial testimony, as

19 well as Exhibits 5 and 6, were filed on October 4th,

20 and we are in February. And then Exhibit 7T was filed

21 in early December.

22 MR. FASSBURG: Your Honor, my

23 understanding is that we are making these objections

24 for the record and not to disrupt the hearing process.

25 I don't believe that these objections are waived by

0066

1 waiting, number one. The reality is, if we were to

2 file a motion to strike, that initiates a round of

3 litigation with motion and response. That takes up

4 valuable time of both the attorneys and the

5 Commission. Frankly, we don't believe that additional

6 expense is necessary based upon the nature of the

7 testimony.

8 And in response to what Mr. Bentson stated a

9 moment ago, it is true that the rules of evidence are

10 relaxed in Commission proceedings. In fact, we do

11 have things that are technically hearsay in our

12 filings as well, as is articulated in the objection in

13 writing. What we believe is the important distinction

14 is that some hearsay can be considered reliable,

15 things that a company would actually rely upon, for

16 example, a writing. The kinds of hearsay that Arrow

17 has relied upon are writings. Those identified the

18 speaker and were in fact created by the speaker. The

19 difference between that and what MEI has filed, is

20 that MEI has filed testimony of Mr. Esch,

21 uncorroborated by other sources.

22 JUDGE FRIEDLANDER: So you wanted to

23 avoid a long delay and needless expenses by filing an

24 objection the day of hearing?

25 MR. FASSBURG: Well, Your Honor --

0067

1 JUDGE FRIEDLANDER: If we have to -- I

2 just -- I'm sorry. I am a little bit confused because

3 at one point you say that you are just filing the

4 objections and that you are prepared to go on with the

5 hearing, but MEI also has due process rights and they

6 are probably going to have to look at this, as am I,

7 in detail in order to make a ruling on these. We are

8 9:40 in the morning of a hearing. You can make

9 objections during the hearing, and I guess that would

10 be my preference. When Mr. Esch comes up, we will

11 deal with each of these objections at the time.

12 I am really not happy, though, that the fact

13 that this didn't [sic] come out now. He is going

14 to -- you are going to have the opportunity to

15 cross-examine him, but you have had the testimony for

16 four months. You could have easily filed a motion to

17 strike any of this and I would have ruled on it.

18 And as Mr. Bentson has said, the rules of

19 evidence may be a guide, they are not, however,

20 strictly enforced, and hearsay is admissible.

21 Do you know what, I am just -- Staff can speak

22 to this, as can Pacific Cruise, but at this point I am

23 just ready to go on with the hearing and I will

24 address each of these objections in course.

25 So at this point, Mr. Bentson, if you want to

0068

1 call your witness, Mr. Esch.

2 MR. BENTSON: Thank you, Your Honor.

3 Your Honor, you would like Mr. Esch to sit in

4 that chair right there. Is that your preference?

5 JUDGE FRIEDLANDER: I would.

6 Mr. Esch, if you would go over there and just

7 remain standing because I need to swear you in.

8

9 RANDY S. ESCH, witness herein, having been

10 first duly sworn on oath, was

11 examined and testified as follows:

12

13 JUDGE FRIEDLANDER: Thank you. You can

14 be seated.

15 Please continue, Mr. Bentson.

16 MR. BEATTIE: Your Honor, I apologize

17 for interrupting, but I'm just not clear.

18 JUDGE FRIEDLANDER: Sure.

19 MR. BEATTIE: Were the exhibits then

20 admitted or are we going to --

21 JUDGE FRIEDLANDER: They are not

22 admitted.

23 MR. BEATTIE: Okay.

24 JUDGE FRIEDLANDER: None of the exhibits

25 are admitted. I will address after Mr. Esch's

0069

1 testimony, because I assume that is the only witness

2 to whose testimony and exhibits Arrow is objecting,

3 after Mr. Esch's testimony, we will admit the

4 remaining exhibits en masse, assuming that no one else

5 has an objection.

6 MR. BEATTIE: Okay.

7 JUDGE FRIEDLANDER: Yes.

8 MR. BEATTIE: And one final matter.

9 JUDGE FRIEDLANDER: Sure.

10 MR. BEATTIE: Staff would recommend that

11 a record be made that this document is not part of the

12 administrative record.

13 JUDGE FRIEDLANDER: Thank you. And it

14 has not been filed with the Commission as of yet. I

15 do understand that objections can be made during the

16 hearing. Again, if you are going to create a paper

17 record, it would be a great idea to give that to the

18 judge and the Commission ahead of time.

19 So why don't we go ahead, Mr. Bentson.

20 As I said before, Mr. Fassburg, I expect you

21 to file this with the records center at the earliest

22 break.

23 Thank you.

24 MR. FASSBURG: Thank you.

25 JUDGE FRIEDLANDER: Mr. Bentson, if you

0070

1 would like to begin.

2

3 D I R E C T E X A M I N A T I O N

4 BY MR. BENTSON:

5 Q Mr. Esch, could you please state your full

6 name for the record and spell your last name?

7 A Randy Scott Esch. I go by Troy. My last name

8 is spelled E-S-C-H.

9 Q And what is your title or position at MEI

10 Northwest?

11 A I am the president of MEI Northwest.

12 Q And is that the company you represent here

13 today?

14 A Yes.

15 Q Have you had a chance to carefully consider

16 and review the prefiled testimony in RSE-1T and

17 RSE-7T?

18 A Yes, I have.

19 Q And do you have any corrections to the

20 testimony you provided in those two prefiled testimony

21 numbers?

22 A No, I do not.

23 Q Okay.

24 Likewise, have you had a chance to review

25 exhibits RSE-2 through 6 and RSE-8?

0071

1 A Yes, I have.

2 Q And is it still your intent to sponsor those

3 exhibits today at this hearing?

4 A It is, yes.

5 MR. BENTSON: Normally there, Your

6 Honor, I would move to admit those, but since I know

7 we have the objections pending, I am going to forego

8 that until the end, and tender the witness for

9 cross-examination.

10 JUDGE FRIEDLANDER: Thank you.

11 And Arrow will be going first. So I suppose

12 now would be an appropriate time to address those

13 objections.

14 Mr. Esch, I would like for you to have a copy

15 of your testimony, both 1T and 7T in front of you so

16 that we can go through these together.

17 If Mr. Bentson can provide that.

18 MR. BENTSON: I can.

19 MR. WILEY: Your Honor, it would be

20 helpful for the witness to have copies of both his

21 direct and rebuttal testimony for my cross in front of

22 him because I am going to ask him about specific

23 lines.

24 JUDGE FRIEDLANDER: Right.

25 MR. WILEY: If we need to take a break

0072

1 to get copies, it would be fine with me.

2 JUDGE FRIEDLANDER: Mr. Bentson, do you

3 have copies of Mr. Esch --

4 MR. BENTSON: It would be helpful for me

5 to make a copy of both of those exhibits before the

6 cross.

7 JUDGE FRIEDLANDER: All right. Why

8 don't we go ahead and take a ten-minute break.

9 MR. BENTSON: Okay.

10 JUDGE FRIEDLANDER: And then this will

11 give you a chance to file that downstairs.

12 MR. FASSBURG: Yes, Your Honor.

13 JUDGE FRIEDLANDER: We are off the

14 record.

15 (A brief recess.)

16 JUDGE FRIEDLANDER: We will go back on

17 the record. I think at this time it would be best if

18 we dealt with the written objections that Arrow has

19 given the parties and the bench.

20 Let's deal with the first one on Page 3, Lines

21 20 through 26. That's within exhibit RSE-1T.

22 Mr. Fassburg, you have said that this is

23 inadmissible self-serving testimony, all hearsay.

24 Mr. Bentson, do you want to respond to that?

25 MR. BENTSON: And I think this is

0073

1 probably going to apply to several of them, Your

2 Honor. I assume what the objection is, is that though

3 some hearsay is admissible because the unsatisfied

4 customers referred to are anonymous, that somehow

5 pushes this into a different category of hearsay that

6 the Court can't consider. I would just submit, Your

7 Honor, that that's exactly the purpose of

8 cross-examination. Mr. Wiley and any of the other

9 parties will have the opportunity to ask Mr. Esch for

10 clarification on those statements. I think any

11 possible prejudice to Arrow can be satisfied through

12 this cross-examination process.

13 Again, the rules of evidence are relaxed, and

14 the point here is to create a substantial record that

15 the Commission can rely on in determining whether or

16 not the certificate should be granted.

17 In addition to that, Your Honor, if we look at

18 RSE-1 and 7 together, we know that one of those

19 customers is later identified as Crowley. Crowley is

20 actually presenting a live witness tomorrow morning to

21 speak to this. It is not the case that the witnesses

22 are purely anonymous.

23 JUDGE FRIEDLANDER: All right.

24 Thank you.

25 Mr. Fassburg, are any of the portions of

0074

1 testimony or exhibits here not related to hearsay? Is

2 it just RSE-5 and 6?

3 MR. FASSBURG: Those are the only

4 objections that were not on the same basis. I thought

5 that's why this wasn't really going to be disruptive,

6 Your Honor, to be honest. I think that every

7 objection except 5 and 6 are on the basis that they

8 refer to statements of his customers who are not

9 identified and are not here for cross-examination.

10 And to rebut Mr. Bentson's comment that

11 Mr. Aikin will be here to address some of this, my

12 understanding is that he is limited to his statement,

13 and so therefore that does not permit Arrow to address

14 all of these issues. Frankly, Mr. Aikin is here for

15 cross-examination on his statement and not to address

16 the rest of this.

17 JUDGE FRIEDLANDER: True, but Mr. Esch

18 is here to address his statements.

19 MR. FASSBURG: Sure.

20 JUDGE FRIEDLANDER: So you do have the

21 opportunity to cross-examine the actual person

22 testifying to those statements.

23 What I have concern over is that you have

24 given me a lot of pieces of testimony that I would

25 have to go look at. If you are telling me right here,

0075

1 right now -- and as I quickly looked at this while

2 Mr. Bentson was making copies of testimony, it does

3 appear that save for RSE-5 and 6, all of the contested

4 pieces of the testimony relate to the inadmissibility

5 of hearsay.

6 I guess I am prepared to rule on them, unless

7 Staff has, or Pacific Cruises has something that they

8 would like to address.

9 MS. ENDEJAN: Your Honor, I would simply

10 observe that in my experience at the Commission here

11 in many cases in other industries, I have rarely seen

12 a piece of testimony that is based upon such rampant

13 hearsay. So I would -- and I understand the rules of

14 evidence here, and I know that it may go more to the

15 issue of weight than admissibility, but I would join

16 in these objections and request the Commission to give

17 it the weight that it is due, which is not much.

18 JUDGE FRIEDLANDER: Thank you.

19 Mr. Beattie, did you have anything that you

20 wanted to add?

21 MR. BEATTIE: We don't.

22 JUDGE FRIEDLANDER: All right. Thank

23 you.

24 The objections relating to hearsay, which are

25 the vast majority of these objections, are denied.

0076

1 First of all, all testimony is self-serving. Second

2 of all, all hearsay is admissible. As Ms. Endejan

3 indicated, the weight that the Commission gives it is

4 another story. And I do believe that Mr. Bentson is

5 correct, that any prejudice to Arrow or Pacific Cruise

6 can be mitigated by cross-examination of Mr. Esch,

7 which we are about to begin.

8 As to Exhibits RSE-5 and 6, I will deny the

9 motion for them as well, because while they may be --

10 they may have occurred 17 years ago, they are

11 foundationally and potentially related to -- they have

12 a relevance to the fitness and character of the

13 existing shipper that Arrow is going to be able to

14 rebut. We also have briefs that are still due in this

15 case, so there is going to be multiple opportunities

16 for Arrow to have another chance to rebut this. And I

17 will deny the motions.

18 At this time, I guess, why don't we go ahead

19 and examine all of the exhibit as far as admission

20 goes, and if anybody has an objection, now would be a

21 good time to voice it, otherwise, I will admit all of

22 the exhibits en masse.

23 All right. Hearing nothing, the exhibits in

24 the exhibit list provided by the bench today will be

25 admitted as of the 14th of February.

0077

1 (Exhibits admitted.)

2 JUDGE FRIEDLANDER: Who will be

3 cross-examining Mr. Esch on behalf of Arrow?

4 MR. WILEY: I will, Your Honor.

5 JUDGE FRIEDLANDER: All right. Please

6 begin, Mr. Wiley.

7 MR. WILEY: Yes.

8

9 C R O S S - E X A M I N A T I O N

10 BY MR. WILEY:

11 Q Good morning, Mr. Esch.

12 A Good morning.

13 Q I see you have your prefiled testimony, both

14 your original and rebuttal, in front of you. We will

15 be referring specifically to it, so I would ask that

16 we follow along together for the record.

17 A Okay.

18 Q My first question deals with whether you have

19 had any experience in the Washington regulated launch

20 industry?

21 A No, I have not.

22 Q Could you speak up, please?

23 A No, I have not.

24 JUDGE FRIEDLANDER: Is your mic on?

25 THE WITNESS: Yes, it is.

0078

1 JUDGE FRIEDLANDER: Okay. Thank you.

2 BY MR. BEATTIE:

3 Q At Page 3, Lines 14 and 15 of your original

4 testimony, you talk about the application that you

5 have filed, the commercial ferry application.

6 Do you see that?

7 A I do.

8 Q Could you tell us what your understanding of

9 the scope of that application is with respect to

10 geography?

11 A Well, it was for the Puget Sound. Inside the

12 demarcation line, is my understanding. The entire

13 Puget Sound.

14 Q The entire Puget Sound.

15 Are you aware that your application was

16 docketed on June 28, 2016, by the Commission?

17 A Yes, I am.

18 MR. WILEY: Your Honor, if I can

19 approach the witness. I've got a copy of that docket.

20 JUDGE FRIEDLANDER: Thank you.

21 BY MR. WILEY:

22 Q Mr. Esch, I would like you to take a gander at

23 that, if you would.

24 A Okay.

25 Q So do you understand that that is, as notice

0079

1 to the public, your application?

2 A I do.

3 Q Okay.

4 So you also filed a tariff in this matter. Do

5 you recall that?

6 A I do recall.

7 Q And you filed a tariff on May 6th with your

8 application, and then you filed another tariff on

9 June 30th, to substitute that. Do you recall that?

10 A I do.

11 Q I am going to hand you a copy of what has --

12 MR. WILEY: Your Honor, this is RSE-10,

13 cross-exhibit.

14 The parties have this. Does anybody need it?

15 MR. BENTSON: Thanks. I've got a copy.

16 BY MR. WILEY:

17 Q I would like you to take a look at that,

18 please, Mr. Esch.

19 A Okay.

20 Q Can you tell me why your proposed tariff

21 appears to exceed the geographic scope of the

22 application as docketed by the Commission?

23 A I'm not sure I follow. In which way?

24 Q Well, why don't we go specifically to the

25 tariff. That's RSE-10, Page 2.

0080

1 A Okay.

2 Q Do you see, for instance, the reference to

3 Anacortes, to Anacortes zones bounded by Crest Bay to

4 the west and Dungeness Bay to the east?

5 A I do.

6 Q And that isn't within the scope of your

7 application, is it?

8 A No, it is not.

9 Q And also up above, Anacortes to Port Angeles

10 anchorage. That isn't within the scope of your

11 application either, is it?

12 A No.

13 Q So it's true, is it not, that the tariff rates

14 as you submitted in RSE-10 and the application as

15 docketed by the Commission on June 28, 2016, do not

16 reconcile, correct?

17 A Correct.

18 Q What about that map accompanying RSE-10?

19 That's Page 3 of RS-10, for the record. Could you

20 tell us what is actually reconcilable with your

21 application as the Commission docketed it?

22 A A lot of these were removed. Everything south

23 of Port Angeles were removed before the docket was

24 even approved.

25 Q And then also by your testimony the -- the

0081

1 indication from Dungeness to Port Angeles, that would

2 be removed as well, would it not? That's the western

3 portion of your map.

4 A I don't recall removing that from --

5 Q Okay.

6 Well, you just told me that you didn't ask for

7 that authority, correct, in your docketed application?

8 MR. BENTSON: I'm going to object, Your

9 Honor, and ask that the witness be allowed to finish

10 his answers to the questions before he is interrupted.

11 MR. WILEY: I didn't mean to interrupt

12 him, Your Honor. I thought he was through. I'm

13 sorry.

14 JUDGE FRIEDLANDER: All right.

15 Mr. Esch, if you could finish your answer.

16 A We specifically removed Seattle and Tacoma

17 from our list, in talks with the department, where we

18 were turning these in to. This was a lot of

19 back-and-forth. It wasn't a final submittal. And I

20 don't recall taking the Port Angeles anchorages out of

21 the docket.

22 BY MR. BEATTIE:

23 Q But didn't you just answer me, when I asked

24 about the scope of your application, that Port

25 Angeles -- that Anacortes to Port Angeles and

0082

1 Anacortes to the Dungeness area was not included in

2 your application?

3 A According to this it is not.

4 Q And isn't it true, then, that the tariff

5 points from your June 30th submission, which is RSE-10

6 and accompanying map, exceed the scope of the

7 application docket of June 28th, 2016?

8 A It would, for the docket, yes.

9 Q Okay.

10 Where you say at Page 3 of your original

11 testimony, Lines 18 and 19, that, quote, MEI's

12 application should be granted, what is the specific

13 application territorial scope you were saying should

14 here be granted?

15 A We are asking for the tariff and the docket

16 locations to be granted.

17 Q Okay.

18 Are you saying, then, that the tariff can

19 exceed the scope of the docketed application and be

20 granted by the Commission?

21 A To my knowledge, at that time, it was -- it

22 wasn't set in stone. You could adjust it as you

23 wanted to. Our fears were putting things in writing

24 that we could not accommodate so we removed them.

25 Q You have talked about "at that time." I am

0083

1 talking about today. Are you saying that this

2 Commission can grant authority in excess of what was

3 docketed?

4 MR. BENTSON: Object to the extent it

5 calls for a legal conclusion.

6 JUDGE FRIEDLANDER: I think he can give

7 his opinion, knowing that he is not testifying on a

8 legal matter. He is giving his own opinion on what

9 his knowledge of what the Commission's authority is.

10 A They could approve what we have asked for

11 and -- and that's it. We can apply for other runs

12 later.

13 BY MR. BEATTIE:

14 Q But my question is: What have you asked for?

15 Are you talking about the docket or the tariff?

16 A I was talking about the tariff.

17 Q So in answer to my question, then, you say

18 that the tariff controls the application's scope?

19 A Yes.

20 Q When you next say that MEI seeks to serve

21 areas, quote, currently underserved by the sole

22 provider, what specific areas are you now referring

23 to, now that you have acknowledged that there is a

24 discrepancy between the tariff and the application

25 docket?

0084

1 When you say, again, the area that's

2 underserved by the sole provider, what specific areas

3 are you referring to?

4 A I am specifically referencing Anacortes.

5 Q So that's the only area that you are saying is

6 underserved; is that correct?

7 A And Port Angeles.

8 Q But you haven't asked for authority in Port

9 Angeles, correct?

10 A According to the tariff I have.

11 Q And not according to the application?

12 A Correct.

13 Q So you are saying Anacortes and Port Angeles

14 now; is that correct?

15 A That's correct.

16 Q At Page 3, Line 23, you say that, quote, many

17 commercial customers have contacted you about using

18 your services. Are you -- by this statement, are you

19 expecting the Commission in a contested case to simply

20 accept statements outside of this hearing record at

21 face value?

22 A I approached this process by keeping my

23 customers out of this because of the process and the

24 time and the exposure and the expense. I have

25 revealed a few of them, but for the most part I do

0085

1 plan to keep that under wraps.

2 Q In answer to my question, though, first of

3 all --

4 A Yes, I expect them --

5 Q You expect the Commission to accept your

6 statement that --

7 A I am hopeful that they --

8 MR. WILEY: Your Honor, if we could not

9 talk over each other. I do it, too, I admit, but if

10 the witness would allow me to finish my question.

11 JUDGE FRIEDLANDER: I would appreciate

12 that, and I think the court reporter would as well.

13 THE WITNESS: Okay.

14 JUDGE FRIEDLANDER: Thank you.

15 BY MR. WILEY:

16 Q So in answer to my question, Mr. Esch, I

17 didn't get to the end because you were starting to

18 interrupt me. Are you saying that the Commission in a

19 contested case should accept your representations

20 about -- that are outside the hearing record?

21 A I am hopeful that they will.

22 Q You also indicate in answer just now, that you

23 said you have kept most of your customers out of this.

24 It's true, is it not, that the only customer that you

25 have referenced is Crowley Petroleum Services,

0086

1 correct?

2 A That's correct.

3 Q If you want your testimony about customers to

4 be accepted at face value, would you expect, then,

5 that Arrow's testimony about your customers in

6 California and San Francisco or Long Beach, in terms

7 of adequacy of your service, should be accepted at

8 face value?

9 A Yes.

10 Q Okay.

11 Going over to Page 6 of your original

12 testimony, you appear to extrapolate or correlate the

13 number of ships entering the San Francisco Bay region

14 with the Puget Sound region, correct?

15 A Correct.

16 Q But isn't it true that you are seeking a much

17 narrower geographic corridor than all of Puget Sound?

18 You have talked about your elimination of the southern

19 locations, I thought you talked about your elimination

20 of the western location, now I'm not as clear, but

21 Dungeness to Port Angeles, you clearly said you are

22 not asking for any more. Isn't it true that you are

23 seeking a much narrower corridor of Puget Sound in

24 your application?

25 A You could say it that way, but really there is

0087

1 no difference because it is based on tankers. There's

2 no tankers going down to those locations.

3 Q So your testimony is there aren't large

4 vessels requiring launch service in Seattle or Tacoma.

5 Is that your testimony?

6 A There are, but not to the volume that the

7 tankers bring.

8 Q So there are tankers, they are just not at the

9 same volume as other areas. Is that what you are

10 saying?

11 A There's very few in the southern areas.

12 Q Yes or no, please.

13 A Can you repeat that?

14 Q Are you saying that there are tankers in the

15 southern regions of Puget Sound, for instance, Seattle

16 and Tacoma, but there are fewer by number than the

17 other location, which I assume by other regions you

18 are referring to Anacortes; is that correct?

19 A I'm not aware of any refineries down in that

20 area.

21 Q That's not my question, Mr. Esch. It's vessel

22 traffic in the southern part of Puget Sound. Are you

23 saying that there are tankers that require launch

24 service in southern Puget Sound?

25 A Yes.

0088

1 Q Isn't it also true that the mere arrival of

2 ships in the Puget Sound have no relationship to the

3 actual demand for regulated launch services in

4 northeastern Puget Sound?

5 A It is, but it's -- we are basing this off a

6 ship count from San Francisco as well, so we are

7 comparing it based on arrivals.

8 Q I understand that, and we both have addressed

9 that in our prefiled testimony. My question is:

10 Isn't it true that ship arrivals may not translate

11 directly into demand for launch services?

12 A Yes, it's not a guaranteed demand.

13 Q At Line 19 on Page 6 of your original

14 testimony, you say, with respect to the San Francisco

15 Bay, that, quote, Even with ten launches in the

16 market, not all launches are available all the time.

17 Aren't you there saying that availability

18 relates not to the number of providers, but to the

19 number of available launch vessels?

20 A The point of that statement was that even with

21 all these resources it's still difficult, but between

22 the two companies down there we can always perform

23 between the two.

24 Q But my question again, Mr. Esch, was: You are

25 relating that not to the number of providers, but

0089

1 rather the number of available launch vessels,

2 correct?

3 A It was between the two, between the amount of

4 vessels and --

5 Q So the answer is yes, as compared to two

6 providers, correct?

7 A Correct.

8 Q At Page 7 of your testimony, you then opine

9 about the, quote, unique geography of the Puget Sound

10 and its distances. Do you recall that testimony?

11 A I do.

12 Q Included in that statement is a rather bold

13 statement at the end of Lines 18 and 19 of Page 7,

14 that says, quote, It is impossible, then, for Arrow

15 Launch to adequately serve those locations. Meaning

16 the territory it is authorized by this Commission to

17 serve, correct?

18 A Say that again.

19 Q Yes. I said at the end of Lines 18 and 19 you

20 say, quote, It is impossible for -- then for Arrow

21 Launch to adequately serve those locations. By "those

22 locations," you mean the territory it is authorized by

23 the Commission to serve, correct?

24 A Correct.

25 Q That conclusion is then predicated on numbers

0090

1 that precede that. I am calling your attention to

2 Page 7 in the testimony, beginning at Line 12.

3 Preceding that statement that I just read to you, that

4 conclusion then is predicated on the numbers you cite

5 there in that paragraph, correct?

6 A Correct.

7 Q Would you agree then, Mr. Esch, that if your

8 numbers on the launches and the locale of those

9 services is not correct, then subsequent -- the

10 subsequent conclusion may well be incorrect?

11 A To my knowledge, that number is not incorrect.

12 Q Okay.

13 So if we were to establish that that number is

14 incorrect, wouldn't it be true that your testimony

15 about those numbers and predicated thereon would be

16 incorrect?

17 A It could, but -- it could change it slightly,

18 but to my knowledge at the time there was eight

19 launches.

20 Q So if I were to tell you that it would change

21 by 50 percent, that would be more than a slight

22 change, wouldn't it?

23 A It would, but you can't count utility boats as

24 launches. I was specific when I said launches.

25 Q We are going to talk about that a little bit

0091

1 later, but my question there is launches. I am saying

2 if you were off by 50 percent, wouldn't the conclusion

3 be off as well?

4 A Yes, it could be.

5 Q Getting back to your reference to the breadth

6 of Puget Sound geographically and the challenges you

7 describe at Page 7, Line 5, isn't it true that one of

8 those challenges, because of the -- what you have

9 described, the broad territory of the Puget Sound, is

10 the need or the level or scope of investment required

11 to serve a relatively large area on a 24/7/365 basis?

12 A Right.

13 Q And if a new provider were to come into the

14 market and offer, for example, similar or overlapping

15 service in a select, high-demand section of that

16 territory, do you understand how that existing

17 infrastructure investment could be negatively

18 impacted?

19 A I do.

20 Q And then isn't it possible that the negative

21 impact might potentially affect service throughout the

22 existing provider's entire territory?

23 A I don't see how it would.

24 Q My question is: If -- you have acknowledged

25 that the infrastructure investment by the existing

0092

1 provider could be negatively impacted if somebody

2 comes in and overlaps in a higher demand area. Isn't

3 it true that the rest of the territory might be

4 affected by the dilution in the most active or one of

5 the most active sectors of their service territory?

6 A I am not aware of what reactions they would

7 have if we provided service in Anacortes.

8 Q In other words, you haven't analyzed the

9 potential impact that it might have on customers if

10 you were to be granted overlapping services in the

11 Anacortes area?

12 A No. I am saying I haven't analyzed how it

13 will affect Arrow.

14 Q Or those customers. Yes or no? Have you

15 analyzed it or not for those customers?

16 A I can't analyze it if it's going to be based

17 off a reaction. I mean there is nothing to analyze.

18 Q Well, my question is: Have you asked any of

19 your customers if Arrow's revenue base were to be

20 diluted, how it might have impacts on them in other

21 areas in which you weren't operating but they were?

22 A No, I have not.

23 Q It's possible, is it not, that that might have

24 a negative impact on all of Arrow's territory,

25 correct?

0093

1 A It may.

2 Q Isn't it also true that in your subsequent

3 testimony on your financial fitness to operate, that

4 your assessment is largely based on a carve-out or a

5 diversion of that revenue from the existing provider

6 who has made that investment?

7 A Cn you repeat that again?

8 Q Yes. Isn't it also true, then, that your

9 subsequent testimony on financial fitness to operate

10 by MEI, at Page 8 specifically, is largely based on a

11 carve-out or diversion of regulated revenues from the

12 existing provider who has made that investment?

13 A Yes.

14 Q At Page 10 of your direct testimony you also

15 quote unnamed California customers who, quote,

16 supposedly want to see you in Puget Sound too. Do you

17 recall that testimony?

18 A Yes.

19 Q You also go on to say that they believe that

20 additional resources are needed in the Puget Sound to

21 instill competition that will make the services they

22 receive better, correct?

23 A Correct.

24 Q So are you saying there that two providers are

25 better than one?

0094

1 A I am.

2 Q Would three also be better than one?

3 A If the market can support it.

4 Q Are there any finite limitations on this more

5 the merrier sort of premise about launch providers?

6 A Of course. I mean if there's not enough to

7 keep you in business and support the workload, then

8 yes, it wouldn't work out.

9 Q Well, how much is too much, in your view?

10 A I mean you have to have enough vessels in

11 service and resources in the area to accommodate the

12 volume.

13 Q When you say "you," who are you talking about?

14 A The operators of the launch companies.

15 Q So again my question is: How much is too

16 much?

17 A I mean the market weeds it out. If it can't

18 support it, it goes away. I can't give you a

19 quantitative --

20 Q So you are saying that basically survival of

21 the fittest under that scenario. In other words, that

22 you just -- you can authorize as many providers as

23 necessary, and that they could fail, and the market

24 will weed it out, but if they fail, they fail; is that

25 correct?

0095

1 A To some extent. But I mean if -- if two

2 companies are here in the Puget Sound and their

3 margins aren't very well and they have had

4 difficulties, I mean of course the Commission would

5 not hopefully grant a third. I mean these things are

6 evaluated, I would imagine.

7 Q But you haven't done that evaluation, it

8 sounds like, in anticipating this application?

9 A I have done it based on gross numbers and the

10 support that we have.

11 Q But my question was with respect to how many

12 providers is too many. Have you done that analysis?

13 A Just, as I said, based on their gross number

14 and their profitability.

15 Q Okay.

16 When you say "they," please identify --

17 A Arrow Launch's gross numbers and profitability

18 warrant that competition.

19 Q So in answer to my question, Mr. Esch, all you

20 have done is look at Arrow Launch. You haven't looked

21 at any potential other providers who might be

22 authorized, who, as you termed it, could be weeded

23 out?

24 A There are no other operators or providers.

25 Q Hypothetically speaking.

0096

1 A I can't be hypothetical about it.

2 Q Okay. Well --

3 A I mean I don't even have a certificate yet.

4 Q I am allowed to ask you a hypothetical

5 question, Mr. Esch. I am saying, you have testified

6 that two providers would be better than one. Three

7 might be better than one; is that what you have said?

8 A In this market? No, I did not say that.

9 Q So your testimony, then, if I back up, is that

10 two providers is better than one, but three providers

11 is not better than one; is that correct?

12 A Specifically in this market, two is better

13 than one.

14 Q That wasn't my question. My question was: Is

15 two providers better than one or is three providers

16 better than one?

17 A Two.

18 Q How many would be too many, in your view, more

19 than two?

20 A Are we talking about the Puget Sound?

21 Q Yes. We are talking about --

22 A Yes.

23 Q -- this area.

24 A More than two would be.

25 Q So do you have any understanding of how many

0097

1 competitive providers there would need to be before

2 the increased competition would have the opposite

3 effect, in terms of decreasing service? Is that more

4 than two again there?

5 A Yes.

6 Q So I gather that you would espouse or advocate

7 that two providers maximum should be authorized to

8 provide regulated launch service in Puget Sound, in

9 your view?

10 A At the current time, yes.

11 Q Page 12 of your testimony, Lines 5 through 10,

12 you talk about your business philosophy on operating

13 costs. Do you see that?

14 A Yes.

15 Q Okay.

16 You use the pronoun "we" there. Is the we

17 referenced in that passage, in Lines 5 through 10, you

18 the applicant or you the parent, MEI?

19 A I would say both, us and the parent company.

20 Q Okay. Let me go to that.

21 So you are saying that if we don't think we

22 can turn a profit with conservative estimates with an

23 average to above average output for costs, then we

24 don't think it's a prudent business decision, is both

25 MEI the applicant and MEI the parent; is that correct?

0098

1 A That's correct.

2 Q Okay.

3 So if your initial estimates of your pro forma

4 exhibits are incorrect or are off -- for instance,

5 Mr. Sevall, in his cross-answering testimony, suggests

6 that you could lose 93,000-plus the first year.

7 Would -- and you say, and you operate at a loss for

8 regulated service if this application is granted.

9 Would you view the application, then, as a prudent

10 decision?

11 A I would. We are willing to go three years.

12 Q Is there any written agreement between the

13 parent and the applicant, MEI Northwest, LLC, to cover

14 those operating losses?

15 A Written agreement, no.

16 Q Whether there is a binding -- whether there is

17 a written agreement or not, your testimony, I take it,

18 is there is a commitment from the parent to stand

19 behind the operating losses?

20 A Well, of course. They own 100 percent of MEI

21 Northwest.

22 Q That's not what my question was.

23 A They will stand behind --

24 Q Let me finish my question, if you would. I do

25 that, too, but please wait.

0099

1 My question is: Is there a commitment by the

2 parent MEI to stand behind what you term the

3 worst-case scenario, three years of operating losses,

4 of MEI Northwest, LLC?

5 A Yes.

6 Q Have you provided any written agreement to the

7 Staff that would verify that commitment to cover any

8 operating losses?

9 A I have not, but I would be happy to do so.

10 Q Have they asked you for that corroboration?

11 A No, they have not.

12 Q You also testified at Page 13 of your

13 testimony, that MEI, at least as of October 2016, had

14 $300,000 on hand at the bank. Could you tell me where

15 that money came from, please?

16 A It came from the parent company.

17 Q Okay. So that's a reference to the parent

18 company.

19 All of it came from the parent company; is

20 that correct?

21 A That's correct.

22 Q So MEI Northwest, LLC, doesn't have any

23 sizable cash on hand, does it?

24 A It does. It has 300,000. It was given a loan

25 for starting expenses and it resides in its own bank

0100

1 account.

2 Q So that money resides in MEI Northwest's bank

3 account as a loan from the parent company?

4 A That's correct.

5 Q And where is that currently on reserve?

6 A I believe that's in Bank of America.

7 Q Did the Commission ever -- Staff ever ask you

8 to verify or otherwise prove the existence of that

9 cash reserve?

10 A No.

11 Q Okay.

12 I want to ask you, on Page 14 you talk

13 about -- let me see. How many -- you refer -- oh,

14 there it is, on Line 3, Page 14. You have talked

15 about owning 18 floating assets. That's the parent

16 company, I assume?

17 A Correct.

18 Q Okay.

19 And would it surprise you to learn that your

20 website shows that you have 17 floating assets as of a

21 review yesterday?

22 A One of them is chartered to another company.

23 Q Which asset is that and who is it chartered

24 to, please?

25 A It's chartered to Seaway Towing.

0101

1 Q And when you say "asset," what are you

2 referring to?

3 A It's a tugboat.

4 Q Let's go down through what those floating

5 assets are. Can you, for the record, tell us what

6 those 17 floating assets consist of, please?

7 A Two crew boats in Long Beach, four crew boats

8 in San Francisco, a 110 supply boat.

9 Q When you refer to a 110, are you talking about

10 the length of the vessel?

11 A Correct.

12 Q Okay.

13 A Offshore supply boat.

14 There is five tugboats. The remainder are

15 barges.

16 Q So if I added that all up, that would be four

17 barges. I just added to 17 and got four, correct?

18 A No. There's -- there's five.

19 Q Okay.

20 Well, are you including the leased one to

21 Seaway?

22 A Yes.

23 Q That's not what I am asking. I am talking

24 about the 17 that are assets available now.

25 Of those 17, as you term them, floating

0102

1 assets, how many of those are suitable for regulated

2 launch service?

3 A Six.

4 Q And four of those are in San Francisco now,

5 two are in Long Beach?

6 A Correct.

7 Q I'm going to ask you a little bit later about

8 your Stockton operation, but I assume that none of

9 those are in Stockton; is that correct?

10 A That's correct.

11 Q At least not now?

12 A Not ever.

13 Q Not ever.

14 So you never station a vessel in Stockton?

15 A We station tugboats only, no crew boats.

16 Q Going back to your testimony at Page 15, Lines

17 17 through 19. You testify that Anacortes is, quote,

18 a busy anchorage zone and at its peak it requires four

19 boats to adequately serve the needs of all the

20 customers.

21 Do you see that testimony?

22 A I do.

23 Q Okay.

24 You understand that this is your sworn

25 testimony now, correct?

0103

1 A Correct.

2 Q Are you not acknowledging in this testimony

3 again that the adequacy of service relates to the

4 availability of vessel numbers?

5 A Say that again.

6 Q Are you not acknowledging by this testimony at

7 Page 15, that the adequacy of service actually relates

8 to the availability of vessel numbers?

9 A Yes.

10 Q Okay.

11 Again, this is your conclusion about the

12 requisite service level to adequately service

13 Anacortes at its peak, correct?

14 A Correct.

15 Q Other -- by the way, other than your reference

16 to being on Arrow's docks, which you talk about in

17 your direct testimony, did you do anything else to

18 verify or cross-check their vessel inventory, such as

19 looking at the list attached to their annual report,

20 to opine on their vessel numbers in your testimony?

21 A No.

22 Q So all you did is walk across a dock,

23 essentially, correct?

24 A I went to the docks and I used marine traffic,

25 because you can follow the boats, and I asked

0104

1 questions.

2 Q But you never sought to make a public records

3 request at the Commission for a list of their vessel

4 inventory that's required to be attached to their

5 annual report, correct?

6 A No.

7 Q At Page 16, Lines 21 through 26, do you see

8 that testimony? It's down at the bottom. "In short,

9 there is a larger need."

10 A Yes.

11 Q Do you see that?

12 A Uh-huh.

13 Q You are not testifying there about actual

14 events that occurred, correct, you are simply positing

15 a hypothetical?

16 A This is not hypothetical.

17 Q Okay.

18 Well, then, for instance, when you say, "An

19 American tanker comes in it will tie up a launch for

20 the majority of the day, putting all the other clients

21 on hold," to whom are you referring, if that's not a

22 hypothetical?

23 A I have had clients that have had to wait when

24 a Polar tanker and another American tanker is in

25 because the schedules are so robust that they have to

0105

1 wait for gaps in the schedule.

2 Q Then I take it by your answer that you are

3 referring to Arrow Launch Service putting all other

4 customers on hold when an American tanker comes in.

5 Is that your testimony?

6 A Yes.

7 Q Okay.

8 By that reference there, aren't you talking

9 about a single launch vessel?

10 A I'm talking about the customer waiting.

11 Q Talking about the customer waiting, but when

12 you say, "when an American tanker comes in it will tie

13 up a launch for the majority of the day, putting all

14 the other clients on hold," aren't you saying that one

15 vessel serves that American tanker all day and the

16 other customers go to the back of the line?

17 A Correct.

18 Q Okay.

19 But you are referring just to one vessel

20 there, are you not?

21 A I am, but if there's multiple ships, it's

22 multiple vessels.

23 Q Well, right now you have only talked about an

24 American tanker, correct?

25 A Right. Correct.

0106

1 Well, just one tanker in 24 hours will take

2 two captains, which also reduces resources. You might

3 have boats at the dock but they can't move.

4 Q But it is your testimony here in this

5 proceeding that when an American tanker comes to the

6 harbor, say in Anacortes, that the launch company

7 would give preference to the American tanker and put

8 everybody else at the back of the line. That's your

9 testimony, correct?

10 A It is.

11 Q So you are saying that Arrow does that?

12 A I am.

13 Q In that type of situation, though, Arrow has

14 other launch vessels available to serve those

15 customers, does it not?

16 A It would if it has crew.

17 Q Okay.

18 And what evidence have you offered from

19 customers directly establishing that Arrow has ever

20 put its other customers at the end of the line when an

21 American tanker is in port?

22 A Crowley has made...

23 Q Excuse me?

24 A Crowley has made a statement, a witness

25 statement --

0107

1 Q Okay.

2 So you are saying --

3 A -- to that extent.

4 Q Excuse me.

5 You are saying in response to my specific

6 question about this occasion for an American tanker,

7 that Crowley has testified that Arrow has put its

8 other customers at the end of the line in order to

9 serve the American tanker. Is that your testimony?

10 A Yes, it is my testimony.

11 Q Again, the evidence you say you have offered

12 on that, that Arrow has ever done this, is the Crowley

13 shipper support statement, RSE-8. Is that your

14 testimony?

15 A Yes.

16 Q Okay.

17 Mr. Esch, at Page 19 you speak about Arrow

18 instilling fear in their customers and allege that

19 they are inflexible with terms and conditions in order

20 to promote better customer service.

21 Do you see that testimony at Lines 14 through

22 16 on Page 19?

23 A Yes.

24 Q Isn't it true that the customers you are

25 referring to there are large publicly traded or

0108

1 privately held oil producers, refiners, or

2 transporters, like Conoco Philips, BP, Shell, and

3 Crowley?

4 A Yes.

5 Q And those are generally multimillion or

6 multibillion dollar conglomerates, are they not?

7 A They are.

8 Q Are you saying that a sophisticated consumer,

9 like BP and Shell, would be intimidated by a

10 family-owned small business like Arrow Launch?

11 A In the sense that they are the only provider

12 here. If this didn't work out, the relationship would

13 be tainted by the issues --

14 Q Okay.

15 A -- or the experience.

16 Q When you say this relationship didn't work out

17 and would be tainted by the issues, can you please

18 explain what you said?

19 A If we were not able to get a certificate, and

20 we brought all of them out, and they all came out

21 pointing fingers and telling Arrow that they weren't

22 happy with the service, and then ultimately the

23 certificate is not given, I mean what kind of position

24 are they left in?

25 Q So you are saying that these customers would

0109

1 not know how to voice their complaints with the

2 Commission Staff, for instance, about regulated launch

3 service. Is that what you are saying?

4 A They haven't up to this point. Yes, that's

5 what I am saying.

6 Q So it hasn't really occurred --

7 A We are bringing --

8 Q -- yet?

9 A We are bringing light to the issues, and we

10 have gotten Crowley, one of the biggest companies in

11 the area, to support that.

12 Q You heard, did you not, in Mr. Sevall's

13 testimony, that there have been absolutely no

14 complaints lodged with the Commission about Arrow

15 Launch's service?

16 A I mean what good would it do?

17 Q That is not my question. My question is: Did

18 you hear that testimony?

19 A I have heard that there was no complaint.

20 Q So there is no external support, other than

21 what you are representing, to say that they are

22 intimidated by small Arrow Launch company, correct?

23 A I don't think they should be painted as a

24 victim, but...

25 Q There is no external evidence? Yes or no?

0110

1 A No.

2 Q You have talked a little bit about the

3 California system and how rates are not regulated in

4 California for launch service. Would you acknowledge

5 that you could make adjustments, or your parent

6 company could make adjustments to customers who would

7 use MEI both in California and Washington?

8 A What do you mean by "adjustments"?

9 Q By adjustments I mean you could offer volume

10 discounts in California for work provided in

11 Washington, couldn't you?

12 A No, I could not.

13 Q Is there any restraint against that in

14 California?

15 A In California there's not, but it's --

16 Q That's my question. My question is: MEI,

17 either parent or the applicant, have you -- is there

18 any restraint or prohibition against you offering

19 MEI's customers in California volume discounts if they

20 were to tender business to you in Washington, volume

21 discounts in California for Washington business?

22 A No. We would not do that.

23 Q Excuse me. What?

24 A No. We would not --

25 Q Okay.

0111

1 A -- offer those discounts.

2 Q That's not my question. My question was

3 whether there were any constraints against doing that?

4 A There are constraints. It's a separate

5 company, and we cannot offer volume discounts from one

6 market to the other.

7 Q Okay.

8 So the answer to my question is, no, you

9 wouldn't do that, not that there are legal constraints

10 against doing that?

11 A I would imagine there would be legal

12 constraints in doing that.

13 Q Well, if I were to tell you there weren't,

14 would that change your testimony?

15 A No.

16 Q And here you distinguish MEI the parent from

17 MEI the applicant, but haven't you said that MEI the

18 parent is providing all the capital for MEI the

19 applicant, that it is standing behind it, that there

20 is complete symmetry, at least in the finances, of the

21 two companies to allow MEI Northwest to operate?

22 A We are, but we are also saying we are not

23 going to. I mean the rates are significantly less up

24 here. There is not enough margin to offer volume

25 discounts. The volume discounts would be based only

0112

1 in the areas in which they are used, California being

2 a region of its own.

3 Q So I think I understand. The answer to your

4 question is there aren't constraints, but you wouldn't

5 offer it because there isn't sufficient margin in

6 Washington, and because MEI and the applicant are

7 different entities. Is that your answer?

8 A Correct.

9 Q Are you aware that in addition to customer

10 fares in Washington, that levels of service are

11 governed by and limited by tariffs submitted to and

12 approved by the WUTC?

13 A I am.

14 Q You talk about the certification process,

15 speaking of the UTC, at Lines 14 through 17 at Page 21

16 of your testimony. Do you see that testimony?

17 A Uh-huh.

18 Q You seem to be saying there that there are

19 potential drawbacks or problems or flaws with the UTC

20 certification process. Is that what you are saying

21 there? If you are not saying that, what are you

22 saying?

23 A I am saying that this process is very

24 time-consuming, very expensive, and offers a lot of

25 security to a single-source provider. There is not

0113

1 many people that can go through a 12-month process and

2 extend the capital with no guarantee or even a chance

3 of earning any of that back. And by saying that,

4 it's -- it has kept them as a monopoly for all these

5 years with very little fear.

6 Q And when you say "them" --

7 A Arrow Launch.

8 Q -- I assume you are referring --

9 Okay. Let me finish my question.

10 When you say "them," I assume you are saying

11 the protest in Arrow Launch service.

12 And I take it, then, that your testimony there

13 is directed to -- to situations where a single

14 provider could perform exclusive service; is that

15 correct?

16 A Say that again.

17 Q Yeah. I take it that your testimony that you

18 just provided is -- about flaws in the process, is

19 where a single provider could perform exclusive

20 service; is that correct?

21 Isn't that what you said?

22 A I don't think that's the point I was making.

23 Q What was the point you were making, then, if

24 it's not the fact -- you say the process can create an

25 environment where a single provider essentially holds

0114

1 a monopoly on the market. You say that, don't you?

2 A I do.

3 Q In answer to my question, isn't it true that

4 your testimony about flaws in the UTC certification

5 process is directed to where a single provider could

6 perform exclusive service?

7 A Yes.

8 Q Okay.

9 And it's true, is it not, that you also then

10 conclude that exclusive service under regulation is,

11 quote, fine, so long as the public is being adequately

12 served?

13 A Correct.

14 Q By this testimony you are acknowledging, are

15 you not, that in certain circumstances exclusive

16 service is acceptable?

17 A No.

18 Q Well, then, what did you mean by "this is

19 fine, so long as the public is adequately being

20 served"?

21 A I mean if the customers are all happy with the

22 service, they are being taken care of, and the

23 equipment is developing with the times, then we

24 wouldn't be here.

25 Q But that's not what your testimony follows.

0115

1 It follows your statement about the UTC's

2 certification process.

3 A Right.

4 Q Again, my question to you, and just listen to

5 the question, is: Are you acknowledging by that

6 statement that exclusive service under regulation is

7 fine, as long as the public is being adequately

8 served?

9 A Yes.

10 Q So then by that testimony you are

11 acknowledging, then, that sometimes exclusive service

12 is acceptable and fully consistent with the public

13 interest?

14 A I am, but I am also saying that they are not

15 being served.

16 Q I get that. We quoted that sentence --

17 A Okay.

18 Q -- but that's not what my question there was.

19 So the answer is yes?

20 A Correct.

21 Q Near the end of your testimony at Page 21,

22 Lines 24 through 26, you described the Commission as,

23 quote, a gatekeeper, unquote, quote, ensuring that the

24 public is adequately served and the rules that the

25 Commission is governed by are being used to serve the

0116

1 public, not a company.

2 Do you see that testimony?

3 A I do.

4 Q Okay.

5 So if the Commission were to find on this

6 record there has been no failure, no refusal to

7 provide reasonable and adequate service, then that

8 would be consistent with the Commission's gatekeeper

9 role and consistent with the public interest as well,

10 correct?

11 A It would, yes.

12 MR. WILEY: Okay. Your Honor, I have

13 finished my cross on the direct. If you want to take

14 a break, it would be a good time because I would start

15 on the rebuttal when we are done. It's up to you.

16 JUDGE FRIEDLANDER: What does everyone

17 think? Are you ready for a break?

18 MS. ENDEJAN: Sure.

19 MR. BENTSON: A Short one.

20 MR. BEATTIE: I think we should do a

21 very short break. I would like to keep this moving.

22 JUDGE FRIEDLANDER: Okay.

23 MR. WILEY: Five minutes? Ten minutes?

24 It's up to you, Your Honor, obviously.

25 JUDGE FRIEDLANDER: Let's go ten

0117

1 minutes. Be back here promptly by five to 11:00.

2 MR. WILEY: Okay.

3 JUDGE FRIEDLANDER: Thank you.

4 We are off the record.

5 (A brief recess.)

6 JUDGE FRIEDLANDER: I think we can go

7 ahead and begin again.

8 Mr. Wiley.

9 MR. WILEY: Thank you, Your Honor.

10 BY MR. WILEY:

11 Q Mr. Esch, before we get to your rebuttal,

12 three loose ends from the direct that I wanted to

13 follow up on.

14 First one, it's true, is it not, that Crowley

15 is an American tanker, or you would describe it as an

16 American tanker company, correct?

17 A We primarily serve their tug and barges.

18 Q But they also have oil that they transport on

19 barges, do they not?

20 A Yes.

21 Q And in that context, if you were serving them,

22 that would be a tanker service, wouldn't it?

23 A The tug and barges don't operate like the true

24 tankers.

25 Q What I am talking about is in Puget Sound for

0118

1 Crowley. They do transport oil in barges in Puget

2 Sound, correct?

3 A They do, yes.

4 Q And they are an American company, correct?

5 A They are.

6 Q And so if you were serving them, they would be

7 an American tanker company in that context, would they

8 not, in Puget Sound?

9 A I suppose you could look at it that way.

10 Q Okay.

11 One of the three -- of the floating assets you

12 named, you have six launch vessels, the 110-foot or

13 5-foot supply boat, that would not be feasible for

14 launch service, would it?

15 A We use it for launches.

16 Q Okay.

17 Where do you use it for launches?

18 A In the San Francisco Bay.

19 Q And you are saying that you could use that

20 here?

21 A I'm not saying we would bring that up here.

22 Q Okay.

23 A I'm saying we could use it.

24 Q So you use it in San Francisco for launch

25 service; is that correct?

0119

1 A For launch and large palletized and liquid

2 deliveries.

3 Q And at Page 9 of your direct testimony, with

4 respect to use and the services that you provide, or

5 that you project to provide, you say at Line 16 --

6 I'll let you get to that -- that generally need

7 fluctuates with the amount of ships, but not with any

8 one season.

9 Are you saying by that testimony that in the

10 Puget Sound launch service does not depend in part

11 upon certain seasons of the year, demand for launch

12 service?

13 A There are some trends, but it depends when the

14 oil companies are buying the oil and refining the oil.

15 Q Would you please talk about the trends then,

16 with respect to seasonality?

17 A I mean they honestly change. For example, we

18 are having the best first quarter in the San Francisco

19 Bay that we've had in ten years, and you would think

20 the opposite. There's a lot of refined products

21 moving along the coast right now.

22 Q So it isn't true that need might fluctuate

23 just with the amount of ships, but also with the

24 seasons; isn't is that true?

25 Maybe I can restate the question. Aren't you

0120

1 just saying, then, that there are times when needs

2 would fluctuate by seasonality?

3 A The season being -- no, I don't think that.

4 Q So when you said "but not with any one

5 season," what did you mean, based on the fact that you

6 are now seeing an increase in San Francisco Bay Area?

7 What did you mean?

8 A I meant, like a lot of industries, you will

9 see an increase in the fourth quarter because of

10 merchandising, things like that. There's not one set

11 season, that oil is like always moving in June and you

12 can -- you can bet around it.

13 Q What about grain ships?

14 A Grain moves a lot more in the fall and the

15 spring.

16 Q So by that testimony, I take it that there

17 would be seasonality in terms of launch service to

18 grain ships; is that correct?

19 A Grain ships are like the smallest margin of

20 our business.

21 Q That's not what I asked you. I said, by that

22 testimony, I would take it that there is some

23 seasonality with respect to grain ships for launch

24 service?

25 A I don't look at it that way.

0121

1 Q How do you look at it, then, with respect to

2 grain ships?

3 A Grain ships, like I said, are probably less

4 than 5 percent of the launches, so an influx in them

5 doesn't mean anything revenue-wise, really. I mean

6 you could do without it.

7 Q So you could just eliminate service to grain

8 ships and be fine?

9 A You wouldn't want to, but you could.

10 Q So that's the only seasonality that you are

11 acknowledging, then?

12 A I would acknowledge that.

13 Q Let's go to your rebuttal testimony.

14 JUDGE FRIEDLANDER: Before we do,

15 Mr. Wiley, the docket sheet that you handed around,

16 are you asking to make this an exhibit?

17 MR. WILEY: Your Honor, I would think

18 you could take official notice of it, but I am fine to

19 make it an exhibit.

20 JUDGE FRIEDLANDER: All right. I will

21 take official notice of it.

22 You can continue.

23 MR. WILEY: Thank you.

24 BY MR. WILEY:

25 Q Mr. Esch, let's begin your testimony on

0122

1 rebuttal at Page 3, Lines 15 through 17, where it

2 appears that you equate -- your operations in the

3 projected first year of service, that you equate that

4 with a reference to MEI's principals being in business

5 for the past 34 years. Are you testifying that

6 because of that 34 years of experience, you would

7 necessarily be able to avoid operating losses in

8 Washington service?

9 A No. I am saying that we have the financial

10 backing that a true start-up wouldn't have.

11 Q Okay.

12 And that again refers to that $300,000 loan

13 from MEI to MEI Northwest, LLC; is that correct?

14 A Correct.

15 Q And that's the $300,000 that you testified

16 today is on cash, you believe at the Bank of America,

17 correct?

18 A Correct.

19 Q Where in the Bank of America, in Washington or

20 in California?

21 A California.

22 Q At Page 4 of your testimony on rebuttal, you

23 note that Mr. Harmon, the principal of Arrow Launch,

24 is, quote, not privy to our books or the way MEI plans

25 to conduct business.

0123

1 Do you see that?

2 A I do.

3 Q Are you suggesting there that with

4 Mr. Harmon's 27 years of operating experience in

5 Washington regulated service, and his previous

6 experience in other jurisdictions, that that wouldn't

7 qualify him to speak about financial projections for a

8 new launch operator here?

9 A I am sure we have many similarities, but how

10 we pay for things and how the finances are kept are

11 different, per speculation.

12 Q But that's not my question. My question is:

13 Based on his experience in operating in the regulated

14 launch industry in Washington, and previously in

15 California, wouldn't that qualify him to discuss

16 generally what it takes to create a viable launch

17 business in the state of Washington?

18 A I'm sure he would know when it pertains to his

19 business.

20 Q Well, how about pertains to any other

21 prospective launch operator, what start-up would

22 involve, what costs would involve? Don't you think he

23 is qualified to make some statements about that?

24 A Statements, sure.

25 Q So how about if he has credence to comment on

0124

1 financial operating costs, do you agree that he has

2 some credence to testify about that?

3 A Not on our financials.

4 Q But my question was a prospective launch

5 applicant. He can talk in generalities about what it

6 would take --

7 A Generalities.

8 Q So you don't have to be in the launch

9 business, do you, necessarily, to make some statements

10 about the feasibility of launch service, or do you?

11 A No.

12 Q You have to be in the business to make

13 projections; is that correct?

14 A Correct.

15 Q Well, then, if that's so, how could you give

16 more credence to the financial review by the Staff

17 than to Arrow Launch?

18 A We did our own due diligence on our own

19 financials. We didn't --

20 Q But --

21 A We are not too concerned --

22 Q -- should -- my question, though, was should

23 you give credence to the Staff, the Commission, who

24 obviously are not launch operators, in their financial

25 review?

0125

1 A I'm sure they have their own criteria for

2 evaluating --

3 Q But I thought --

4 A -- financials.

5 Q I thought you just said you had to be in the

6 launch business in order to give credible testimony

7 about what you face as a prospective launch company.

8 Now you are saying that both can do that or neither

9 can do that? What are you saying?

10 A I'm saying the regulatory side I'm sure has

11 its own parameters for evaluating financial fitness

12 and that Arrow Launch has its own views on financials

13 based on their experiences and the way they conduct

14 their business.

15 Q And Arrow Launch has operated in regulated

16 service for 27 years in Washington, has it not?

17 A They have.

18 Q And it would gain some experience through that

19 in understanding the regulated system, correct?

20 A It would, but our pro forma wasn't solely

21 based on a regulated system. I mean there's a cost of

22 doing business, whether it's regulated or unregulated.

23 Q But in Washington, rates and charges and

24 service levels are all subject to regulation by

25 Commission, are they not?

0126

1 A What you charge is, but not your outputs, what

2 you -- your expenditures.

3 Q That's not my question. My question was: In

4 Washington, aren't rates, charges, and service levels

5 all subject to jurisdiction by the Commission?

6 A The rates are, yes.

7 Q Not the service levels and charges you are

8 saying?

9 A It's all regulated.

10 Q Okay.

11 Including profitability and revenue margin,

12 correct?

13 A That's what I understand.

14 Q So that's a yes?

15 A Correct.

16 Q Going over to Page 5, Lines 1 through 7, you

17 are talking generally about employing maintenance

18 personnel. Who are you referring to there? I assume

19 it's MEI the parent and not the applicant, correct?

20 A Correct.

21 Q And are you suggesting that the maintenance

22 that you speak of there would be taking place at your

23 headquarter's offices?

24 A We were pretty clear that we rotate our boats.

25 Q Again, I'm not -- I don't think you are

0127

1 understanding my question. My question was whether

2 the maintenance that you are referring to at Page 5

3 there refers to MEI the parent, or MEI Northwest, LLC,

4 the applicant?

5 A The in-house maintenance Staff referenced here

6 would be in the Bay Area.

7 Q And that's at your headquarter's offices,

8 correct?

9 A That's correct.

10 Q And that would, then, incur costs to the

11 parent company, would it not?

12 A Yes.

13 Q And how would you propose to be made whole by

14 the applicant company on those charges?

15 A Those burdens are absorbed by the parent

16 company.

17 Q So they are not going to be charged to the

18 Washington applicant company, correct?

19 A Correct.

20 Q Further on that page you describe stationing

21 MEI vessels in three different ports.

22 Do you see that?

23 A Which line?

24 Q Let me go to that. It's on Page 5. Yes,

25 there it is. Lines 10 through 11.

0128

1 A I see it.

2 Q Now, the "we" there -- again, I want to be

3 clear that the record is certain on this. The "We

4 also employ a preventative maintenance program,"

5 that's MEI the parent, correct?

6 A All companies.

7 Q Okay.

8 So what other companies are there besides MEI

9 and MEI Northwest, LLC?

10 A There is Seaway Towing.

11 Q What's that?

12 A It's a tugboat company.

13 Q And that's -- some of your, quote/unquote,

14 floating assets are assigned to Seaway Towing,

15 correct?

16 A Correct.

17 Q And when you told me that, are you saying that

18 Seaway is a separate entity?

19 A They are.

20 Q Oh, I didn't understand that. So you are

21 saying that of your 17 floating assets, at least five

22 are owned by Seaway Towing?

23 A No. They are chartered and we can pull the

24 charter at any moment.

25 Q Okay.

0129

1 But they are operated by -- I am just trying

2 to understand how your fleet is titled. Is it all

3 titled to MEI or is it -- some titled in Seaway

4 Towing, and the two that you would bring up here, MEI

5 Northwest? I am just trying to get a handle on how

6 your floating assets are owned.

7 A Seaway owns one tugboat, and then they charter

8 the rest on a month-to-month basis. MEI Northwest

9 will be bareboat chartering two crew boats.

10 Q To MEI Northwest, LLC?

11 A Correct.

12 Q And they will still be owned by MEI the

13 parent, correct?

14 A Correct.

15 Q Okay.

16 So again, my question there at Page 5, the

17 "we" refers --

18 (Bridge line interruption.)

19 JUDGE FRIEDLANDER: I apologize. We

20 didn't have the conference bridge on.

21 MR. WILEY: Okay.

22 JUDGE FRIEDLANDER: Thank you.

23 BY MR. WILEY:

24 Q The "we" refers to MEI the parent, does it

25 not, based on what you have just told me?

0130

1 A I think what I meant by "we," as in all our

2 companies.

3 Q So all your companies would employ a

4 preventive maintenance program. I get that.

5 How many vessels -- is it true now that MEI

6 the parent, stations two launch vessels in Long Beach

7 and four in San Francisco?

8 A Correct.

9 Q Where are the two that you are going to

10 bareboat charter and bring up here located?

11 A One is in Long Beach and one is in

12 San Francisco.

13 Q And what's going to happen to your -- so you

14 are going to just have one vessel in Long Beach?

15 A No. We are going to move another one from

16 San Francisco down and buy a new boat.

17 Q And when you say "we," are you referring there

18 to MEI the parent?

19 A Correct.

20 Q Okay.

21 And so you are going to move one from

22 Long Beach to Seattle and -- or to the Puget Sound,

23 excuse me, and one from San Francisco?

24 A Correct.

25 Q And what's going to happen in San Francisco?

0131

1 Will you be down to three launch vessels, then?

2 A We should be down to two.

3 Q So you will have two in Long Beach, two in

4 San Francisco, and two in the Puget Sound area; is

5 that correct?

6 A Right. And we have arrangements to buy a

7 swing boat when the time comes. And don't forget, we

8 also have the 110-foot supply boat that moves heavy,

9 oversized, large cargo.

10 Q And who is that owned by? Seaway Towing

11 or MEI?

12 A Marine Express.

13 Q Excuse me?

14 A MEI.

15 Q Okay.

16 The parent company?

17 A Correct.

18 Q And Stockton you refer to there, and we talked

19 a little bit about it earlier. I take it that

20 Stockton is -- has no relevance to launch vessels or

21 launch service; is that correct?

22 A That's correct.

23 Q So you don't move equipment between Stockton

24 and Long Beach, for instance?

25 A No.

0132

1 Q At Page 6, Lines 20 through 26, you are

2 critiquing Mr. Harmon's analysis of your proposed

3 statement of operations here. You refer again to your

4 broad experience in the industry there.

5 Do you see that?

6 A Which line?

7 Q Lines 20 through 26.

8 A I do.

9 Q Okay.

10 But you haven't actually performed a pro forma

11 analysis that would incorporate, for instance, the

12 Puget Sound's distances and actual costs per mile of

13 your proposed service in the Anacortes area with those

14 that you currently experience in San Francisco, have

15 you?

16 A We provided fuel calculations based on what we

17 thought.

18 Q That's not my question. My question is: Have

19 you provided a -- have you performed a pro forma

20 financial analysis that incorporates distances and

21 cost per mile, labor, other costs, with what you

22 currently are experiencing in San Francisco, to see if

23 there are parallels or if operating costs per mile

24 would be higher here, for instance? You haven't done

25 that, have you?

0133

1 A No, because that's not very common in the

2 business, to figure out your costs per mile.

3 Q If you would answer my question yes or no, I

4 can follow up, and your counsel can. But the answer

5 is, no, you haven't done that, correct?

6 A Can you repeat the question?

7 Q Yeah. I said that you haven't actually

8 performed a pro forma financial analysis of your costs

9 of operations in the Puget Sound area, as compared to

10 what you have experienced in San Francisco, to

11 determine whether your costs per mile for labor, fuel,

12 all of that would be higher here than they are in

13 San Francisco?

14 A We have compared that. That's how our

15 pro forma --

16 Q Okay.

17 A -- was generated.

18 Q So that was a comparison of San Francisco

19 costs and Anacortes prospective costs, and you are

20 saying on an apples-to-apples basis you have done

21 that, and that's in your financial statement, that's a

22 part of your application?

23 A The comparison is not part of our application.

24 That was --

25 Q That's what my --

0134

1 A -- used behind --

2 Q -- question is.

3 A -- the scenes.

4 Q That's what my question was.

5 A We have compared it. That is how we have

6 generated our numbers.

7 Q What were the conclusions that you reached in

8 that --

9 A Well, a lot of --

10 Q Can I please finish my question?

11 What was the conclusions that you reached in

12 performing that pro forma financial analysis,

13 San Francisco versus Anacortes, in terms of the

14 operating costs per mile?

15 A They are very similar.

16 Q Okay.

17 And you said -- but then you said that the

18 rates in Washington are considerably less. Didn't you

19 just testify to that?

20 A I did.

21 Q Okay.

22 And wouldn't that suggest that it would be

23 much more difficult to have a profit or an operating

24 revenue margin in the Puget Sound?

25 A No, because they have a two-hour minimum and

0135

1 we have a one-hour minimum. So for every hour job

2 they bill two, where we bill true time.

3 Q When you say "they" --

4 A Arrow Launch.

5 Q Okay.

6 So you are saying that your proposal all

7 hinges, in terms of profitability, on the service

8 parameters that you would propose?

9 A Yes.

10 Q Okay.

11 And you understand, do you not, that those

12 rates, charges, and service levels are all subject to

13 approval by the WUTC?

14 A Of course I do.

15 Q So you are making an assumption that your

16 proposal would be approved and would allow you to be

17 more profitable than it would appear on the surface,

18 based on what you have said?

19 A Yes.

20 Q "Yes"? That what you said?

21 A Yes.

22 Q Are you aware that in Exhibit RSE-4 -- and

23 I've got a copy of that here that I can hand you.

24 You referred to a two-hour minimum that Arrow

25 Launch has and that you have a one-hour minimum. It's

0136

1 true, is it not, that you proposed a two-hour minimum

2 in the tariff that you submitted with your

3 application?

4 A I said we have a one-hour minimum in our other

5 locations and that this location would be a two-hour

6 minimum, matching theirs.

7 Q Okay.

8 And that assumes again that the Commission is

9 going to approve that for you, does it not?

10 A Yes.

11 Q Is your testimony that, if you weren't to be

12 approved that particular service parameter, that you

13 would be unprofitable?

14 A It would change things.

15 Q And it would change things for the detriment;

16 is that correct?

17 A Yes.

18 Q Okay.

19 So I assume that you wouldn't agree that it is

20 a correct assumption that the geographic distances and

21 separation of service areas in Puget Sound, that you

22 spoke of in your direct testimony, would generally

23 entail higher costs per mile for launch operations?

24 A We are excluding the lower Puget Sound to

25 avoid that.

0137

1 Q So you are selecting a lower cost, higher

2 revenue territory to ensure that those generally

3 higher costs don't get incurred by you; is that

4 correct?

5 A That happens to be the case, but we picked

6 that area because --

7 Q Please.

8 A -- that's where our --

9 Q Please, Mr. Esch, it's yes or no, and then you

10 can follow up, okay?

11 MR. BENTSON: Objection, Your Honor.

12 The witness is allowed to answer the question how he

13 wants to.

14 MR. WILEY: Well, Your Honor --

15 MR. BENTSON: Counsel can't interrupt --

16 MR. WILEY: -- I am trying to make --

17 JUDGE FRIEDLANDER: Okay. Wait, wait,

18 wait, wait. Counsel can't interrupt each other

19 either.

20 Mr. Wiley, let Mr. Bentson speak, and then you

21 can follow up.

22 MR. BENTSON: The objection, Your Honor,

23 is that when my witness is speaking, Mr. Wiley cannot

24 interrupt him and say "yes or no." He is allowed to

25 answer the question how he wants to. Mr. Wiley can't

0138

1 force him to say yes or no. That's improper

2 procedure. And the witness should not be interrupted

3 if that is not his answer.

4 JUDGE FRIEDLANDER: Mr. Wiley?

5 MR. WILEY: Your Honor, I am entitled to

6 make a record here. I am entitled to get a yes or no

7 answer. I am not objecting to the follow-up, but I

8 would like a yes or no answer.

9 JUDGE FRIEDLANDER: All right.

10 Does anyone else wish to weigh in on this?

11 MS. ENDEJAN: No, Your Honor.

12 JUDGE FRIEDLANDER: All right.

13 The witness does need to answer yes or no to

14 the direct question that Mr. Wiley has asked.

15 However, you can certainly, Mr. Esch, follow up with

16 an explanation, and your counsel can also follow up

17 with redirect. So please answer the direct question

18 yes or no, and then go into an explanation.

19 Thank you.

20 THE WITNESS: Can you repeat the

21 question?

22 MR. WILEY: I am going to have to have

23 it read back because I can't remember it either. If I

24 could, Your Honor.

25 JUDGE FRIEDLANDER: Would you mind doing

0139

1 that?

2 (The requested portion of the

3 transcript was read by the reporter.)

4 A It's correct, but it happens to be the sole

5 place that our customers are asking for our resources

6 at.

7 BY MR. BEATTIE:

8 Q And that's Anacortes, correct?

9 A Correct.

10 Q And the only customers -- the only customer

11 you have identified is Crowley Petroleum Services by

12 that testimony, correct?

13 A Yes.

14 Q Okay.

15 With respect to Weldon Burton's testimony on

16 MEI's pro forma and financial statement, that you

17 refer to beginning at Page 7 -- I'll let you get over

18 to that. Do you see that there?

19 A Yes.

20 Q Is it correct that you are essentially saying

21 there that an accountant wouldn't be as reliable an

22 analyst of launch company financial operations as a

23 proprietor or owner of that company? Is that what you

24 are saying?

25 A I am definitely saying that.

0140

1 Q Okay.

2 For instance, going over to Page 8, you go

3 further and say that "He has no insight into how we do

4 business and has never seen MEI's parent company's

5 books," and no understanding of how we do business,

6 correct?

7 A Correct.

8 Q By the way, did the WUTC Staff see MEI's

9 parent company's books?

10 A No.

11 Q Did they seek to understand your costs of

12 doing business, as far as you know?

13 A Not beyond the sheet we turned in.

14 Q So assuming they did not, how would their

15 opinions on your prospective financial fitness be any

16 more credible than Mr. Burton's?

17 A I guess it was based on what they have seen in

18 the past, and the cash on hand is pretty much a good

19 safety net.

20 Q That $300,000 figure again, correct?

21 A Right.

22 Q That's kind of the mother lode of the

23 financial fitness issue in this case, then, correct?

24 A I don't see it that way.

25 Q Okay.

0141

1 But that's certainly a big boon to your

2 ability to start service here, is it not?

3 A I mean cash on hand is definitely strength

4 in --

5 Q Again, no one, to your knowledge, has ever

6 verified that cash on hand, have they?

7 A To my knowledge, no.

8 Q Okay.

9 When you say in your rebuttal testimony, Page

10 8, Line 10, that you continue to believe that $500,000

11 in revenue during MEI's first operating year here is

12 conservative, quote/unquote, can you tell us what

13 corroborating financial analysis you have performed

14 with your California customers who have Puget Sound

15 business to test that figure?

16 A Well, even if we just provide service for

17 Crowley it would exceed that number.

18 Q So you are saying that that $500,000 is --

19 Crowley alone is 500,000, correct?

20 A Correct.

21 Q And that would be diverting all of that

22 current Crowley business from Arrow Launch currently,

23 correct?

24 A We do not know what they will do, but --

25 Q Who is "they"?

0142

1 A Crowley. We do not know what Crowley will do.

2 Q So my question was: Is it possible, then,

3 that that $500,000 would be diverted from Arrow Launch

4 to MEI Northwest, LLC?

5 A It is possible.

6 Q In speaking with your California customers

7 about possible Washington launch business, your

8 testimony is that you did not offer any discounts,

9 correct?

10 A Correct.

11 Q At Page 9, Lines 9 through 11, you refer again

12 to your first year of regulated and nonregulated

13 projection of $700,000.

14 Do you see that?

15 A I do.

16 Q Okay.

17 I understand here that you are saying that

18 revenue amount would actually be new revenues that

19 Arrow is not currently capturing due to its

20 performance, which you there critique; is that

21 correct? Is that what you were saying?

22 A The project management charges or revenue

23 would be new, not even related to them.

24 Q What I am asking you to do is look

25 specifically at Lines 8 through 11, where you say, "I

0143

1 believe $700,000 is a very reasonable projection for

2 the amount of business that Arrow is not currently

3 capturing from the market due to its poor performance

4 and underserving the market."

5 Do you see that testimony?

6 A I do.

7 Q Okay.

8 Now, isn't it true, then, that that would

9 actually be new revenues that Arrow is not currently

10 capturing by your testimony?

11 A Some of them are new revenues.

12 Q Well, you said it. You said 700,000, so you

13 are going to have to tell me what part is some and

14 what part is not included in that testimony.

15 A The project management would all be new to our

16 cruise line customers. I'm not sure to what extent

17 they provide environmental services, but a large

18 amount of our service base is environmental services.

19 Q Those are not regulated services, correct?

20 A Correct.

21 Q Let's go back to your testimony, because it

22 sounds like you are amending or modifying it. You are

23 saying that 700- is the amount of business that Arrow

24 is not currently capturing, in your testimony,

25 correct? That's what you say there.

0144

1 A That's based off the pro forma we submitted

2 and how we broke it down with where they are.

3 Q Again, my question isn't what other source you

4 are referring to. My question is directed to your

5 sworn testimony at Line 9, where you say, "$700,000 is

6 a very reasonable projection for the amount of

7 business Arrow is not currently capturing." I am

8 asking you, have you now modified that to say, oh, but

9 that's really only project management and environment,

10 nonregulated services?

11 A Correct. Some of it is old business.

12 Q How much? If we are trying to quantify what

13 you are saying is not being captured, including

14 nonregulated service revenues, how much of that

15 700,000 are you now saying is not being captured by

16 Arrow?

17 A It would be the 500,000 -- the 500,000

18 being --

19 Q And that all relates to Crowley revenues, and

20 it includes nonregulated, as well as regulated

21 revenues. Is that what you are saying?

22 A Yes.

23 Q How do you suggest that that kind of level of

24 revenue would be recoupable, in other words,

25 obtainable?

0145

1 A By who?

2 Q By you, which is what you are saying here,

3 that one reason that you believe you could be feasible

4 is that there is a lot of extra revenue sources that

5 aren't being tapped by Arrow.

6 A Right. Which is our environmental services

7 and our project management --

8 Q Okay.

9 A -- that we provide.

10 Q Those aren't regulated by the Commission,

11 though, are they?

12 A I understand, but they are still listed as

13 part of our revenue.

14 Q Are you saying that Arrow does not provide

15 environmental services such as slops and other

16 activities?

17 A They do.

18 Q So can you quantify for me, is it 500-? Is it

19 700-? How much revenue is being left on the table

20 there by your testimony?

21 A Probably 100,000.

22 Q So instead of 700,000, we should say 100,000,

23 right?

24 A Correct.

25 Q Are you saying that that $100,000 revenue that

0146

1 is not being tapped would be services that wouldn't be

2 offered by a regulated service provider and thus could

3 have caused a complaint to the Commission, for

4 instance?

5 A Say that again.

6 Q Yeah. Are you saying that that now $100,000,

7 not $700,000, of revenue are services that aren't

8 being offered or provided and otherwise could serve as

9 a source of a complaint to the Commission for

10 insufficient service?

11 A No.

12 Q You are not saying that. Are you saying -- so

13 you are not saying that Arrow is leaving any regulated

14 revenue on the table in that passage, correct?

15 A Correct.

16 Q Do you believe that with Arrow's 27-year

17 history and investment, they wouldn't solicit,

18 welcome, or seek to identify, I guess $100,000, not

19 $700,00, in additional revenue for launch business in

20 the Puget Sound?

21 A Say that again.

22 Q Do you believe that in Arrow's 27-year history

23 and their investment, they would not solicit, welcome,

24 or otherwise seek to recoup or obtain that revenue,

25 which you now say is 100,000, not 700,000, for

0147

1 regulated launch service in Puget Sound?

2 A I'm sure they would.

3 Q So they are not consciously leaving anything

4 on the table, are they?

5 A They may not be privy to that market.

6 Q You wouldn't suggest by this testimony that

7 there is an untapped revenue stream involving

8 regulated service that the Commission would want a

9 provider to offer that isn't being provided, correct?

10 A Well, a lot of these companies may avoid

11 certain things in this area because of the service or

12 the challenges of getting what they need.

13 Q Well, you testified about that, and maybe I

14 should ask you. What specific evidence can you offer

15 us that that has occurred, that there has been any

16 diversion?

17 A A lot of companies will do large storings down

18 in Long Beach for cost reasons and ease.

19 Q Well, I though you said that rates were

20 cheaper here than in California, so why would they do

21 that for cost reasons?

22 A It's pretty similar to Long Beach.

23 Q So now you are saying that Long Beach and the

24 State of Washington have comparable rates; is that

25 correct?

0148

1 You don't know anything about the basis for

2 any diversion in a certain specific instance, do you?

3 A Not a specific instance.

4 Q Again, you have offered third-party references

5 to business being diverted, but what proof have you

6 offered us that that has actually occurred?

7 A The slops in the water and all these services,

8 I bet you would find that it's ten to one down in our

9 area for them being provided, based on the volume that

10 we can move and what we can take.

11 Q So you are saying that those unregulated

12 services, the environmental services, are being

13 somehow reassigned to California because they are not

14 available here. Is that your testimony?

15 A To the volume, yes.

16 Q Have you offered us any specific instance,

17 day, time, boat, ship being -- ship sailing, anything

18 to support that?

19 A No.

20 Q Can you tell us whether anybody is diverting

21 regulated passenger or freight service in the state of

22 Washington based on the inability to serve by Arrow

23 Launch?

24 A Just as I have said, that they will avoid crew

25 changes and certain things here because of the

0149

1 challenges and the issues.

2 Q That sounds very broad. Can you be any more

3 specific about challenges, crewing, anything that we

4 could respond to in our testimony that supports that

5 kind of statement?

6 A Just the fact of what I have been told. And

7 to the extent --

8 Q Again, what you are representing you have been

9 told is the basis for any kind of response about any

10 diversion or -- or inability to serve. Is that your

11 testimony?

12 A Correct.

13 Q Continuing on Page 9 of your testimony, you

14 say that in your opinion a CPI has -- excuse me, a CPA

15 has no business providing fuel calculations.

16 Do you see that testimony?

17 A I do.

18 Q Okay.

19 Are you saying there that an accountant has no

20 basis to evaluate a fuel expense item in a pro forma

21 financial statement?

22 A He could, but to actually do the calculation

23 would not make any sense.

24 Q So you are saying he can't perform an analysis

25 of the numbers that you provide to test their accuracy

0150

1 or validity. Is that what you are saying?

2 A I didn't give him the numbers, I gave him a

3 gross number.

4 Q Okay.

5 Are you saying that he can't explore that,

6 analyze it, and opine on it?

7 A He can, based on the information and knowledge

8 that he has, not --

9 Q Not inside knowledge by you in running MEI,

10 correct?

11 A Correct.

12 Q Okay.

13 But what about accountants on the UTC staff?

14 In your view, do they have a right or any function in

15 providing an analysis of that?

16 A Reviewing the gross numbers provided, yes.

17 Q But you dispute Mr. Burton's fuel

18 calculations, do you not, based on things like burn

19 rates and other technicalities that we don't need to

20 get into here, but then you conclude your fuel

21 discussion with an acknowledgment that you might have

22 been wrong and that you could be higher than what was

23 pro-formed. Do you recall that testimony?

24 A I do recall that.

25 Q Okay.

0151

1 A And that's because he used the high number of

2 running hours and we used the low number and so that's

3 where the discrepancy is.

4 Q Okay.

5 And then you acknowledged that with a higher

6 number, that original $15,000 fuel figure might have

7 been too low, do you not?

8 A And we said we will gladly welcome additional

9 fuel costs because that means there's more billable

10 hours.

11 Q Yeah, I wanted to ask you specifically about

12 that question. You say at Line 8, Page 10, quote, We

13 will gladly accept a slightly higher fuel cost than we

14 initially estimated in return for more work.

15 What did you mean there, other than if there

16 is more launch work there would be more fuel consumed?

17 What did you mean by that statement?

18 A That statement was in reference to the CPA

19 saying that we just totally messed up the number.

20 After we explained how you come up with a true number

21 that an operator would know, that if we did end up on

22 the high side of billable hours, not the low side,

23 that it would be a win for us because it would mean

24 that there was more gross revenue.

25 Q You are going right to my question, which is

0152

1 the quote, We will gladly accept a slightly higher

2 fuel cost than we initially estimated in return for

3 more work.

4 What did you mean there, other than if there

5 is more launch work there would obviously be more fuel

6 consumed?

7 A Right.

8 Q Okay.

9 And where would that extra work come from, in

10 your view?

11 A Well, we based it off 500,000. Let's say it's

12 $600,000 and we run several hundred more hours. Our

13 cost for fuel is going to go up.

14 Q Again, getting back to my earlier questions

15 about Page 9, Lines 9 through 11. That's not 700,000

16 in new work, that's potentially 100,000 that is being

17 left. Where is that new work going to come from?

18 A The launch -- I mean the launch work is going

19 to come from -- I mean there is no new work, if that's

20 what you are getting at.

21 Q That's what I am getting at. And, Mr. Esch,

22 that work would clearly have to be diverted from Arrow

23 Launch Service, wouldn't it?

24 A Yes.

25 Q Staying on Page 11. You are going back to

0153

1 your analysis that you originally provided in October

2 about underserving the market, correct?

3 A Where are we at?

4 Q Page 11.

5 A Okay.

6 Q Do you see the heading, "ARROW LAUNCH IS

7 UNDERSERVING"?

8 A Correct.

9 Q Okay.

10 So you are going back to that. There you are

11 broadly asked if anything in Arrow's testimony changed

12 your opinion, and you say no, correct?

13 A Correct.

14 Q We will get into that in a little more detail,

15 but right now I wanted to ask you generally here

16 whether any of your metrics or numbers about Arrow's

17 capabilities, that were shown by their testimony to be

18 significantly understated by you in your original

19 testimony, caused you any pause?

20 A No.

21 Q So you say despite what they said about

22 numbers and adjustments higher to actually reflect

23 their fleet, that didn't cause you any pause or

24 reassessment of your original conclusions about

25 underservice, correct?

0154

1 A Correct.

2 Q So when you next then allude at Page 11 of

3 your rebuttal testimony to receiving the information

4 from Crowley Petroleum Service and attach RSE-8, which

5 is that written statement, you or your representatives

6 actually initiated that contact with Crowley before

7 Arrow submitted its testimony, did it not?

8 A Yes.

9 Q So actually you were involved in inputting on

10 that statement before you knew that Arrow was going to

11 submit its testimony and what it was going to say,

12 correct?

13 A Repeat that.

14 Q Yeah. So you were involved in inputting on

15 that statement before you knew what Arrow was going to

16 submit in its testimony?

17 A I had no idea what Crowley would put on their

18 statement.

19 Q That's not what I am saying. I am saying what

20 Arrow would say in its testimony. You have just said

21 you initiated contact with Crowley before Arrow filed

22 its testimony, correct?

23 A I don't know the dates.

24 Q Okay.

25 Well, let me call your attention to RSE-8. I

0155

1 can hand it to you. But for the purposes of my

2 question, would you accept, subject to check, that it

3 is dated October 31, 2016?

4 A Yes.

5 Q Okay.

6 And are you aware that Arrow did not file its

7 testimony in this proceeding until Tuesday,

8 November 1, 2016?

9 A Okay.

10 Q So my question to you is: You were actually

11 involved in contacting Crowley about obtaining a

12 statement before Arrow even filed testimony to which

13 you were purportedly responding, correct?

14 A We contacted Crowley before we even completed

15 the application.

16 Q That's not my question here. My question is:

17 RSE-8, the date on RSE-8, when you contacted Crowley

18 and when Arrow filed its rebuttal or response

19 testimony. My question again says: You in fact were

20 in touch with Crowley before Arrow filed its testimony

21 here, correct? Yes or no?

22 A No.

23 Q Okay.

24 So you didn't -- you just said that you

25 contacted them before --

0156

1 A Are you asking --

2 Q Let me finish.

3 You just said that you contacted them before

4 you even filed your application. My question then

5 was: Well, with respect to the statement that they

6 filed in RSE-8, isn't it true that you contacted them

7 before Arrow filed testimony to which RSE-8 was

8 specifically responding. Yes or no?

9 A Yes.

10 Q At the time Arrow filed its response testimony

11 on November 1, how could you have known that Crowley's

12 statement directly refuted, quote/unquote, testimony

13 from Arrow that had not been filed?

14 Do you want me to point you to where you say

15 that?

16 A Sure.

17 Q It's Page 12, Line 8.

18 A Okay.

19 Q How could you have known that Crowley's

20 statement would directly refute testimony from Arrow

21 that had not been filed?

22 A I am going to have to see the dates.

23 Q Assuming that, for the purposes of my

24 question, the date the statement was signed was

25 October 31, 2016, how could you have known?

0157

1 A I wouldn't know.

2 Q That's my question.

3 Going to your statement about what

4 Crowley's -- going to your testimony, rather, about

5 what Crowley's statement shows at Page 12 of your

6 rebuttal, can you explain how at Lines 14 through 16

7 on Page 12 the statement, quote, this need is not

8 currently being met, unquote, shows that, quote, Arrow

9 is -- excuse me. Shows that Arrow is, quote,

10 currently unable to meet the around-the-clock demands

11 of one of the largest shipping customers in the Puget

12 Sound?

13 A Okay.

14 Q Can you explain how that is?

15 A I cannot.

16 Q Can you explain how this need is not currently

17 being met shows how Arrow is currently unable to meet

18 the around-the-clock demands of one of the largest

19 shipping customers in the Puget Sound? How does it

20 show that, please?

21 I am going to hand you RSE-8, if you need to

22 refer to it.

23 A If this statement was made October 31 and my

24 rebuttal is December 5th, this information would have

25 been available to me.

0158

1 Q That's not my question. My question was: If

2 you look at -- it would have been available to you, I

3 get that. My question is: How does that statement

4 support what you said at Lines 14 through 16 of your

5 testimony?

6 If you need to let's run --

7 A No, that's fine.

8 Q Okay.

9 A Crowley made points that they didn't have the

10 service that they needed around the clock.

11 Q I understand that, but my question goes to how

12 your testimony in quoting that statement supports that

13 or shows that?

14 A It is referencing it as supportive of what we

15 said in the beginning.

16 Q So your testimony is it's not actually

17 verbatim showing that, it's just generally supporting

18 that. Is that your testimony?

19 A It is in support of our testimony, yes.

20 Q So when you say that -- let's go back to your

21 testimony, then, and see if we need to correct it.

22 It says the statement, This need is not

23 currently being met, quote, shows that Arrow is

24 currently unable to meet the around-the-clock demands

25 of the largest -- of one of the largest shipping

0159

1 customers -- companies in the Puget Sound.

2 Where in that statement does it say that,

3 Mr. Esch's statement? Where does it say that?

4 You know, let's look at Lines --

5 JUDGE FRIEDLANDER: I'm sorry. I hate

6 to interrupt. I think you mean Mr. Aikin's statement.

7 MR. WILEY: Excuse me. Mr. Aikin's.

8 I'm sorry, Your Honor. Thank you.

9 JUDGE FRIEDLANDER: Thank you.

10 A Word for word it doesn't say the same exact

11 thing.

12 BY MR. WILEY:

13 Q That's my question.

14 Now let's look at Lines 4 through 8 in

15 Mr. Akin's statement, RSE-8.

16 A I don't --

17 Q That's the passage you quoted at Page 12,

18 correct?

19 A Mine is not prepared the same way.

20 Q Please explain how, quote, this shows that

21 despite Arrow's contention that it holds itself out as

22 a reliable around-the-clock provider it is unable to

23 meet the demands of Crowley.

24 Do you see that statement?

25 A Yes.

0160

1 Q What are you saying there? That Arrow is not

2 an around-the-clock provider, that it has somehow

3 failed to meet Crowley's needs, or both?

4 A They are an around-the-clock provider. They

5 failed to meet their needs.

6 Q So then in answer to my question, that

7 statement does not refer to any deficiency by Arrow

8 Launch on the around-the-clock testimony from

9 Mr. Aikin in RSE-8, but just refers generally about,

10 quote, being unable to meet the needs -- the demands

11 of Crowley, unquote, correct?

12 A Right.

13 Q Okay.

14 How do you claim that this demonstrates that

15 Arrow has not in fact met Crowley's needs?

16 A I mean they are explicit in their own

17 statement saying that their needs are not being met.

18 Q But again, how does this demonstrate that

19 Arrow has not in fact met them?

20 A You would have to ask them that.

21 Q But you are saying that it says that about

22 Arrow?

23 A Not verbatim, but yes, I am saying that their

24 around-the-clock needs are not being met. Whether you

25 offer something or not doesn't mean that it is being

0161

1 furnished when you need it.

2 Q So your testimony is that it refers to Arrow,

3 even though it doesn't say that. It doesn't identify

4 Arrow, correct?

5 A Correct.

6 Q And that it is not critiquing the

7 around-the-clock availability, it is only critiquing

8 the, quote, inability to meet the demands of Crowley?

9 MR. BEATTIE: Your Honor, this is

10 cumulative.

11 JUDGE FRIEDLANDER: I'm sorry. Go

12 ahead.

13 MR. BEATTIE: This is cumulative.

14 JUDGE FRIEDLANDER: Can you explain?

15 What do you mean?

16 MR. BEATTIE: We have been through this

17 already, and we are nearing the lunch hour, so I just

18 wonder if we could move on to a different topic.

19 JUDGE FRIEDLANDER: Okay. Thank you.

20 MR. BEATTIE: I know it's not my

21 witness.

22 JUDGE FRIEDLANDER: Thank you.

23 Mr. Wiley, I think we are getting a bit

24 repetitive, so if we can kind of come to a --

25 MR. WILEY: Sure.

0162

1 JUDGE FRIEDLANDER: -- point here.

2 MR. WILEY: Let me try it this way, Your

3 Honor.

4 BY MR. WILEY:

5 Q Where you say in your testimony that RSE-8

6 shows this need is not currently being met, what are

7 the specific requirements you say in relying on RSE-8

8 that are here going unmet?

9 A I could read the support statement where they

10 say that there is timing issues and reliability issues

11 for their customers.

12 Q Timing and reliability; is that correct?

13 A Correct.

14 Q Is there anything else?

15 A The lack of competition reduces their ability

16 to meet the needs of their customers.

17 Q So that means needs are going unmet, as you

18 understand?

19 A That is correct.

20 Q Okay.

21 Going further down on Page 12, quoting the

22 Crowley statement again, you say that, quote, delays

23 in transporting crews to or -- excuse me. You refer

24 to the delays in transporting crews to or from vessels

25 have occurred in the past. Where in Mr. Aikin's

0163

1 statement and your rebuttal testimony is there a

2 linkage between delays in transporting crews to

3 tankers and any actions by Arrow?

4 A Those are verbal complaints.

5 Q So you have not provided any documentation of

6 problems or delays by Arrow, have you?

7 A No.

8 Q Okay.

9 Isn't it true, Mr. Esch, that any actor in the

10 supply chain of service to a tanker might have caused

11 delays, such as vendors who supply parts, provisioners

12 who provide food and sundries? Any of those might

13 cause a delay, correct?

14 A Sure.

15 Q It's not just the launch company that you

16 could point to in all situations, correct?

17 A Right.

18 Q And it's not just the launch company, in this

19 case Arrow, that you could point to in any situation,

20 correct?

21 A But Crowley is.

22 Q No. I am asking you to show me where you have

23 said specifically where there has been a delay by

24 Arrow, by vessel, by date, by time --

25 A I have --

0164

1 Q -- by shift?

2 A I have not identified one.

3 Q By the way, couldn't delays to Crowley's

4 vessels have been caused by Crowley's own tugs and

5 ATBs which regularly deliver pilots to tankers and

6 bypass regulated launch service?

7 A Sure.

8 Q So we don't know who could have caused the

9 delay that Mr. Aikin responds to; isn't that correct?

10 A No. I am agreeing that that could be a

11 situation where there was additional delays they were

12 responsible for.

13 Q So again, we don't know who he is referring

14 to. You say it is Arrow Launch, but you never

15 identified that, have you, on the delays?

16 A No.

17 Q Okay.

18 Do you see anything in Crowley's statement

19 that specifically ties Arrow to those alleged delays?

20 A Just the statement.

21 Q So is the answer yes or no? I asked you: Do

22 you see anything in Crowley's statement that ties

23 Arrow's actions to those delays?

24 A They did not give us a specific situation.

25 Q And it also didn't even identify Arrow as the

0165

1 cause of delay, did it?

2 A I can't speak for Crowley.

3 Q But you can read the statement. I am just

4 asking you if you see any identification of Arrow as

5 the cause of the delays?

6 A There is currently one service provider for

7 passenger ferry and freight service in the Puget

8 Sound. I mean they are being very clear. "This has

9 created timing and reliability issues for us as our

10 customers..."

11 Q But again, on those timing issues, you have

12 testified that it could be the cause of other actors

13 other than the launch company. My question to you is:

14 Where on that statement does it identify Arrow as the

15 cause of delays?

16 A We have gone over this. Generally, they are

17 not giving us specific time, day, or reason. I

18 mean...

19 Q And you haven't provided that either, correct?

20 A That is correct.

21 Q Okay.

22 Page 13 of your rebuttal, you indicate that

23 you have never heard any complaint related to Arrow's

24 rates. Is that why, by the way, that you simply

25 mirrored their current rate levels in your proposed

0166

1 tariff?

2 A That's exactly why.

3 Q Okay.

4 With respect to that lack of complaint, isn't

5 it the truth that you analyzed invoices of Arrow

6 Launch with Crowley procurement personnel before you

7 filed your application?

8 A I have never seen an Arrow Launch invoice.

9 Q So you never sat down with any Arrow -- with

10 any Crowley personnel to review Arrow Launch invoices;

11 is that correct?

12 A I have never seen an Arrow Launch invoice.

13 Q That's not my question. My question was: Did

14 you sit down with Crowley personnel before you filed

15 this application to review any invoices from Arrow?

16 A I have sat down with Crowley and talked about

17 what they thought their gross number was and what they

18 needed, but they did not furnish, and I have never

19 once seen an Arrow Launch invoice.

20 Q Did that discussion involve any reference to

21 Arrow's rates and charges?

22 A Well, those were available to me already on

23 the -- online.

24 Q That's not my question, Mr. Esch. Did that

25 discussion that you just referenced with Crowley

0167

1 personnel involve any reference to Arrow's rates and

2 charges? Yes or no?

3 A I think they said, yeah, that they weren't

4 happy with the rates.

5 Q Okay.

6 So then you have heard a complaint about

7 Arrow's rates, I take it?

8 A They were more on their -- their additional

9 charges, their ancillary charges.

10 Q When you talk about their additional charges,

11 isn't it true that you are talking about the

12 imposition of late charges to Crowley authorized by

13 Arrow's tariff?

14 A No. I am talking about the crane charges, the

15 forklift charges, the receiving charges.

16 Q And none of those charges are subject to

17 regulation by the Commission, are they?

18 A It doesn't mean they have to like them.

19 Q That is not my question. Yes or no. None of

20 those charges that you just referenced are subject to

21 regulation by this Commission?

22 A Correct.

23 Q During your discussions with Crowley, did you

24 discuss Arrow's policy of imposing late charges on

25 Crowley invoices pursuant to tariff and the fact that

0168

1 some Crowley personnel objected to payment of late

2 charges?

3 A I don't know anything about late --

4 Q Okay.

5 A -- charges.

6 Q So then that's a no?

7 A That's a no.

8 Q Near the bottom of Page 13 of your rebuttal

9 testimony, you explained that even though you were

10 50 percent under in your original estimate of Arrow's

11 fleet size -- that's our testimony about being 50

12 percent under, not yours, I acknowledge -- it doesn't

13 change your opinion at all that they are still

14 underserving the market, correct?

15 A Correct.

16 Q But where your direct testimony attempted to

17 quantify the number of launches you think are

18 necessary to serve a market, based on metrics that are

19 now established as mistaken, wouldn't that undercount

20 impact your conclusion?

21 A I can't agree with something that -- you

22 haven't provided me their fleet list and how I have

23 been wrong with that.

24 Q You haven't seen their fleet list that was

25 provided pursuant to the annual report. Is that what

0169

1 you are saying?

2 A That is what I am saying.

3 Q When you saw the testimony from Arrow Launch

4 about their fleet size, did you do anything to

5 question that inventory of vessels?

6 A I did. I think two can be discarded because

7 they are utility boats and don't carry passengers, and

8 I think there's two others they don't operate.

9 Q Can you identify what those are?

10 A I don't know the name of their boats.

11 Q And --

12 A Which brings us to eight.

13 Q Okay.

14 Are you testifying that they do station four

15 launch vessels in Anacortes or they do not?

16 A I have never seen four.

17 Q Their testimony under oath is that they

18 station four. Do you understand that?

19 A I do.

20 Q What basis do you have to challenge that?

21 A It's what I have seen.

22 Q Again, walking across their docks. And when

23 was that?

24 A It's probably been a half a dozen times over

25 the last two years.

0170

1 Q Are you saying here that you challenge and

2 don't believe that they station four launch vessels in

3 Anacortes?

4 A I do.

5 Q Can you tell me, regarding your testimony at

6 Page 15, how the expansion of infrastructure and

7 resources by a regulated provider could translate into

8 a conclusion of how many providers a regulated

9 industry can support?

10 In other words, you seem to say at Page 15,

11 Lines 5 through 8, that the expansion of

12 infrastructure and resources by a regulated provider

13 can be correlated or translated into a conclusion of

14 how many providers a regulated industry can support,

15 correct?

16 A Correct.

17 Q Okay.

18 In other words, can you tell me why you think

19 the growth and size of a regulated launch provider

20 translates into con -- to any type of conclusion about

21 how many providers the market can sustain?

22 A What do you mean, "growth and size"? What do

23 you mean.

24 Q Excuse me?

25 A Can you say that again?

0171

1 MR. BEATTIE: Can I have the question

2 read back, Your Honor.

3 JUDGE FRIEDLANDER: Yes. Please.

4 (The requested portion of the

5 transcript was read by the reporter.)

6 A I mean in addition to boats you need people.

7 There is a fine line of having enough resources on

8 your books to run all your boats at the same time.

9 BY MR. WILEY:

10 Q Do you know how many employees Arrow has?

11 A I think the report was in the 40s, they

12 mentioned.

13 Q Are you saying that's insufficient?

14 A To crew eight boats all at the same time, yes.

15 Q How many employees does MEI have?

16 A They will have four.

17 Q They will have four in Anacortes for two

18 boats?

19 A They will most likely have two.

20 Q So how are you going to staff those two boats?

21 A Around the clock. We will have crew onboard.

22 Q And you are saying you can do that with four

23 employees?

24 A Yes.

25 Q Okay.

0172

1 And are there any hours of service restriction

2 on those employees?

3 A There are. There's 12 hours.

4 Q So you are saying that two vessels will have

5 two employees standing by for 12 hours for each shift,

6 whether or not there is any work to be standing by

7 for, correct?

8 A Yes.

9 Q So they are just going to sit in port waiting

10 for business that might not develop for days; is that

11 correct?

12 A That is the plan.

13 Q Do you think that's an efficient deployment of

14 personnel resources?

15 A That's what we -- that's how we crew our

16 boats.

17 Q That's not my question. My question is: Is

18 that an efficient deployment of personnel resources,

19 in your view?

20 A For us, yes.

21 Q How about in general?

22 A For us, yes. I can't generalize how they crew

23 their boats.

24 Q I am not asking you to ask about their boats.

25 I'm saying is that an efficient use of personnel in

0173

1 general, in your view?

2 A Yes.

3 Q You acknowledge at the end -- near the end of

4 your rebuttal -- oh, by the way, what are ABS and

5 AWOs? You used that in your testimony. I don't

6 believe you defined it.

7 Are your water taxis ABS certified?

8 A No.

9 Q Okay.

10 Are your water taxis AWO certified?

11 A No.

12 Q What are those acronyms, please?

13 A AWO is American Waterway Operators, which

14 governs the tugs.

15 Q Okay.

16 A And ABS is an inspection society. They run

17 class.

18 Q They run what? A class?

19 A Class society.

20 Q That has nothing whatsoever to do with lunch

21 service, though, correct?

22 A Correct.

23 Q Near the end of your rebuttal testimony, you

24 acknowledge the Alaska tanker market is down, correct?

25 A Correct.

0174

1 Q Also at Page 14 of your rebuttal testimony,

2 you assert that, quote, other oil markets have

3 increased as the consumption of oil has decreased over

4 the -- excuse me, increased over the years.

5 Do you see that?

6 A Uh-huh.

7 Q Okay.

8 What other oil markets are you referring to

9 there and how does that correlate, if at all, to the

10 need for launch service in Puget Sound?

11 A We have noticed all the wire boats have gone

12 away and they now use ATBs, which require more crew

13 and have the same needs as a ship, and that has

14 increased a lot of our work.

15 Q You are talking about Crowley there?

16 A Crowley, Kirby, Harley Marine.

17 Q Okay.

18 And when you say the wire services have left,

19 what are you referring to?

20 A There used to be tugboats that would pull

21 smaller barges on the wire up and down the coast. Now

22 those are pretty much dedicated to Alaska runs.

23 Everything on the West Coast is in ATBs.

24 Q Are you saying that that translates into

25 increased demand for launch service in Puget Sound?

0175

1 A Absolutely. They own a lot of refine product

2 now.

3 Q Okay.

4 So you are saying that actually demand for

5 launch service has increased in Puget Sound. Is that

6 your testimony?

7 A I can't say for the Puget Sound. I can say

8 that we have noticed trends.

9 Q All my questions right now are related to this

10 application's geographic scope in Puget Sound.

11 A Right.

12 Q Are you or are you not saying that that change

13 with ATBs has increased demand for regulated launch

14 service in the Puget Sound, yes or no?

15 A Yes.

16 Q Okay. Yes.

17 Do you disagree with Mr. Harmon's testimonial

18 evidence about the recent significant decline in

19 launch demand by the oil industry in Puget Sound?

20 A I do.

21 Q What is that based on in terms of your actual

22 knowledge of numbers in Puget Sound?

23 A The decline might be because they are being

24 more financially conscious of what they are spending,

25 but the same amount of ships continue to move.

0176

1 Q When we say "they," can you identify for the

2 record --

3 A Arrow.

4 Q -- who they is?

5 So you are saying that Arrow is being more

6 financially conscious?

7 A No.

8 Q What are you saying?

9 A That oil companies are being more financially

10 conscious.

11 Q Okay.

12 And what about the advent of oil trains?

13 A Yeah. I'm sure that has reduced a fair amount

14 of crude shipping.

15 Q When you say consumption of oil is up, where

16 are you referring to?

17 A Just some reports that we found.

18 Q Well, can you be more specific?

19 A I don't have the data in front of me.

20 Q Okay.

21 So you are saying that some unidentified

22 report shows that oil consumption is up, correct?

23 A Correct.

24 Q You are not saying, I take it by that, that

25 per capita oil consumption has increased, are you?

0177

1 A Say that again.

2 Q You are not saying that per capita oil

3 consumption has increased, are you?

4 A It is probably similar or increased slightly.

5 Q What's that based on, please, sir?

6 A Population, demand.

7 Q So --

8 A Cost of fuel.

9 Q Population, demand, and cost of fuel.

10 Are you aware that large companies, like

11 Alaska Tanker Company, have actually mothballed or are

12 otherwise planning to put out of service oil tankers

13 due to a reduction in oil production?

14 A That's directly related to Alaska oil.

15 Q That's the mainstay of Puget Sound's oil

16 business, is it not?

17 A They bring in a lot of other oil, too.

18 Q But isn't the mainstay traditionally and

19 currently oil business in Puget Sound related to

20 Valdez and the Alaska pipeline?

21 A Yes.

22 Q And do you acknowledge that fuel emission

23 efficiency standards and other environmental concerns

24 have impacted oil consumption in the U.S.?

25 A Yes.

0178

1 Q And that has had a consequential impact on

2 volume of traffic in the Puget Sound, has it not?

3 A Yes.

4 Q And in turn, Puget Sound oil traffic is down

5 significantly, as shown by the statistics in this

6 record, correct?

7 A I would have to see the barrels. The ships

8 could be down, but they could be bigger ships carrying

9 different amounts of barrels.

10 Q Okay.

11 And you haven't investigated to draw any

12 comparison to that conclusion, correct?

13 A No, I have not.

14 Q Okay.

15 Do you have any basis to refute that the

16 decline in oil tanker statistics for vessels calling

17 on Puget Sound have in fact occurred?

18 A Sure. There might be fewer tankers.

19 Q And that could reduce demand?

20 A It could, but it is being offset by the

21 increase of ATBs.

22 Q So your testimony is while there may be a

23 decrease in oil tankers traveling into Puget Sound,

24 that has been offset by ATB activity in Puget Sound.

25 Is that your testimony?

0179

1 A Yes.

2 Q Okay.

3 Did you provide any evidence to support that

4 conclusion?

5 A No.

6 Q Okay.

7 Despite all of these facts or trends that you

8 acknowledged are not positive for oil production, can

9 you say -- you say again that there is untapped

10 potential on the Puget Sound. Could you state for the

11 record what that might be or where that might be?

12 A I have already stated that it is not very much

13 related to the launch business, but other sectors of

14 the maritime industry.

15 Q So as far as regulated service, you can't

16 allude to any increase in demand. You are talking

17 about the environmental services and the other

18 untapped potential that you say is about 100,000 a

19 year, correct?

20 A Correct.

21 Q When you say at Page 15, Line 17, that Crowley

22 believes there is an untapped market that another

23 provider can take advantage of, can you tell me where

24 in RSE-8, that you have in front of you, they actually

25 say that?

0180

1 A That could be my opinion.

2 Q So it is actually how you kind of extrapolate

3 from their statement that there is a significant

4 untapped market that a new entrant could take

5 advantage of, correct?

6 A Correct.

7 Q Okay.

8 Finally, where you criticize Arrow for

9 seemingly being more concerned with its bottom line

10 and being cautious about the cost of fleet

11 modernization, do you have an understanding of how a

12 regulated -- Washington launch company's costs under

13 an operating ratio methodology impact its rates?

14 A I'm sure it has a large implication on their

15 rates and financials.

16 Q So in other words, if they incur a cost, do

17 you understand that that could affect their rates for

18 providing regulated service?

19 A Like they would increase?

20 Q Potentially. Do you understand that?

21 A I do.

22 Q Okay.

23 And are you aware of the standards by which

24 regulated launch rates are set, which requires them to

25 be just, fair, reasonable, and sufficient?

0181

1 A Yes.

2 Q Okay.

3 Are you saying there at Page 17 that a

4 regulator provider could decide to simply eat or

5 absorb cost increases to its rate base without having

6 some ultimate effect on its customers' rates?

7 A I am.

8 Q In other words, you could choose not -- you

9 could choose, as a regulated provider, to just absorb

10 costs indefinitely and not pass them on to your

11 customers.

12 And do you believe that that has relevance in

13 a regulated rate environment, that you could just

14 continue to absorb costs and go into a loss position?

15 A In any business you can't continue to absorb

16 costs.

17 Q So if there were equipment adjustments or

18 modernization costs that were incurred by a regulated

19 provider, eventually those would have to be passed on

20 to customers, wouldn't they?

21 A I mean everybody's cost is going up to do

22 business. I mean you can't just, because you may have

23 to use capital for a few projects and raise the rates

24 after a few years, use that as...

25 MR. WILEY: Your Honor, I would move to

0182

1 strike that answer as not responsive. What I am

2 asking Mr. Esch is whether in a regulated environment

3 ultimately cost increases to your cost base would have

4 to be passed on to your customers.

5 MR. BENTSON: And I am going to object

6 to the question as asked and answered several times.

7 JUDGE FRIEDLANDER: I would like to hear

8 Mr. Esch's answer to this one.

9 A At some point you will have to increase your

10 rates, but that's expected as you improve your fleet

11 and your service, and you have to move with the times.

12 BY MR. WILEY:

13 Q You understand, do you not, that cost of

14 service is the touchstone of how regulated rates in

15 the launch industry in Washington are set?

16 A I thought they were set by the net revenue.

17 Q So you don't know about the cost of service

18 impacting regulated services, then?

19 A Not entirely.

20 Q Okay.

21 Where you say at the bottom of Page 17 that

22 Arrow did not consider what the shipping public would

23 gain from having an additional provider, did you in

24 fact study the testimony of Arrow's customers that

25 will be offered in the record in that regard?

0183

1 A I read them.

2 Q Okay.

3 Did you not see their testimony about what the

4 potential impact could be of authorizing an

5 overlapping provider?

6 A I did, but how would they come to that

7 conclusion on their own?

8 Q So you are challenging their testimony on the

9 adverse effects, then, of an overlapping provider

10 being authorized on their particular service --

11 A I'm saying they are speculating on what they

12 think or what they have been told may happen.

13 Q How is that any different than what Crowley

14 has done to you, in terms of talking about the

15 business that they are going to give you?

16 A It's not very different.

17 Q It's pretty speculative, as you would term it,

18 as well, then, isn't it?

19 A On the business they say they are going to

20 give us?

21 Q On all of that. You said that our customers'

22 testimony about impact of overlapping service on them

23 was speculative. I said, How is that any different

24 than what Crowley has told you about the service that

25 you might be offered?

0184

1 A Right. It's the same.

2 Q Speculative?

3 A Right.

4 Q Did you understand that they -- did you

5 understand that those customers expressed real

6 concerns about the negative impact of overlapping

7 service?

8 A I'm aware.

9 Q Okay.

10 Did you similarly see Captain Schmidt's

11 cross-answering testimony where he cites his own

12 adverse experience with overlapping certificates in

13 the commercial ferry field?

14 A I did read it, but it had nothing to do with

15 launch service. It was just certificate holders.

16 Q Well, he is a commercial ferry under Title

17 8184 and transports passengers and freight. Did you

18 see his testimony about the overlapping impact?

19 A I did.

20 Q Okay.

21 And would you acknowledge that -- you say

22 there are real gains posed to the shipping public.

23 Would you also acknowledge that there are real

24 potential losses, based on that testimony of those

25 shippers and Captain Schmidt, posed to the shipping

0185

1 public in the Puget Sound if another launch provider

2 were authorized here?

3 A I think the only negative reactions will be by

4 how Arrow responds and what they decide to --

5 Q That's not my question. Did you acknowledge

6 that there is a potential for -- will you acknowledge

7 that there is a potential for real losses to Arrow,

8 its customers, and possibly to other certificated

9 providers if overlap is allowed in this record?

10 A I think the only negative it would be to

11 Arrow. And anything that their customers -- service

12 failures they felt on that end, we could fill in the

13 gaps so that there would be no issues.

14 Q So in other words, we should discount what

15 they say because they haven't seen your service, and

16 you know they would be satisfied, even though you

17 couldn't serve them in Seattle, Tacoma, Port Angeles,

18 and other areas where they require service; is that

19 correct?

20 A Correct.

21 MR. WILEY: No further questions at this

22 time, Your Honor.

23 JUDGE FRIEDLANDER: All right. Thank

24 you.

25 I think it is about time that we take a lunch

0186

1 break. Is an hour sufficient for everyone? We can

2 come back at around 12:15 -- I'm sorry, 1:15.

3 We are adjourned.

4 (Lunch recess.)

5 JUDGE FRIEDLANDER: We will go back on

6 the record. I believe everyone is back from our lunch

7 break.

8 Mr. Esch, I will remind you that you are still

9 under oath. And I will let Ms. Endejan go forward

10 with cross-examination.

11 MS. ENDEJAN: Thank you, Your Honor.

12 Is this on?

13 JUDGE FRIEDLANDER: Yes.

14 MS. ENDEJAN: Thank you.

15 BY MS. ENDEJAN:

16 Q Good afternoon, Mr. Esch.

17 JUDGE FRIEDLANDER: I don't think it is

18 now.

19 MS. ENDEJAN: The red light is on.

20 JUDGE FRIEDLANDER: Okay. Now I can

21 hear it.

22 MS. ENDEJAN: Okay. Thank you.

23 C R O S S - E X A M I N A T I O N

24 BY MS. ENDEJAN:

25 Q Good afternoon, Mr. Esch. My name is Judy

0187

1 Endejan, and I represent Pacific Cruises Northwest,

2 Inc., and I have a few questions for you. I will try

3 not to duplicate what Mr. Wiley asked you, okay?

4 A Okay.

5 Q All right.

6 First of all, your application lists MEI

7 Northwest, LLC is the applicant; is that correct?

8 A Correct.

9 Q Okay.

10 And as the applicant, you do understand that

11 you bear the burden of proving that, proving

12 sufficient reasons for the Commission to grant your

13 application. Do you understand that?

14 A We do.

15 Q Okay.

16 Did you have an opportunity to read the

17 statute that controls the Commission's ability to

18 grant you a certificate before you wrote your

19 testimony?

20 A No.

21 MS. ENDEJAN: Your Honor, if I might

22 approach the witness.

23 JUDGE FRIEDLANDER: What do you have?

24 MS. ENDEJAN: I have a copy of RCW

25 81.84.020. I don't intend to make this an exhibit

0188

1 because I think that is something that can be properly

2 taken notice of.

3 JUDGE FRIEDLANDER: Right. Thank you.

4 Yes, please.

5 BY MS. ENDEJAN:

6 Q Mr. Esch, I am handing you a copy of RCW

7 81.84.020. Is it correct that you have never seen

8 this before?

9 A That's correct.

10 Q Okay.

11 If I could direct your attention, and take

12 your time, to read the first section, Subparagraph 1.

13 (Pause in the proceedings.)

14 A Okay.

15 Q Okay. Thank you.

16 And I am not asking for your testimony as a

17 lawyer because I understand that you are not a lawyer.

18 Lucky you. I am going to ask you if you understand --

19 if you have read this to understand that Washington

20 law states that a certificate won't be issued to a

21 provider that serves the same area as another

22 certificate holder unless certain circumstances are

23 present. Does that comport with your general

24 understanding of basically the situation that you are

25 facing here in asking for a certificate?

0189

1 A Yes.

2 Q Okay.

3 And this means that basically only one

4 provider is to serve unless there are significant

5 service issues, correct?

6 A Correct.

7 Q All right.

8 And would you agree with me that under this

9 statute, this statute does not really allow for

10 competition between service providers unless there are

11 certain circumstances present, correct?

12 MR. BENTSON: I am going to object, Your

13 Honor. I understand counsel prefaced her remarks by

14 saying she is not asking for a legal conclusion, but I

15 don't understand the relevance of my client's

16 interpretation of a statute if it is not in any legal

17 capacity.

18 JUDGE FRIEDLANDER: Ms. Endejan?

19 MS. ENDEJAN: Okay. I guess what I

20 am -- this goes to the issue, Your Honor. This

21 witness has testified extensively that competition is

22 always in the public interest. If that is the case, I

23 would ask the witness, who is here before the

24 Commission asking for an application under

25 circumstances where the law clearly states something

0190

1 to the contrary. And I am just asking this witness if

2 he has -- if it is his understanding that Washington

3 law allows competition between launch providers when

4 there is another certificate holder in a serving area.

5 BY MS. ENDEJAN:

6 Q Do you have any understanding of that?

7 JUDGE FRIEDLANDER: And I would say that

8 that does call for a legal conclusion --

9 MS. ENDEJAN: Okay.

10 JUDGE FRIEDLANDER: -- based on the

11 statute.

12 MS. ENDEJAN: I will move on.

13 BY MS. ENDEJAN:

14 Q Is it your testimony that competition is

15 always in the public interest?

16 A Yes.

17 Q And there are no circumstances that would

18 warrant limiting competition for the public good. Is

19 that your testimony?

20 A Yes.

21 Q Okay.

22 But you are here today, and according to what

23 you told Mr. Wiley this morning, you are seeking a

24 certificate to serve only certain portions of Puget

25 Sound, correct?

0191

1 A Correct.

2 Q So, in other words, those shippers and others

3 who would use launch services in the areas where you

4 are seeking to get a certificate would get the benefit

5 of competition, but those who operate outside of the

6 area you are seeking to serve would not get the

7 benefit of composition?

8 A Not immediately. It would take time to expand

9 down to those areas.

10 Q Is that your intention, to expand down to

11 those areas and serve the entire Puget Sound?

12 A Eventually.

13 Q Okay.

14 Let me ask you a question about how you

15 currently serve in California. I believe you

16 testified that you have two boats capable of providing

17 launch service in Long Beach and four in

18 San Francisco. Did I get that right?

19 A Correct.

20 Q And I also believe you testified that you

21 would move one of the boats from Long Beach and one of

22 the boats to the Puget Sound region in order to offer

23 service here. Did I get that right?

24 A Correct.

25 Q Okay.

0192

1 Now, at the current time, would you agree that

2 you need the four boats in San Francisco and the two

3 boats in Long Beach to meet your customers' current

4 demands?

5 A We would still have two in Long Beach and we

6 would be able to meet the demands in the area of

7 San Francisco with what we have. We can utilize our

8 tug and barges, increase their utilization. We can

9 use our supply boat. Like I said, we plan on buying a

10 new build for --

11 Q And when you use the term "we," you are

12 referring to the parent corporation, MEI Express,

13 Inc.?

14 A Marine Express, Inc., yes.

15 Q Okay.

16 Now, that company is not the applicant for

17 this certificate, correct?

18 A No, they are not.

19 Q All right.

20 And the financial information that you

21 provided in your application shows that you have

22 $300,000 in cash on hand, correct?

23 A Correct.

24 Q And I believe you testified this morning that

25 that money was a loan from your parent corporation?

0193

1 A Correct.

2 Q Now, if it's not a loan, can you tell me why

3 it is not reflected in any of your financial

4 information as a liability?

5 A Because we are not paying any mortgage on the

6 loan right now. It's a free and clear loan.

7 Q So do you have any documentation of the terms

8 of the loan that would show that it is an arm's length

9 transaction between the parent and the affiliate?

10 A I'm sure we have some of those documents.

11 Q Would that be in writing anywhere?

12 A It would be. Yeah, the parent company.

13 Q Well, the parent company, if it found itself

14 in cash shortfall, it could reach and possibly utilize

15 the $300,000 that it had provided MEI Northwest, LLC,

16 could it not?

17 A I would not see a need for that.

18 Q But could it do that?

19 A Anything is possible.

20 Q Okay.

21 And similarly, I believe you testified that --

22 to Mr. Wiley this morning, that if you were operating

23 in Washington and perhaps adding new equipment,

24 et cetera, you would not necessarily pass the costs on

25 to your customers. Did I -- am I characterizing what

0194

1 you said this morning properly?

2 A Yes.

3 Q Okay.

4 And is that because you would be able to

5 subsidize that with revenues from your parent

6 corporation?

7 A No. No subsidy.

8 Q Is it your testimony that -- did you inform

9 the Staff, during its examination of your books and

10 records, the extent to which your finances were

11 dependent upon your parent corporation?

12 A Say that again.

13 Q All right.

14 In other words, the staff here has reviewed

15 your financial data and has come -- and has said that

16 they are satisfied with it, but did you advise them

17 that, for instance, the $300,000 in cash on hand came

18 from the parent corporation?

19 A I don't recall if that was explicitly said or

20 not.

21 Q Okay.

22 A The money is there and available to MEI

23 Northwest.

24 Q But there is no -- did Staff ever ask to see

25 any verification of -- or did they know that it was a

0195

1 loan from the parent to the corporation?

2 A I can't speak for them. I don't know.

3 Q Okay.

4 And you weren't aware of any particular

5 written instrument that documents the terms of that

6 loan between MEI Northwest, LLC, and the parent

7 corporation?

8 A There would -- there would be internal

9 documents of the agreement. It's not as -- it's very

10 loose. I mean when you own 100 percent of both

11 companies you don't have to --

12 Q So the funds can go back and forth easily

13 between the two entities?

14 A Well, you have to keep a record of it, but

15 yes.

16 Q Okay.

17 And I believe you testified that -- in your

18 rebuttal testimony, which is RSE-7T, on Page 4, Lines

19 13 through 15, you criticize Mr. Harmon. And I will

20 quote your testimony that says, Mr. Harmon, however,

21 is not privy to our books or the way that MEI plans to

22 conduct its business.

23 Did you make the Commission Staff aware of

24 your books and how MEI plans to conduct its business?

25 A That statement was in reference to the way

0196

1 they were going down line by line of what our expenses

2 would be, based on what their expenses are.

3 Q Well, I hate to paraphrase Mr. Wiley, but

4 could you answer the question?

5 Did you make the books and your business plans

6 to conduct its business fully available to the

7 Commission Staff?

8 A I made everything available that was

9 requested.

10 Q And so they did not request to see the parent

11 corporation's books?

12 A No, they did not.

13 Q And did they ask for any of your business

14 plans with respect to how you -- I believe you have

15 now said you intend at some point to deployed around

16 the whole Puget Sound area.

17 A That's very far down the road.

18 Q So that's -- would it be fair to say that that

19 is speculative, you don't know when that might occur?

20 A It is speculative.

21 Q All right.

22 Now, you also have talked a lot about customer

23 dissatisfaction here, but I believe you have only

24 identified one of Arrow's current customers that has

25 come forth with a complaint and that would be Crowley;

0197

1 is that correct?

2 A That's correct.

3 Q Okay.

4 In your business, has MEI ever received any

5 complaints or concerns of customer dissatisfaction?

6 A Marine Express has, if that's what you are

7 asking.

8 Q Your --

9 A MEI has not done one job for hire.

10 Q Okay.

11 But by Marine Express you mean the parent

12 corporation?

13 A Yes.

14 Q Okay.

15 So there have been concerns expressed about

16 Marine Express's service from particular customers?

17 A We have had issues that we have dealt with.

18 Q So would you say that one customer expressing

19 dissatisfaction about Marine Express's service would

20 prove that Marine Express has failed or furnished --

21 or refused to furnish reasonable and adequate service?

22 A There are some situations where we did fail

23 and they went to the competition and we lost the

24 business.

25 Q I am asking you a question. Overall, if there

0198

1 is one customer complaint against a company, do you --

2 is it your testimony today that that is sufficient

3 proof that the company complained about has failed or

4 refused to furnish reasonable and adequate service?

5 A Yes.

6 Q So all it takes is one complaint?

7 A From the biggest customer they have, I suppose

8 so.

9 Q Okay.

10 And throughout the rest of your testimony you

11 allude to various other customers, but you refuse to

12 name those customers; isn't that correct?

13 A It's because it was things that were said long

14 ago that probably could have changed or are not

15 relevant anymore.

16 Q So these concerns from other customers aren't

17 current concerns or complaints?

18 A Not current enough for me to stand on.

19 Q So really the only current one that you are

20 presenting to this Commission as proof of inadequate

21 service by Arrow is Crowley?

22 A Correct.

23 MS. ENDEJAN: If you will just give me a

24 minute, Your Honor. This may be very quick.

25 JUDGE FRIEDLANDER: That's fine.

0199

1 (Pause in the proceedings.)

2 MS. ENDEJAN: I have nothing further.

3 JUDGE FRIEDLANDER: Okay. Thank you.

4 I will have Staff cross-examine now, and then

5 afterwards I will offer redirect to Mr. Bentson.

6 MR. BEATTIE: Thank you, Judge

7 Friedlander.

8

9 C R O S S - E X A M I N A T I O N

10 BY MR. BEATTIE:

11 Q Good afternoon, Mr. Esch.

12 A Good afternoon.

13 Q I am Julian Beattie, I am with the Attorney

14 General's Office, and I am here on behalf of the

15 Commission Staff.

16 I would like to start with your application,

17 which is in the record as RSE-4.

18 A Okay.

19 Q Do you have a copy?

20 A I do.

21 Q On Page 1 you were asked to indicate the type

22 of service you are applying for. There are two boxes.

23 One says Certificated Commercial Ferry, including

24 launch service, and the other box says Launch Service

25 Only.

0200

1 Do you see that?

2 A I do.

3 Q And am I correct that you or whoever filled

4 out this application checked Launch Service Only?

5 A Correct.

6 Q In your opinion, is there a difference between

7 commercial ferry service and launch service?

8 A I was under the impression that commercial

9 ferry was the large passenger vessels that move people

10 between the islands and that a launch was the launch

11 service.

12 Q Okay.

13 And how do you define launch service?

14 A Transportation to a ship, people and goods.

15 Q Okay.

16 Would you please turn to your direct

17 testimony, RSE-1T, Page 5.

18 A (Complies.)

19 Q Starting at Line 3, you were asked what

20 segments of the public do you anticipate would utilize

21 your proposed service, and your answer is: While the

22 general public would probably -- excuse me. "While

23 the general public use would probably be small as

24 there would not be many public passengers

25 being transported to vessels at anchorage, I

0201

1 anticipate that the commercial public would utilize

2 our proposed service regularly."

3 Did I read that correctly?

4 A Correct.

5 Q So am I correct in understanding that you see

6 a distinction between the general public and what you

7 refer to as the commercial public?

8 A I think there is a distinction between the

9 people riding out on launches and the general public.

10 I can't think, in the last ten years, in any of my

11 locations, where I have offered service to the general

12 public, where they come in as John so-and-so and hire

13 a boat. It's more so being done by third parties and

14 the oil companies. We are moving people that they

15 have hired and that they need transported to their

16 vessels.

17 Q Okay.

18 So maybe I could approach this from a

19 different angle. Let's say hypothetically I wanted to

20 ride one of your launches and let's say hypothetically

21 you are operating in Puget Sound. How would I go

22 about getting on board?

23 A You would just call the number and schedule a

24 run. You would set up a payment schedule or plan and

25 we would take you out.

0202

1 Q And would you sell me a ticket?

2 A We don't issue tickets, no. You would be

3 issued an invoice.

4 Q Okay.

5 And I assume that that same process would

6 apply if Mr. Kermode, who is seated to my left, wanted

7 to get on the same ferry. Could we both get on --

8 excuse me. Could we both get on the same launch at

9 the same time?

10 A Sure.

11 Q Now, how about if -- if I made the arrangement

12 can I bring on anybody I want because I have chartered

13 the boat?

14 A That would make sense, yes.

15 Q Okay.

16 So you don't actually charge by passenger, by

17 head count; is that correct?

18 A That's correct. We charge by the hour.

19 Q Turning back to RSE-4, about six pages in is

20 your proposed tariff. When you say you charge by the

21 hour, do I see these per hour charges you are

22 proposing as confirming what your hourly rate would

23 be?

24 A Correct.

25 Q And so, so long as I have chartered the

0203

1 vessel, I pay by the hour. Again, it's not -- it's

2 not based on how many tickets you sell, right?

3 A That's correct.

4 Q Okay.

5 I want to return to your testimony, RSE-1T.

6 You said while the general public use would probably

7 be small. Can we agree, based on what you just told

8 me, that it -- perhaps nonexistent would be a better

9 word as linked with the general public?

10 A Being that I have not operated in this area, I

11 don't know if there is a market that I am not aware

12 of, where people often hire the boats to run to the

13 islands or for their own use.

14 Q Do you intend to solicit business from what

15 you have referred to as the general public?

16 A I welcome the business. I don't intend to

17 solicit it.

18 Q Why not?

19 A I would not even know how to go about that.

20 That would take a fair amount of research and know-how

21 to see if that is even a need. I mean I am sure the

22 needs are being met by the large ferries running

23 people around throughout the islands.

24 Q Okay.

25 Do you intend to operate your launch service

0204

1 on a schedule?

2 A No.

3 Q Do you understand what I mean by "schedule"?

4 A I do.

5 Q Okay.

6 Would it be fair to say that your proposed

7 launch service is on demand rather than scheduled?

8 A It is completely on demand. We don't know if

9 we are working in an hour from now, two hours, or

10 tomorrow. We get a call and that's when we go.

11 Q Okay.

12 So would it be correct to say, then, that if

13 you receive no inquiries about hiring your vessels,

14 then you would not run that day, or you would -- you

15 would wait until you received business?

16 A Correct.

17 Q You don't run empty boats?

18 A No. There's no reason to.

19 Q Okay.

20 Do you still have in front of you the statute

21 RCW 81.84.010?

22 A Yes.

23 MS. ENDEJAN: Did you say 010 or 020?

24 MR. BEATTIE: I said 010. Does he have

25 020?

0205

1 MS. ENDEJAN: He just has 020.

2 MR. BEATTIE: Your Honor, may I hand the

3 witness 010?

4 JUDGE FRIEDLANDER: Yes.

5 MR. BEATTIE: Just one second, Your

6 Honor.

7 (Pause in the proceedings.)

8 BY MR. BEATTIE:

9 Q Mr. Esch, Subsection 1, the last sentence

10 reads -- and I wonder if you can follow along with me

11 while I read. The sentence reads, "However, a

12 certificate is not required for a vessel primarily

13 engaged in transporting freight other than vehicles,

14 whose gross earnings from the transportation of

15 passengers or vehicles, or both, are not more than ten

16 percent of the total gross annual earnings of such

17 vessel."

18 Do you see that language?

19 A I do.

20 Q What percentage of your business measured in

21 gross earnings, to use the phrase from the statute, do

22 you anticipate will come from transporting passengers

23 as opposed to freight?

24 MR. WILEY: Objection, Your Honor. Lack

25 of foundation. There is no basis. I asked these kind

0206

1 of questions and there was no basis. I think he is

2 asking about, when he says "you," the applicant, MEI

3 Northwest. There is nothing in the record that is

4 going allow the witness to answer this question.

5 JUDGE FRIEDLANDER: I am going to allow

6 it. And it will be caveated with Mr. Wiley's

7 objection as to how you would know your percentage of

8 passengers or vehicles relating to your total gross

9 annual earnings.

10 You can answer the question, but I would

11 appreciate some kind of citation to how you might know

12 this, whether it is a guess or whether you actually

13 have some firm numbers to give us.

14 A I don't have any firm calculations, but that's

15 what we do, is people and cargo. Whenever the boat

16 leaves it would be for that kind of service almost

17 exclusively. So if that's how 75 percent of our

18 revenue is generated, then it would be -- it would

19 exceed that allowance.

20 BY MR. BEATTIE:

21 Q Fair enough.

22 When you say "people," could you clarify?

23 Because I want to take you back to your testimony

24 where you seemed to create a distinction between

25 general public and commercial public.

0207

1 A Okay. Crew members that go on the ships,

2 there's superintendents, there are management

3 companies, Coast Guard, technicians. Every -- there

4 is a huge array of maritime professionals that travel

5 out to the vessels.

6 Q Can we agree that the vessels that these

7 people that you just talked about are traveling to

8 are -- the vessels themselves are private property, as

9 opposed to public property?

10 A Yes.

11 MR. BEATTIE: Okay. Thank you. I have

12 no other questions.

13 JUDGE FRIEDLANDER: Okay. Thank you.

14 Mr. Bentson, redirect?

15 MR. BENTSON: Yes.

16 Thank you, Your Honor.

17

18 R E D I R E C T E X A M I N A T I O N

19 BY MR. BENTSON:

20 Q Good afternoon, Mr. Esch. We are going to

21 backtrack now a few hours to Mr. Wiley's

22 cross-examination, as that is the bulk of the

23 testimony you have given today.

24 At the beginning of Mr. Wiley's

25 cross-examination he referenced a document. It was a

0208

1 docket printout that the Court has now taken notice

2 of. Do you still have that in front of you?

3 A Yes.

4 Q And he also looked at RSE-10, which was a copy

5 of the tariff sheet you submitted to the UTC; is that

6 correct?

7 A Yes.

8 Q In Mr. Wiley's questioning he referred to this

9 docket as your -- this docket printout as your

10 application. Is that the application you submitted to

11 the UTC?

12 A No, it is not.

13 Q Okay.

14 What did you submit to the UTC?

15 A I submitted the RS-4 [sic] tariff and the

16 pro forma financial statement.

17 Q So you never generated the document that he

18 referred to as your application?

19 A I did not.

20 Q Mr. Wiley also asked you several questions

21 about -- questioning the comparison between the

22 San Francisco Bay Area and the Puget Sound. Do you

23 feel that was an -- the comparison you made between

24 those two regions was accurate?

25 A There is not a lot of things to measure our

0209

1 industry by. I thought it was a good measure to see

2 ship calls, and then more specifically the amount of

3 tankers, which is the bulk of our business. I

4 believed it was a good measure.

5 Q Following that he asked you a series of

6 questions about Arrow's fleet. I was a little bit

7 confused. Sometimes you referred to boats and

8 sometimes you referred to launches. Can you clarify

9 that distinction that you are making between those two

10 terms?

11 A I think in my testimony I was specific in

12 saying launches, not the amount of boats in their

13 fleet, because certain boats hold no real value or

14 significance to the launch industry. Like our

15 tugboats. Although they support us with large amounts

16 of cargo and barging and stuff, they are really not

17 part of that fleet and can do the same services. So

18 that could be the difference in the 12 boats, I don't

19 know if they are all launches or not, versus the eight

20 that we reported.

21 Q There has been some discussion of the $300,000

22 in cash that MEI has and is reflected on its books as

23 part of the pro forma. Are you under any obligation

24 to pay that back within the next 12 months?

25 A No.

0210

1 Q Are you under any obligation to pay interest

2 on that in the next 12 months to the parent?

3 A No.

4 Q Do you have any reason to think that cash

5 won't be available for the next 12 months?

6 A I have zero reason to think that we would need

7 to collect that back.

8 Q Mr. Wiley asked you about whether or not MEI's

9 parent company could offer large volume discounts to

10 Crowley in other markets, such as the Bay Area or the

11 Los Angeles area. Are there any -- have any large

12 volume discounts been negotiated between MEI's parent

13 and Crowley?

14 A No.

15 Q Is there any intent to enter into such

16 agreement?

17 A No, there is not.

18 Q I mean is there any evidence whatsoever in the

19 record that you have seen that such an agreement

20 exists?

21 A No.

22 Q I want to turn to RSE-8, the shipper support

23 statement provided by Crowley. Do you still have that

24 in front of you?

25 A I do.

0211

1 Q Now, can you explain for Judge Friedlander how

2 it came about that you obtained this shipper support

3 statement?

4 A After years of just little comments, we would

5 like you up here, we would support you guys, things

6 like that, we began, once it got a little more

7 serious, getting the wheels turning, and looked into

8 the application process. One of the main things was a

9 witness support statement and how it was valuable. We

10 asked if they would support us. We didn't get a

11 definite answer or not. We received this when we

12 received it.

13 Q Now, Mr. Wiley asked you some questions about

14 a meeting between you and Crowley and he asked you

15 whether or not any rates were discussed during that

16 meeting. Do you recall those questions?

17 A I do.

18 Q When did that meeting with Crowley occur?

19 A Oh, I don't know. Well over a year, a year

20 and a half.

21 Q And was that in response to any action taken

22 by Crowley, for example, if Crowley requested that

23 meeting or requested any information?

24 A No. Actually, I think I was just doing my

25 house account rounds and it just became a topic

0212

1 during -- you know, thanking them for the business

2 throughout the coast.

3 Q When you requested the shipper support

4 statement from Crowley, did you explain what you

5 intended to use it for?

6 A I did. I also explained that I thought there

7 would also be some cross-examining that came along

8 with it.

9 Q Did you explain that it was to provide launch

10 services in the Puget Sound and that is what you were

11 seeking the certificate for?

12 A I did.

13 Q And did Crowley understand that Arrow Launch

14 is the only other provider of such services in the

15 Puget Sound?

16 MR. WILEY: Objection. Foundation.

17 JUDGE FRIEDLANDER: Mr. Bentson?

18 MR. BENTSON: Sure. I can rephrase,

19 Your Honor.

20 BY MR. BENTSON:

21 Q Mr. Esch, did you explain to Crowley that

22 Arrow Launch was the only other launch service

23 provider in the Puget Sound?

24 A They explained it to me.

25 Q Turning to RSE-8. The first sentence says,

0213

1 There is currently only one service provider for

2 passenger freight -- ferry and freight services in the

3 Puget Sound.

4 Did I read that correctly?

5 A You did.

6 Q Okay.

7 Do you know who the one service provider for

8 those services is in the Puget Sound?

9 A Arrow Launch.

10 Q The next thing it says, "This has created

11 timing and reliability issues for us as our customers

12 (i.e., major oil companies) work on a tight schedule."

13 Did I read that correctly?

14 A Yes, you did.

15 Q And so did you infer from that that Crowley

16 believed that having only one launch services provider

17 causing the complaint identified in Sentence No. 2?

18 A Yes, that's how I read it.

19 Q And then the third sentence of that says, "The

20 lack of competition reduces our ability to meet the

21 needs of our customers."

22 Did I read that correctly?

23 A You did.

24 Q And is that the sentence from which you

25 inferred that Crowley's needs were not being met;

0214

1 namely, the last part of the sentence where it says

2 Crowley's needs are not being met?

3 A That's exactly where I got it.

4 Q Okay. Just making sure.

5 If you go down to the next section, to the

6 third-to-last sentence -- well, the fourth-to-last

7 sentence, it says, "This need is not currently being

8 met." And then the following sentences says, "Delays

9 in transporting crew to our vessels have occurred in

10 the past."

11 Do you see that sentence?

12 A I do.

13 Q Now, there was a lot of talk about delays

14 possibly being caused by parties other than Arrow

15 Launch Services during Mr. Wiley's questioning. Do

16 you remember those questions?

17 A I do.

18 Q Okay.

19 When you requested the shipper support

20 statement from Crowley, were any other of their

21 customers discussed?

22 A Any of their customers?

23 Q Any of Crowley's customers, as the source of

24 the delays?

25 A No.

0215

1 Q Okay.

2 What was the only -- I guess the only service

3 provider at issue when you requested the shipper

4 support statement from Crowley?

5 A Was that the delays were based on waiting for

6 the boat to be available or to wait until another run

7 was headed out so they could go together.

8 Q Had you had subsequent conversations with

9 Crowley that clarified what was the source of those

10 delays?

11 MR. WILEY: Objection. Hearsay.

12 MR. BENTSON: You can answer.

13 MR. WILEY: Excuse me.

14 MR. BENTSON: Oh, I'm sorry.

15 MR. WILEY: She has to rule.

16 JUDGE FRIEDLANDER: I am going to give

17 you an opportunity to rebut the contention that

18 Mr. Wiley has made.

19 MR. BENTSON: I'm sorry, Your Honor.

20 It is a hearsay statement that is being called

21 for. Again, my understanding is that is admissible.

22 And Mr. Aikin from Crowley will be here tomorrow

23 morning to be cross-examined, so I don't see the

24 prejudice.

25 JUDGE FRIEDLANDER: Go ahead, Mr. Wiley.

0216

1 MR. WILEY: Your Honor, hearsay, while

2 admissible in administrative proceedings, still has to

3 be the kind of evidence that people can rely upon in

4 the ordinary course of business. This is an

5 out-of-court declaration that he is now repeating

6 here. It is rank hearsay.

7 JUDGE FRIEDLANDER: And I would just say

8 that if Mr. Aikin is going to be here tomorrow, it

9 might be best to discuss this when he is on the stand,

10 as opposed to Mr. Esch.

11 MR. BENTSON: Your Honor, if I may be

12 heard in response to that?

13 JUDGE FRIEDLANDER: That's fine.

14 MR. BENTSON: Mr. Esch was asked

15 probably 30 minutes of questions on this statement and

16 how he could identify that it was referring to Arrow.

17 I only think it is fair to MEI that we be allowed to

18 identify the reasons why we think the shipper support

19 statement is referring to the launch services being

20 provided by Arrow.

21 JUDGE FRIEDLANDER: Go ahead, Mr. Wiley.

22 MR. WILEY: Most direct evidence comes

23 from Mr. Aikin on that point. Again, he is asking for

24 hearsay interpretations and understandings and

25 specific conversation. Let's ask Mr. Aikin about it.

0217

1 JUDGE FRIEDLANDER: And I think

2 Mr. Wiley is making a good point here, in that there

3 is -- what Mr. Wiley was asking of Mr. Esch previously

4 was his understanding and his experience of the

5 meeting. You are asking him specific statements from

6 Mr. Aikin. If Mr. Aikin is going to be here tomorrow,

7 it would be best to wait for Mr. Aikin's appearance,

8 and then draw this information out from him, as

9 opposed to having Mr. Esch interpret what Mr. Aikin

10 has said, when Mr. Aikin is going to be here tomorrow.

11 MR. BENTSON: Thank you, Your Honor.

12 JUDGE FRIEDLANDER: So I will --

13 MR. BENTSON: I can move on.

14 JUDGE FRIEDLANDER: Okay. Thank you.

15 BY MR. BENTSON:

16 Q Mr. Esch, you were asked a series of questions

17 by Mr. Wiley about Arrow's rates and why MEI had

18 submitted identical rates and how that would result in

19 cost savings to the customers. Do you remember those

20 questions?

21 A Yes.

22 Q Do you distinguish between different rates and

23 different charges?

24 A What do you mean?

25 Q Well, I was wondering if -- you said you

0218

1 haven't received any complaints from customers about

2 rates. You testified to that earlier. I was

3 wondering if you had received complaints about

4 charges?

5 A Yes, charges.

6 Q What kind of complaints have you heard from

7 Crowley, for example, and charging?

8 A Just the ancillary charges about cranes and

9 forklifts and receiving. A lot of nickel-and-dime

10 items that add up to more than the launch itself.

11 MR. BENTSON: I have no further

12 questions for you at this time.

13 JUDGE FRIEDLANDER: Thank you.

14 I have just two clarification questions.

15

16 E X A M I N A T I O N

17 BY JUDGE FRIEDLANDER:

18 Q You described the corporate structure of MEI

19 the parent company as owning 100 percent of MEI the

20 applicant; is that correct?

21 A Correct.

22 Q Could the creditors of MEI the parent company

23 come after the assets, then, of MEI the applicant?

24 A No, because the assets being chartered are

25 free and clear, meaning no debt to those boats.

0219

1 Q Okay.

2 So they are not --

3 A Mortgaged.

4 Q -- held as collateral?

5 A Right.

6 Q Okay.

7 The other question I have is about the loan.

8 You mentioned that it is not going to have to be paid

9 back within 12 months. Is it after that point that it

10 has to be paid back or was this actually a gift?

11 A I think our accountant would have to say if it

12 is a gift. I think it is an open-ended loan until

13 they build up enough of their own capital to sustain

14 the ups and downs of the business.

15 Q Okay.

16 And then if that didn't occur, then it would,

17 my guess, become a gift?

18 If for some reason after the projected three

19 years there wasn't enough equity or enough profit to

20 consider them up on their feet, would it just become a

21 gift at that point?

22 A It probably would, yes.

23 Q And then if they did have to repay it back, if

24 the company, MEI the applicant had to pay it back,

25 would there be a certain interest rate or will the

0220

1 interest rate remain zero the entire life of the loan?

2 A It would be zero. We would set up plans, like

3 a payment plan, that it could afford to pay back and

4 still have liquid cash.

5 Q And you mentioned that there might be some

6 paperwork, there may be some agreement or something in

7 writing between the parent company and the applicant

8 as to the terms of this money. Do you have those? I

9 don't believe that they are in the record right now.

10 A They are not in the record. I don't have them

11 with me, but --

12 Q Okay.

13 A -- we can furnish the --

14 Q And have they been provided to the parties at

15 all under data requests or --

16 MR. BENTSON: Your Honor, they were not

17 requested, data requests from MEI.

18 JUDGE FRIEDLANDER: I would find them

19 helpful. I am going to go ahead and make that Bench

20 Request No. 1.

21 So if you could provide them to me, say within

22 a week, would that be feasible?

23 THE WITNESS: Oh, sure.

24 JUDGE FRIEDLANDER: Okay. I would

25 appreciate that.

0221

1 MR. WILEY: Your Honor, could you state

2 what that -- I just want to get a note on --

3 JUDGE FRIEDLANDER: What I am requiring

4 him --

5 MR. WILEY: Yes.

6 JUDGE FRIEDLANDER: -- to provide?

7 Any paperwork that is reflective of the

8 agreement between MEI the parent company and MEI the

9 applicant, as to the terms and conditions of the

10 $300,000 loan. And that will be due next week, the

11 21st.

12 And those were all the questions that I had.

13 Thank you for your testimony and you are excused.

14 THE WITNESS: Thank you.

15 JUDGE FRIEDLANDER: Thank you.

16 Do we need to take a break right now before we

17 call Mr. Sevall?

18 MR. WILEY: Not us. Not for us.

19 JUDGE FRIEDLANDER: So you don't need a

20 break?

21 MR. WILEY: No.

22 MS. ENDEJAN: No.

23 MR. SEVALL: I need to run to the rest

24 room real quick.

25 JUDGE FRIEDLANDER: Why don't we break.

0222

1 Five minutes. We will be off the record.

2 (A brief recess.)

3 JUDGE FRIEDLANDER: We will go back on

4 the record.

5 If I want to remain standing so I can swear

6 you in.

7

8 SCOTT SEVALL, witness herein, having been

9 first duly sworn on oath, was

10 examined and testified as follows:

11

12 JUDGE FRIEDLANDER: Thank you. You can

13 be seated.

14 Mr. Beattie, if you want to introduce your

15 witness.

16 MR. BEATTIE: Thank you, Judge.

17

18 D I R E C T E X A M I N A T I O N

19 BY MR. BEATTIE:

20 Q Good afternoon. Would you please state your

21 name for the record, spelling your last name?

22 A It is Scott Sevall. My last name is spelled

23 S-E-V-A-L-L.

24 Q What is your position with Commission Staff?

25 A A regulatory analyst in the water and

0223

1 transportation section.

2 Q Did you sponsor prefiled written testimony in

3 this case, which has been admitted as SS-1T?

4 A Yes.

5 Q Do you have any corrections to that testimony?

6 A No.

7 Q Did you also sponsor Exhibits SS-2 through

8 SS-3, along with your prefiled written direct

9 testimony?

10 A Yes.

11 Q Did you also sponsor prefiled cross-answering

12 testimony, which has been admitted as SS-4T?

13 A Yes.

14 Q And along with that cross-answering testimony,

15 did you sponsor Exhibit SS-5?

16 A Yes.

17 Q Do you have any corrections to either the

18 cross-answering testimony or the exhibit?

19 A No, I do not.

20 Q And do you adopt your prefiled testimony as

21 though you were giving it here in the hearing room

22 today?

23 A Yes.

24 Q Thank you.

25 MR. BEATTIE: Mr. Sevall is available

0224

1 for cross-examination.

2 JUDGE FRIEDLANDER: Thank you.

3 Mr. Wiley, are you ready to begin?

4 MR. WILEY: Yes, Your Honor. I am

5 allowing my colleague, in the annals of new people

6 getting into the -- going on the ropes, to do the

7 cross.

8 JUDGE FRIEDLANDER: All right.

9 Mr. Fassburg?

10 MR. FASSBURG: Thank you.

11

12 C R O S S - E X A M I N A T I O N

13 BY MR. FASSBURG:

14 Q Good afternoon, Mr. Sevall. I understand that

15 you have been with the Commission since August of

16 2014; is that correct?

17 A That is correct.

18 Q And as you testified a moment ago, you are in

19 the water and transportation division. Is this your

20 first application case in the water and transportation

21 division?

22 A Yes, it is.

23 Q Do I understand correctly, this will be your

24 first time giving testimony?

25 A Yes.

0225

1 Q I will try to take it easy on you.

2 I take that you, before coming to work for the

3 Commission, did not deal with water transportation.

4 Would that be correct?

5 A As far as regulating it?

6 Q In any respect.

7 A Well, I use them both, but yeah, that's it.

8 Q Okay.

9 So your knowledge and experience with respect

10 to the water and transportation industry is mostly

11 with respect to personal use. Would that be fair?

12 A Prior to August of 2014, that would be true.

13 Q Prior to joining or coming to work for the

14 Commission, I understand you worked for the Department

15 of Ecology; is that correct?

16 A That is correct.

17 Q How long were you with the Department of

18 Ecology?

19 A I believe I was hired there in December 2012.

20 Q Were you there --

21 A November or December.

22 Q So you were there a little under two years?

23 A Yeah. Two-ish years.

24 Q Did any of your work for the Department of

25 Ecology deal with regulatory analysis?

0226

1 A Subject to regulations, but no, not as far as

2 putting them on someone else.

3 Q So with respect to your professional career,

4 you have been performing regulatory analysis since

5 August of 2014?

6 A That's correct.

7 Q Having since joined the UTC, have you become

8 familiar with RCW 81.84?

9 A 81.84 I have read several times. I don't

10 commit those to memory, but...

11 Q Do you have a general understanding of what it

12 requires?

13 A Yes. And I have it in front of me. I can

14 review it. Sure.

15 Q Well, I am really interested mostly in your

16 understanding as you applied it to your testimony.

17 When you wrote your testimony, did you have an

18 understanding of what was required under 81.84 in an

19 overlap application?

20 A What specific portion of the RCW or testimony

21 are you referring to?

22 Q Okay.

23 Well, I will refer you to 81.84.020,

24 specifically Section 1.

25 JUDGE FRIEDLANDER: And you said 020?

0227

1 MR. FASSBURG: Correct.

2 JUDGE FRIEDLANDER: Okay. Thank you.

3 BY MR. FASSBURG:

4 Q So let me start this over a little bit. Had

5 you read that specific provision before your testimony

6 was prepared?

7 A I believe I had read that. Yes, before

8 writing my testimony I reviewed it.

9 Q At the time your testimony was prepared, did

10 you have a general understanding of what was required

11 when an applicant, under 81.84, applies for a

12 territory already served, in terms of the burden of

13 proof of what they had to prove to --

14 A That the burden --

15 Q -- be granted an application?

16 A That the burden is on -- in this case, that

17 the burden would be on MEI Northwest --

18 Q What was your understanding --

19 A -- yes.

20 Q -- of what standard they had to meet in order

21 for that application to be granted?

22 A I believe that's a legal interpretation that I

23 am not -- nor did I testify to.

24 Q If I understand your response, you are

25 indicating that because you did not provide a Staff

0228

1 conclusion as to whether the application should or

2 should not be granted, you are not prepared to speak

3 also about the standards by which the applicant will

4 be judged?

5 A No. Nor am I the one doing the judging.

6 Q Okay.

7 Nonetheless, did you have some understanding

8 of what was required?

9 A Yes.

10 Q What is your understanding of what the

11 applicant must show in order to be granted an

12 overlapping application under 81.84.020?

13 A I believe I testified to that.

14 Give me a second.

15 (Pause in the proceedings.)

16 A I believe I answered the question on -- this

17 is my testimony, SS-1T, referring to the question

18 which is on Page 5, Line 20. "The Commission is

19 prohibited from issuing a certificate to territory

20 already served by an existing certificate holder

21 unless the current holder has failed or refused to

22 furnish reasonable or adequate service."

23 Q Was it your understanding that this provision

24 that you just read from your testimony applies to

25 launch service?

0229

1 A It currently does because it is interpreted

2 that launch services is regulated under Title 1 or

3 Order -- Order SBC 363-A.

4 Q Now, with respect to your understanding of the

5 rule, I take it you at least at some point attempted

6 to evaluate the testimony that had been provided and

7 consider whether or not that testimony met the

8 standard. Would that be fair?

9 A Are you talking about the testimony of the

10 applicant in this case?

11 Q The testimony that was prefiled in this

12 matter.

13 A All of it? Yes, I believe I have reviewed it

14 all. Some more than others.

15 Q Would it be correct to say that you still have

16 no opinion as to whether or not the application should

17 be granted?

18 A I currently -- since the record is still being

19 developed, I currently do not have a recommendation.

20 Q Now, I understand that you performed the

21 analysis of that testimony yourself. Is there anyone

22 else with the UTC Staff that participated in the

23 analysis of the applicant's application and testimony?

24 A Were you asking if we prepared the applicant's

25 testimony?

0230

1 Q No. Let me rephrase that, just so I can be

2 clear. Sometimes my questions aren't great. If you

3 don't understand them just let me know.

4 I understand you evaluated the application,

5 including the financial information, to make a

6 determination as to whether or not Staff thought that

7 the applicant was financially fit to provide service;

8 is that correct?

9 A Yes.

10 Q Are you the only one within UTC Staff that

11 engaged in that analysis?

12 A I have management oversight. If there are

13 processes that involve review, then it was reviewed

14 through the management internal processes at the

15 Commission.

16 Q In terms of the legwork, did you do all of the

17 legwork?

18 A Yes.

19 Q So if I understand your testimony correctly,

20 you had a manager oversee it but you did the work?

21 A Yes.

22 Q Who is the manager who signed off on your

23 work?

24 A That would be Michael Young, who is in the

25 room, and Danny Kermode.

0231

1 Q Is there any information that you used with

2 respect to your financial fitness evaluation that was

3 not included in the pro forma statement filed with the

4 application?

5 A Any information from MEI or...

6 Q It was intended more broadly than that. So to

7 make it more clear, did you go seek information from

8 other sources?

9 A Yes. I referred specifically to annual

10 reports for launch service providers, which are given

11 to the Commission on an annual basis, required by law.

12 Q And so those annual reports came from someone

13 other than MEI?

14 A Correct.

15 Q Did you do anything to investigate the

16 accuracy of the pro forma statement provided by MEI?

17 A An application isn't subject to an audit. It

18 is an analysis. And the applicant, in providing

19 the -- in providing the application -- it's a sworn

20 affidavit, that everything on there is accurate and

21 true, subject to perjury on the applicant's part.

22 Q Were you here in this room earlier today when

23 Mr. Esch provided his testimony?

24 A I was in the room, yes.

25 Q I take it, then, that you overheard Mr. Esch's

0232

1 testimony with respect to the nature of the $300,000

2 cash deposit. Would that be right?

3 A I heard him talk about the $300,000. That's

4 correct.

5 Q Had you previously been made aware that the

6 cash deposit was in the form of a loan?

7 A The -- well, the application does not state

8 that it is in the form of a loan. There is no

9 liabilities listed. The $300,000 was known as cash,

10 as equity, per the application.

11 Q In performing a financial fitness analysis, is

12 it important to you to know both the assets and

13 liabilities of the company?

14 A As well as the equity, yes.

15 Q And did you have information available to you

16 to determine the liabilities of MEI Northwest?

17 A The applicant said there was zero liabilities

18 on their application.

19 Q So if the application indicated there were

20 zero liabilities, but in fact there is a commitment to

21 repay the $300,000 cash deposit, would that be an

22 inaccurate statement, that there are zero liabilities?

23 A As the bench request issued earlier, we don't

24 know the terms of that agreement. That's the first

25 time anyone said "loan," but is it truly held as a

0233

1 loan? I don't know. I can't answer that.

2 Q Let me ask you instead as a hypothetical. If

3 it does indeed turn out to be a loan for which there

4 is an obligation to make repayment, does that make the

5 financial pro forma statement inaccurate?

6 A It means that the $300,000 is a liability and

7 not an equity.

8 Q Did you ever ask the applicant, or Mr. Esch,

9 for any information with respect to the nature of that

10 cash deposit?

11 A No.

12 Q So I take it, then, that you did not verify

13 whether or not the cash deposit is held in an account

14 in the name of MEI Northwest, as opposed to Marine

15 Express, Inc.?

16 A No. And I don't believe the statute requires

17 me to do that.

18 Q And I hope I am not being rude when I say

19 this, but I was asking whether you did it, not whether

20 you were required to do it.

21 I believe you have answered my question.

22 A Okay.

23 Q Would it make any difference to you if that

24 cash deposit was not held in an account in the name of

25 MEI Northwest?

0234

1 A Not as long as the resources are available to

2 MEI Northwest.

3 Q Would it matter to you if MEI the parent

4 company did not in fact have documentation of the

5 commitment to make that payment and the only

6 commitment came through testimony?

7 A I am not a lawyer on contract law, but I

8 believe a verbal commitment could be held up in court.

9 My opinion.

10 Q So I take it, then, it would be satisfactory

11 to you, as long as Mr. Esch has testified there would

12 be a commitment to make the payment?

13 A Yes.

14 Q In your testimony, you indicated that you

15 believed MEI's estimation of its revenue was

16 reasonable. Do I recall your testimony correctly?

17 A Where are you referring to? I will make sure.

18 Q I will direct you to Page 4, Lines 5 through

19 10.

20 A Okay. I'm there.

21 Q What did you do to arrive at your conclusion

22 that that estimation was reasonable?

23 A I did a ratio analysis of expenses and

24 revenues across the industry. If they were going to

25 incur the expenses that they say they were going to

0235

1 incur, the market bears that that would be a

2 reasonable estimate of revenues.

3 Q So if I understand you correctly, you based

4 your conclusion as to expected revenues based on the

5 costs they expected to incur?

6 A Yes, because this industry works on an

7 operating ratio.

8 Q Did you do anything to determine whether there

9 was an existing demand for additional launch service?

10 A No.

11 Q Did you do anything to determine whether or

12 not any of Arrow Launch's customers that were paying

13 Arrow Launch anything in that estimated range would be

14 willing to commitment that to a new applicant?

15 A You are saying did I ask Arrow Launch

16 customers to commit to providing MEI that amount of

17 revenue?

18 Q No. I am asking you what you did to determine

19 that that was a reasonable estimate beyond looking at

20 the projected costs provided by MEI.

21 A For the reasonable estimate? No. The market

22 is born competition prior, so no. I did not

23 explicitly go and find if there was providers willing

24 to cough up $700,000.

25 Q So when you testified that you believed that

0236

1 was a reasonable estimate, was that a guess based on

2 what you believe the market would bear?

3 A That wasn't a guess. That was based off of

4 the pro forma application which was submitted and the

5 expenses and what the market bears.

6 Q Did you accept Mr. Esch's testimony at face

7 value as being correct?

8 A We have to assume in an analysis that people

9 are telling the truth and giving full effort. We

10 trust the annual reports that these companies file

11 every single year, which pay the regulatory fees.

12 Q So you aren't concerned about the potential

13 for bias in an applicant's testimony?

14 A Bias is always a concern in the back of your

15 mind, but if the applicant is willing to put forth

16 $300,000, only to come up here and fall on his face,

17 then that would be his problem.

18 Q I would like to turn for a moment to your

19 cross-answering testimony.

20 A Okay.

21 Q You indicated -- and I will direct you to

22 Page 2, Lines 18 to 19.

23 A What page?

24 Q I'm sorry. Page 2, Lines 18 to 19.

25 You indicated that you adjusted your analysis

0237

1 of MEI's pro forma, then concluded that MEI, based on

2 Mr. Burton's numbers, would have expected expenses of

3 $793,000, roughly; is that --

4 A That's correct.

5 Q If MEI's expectations of its regulated revenue

6 were off, it could in fact lose more than the $93,000

7 you said they could lose, correct?

8 A I am not going to do a hypothetical analysis

9 on the stand.

10 Q Did you hear when Mr. Esch testified that

11 repair expenses that will be incurred on behalf of MEI

12 Northwest will in fact be paid by Marine Express,

13 Inc.?

14 A Yes, I heard that.

15 Q If MEI Northwest included those projected

16 expenses on its pro forma, that would in fact

17 potentially increase the expected loss, correct?

18 A The numbers would be different than what I

19 concluded. I would agree with that. But I don't know

20 the direction in which they would occur. I am not

21 going to do that analysis on the stand.

22 Q Well, one thing that would be pretty simple is

23 if they had additional increased expenses but with no

24 additional income to account for them, you would have

25 an additional cost without an additional income,

0238

1 correct?

2 A If all these estimates, including Mr. Burton's

3 estimates, then I guess you could make that

4 assumption.

5 Q Well, even without Mr. Burton's analysis, if

6 you have increased costs without increased revenue,

7 the numbers would shift toward increased costs,

8 correct?

9 A Yes, you would have higher costs.

10 Q You wouldn't project that shifting the repair

11 expenses from MEI in California, the parent company,

12 to MEI Northwest, in terms of accounting, would

13 somehow increase the revenue available in Washington,

14 would you?

15 A No.

16 Q And so on that alone, if Mr. Burton's analysis

17 is correct, then, instead of losing $93,000 in their

18 first year, they could potentially lose a

19 significantly larger amount of money, correct?

20 A That is a possibility, yes.

21 Q Why did you revise your pro forma after

22 reviewing Mr. Burton's testimony?

23 A To prove that with the $300,000 cash on hand

24 that MEI Northwest would still be viable. Even if --

25 even if they took a $93,000 loss, they are still able

0239

1 to provide service for 12 months, which is what my

2 analysis is meant to provide.

3 Q Again, you accepted his estimation of revenue

4 at face value, and if it were incorrect, and if they

5 don't make that much money, isn't it in fact possible

6 that MEI will have insufficient founds to operate for

7 a full 12 months?

8 MR. BEATTIE: Objection. Asked and

9 answered.

10 MR. FASSBURG: I don't think I asked

11 that precise question previously.

12 JUDGE FRIEDLANDER: How about you

13 rephrase it?

14 MR. FASSBURG: Sure.

15 BY MR. FASSBURG:

16 Q If these numbers are wrong, it is possible

17 that MEI Northwest does not have funds to operate for

18 a full 12 months?

19 A The only -- the only way that I see MEI

20 Northwest not be able to provide service for a full 12

21 months is if their estimates are off, or the actuals

22 are off to the extent that there is a negative

23 $300,000 outlay. That means combined expenses

24 increased, revenues decreased, that they would take a

25 $300,000 loss.

0240

1 Q If I recall correctly, on that pro forma

2 statement there was a number provided with respect to

3 essentially management fees. Do you recall that?

4 A Could you read that again?

5 Q Sure. With respect to the pro forma provided

6 by MEI, there was a charge, if I recall correctly, of

7 $48,000, for what was essentially management fees. Do

8 you recall seeing that?

9 A I think I've got it somewhere.

10 JUDGE FRIEDLANDER: Which exhibit are

11 you referring to?

12 MR. FASSBURG: I will refer him to the

13 page I am looking for now.

14 JUDGE FRIEDLANDER: But which exhibit?

15 MR. FASSBURG: This is Exhibit RSE-4.

16 JUDGE FRIEDLANDER: Okay. Thank you.

17 BY MR. FASSBURG:

18 Q I'm sorry. There is no page number, but it is

19 a few --

20 A Exhibit RSE-4?

21 Q Correct.

22 A The pro forma is on -- it is Section 12.

23 MR. WILEY: That's the application. I

24 think we are referring to a simple pro forma.

25 BY MR. FASSBURG:

0241

1 Q So within the application, which is Exhibit

2 RSE-4, we have a pro forma statement that Mr. Wiley

3 will hand you a copy of.

4 MR. FASSBURG: Thank you, David.

5 BY MR. FASSBURG:

6 Q So we have here Admin Support/Corporate Fee,

7 48,000. Do you see that?

8 A Yes, I see it.

9 Q Did you do anything to determine whether that

10 was a fair pro rata, or however they are going to

11 charge it, basis for the fees being charged from the

12 parent company for providing management of the

13 operation in Washington?

14 A No. This is an application hearing, not a

15 rate case. This is an analysis on an application, not

16 an audit to set rates.

17 Q I believe the answer was "no"; is that right?

18 A No.

19 Q If, in fact, a fair cost basis for the service

20 being provided by MEI the parent to MEI Northwest is a

21 larger number, could that not in fact drive up the

22 potential loss even higher?

23 A If the estimates are off, if any of the

24 estimates that MEI has are wrong, there is going to be

25 a financial impact to it period. These are estimates

0242

1 we are working with.

2 Q Do you have any idea how that is being

3 charged, in terms of, is that a flat fee? Is that an

4 hourly rate?

5 A I do not.

6 Q Did you ask?

7 A No, because this is not a rate case.

8 Q Did you do anything to determine whether MEI

9 Northwest will be required to pay its parents for

10 hourly rates for any of its employees?

11 A No. I -- I took the pro forma -- the

12 pro forma financial statement provided, compared it to

13 what the market bears, and went forward.

14 Q I would like to turn back to your original

15 response testimony of November 1st.

16 A That's T1?

17 Q Correct.

18 On Page 5.

19 A Page 5.

20 Q Lines 4 to 5.

21 You testified that the California market is

22 similar to the Puget Sound area. What personal

23 knowledge do you have of the market for launch service

24 in California?

25 A I was using shipping, gross shipping numbers

0243

1 on that.

2 Q Did you hear the testimony earlier, when

3 Mr. Wiley was questioning Mr. Esch, with respect to

4 those shipping numbers?

5 A I have heard that testimony, yes.

6 Q Have you reviewed Mr. Harmon's testimony, his

7 prefiled testimony, in which he discusses that there

8 is errors in the numbers being used by Mr. Esch with

9 respect to the numbers for the Puget Sound?

10 A Yes. At the time of this, I had not seen

11 Mr. Harmon's testimony, to be able to examine that,

12 compared to what I was writing.

13 Q Now that you have reviewed Mr. Harmon's

14 testimony, do you stand by your statement that the

15 California market is similar to the Puget Sound area?

16 A I would say I don't know if the California

17 market is the same as the Puget Sound.

18 Q Do you know whether California is regulated

19 similarly to Washington with respect to launch

20 service?

21 A I believe they are not regulated in the same

22 fashion in Washington.

23 Q Now turning to Page 6.

24 A Page 6 of the testimony?

25 Q Correct.

0244

1 I will direct you to Line 3. You testified

2 that the Commissioning had no record of a failure or

3 refusal by Arrow Launch, correct?

4 A That's correct.

5 Q Is that still true as of today?

6 A That is still true as of today. I have no

7 record if it.

8 Q You discussed MEI's testimony with respect to

9 the reason it is requesting the Commission to consider

10 its application, is that it alleges Arrow lacks

11 availability and resources to serve its customers in

12 the Puget Sound.

13 Have you done anything to independently

14 evaluate Arrow's resources and availability?

15 A Well, there was no complaints issued that they

16 failed or refused service, so I would stand by that.

17 Q Sure. My question was just a little bit

18 different. Did you do anything to investigate their

19 claim --

20 A I --

21 Q -- specifically with respect to availability

22 and resources?

23 A As far as availability and resources, no.

24 Q Now, when you stated that there is no

25 Commission record of a failure or refusal, did you

0245

1 actually review Commission records with respect to

2 Arrow Launch?

3 A I did. I contacted the consumer protection

4 downstairs, who holds those records.

5 Q Do you know how far back the records go?

6 A I do not know. I could find out.

7 Q So as we sit here today, you can't tell us

8 where those go back for the entire 27 years of Arrow's

9 existence?

10 A I cannot tell you if it is all 27 years or

11 not.

12 Q Do you believe that that is a complete

13 response with respect to the Commission's records on

14 Arrow?

15 A I believe it is. I believe there has never

16 been a complaint against Arrow.

17 Q Do you understand that Arrow has customers

18 that include global oil conglomerates like Shell Oil?

19 A Yes. And ConocoPhillips. Yes.

20 Q Have you ever looked at an SEC statement for

21 Shell Oil to see what its gross annual revenue is?

22 A I did not ever look at Shell, no.

23 Q Okay.

24 A But I have looked at 10-K forms filed with the

25 SEC for various corporations.

0246

1 Q Sure.

2 I bet you wouldn't be shocked. I will

3 represent to you, I looked it up myself out of

4 curiosity. Shell Oil, the parent company, their gross

5 annual revenue for 2015 was $264 billion.

6 Do you think a company that size would be

7 intimidated by Arrow Launch, a family-owned and

8 operated company located only in Washington state?

9 MR. BENTSON: Objection. Lacks

10 foundation.

11 JUDGE FRIEDLANDER: Mr. Fassburg?

12 MR. FASSBURG: I think I have provided

13 the foundation. It is based on a hypothetical anyway.

14 JUDGE FRIEDLANDER: He can give his

15 opinion.

16 A I don't believe a corporation could be, but

17 the people who make up the corporation could be.

18 BY MR. FASSBURG:

19 Q I understand you spoke with some of Arrow's

20 customers to investigate the allegation that they were

21 too intimidated to raise their complaints as alleged

22 by MEI; is that correct?

23 A That is correct.

24 Q How would you classify your -- speaking with

25 those customers? I know you called it a survey, but

0247

1 was it an interview or did you prepare a survey?

2 A It was -- I contacted them, out of the blue to

3 them, six customers on the phone, and asked if they

4 were satisfied or dissatisfied with Arrow's launch

5 services provided in the Puget Sound.

6 Q Was that verbatim the question that you asked

7 them?

8 A Yeah.

9 Q Other than --

10 A My memory. It was clear back in October. I

11 don't have a transcript of it, but...

12 Q Now, when you say you don't have a transcript,

13 I assume that means there is no transcript of it?

14 A I don't believe there would be a transcript of

15 any of those calls.

16 Q Did you record the calls?

17 A No. I don't think my phone has that

18 capability.

19 Q Did you take notes on those calls?

20 A I did.

21 Q Is it fair that the single customer that you

22 identified in your testimony as being dissatisfied

23 with Arrow was Crowley Petroleum?

24 A I've got my notes on that. The -- out of the

25 six customers surveyed, the only one that said they

0248

1 are dissatisfied and support MEI would be Crowley

2 Maritime.

3 Q Did Crowley explain their dissatisfaction in

4 any way?

5 MR. BEATTIE: Objection. Hearsay.

6 MR. FASSBURG: I'm just asking him based

7 on what he has recorded in his survey, what they

8 indicated -- or whether they indicated the basis of

9 their satisfaction. I didn't ask him what it was.

10 MR. BEATTIE: I will refer to

11 Mr. Wiley's argument on this point from earlier and

12 incorporate it by reference.

13 JUDGE FRIEDLANDER: You are going to

14 have to remind me what that was.

15 MR. FASSBURG: I'll move along.

16 MR. BEATTIE: Mr. Aikin will be here

17 tomorrow.

18 MR. FASSBURG: It's fine. I will move

19 along.

20 JUDGE FRIEDLANDER: And I would ask

21 Mr. Sevall if Mr. Aikin was the person for Crowley

22 that you talked with --

23 THE WITNESS: Mr. Aikin was --

24 JUDGE FRIEDLANDER: -- on the survey?

25 THE WITNESS: -- not. It was the local

0249

1 representative in Anacortes. Her name was Lindy

2 Evans.

3 JUDGE FRIEDLANDER: I would ask

4 Mr. Sevall to answer your question, then, whether or

5 not there was additional information provided by

6 Crowley.

7 BY MR. FASSBURG:

8 Q Did Ms. Evans provide you the basis of her

9 dissatisfaction with Arrow?

10 A A description or basis of it, no. She just

11 simply said that she was dissatisfied and supported

12 MEI.

13 Q Did you ask Ms. Crowley whether she was

14 someone who frequently --

15 MR. WILEY: Ms. Evans.

16 MR. FASSBURG: Thank you, David.

17 BY MR. FASSBURG:

18 Q Did you ask Ms. Evans --

19 MR. FASSBURG: Ms. Crowley. That's

20 good.

21 THE WITNESS: It would be a different

22 discussion.

23 BY MR. FASSBURG:

24 Q So let's get that one right.

25 Did Ms. Evans indicate to you whether she was

0250

1 a person who frequently interacted with Arrow?

2 A She indicated that she is over the Crowley

3 area. So all of the Crowley boats that come in and

4 out of Anacortes I believe would be -- she would

5 interact with them, scheduling services.

6 Q Did she ever tell you how many people with

7 Crowley interact with Arrow?

8 A I have no clue. She did not tell me that, no.

9 Q So moving on. You indicated at Page 8, Lines

10 2 to 3 --

11 A For 1T?

12 Q 1T.

13 A Okay.

14 Q You stated that customer choice would permit

15 customers -- and I am paraphrasing -- to be able to

16 signal their dissatisfaction with a particular

17 service. Do you also believe that the residents of

18 Washington's island communities should be able to

19 select among ferry services?

20 A Well, if I am interpreting the question

21 correctly, you are talking about two different

22 services which are distinguished as different services

23 in the application. One is launch and one is ferry

24 service.

25 Q Am I --

0251

1 A I don't understand exactly what you are

2 getting at, but ferry is not the same as launch.

3 Q Certainly, but my question was nonetheless, do

4 you believe that discriminating customers should be

5 permitted to choose between their ferry providers?

6 MR. BEATTIE: Objection. Relevance.

7 JUDGE FRIEDLANDER: Mr. Fassburg?

8 MR. FASSBURG: These are regulated under

9 the same statute.

10 JUDGE FRIEDLANDER: I would just say --

11 and I will allow you to jump in here in just a moment.

12 Why would ferry service be at issue in this case if we

13 are talking only about launch service?

14 MR. FASSBURG: Because this goes to the

15 ability to provide multiple services, competition

16 under the statute. Mr. Sevall has testified that he

17 believes customer choice would be a reason to allow

18 competition.

19 JUDGE FRIEDLANDER: Mr. Beattie?

20 MR. BEATTIE: Well, Your Honor, I think

21 that -- that you know where I am going with this.

22 This is a launch service application and I don't know

23 how relevant it is to talk about passenger ferries,

24 which is, I think, where the question is directed at.

25 JUDGE FRIEDLANDER: And I would agree.

0252

1 If that is where the question is directed I am going

2 to sustain the objection.

3 BY MR. FASSBURG:

4 Q Do you have an understanding of the meaning of

5 the term "cream skimming"?

6 A Does it have to do with milk? I'm assuming,

7 yeah. Churn butter. I don't know.

8 Q How about if I use the word "cherry-picking"?

9 A Cherry-picking. Yes.

10 Q What does the word cherry-picking mean to you

11 in the regulatory context?

12 A Well, there is a current case that is going

13 forward in the federal world where a ferry statute is

14 being challenged, where you've got residents on the

15 end of a 50-mile lake and some people are proposing to

16 put forth competition in that -- during this high

17 season for tourists. That would be cherry-picking.

18 If you are able to just take the prime season, and

19 that one being tourism-based summer activity, that

20 would be cherry-picking.

21 Q If I am understanding your testimony

22 correctly, when there is competition and one of the

23 competitors is seeking only most lucrative work, that

24 would be considered cherry-picking?

25 A In a regulated world, yeah, that could be

0253

1 considered cherry-picking.

2 Q Cherry-picking, if allowed, could potentially

3 increase the cost to customers outside the most

4 lucrative areas, couldn't it?

5 A There is that possibility, but how companies

6 are run is based on their internal decisions, not

7 Staff's decision, not regulation.

8 Q Are you familiar with the operating ratio

9 method of ratemaking?

10 A Operational rational ratemaking?

11 Q Operating ratio.

12 A Operating ratio. Sorry about that.

13 Yes.

14 Q The UTC uses the operating ratio for

15 ratemaking in launch service, correct?

16 A That's correct.

17 Q And under the operating ratio method of

18 ratemaking, if costs are in fact increased, that can

19 drive up the rates, the fares charged, correct?

20 A As long as the Commission has deemed them to

21 be prudent and valid costs, it could do that, yes.

22 Q Can costs be driven up if one of the

23 competitors is cherry-picking?

24 A Only if the Commission were to deem them to be

25 prudent.

0254

1 Q Do you have a conclusion as to whether MEI's

2 application would be considered cherry-picking?

3 A I don't have an opinion or conclusion on

4 whether it would be cherry-picking or not.

5 Q Moving on a little bit to Page 8, Lines 16 to

6 20. You state there is precedent for issuing

7 overlapping certificates.

8 A That's correct.

9 Q I understand you base that statement on a

10 number of orders that you have summarized in a chart,

11 which I believe is Exhibit SS-3.

12 A Is it 2 or 3?

13 Q Two.

14 And so you have summarized those orders in

15 Exhibit SS-2. Is that the basis of your testimony

16 that there is precedent for issuing overlapping

17 certificates?

18 A That is correct. The Commission has done it

19 before and that means there is no legal boundary

20 saying they couldn't do it again if they have legal

21 justification to do it.

22 MR. FASSBURG: I'm going to object to

23 the responsiveness of the response.

24 BY MR. FASSBURG:

25 Q Mr. Sevall, my question was a little different

0255

1 and a little bit more narrow. Was that chart a

2 summary of orders that you reviewed?

3 A Yes. This is a summary of orders that I

4 reviewed.

5 Q Did you review each of those orders?

6 A Yes, I did. That's been a while ago, but...

7 Q Do you recall the most recent of any of those

8 orders that are included in Exhibit SS-2?

9 A Not the specific dates. I believe the last

10 one was 3/8/05, and so that has probably got the last

11 date on it, but the original order was 1977.

12 Q Would it be fair to say that those orders were

13 issued in a short succession?

14 A Yeah. I believe they were only over a two- or

15 three-year period in general.

16 Q Do you have any personal knowledge of how or

17 whether launch service was provided in Washington

18 prior to the Commission's determinations who regulate

19 launch service?

20 A These orders represent the grandfathering in,

21 I believe, as Mr. Jack Harmon testified to in his

22 testimony. In order to grandfather something in, you

23 have to have previously provided the service in that

24 area, is my understanding. And so this would be an

25 accurate representation of what the competitive launch

0256

1 service looked like, roughly, in the late '70s and

2 early '80s.

3 Q So prior to the existence of regulation, is it

4 your understanding that each of these launch companies

5 was operating in their respective territories?

6 A Based off of the orders and the grandfathering

7 assumptions, I would have to assume yes.

8 Q Now, in your review of those orders, did you

9 find that in fact some of those were based upon a

10 determination that another certificated launch carrier

11 that had, in that short succession, already obtained a

12 certificate was not providing reasonable and adequate

13 service?

14 A I believe there are a few of them in there.

15 Q In fact --

16 A I can't point to exactly which ones right now

17 on the stand.

18 Q In fact, the remainder of them were all

19 concurrent applications, signed on the same day,

20 correct?

21 A I don't know if they were all signed on the

22 same day. These applications came forward and they

23 got approval to operate in these areas. I don't doubt

24 that.

25 Q Can you point to a single one of these orders

0257

1 that was granted without first making a finding that

2 they were either concurrent or that there was a

3 failure or a refusal to provide reasonable and

4 adequate service?

5 A No, I don't believe any of them were on -- or

6 a lack of reasonable or adequate service.

7 Q Sorry. Your answer confused me.

8 A Yeah. It confused me, too. Sorry. I will

9 restate it.

10 I don't believe any of these certificates

11 issued from any of these orders were because of a lack

12 of reasonable service.

13 Q Let's try that one more time. I am still

14 confused.

15 Is it correct that in the very -- second order

16 there was a finding of failure and -- failure and/or

17 refusal to provide reasonable and adequate service by

18 the first applicant?

19 A I would have to review that order, but that

20 sounds like it could be true. The order would reflect

21 that.

22 Q So going back through these, Island Mariner

23 was the first to apply for launch service in the state

24 of Washington, correct?

25 A In Order 363, yes.

0258

1 Q And Lavina Longstaff, when she applied for

2 launch service, the Commission reached a finding that

3 Island Mariner failed or refused to provide reasonable

4 and adequate service, correct?

5 A So you would be talking about Order 365, the

6 first order war Ms. Longstaff?

7 Q Do you recall that?

8 A I don't recall that order off the top of my

9 head.

10 Q When you state that there is precedent for the

11 Commission to grant overlap, are you meaning that

12 within the confines of 81.84.020 the Commission has a

13 standard by which it can grant overlap?

14 A Title 81 says reasonable -- the refusal of

15 reasonable and adequate service. If they deemed that

16 there was a lack of reasonable or adequate service, I

17 believe they could issue overlap.

18 Q Sure. I want to make sure I understand your

19 testimony. You say there is precedent. Are you

20 providing that comment within the context of the

21 Commission's ability to reach a finding under

22 81.84.020, Section 1?

23 A No. This is simply saying that we have issued

24 overlapping the past and that's it.

25 Q Are you telling the Commission today that

0259

1 there is precedent by which the Commission can ignore

2 the requirements of 81.84.020, Section 1?

3 A No.

4 MR. FASSBURG: I will pass the witness.

5 JUDGE FRIEDLANDER: Thank you.

6 Ms. Endejan.

7 MS. ENDEJAN: Okay.

8

9 C R O S S - E X A M I N A T I O N

10 BY MS. ENDEJAN:

11 Q Good afternoon, Mr. Sevall.

12 THE WITNESS: Red button.

13 MS. ENDEJAN: Red light.

14 Can you hear me now?

15 BY MS. ENDEJAN:

16 Q Again, I am Judy Endejan and I am here on

17 behalf of my client, Pacific Cruises Northwest, Inc.

18 I will try not to repeat the questions that

19 Mr. Fassburg asked you, but if I could turn your

20 attention to something you talked about with him. On

21 Page 5 of your opening testimony, that's 1T, at the

22 bottom of the page, Lines 20, you talked about, "The

23 Commission is prohibited from issuing a certificate to

24 territory already served by an existing certificate

25 holder."

0260

1 Do you remember that?

2 A Yes. Lines 20 and 22. I see that.

3 Q Okay.

4 And so this came from the statute RCW

5 81.84.020, correct? Maybe not word for word, but in

6 substance?

7 A Yeah. I even footnote it there.

8 Q Okay.

9 And in the course of performing your work on

10 this particular case, in reviewing that application

11 you referred to the statute. That again is referenced

12 in your question on the bottom of Page 5. Would that

13 be a fair statement?

14 A 81.84.020. Yes.

15 Q Okay.

16 So in light of that statute, wouldn't you

17 agree that the scope of your analysis would be to

18 determine if the current certificate holder has failed

19 or refused to furnish reasonable and adequate service?

20 That was something that you were tasked with

21 doing.

22 A Correct. And I believe I answered the

23 question on the next page, referring --

24 Q Okay.

25 A -- that we have never had a complaint.

0261

1 Q Correct.

2 And isn't it true -- and if you would turn to

3 Page 7, Lines 11 through 16, and take a moment to read

4 that.

5 A Seven, 11 through 16?

6 Q Page 7 of your opening testimony, 11 through

7 16.

8 A Okay.

9 Q Okay.

10 So am I reading that passage correctly to

11 state that you have not found the condition in RCW

12 81.84.020 that would allow the Commission to grant a

13 certificate to the applicant in this case?

14 A In that actual line, on Line 15 and 16, I

15 state, "I am not prepared to conclude that Arrow

16 Launch has failed or refused to furnish reasonable and

17 adequate service within the meaning of the statute."

18 Q So I guess that's a "yes" to my question?

19 A That is an "I don't know."

20 Q So when you say you don't know, it means you

21 are -- basically have not concluded anything with

22 respect to whether Arrow has failed or refused to

23 furnish reasonable and adequate service at this time?

24 Is that what you are saying?

25 A Correct. I have gone through our records. I

0262

1 have no records, but the evidentiary record here is

2 not closed and so I cannot make that conclusion.

3 Q But since you made that statement as of

4 November 1st, 2016, you have had the opportunity to

5 read the testimony filed by the parties on

6 December 5th, 2016. Would that be correct?

7 A I have, yes.

8 Q Okay.

9 And nothing in the testimony that you reviewed

10 from December 5th, 2016, has caused you to change your

11 opinion as reflected in the statement in your opening

12 testimony, that you are not prepared to conclude that

13 Arrow Launch has failed or refused to furnish

14 reasonable and adequate service?

15 A I am still not prepared to conclude that Arrow

16 has failed or refused to furnish reasonable or

17 adequate service.

18 Q Okay.

19 So let's go over the evidence that you have

20 looked at with respect to that particular issue, okay?

21 A All right.

22 Q And I believe you said that you investigated

23 and found no complaints or records of concern at the

24 Commission's -- within the Commission's records,

25 correct?

0263

1 A That's correct.

2 Q Okay.

3 Now, wouldn't you agree that that's a pretty

4 good indicator that there is no service problem with

5 the regulated provider?

6 A That is one indicator, yes, but the

7 evidentiary record here is still open.

8 Q Okay.

9 And what do you anticipate being presented in

10 this open evidentiary record that might cause you to

11 change your mind in any way?

12 MR. BEATTIE: Objection. Calls for

13 speculation about what the remainder of the

14 evidentiary record may show.

15 MS. ENDEJAN: Well, Your Honor, he

16 has -- we now have the record. All of -- we are here

17 at the hearing, we have all of the prefiled testimony,

18 and the witness has said, well, the record still isn't

19 closed. I am basically asking him, what do you think

20 is going to come out that might make you change your

21 mind, because what Staff says is a pretty important

22 factor in Commission proceeding. I am entitled

23 explore basically the basis for his, I guess, lack of

24 closure on that particular issue.

25 JUDGE FRIEDLANDER: Did you have

0264

1 anything you wanted to add?

2 MR. BEATTIE: Sure, Judge.

3 This witness has on multiple occasions said he

4 is waiting for all of the record evidence to come in

5 before Staff is willing to make a recommendation,

6 which it will most likely do in its brief after the

7 close of the evidentiary record.

8 Multiple lawyers here are trying to find

9 different angles to get at the same question, but

10 it's -- you know, we have hoed this row already.

11 BY MS. ENDEJAN:

12 Q Well, let me be very clear because this is

13 very important. Does Staff intend to make a

14 recommendation in this proceeding?

15 A I believe my lawyer said we intend to make a

16 recommendation in our -- in our final brief, when we

17 have the full record.

18 Q So the parties will not be entitled question

19 or probe the basis for your recommendation if it is

20 rendered in a brief? Is that your testimony?

21 Mr. Sevall, you are the fact witness here. If

22 the Commission intends to receive a recommendation

23 from the Staff, all of the parties as a matter of due

24 process are entitled probe the basis for your

25 recommendation.

0265

1 MR. BEATTIE: Objection. Your Honor,

2 Mr. Sevall is not prepared to make pronouncements

3 about how the process will be handled. His testimony

4 says I am not prepared to make a recommendation at

5 this time.

6 JUDGE FRIEDLANDER: I understand that.

7 I guess I have a little bit of concern, as

8 well as Ms. Endejan, because if Staff does raise an

9 argument, which can include a recommendation for the

10 very first time on brief, none of the parties will

11 have had any opportunity to question him on that,

12 whereas everyone else has had their positions out in

13 full in the record and Staff has been able to question

14 them on it. No one will get the same opportunity for

15 Staff.

16 I would like to know personally if that is

17 what Staff intends, to have a recommendation only in

18 the brief.

19 We do, I believe, have an initial brief and a

20 reply brief, but I think procedurally there may be two

21 weeks in between, I will have to check the procedural

22 schedule for that, but it would not allow a very

23 robust due process for the other parties.

24 MR. BEATTIE: Very well, Judge. I think

25 the solution here is for Ms. Endejan to ask again

0266

1 whether Scott is prepared, based on anything he has

2 seen or thinks he may see, to make a recommendation.

3 If he is, then he should answer, and if he says he

4 still isn't, then I think that has to end the inquiry.

5 I don't know where else we can go with it.

6 MS. ENDEJAN: Your Honor, maybe I could

7 phrase it this way.

8 BY MS. ENDEJAN:

9 Q What is it that you would like to see that you

10 have not seen in the record presented that would cause

11 you to formulate a final recommendation?

12 A An absolute proof that I believe Arrow Launch

13 has not failed to refuse for furnish reasonable

14 service. The only gray area comes from the survey and

15 the -- and the Crowley witness, which is on the stand

16 tomorrow, and I have not heard that testimony.

17 Nobody here knows particularly what Crowley's

18 complaint is.

19 MS. ENDEJAN: Your Honor, I am going to

20 have to pick that one apart. Do we want to take a

21 break now and spare the court reporter's fingers or do

22 you want me to keep going?

23 JUDGE FRIEDLANDER: Why don't we take a

24 quick five-minute recess.

25 Thank you. We will be off the record.

0267

1 (A brief recess.)

2 JUDGE FRIEDLANDER: All right. It looks

3 like we are all back in our seats.

4 I should correct something that I said earlier

5 as far as the procedural schedule. It looks like we

6 do not have initial and reply briefs, we only have

7 simultaneous posthearing briefs, so there is just that

8 only that one opportunity.

9 Ms. Endejan, you're up.

10 MS. ENDEJAN: Thank you. Thank you,

11 Your Honor.

12 BY MS. ENDEJAN:

13 Q Then that makes it, I guess, quite critical to

14 factually explore the basis for your opinion,

15 Mr. Sevall, okay?

16 A Okay.

17 Q All right.

18 And I don't want to put words in your mouth,

19 but I believe I heard you just say that you are

20 waiting for additional information as to -- something

21 that would tell you one way or the other that Arrow is

22 not providing the level of service required by

23 81.84.020. Is that what -- am I hearing you say that?

24 A Yes. My position, after thinking about it

25 further, and now knowing there is only one brief --

0268

1 and I am not a lawyer so people's judicial rights I'm

2 not good at. Staff's position in this application

3 hearing was -- because we are required to do financial

4 review of applicant. The burden is on the applicant,

5 and Staff will abstain from giving any recommendation

6 in a brief.

7 Q So I take it from that last sentence, then,

8 that Staff will not be rendering an opinion as to

9 whether Arrow Launch has failed or refused to provide

10 reasonable and adequate service within the meaning of

11 the statute. Is that a correct statement?

12 A Staff is not going to take a position on that.

13 We will let the record stand as it is and let the

14 judge interpret it and come to her conclusion without

15 Staff's conclusion.

16 Q Okay.

17 And you -- let me ask you a couple of

18 questions about the survey that you took.

19 A Okay.

20 Q Now, you undertook that survey on your own

21 initiative, correct?

22 A Yes. There was an allegation of dissatisfied

23 customers and Staff investigated that, or I

24 investigated that.

25 Q Okay.

0269

1 And in your testimony you call it a, quote,

2 limited survey. Now, this was not really a formal

3 survey, was it? Wasn't it just more of pick up the

4 phone and call people and ask them questions?

5 A I picked up the phone and called six customers

6 of Arrow Launch. Those customers --

7 Q And that was my next question. How did you

8 identify the customers to call?

9 A I went to -- frankly, down the customer list

10 and kind of went to the six biggest. So it was

11 Alaskan Tanker Company, Blue Water Shipping Company,

12 ConocoPhillips, Crowley Maritime, Foss Maritime, and

13 Trans Navigation Corporation.

14 THE WITNESS: Sorry if I was speaking

15 too fast.

16 A Those six companies represent 70 percent of

17 the revenue in which Arrow has generated, at least

18 within the test period of their last rate case.

19 BY MS. ENDEJAN:

20 Q Okay.

21 And how did you find the appropriate person in

22 those companies to talk to about Arrow? That must

23 have been a gargantuan task.

24 A It is. It took a couple days. I can tell

25 you, ConocoPhillips has a very good switchboard

0270

1 operator and managed to find somebody when I said, I

2 need to talk to somebody about tankers in the Puget

3 Sound, because that's all I could call Houston with.

4 It did take time, that's correct.

5 Q Okay.

6 I am not certain if I heard this in your

7 responses to Mr. Fassburg's testimony, but did you ask

8 each person, when you finally located them, the same

9 question or was it just a generic question?

10 A It was a generic question about their

11 satisfaction with launch services in the Puget Sound

12 being provided by Arrow Launch.

13 Q Okay.

14 And in your testimony you stated that

15 basically, let's see, two customers had positive

16 comments, which is good. Meaning no service problem,

17 correct?

18 A That's correct. That was Alaskan Tanker and

19 Blue Water Shipping.

20 Q Okay.

21 And then you said three had no issues with

22 Arrow. Would it be fair to say that they also didn't

23 have any service problems with Arrow?

24 A Three did not have any service issues with

25 Arrow, but in general they also said, as a tag line,

0271

1 we support competition.

2 Q Okay.

3 And then the only one who was dissatisfied was

4 Crowley, correct?

5 A Crowley, which represents 15 percent of the

6 market. That's correct.

7 Q Okay. Fine.

8 So based upon what you just said, it would be

9 fair to say, then, that five out of the six companies

10 that you called did not have service issues with

11 Arrow?

12 A That's correct.

13 Q Okay.

14 And how did the issue of competition come up

15 in your conversations with these six companies?

16 A They brought it up. I simply asked, Would

17 you -- what is your service level? We have another

18 person applying and what is your service level with

19 Arrow Launch? Because they were questioning why on

20 earth I was even calling them, so I had to tell them

21 what the UTC is in the first place, and then, you

22 know, why I am -- a little background on why I am

23 contacting them.

24 And so in that -- in that brief bit they

25 learned that somebody was looking to go come into the

0272

1 market and compete. And they answered the question.

2 Well, we've had no service -- no service issues, but

3 we would support a competitor coming in. And that's

4 their words, not mine.

5 Q Okay.

6 So it was volunteered, as opposed to you

7 saying, oh, by the way, would you favor competition?

8 A Yeah. Those three volunteered it and I just

9 marked it down because it was a noted difference from

10 what Alaskan Tanker, Blue Water, and Crowley said.

11 Q Okay.

12 So as you sit here today, the only evidence

13 before the Commission that there is some problem with

14 Arrow Launch's service is that of Crowley Petroleum

15 Services; is that correct?

16 A Yes. I guess from the survey and from the

17 shipper support statement that they sponsored.

18 Q Okay.

19 And how many customers does Arrow have, based

20 upon your review of the customer list?

21 A I want to say it's -- I saw 40. Mid 40s, I

22 think.

23 Q Okay.

24 A I can't recall off the top of my head, no.

25 Q Well, where did you get the list of customers?

0273

1 A That was provided in the last general rate

2 case, which I did.

3 Q Okay. All right.

4 And would it be -- would you have a position

5 one way or the other as to whether evidence of

6 dissatisfaction from one customer equals proof that

7 Arrow Launch has failed or refused to provide adequate

8 service?

9 A The comment made to me of general

10 dissatisfaction on its surface I wouldn't say is

11 refusal to provide adequate service, but that one

12 customer is 15 percent of the market, so we need to be

13 mindful of what they -- if there really is a problem

14 there.

15 Q Did you do anything to probe Ms. Evans for the

16 reasons why Crowley was dissatisfied?

17 A No, I did not. I simply found out she was

18 dissatisfied and that was it.

19 Q Okay.

20 So as far as you know, it could be she was

21 upset over late payment charges on a bill?

22 A I told her -- I asked her if she knew about

23 the consumer protection area downstairs and if she has

24 ever gone through that. We have an internal procedure

25 to vet those. That wasn't my position or my job at

0274

1 that point in time.

2 Q Did you ever advise her that the Commission

3 has the capacity to hear and resolve customer

4 complaints over regulated services? Did that come up

5 at all?

6 A That was part of what I was alluding there to

7 when I notified her of our consumer protection stuff.

8 If this dissatisfaction is to some level, she can call

9 them and get help with the complaint, or if Crowley

10 were to need...

11 Q When you say "them," who are you referring to?

12 A Consumer protection downstairs.

13 Q Okay. Downstairs.

14 A Yes.

15 Q You were pointing downstairs. I don't know

16 where you put consumer protection.

17 And do you know, did -- and you had that call

18 with Crowley when approximately?

19 A I believe that was October 20th or 21st I

20 marked down.

21 Q And did you do anything since then to -- we're

22 now on Valentine's Day. Happy Valentine's Day. Did

23 you do anything to see if Crowley ever filed any

24 complaint about Arrow?

25 A I have not actively asked consumer protection

0275

1 people, but I work in the same building. I have not

2 heard that anyone filed a complaint against Arrow.

3 Q Okay.

4 So would it be fair to say, just to clarify

5 the record, that -- you know, that you didn't mean

6 your conversations to be considered a survey in the

7 classical sense, of, you know, you design a survey,

8 and then you do a statistical analysis, et cetera, or

9 was this just more of an information-gathering

10 exercise for you?

11 A This was more information gathering to find

12 out if the applicant's testimony had any validity to

13 it.

14 Q Okay.

15 Now let me turn to another topic regarding

16 overlapping areas because I am a little confused about

17 your chart and your testimony in response to other

18 cross-examination questions.

19 Do you know if any of these companies are

20 still in business today and providing launch service?

21 A The -- well, over 40 years the market has

22 changed. I do not believe any of these individuals to

23 be providing a launch service anymore, no. I don't

24 believe I have ever seen them come across my desk.

25 Q Okay.

0276

1 So would it be fair to say that what happened

2 back in the '70s, approximately 1997, is that the

3 Commission decided that it would exercise jurisdiction

4 over launch services in the Island Mariner case,

5 correct?

6 A Yeah.

7 Q '77.

8 A Order 363. Is that it?

9 Q 363A and 364.

10 A Yes.

11 Q Okay.

12 And then all of these other orders were issued

13 basically to bring the services in conformity with the

14 Island Mariner decision. Would that be a fair

15 statement?

16 A Yeah. I believe I discussed that when --

17 Q Okay.

18 A -- I was talking about grandfathering.

19 Q Okay.

20 And do you happen to recall the facts of the

21 Mariner Island [sic] case, which is Exhibit No. SS-3?

22 A Which facts?

23 Q Okay. Well, do you recall reading the

24 decision? I am presuming you did because it is an

25 exhibit.

0277

1 A Yes, I have. I have it here if you want to

2 reference it.

3 Q Okay.

4 Do you recall that in that case the applicant,

5 Island Mariner, leased vessels from another

6 corporation, Puget Sound Launch and Chandlery, Inc.,

7 through what the judge characterized as a, quote, oral

8 ephemeral arrangement subject to question.

9 It's on Page 5 of that decision, toward the

10 bottom of the page. The last -- the very last full

11 paragraph.

12 A "The bear boat charter, or one-year lease of

13 vessels"?

14 Q Correct.

15 JUDGE FRIEDLANDER: And I have to ask a

16 question as well. Are any of these decisions in the

17 record? I know that Mr. Sevall has provided me with

18 the docks. What are the exhibit numbers for the

19 orders?

20 MS. ENDEJAN: Your Honor, I -- I tried

21 to find these orders as well, that are referenced, and

22 they are very old.

23 JUDGE FRIEDLANDER: Yes.

24 MS. ENDEJAN: I could not retrieve them,

25 so I do not have them.

0278

1 MR. FASSBURG: The one she is referring

2 to, though, was SS-3.

3 MS. ENDEJAN: The one that I am

4 referring to is an exhibit.

5 THE WITNESS: I made -- SS-3 was

6 steamboat order certificate 363-A and 364, which were

7 the initial Island Mariner ALJ order and then final

8 order by the Commission.

9 JUDGE FRIEDLANDER: Okay. Thank you.

10 And then the other orders are not exhibits in

11 the record?

12 MS. ENDEJAN: That's correct.

13 JUDGE FRIEDLANDER: Okay. Thank you.

14 MS. ENDEJAN: Yes.

15 JUDGE FRIEDLANDER: That's all I wanted

16 to know.

17 MS. ENDEJAN: Okay.

18 BY MS. ENDEJAN:

19 Q So, you know, in that case there was an

20 arrangement between two separate entities, one of whom

21 provided support to the other. Based upon your

22 review, did that raise any concerns at the Commission

23 at that time?

24 A I don't think it could have because -- I don't

25 have that record to know if there was any discussion

0279

1 of it, but I know that the application was successful

2 and they issued a certificate.

3 Q Okay.

4 A As far as I know, it did not bear any weight

5 on the decision.

6 Q Okay.

7 But didn't the Commission in this order insist

8 upon seeing a formal written rental agreement,

9 et cetera, that would disclose the relationship

10 between the applicant and the, I guess, partner

11 company?

12 I will represent to you that if you read the

13 order it does, okay, just to move right along.

14 A In the conclusion section?

15 Q Yes. Yes.

16 A I can go there.

17 Q So then let's go to the current situation here

18 today with MEI. Shouldn't each legal entity keep

19 separate records of revenues and expenses from an

20 accounting purpose -- for accounting purposes? And I

21 am asking you as a regulatory accountant.

22 A Yes. And we can require that.

23 Q Okay.

24 And when were you first made aware that MEI,

25 LLC was wholly owned by Marine Express that was

0280

1 funding the operation?

2 A That they were wholly owned? I believe that

3 came forth in the application.

4 Q Okay.

5 Did you ask to see anything from the parent

6 corporation to verify the financial status of the

7 affiliate corporation, the LLC?

8 A So you are asking if I had -- if I asked to

9 see the parent corporation's books?

10 Q Correct.

11 A No, I did not.

12 Q Okay.

13 And I think you said something about this is

14 not a rate case, which is why you accepted essentially

15 the financial representations at face value. Is that

16 a fair characterization of your testimony?

17 A Yes. Under the fact that the applicant would

18 perjure -- is subject to perjury if they aren't wholly

19 truthful.

20 Q Okay.

21 And did you -- do you think that the failure

22 to record a $300,000 loan as a loan is in any way

23 disingenuous or an inaccurate representation of the

24 applicant's financial condition?

25 A Well, I have no evidence that there is a loan.

0281

1 I know Mr. Esch said there was today. That was the

2 first that I heard of that.

3 Q And would that concern you now, knowing that,

4 gee, that $300,000 was a loan, it really is something

5 that should be recorded as a loan, wasn't recorded as

6 a loan, it may indicate they have $300,000 in the

7 bank, but they didn't -- you didn't get told that in

8 the process of examining this application?

9 A No, my -- yeah. My analysis was more on there

10 is $300,000 there, and that, you know, even though

11 questioning has held true, that there is $300,000

12 there. Whether it is equity or a loan in my analysis

13 is a moot point. The cash is available.

14 Q Okay.

15 And if the cash also could be withdrawn at the

16 discretion of the parent, Marine Express, despite what

17 Mr. Esch says, would that concern you? In other

18 words, if the terms were very fluid?

19 A I would have to see the terms before I could

20 voice any concern on that.

21 MS. ENDEJAN: Okay. All right.

22 And I think Mr. Fassburg asked most of the

23 questions that I would otherwise ask. If I could just

24 have one moment?

25 JUDGE FRIEDLANDER: That's fine.

0282

1 (Pause in the proceedings.)

2 BY MS. ENDEJAN:

3 Q Just to clarify, you did not conduct any

4 separate market analysis to determine if there was

5 sufficient demand to support two launch providers in

6 Puget Sound, did you?

7 A I have done a little research on that, but I

8 wasn't going to testify to any market analysis, no.

9 Q Okay.

10 So as you sit here today, you are not in a

11 position to state one way or the other whether or not

12 there is sufficient demand to support, on a profitable

13 basis, two launch service providers in Puget Sound?

14 A No. The only assumption that I have to -- or

15 the only fact that I have is the market has borne

16 competition with six companies, as shown in SS-2,

17 previously, and going forward I would have no reason

18 to understand why they wouldn't going forward.

19 Q Now, I think you also said that this -- this

20 chart represents the state of affairs 40-plus years

21 ago, correct?

22 A Correct.

23 Q And I believe you testified that you don't

24 think any of these entities are still operating as a

25 launch service. Is that also fair to say?

0283

1 A Yes.

2 Q Okay.

3 MS. ENDEJAN: No further questions.

4 JUDGE FRIEDLANDER: Thank you.

5 Mr. Bentson?

6 MR. BENTSON: Thank you, Your Honor.

7

8 C R O S S - E X A M I N A T I O N

9 BY MR. BENTSON:

10 Q Good afternoon, Mr. Sevall, or "Sevall." I

11 apologize.

12 Am I saying it right, the second one?

13 A Yes.

14 Q Thank you.

15 A Now it is officially on the record.

16 Q All right.

17 Mr. Sevall, there has been a lot of talk about

18 this $300,000 loan to MEI. Could you turn to RCW

19 81.84.020(2), which I believe we were looking at

20 earlier?

21 A 81.84.020?

22 Q Yes. Subsection 2.

23 A Subsection 2.

24 Q Do you have that in front of you, Mr. Sevall?

25 A I do.

0284

1 Q And I am going to read the first sentence

2 there. It says, "Before issuing a certificate, the

3 commission shall determine that the applicant has the

4 financial resources to operate the proposed service

5 for at least twelve months, based upon the submission

6 by the applicant of a pro forma financial statement of

7 operations."

8 Did I read that correctly?

9 A You did.

10 Q And this is the statute that you are working

11 off of to determine the financial analysis you need to

12 do of a pro forma application; is that right?

13 A Correct.

14 Q And is there anything in this statute that

15 requires you to do a debt to equity ratio of the

16 applicant's books?

17 A No.

18 Q And so, I guess, with respect to this $300,000

19 loan that you have been asked about, then, whether the

20 $300,000 is a loan from a parent company or cash in a

21 savings account, does that affect your ability to do

22 the analysis under this financial standard?

23 A No, it does not. The capital structure in

24 this case is a moot point. It's the fact that cash is

25 available.

0285

1 Q So you have had a chance to review all of the

2 testimony submitted by MEI in this case?

3 A Yes. It's in one of my binders.

4 Q And you had a chance to review all of the

5 various cross-answering testimony submitted by Pacific

6 Cruises and Arrow Launch; isn't that correct?

7 A Correct. And I submitted exhibits furthering

8 my analysis on the pro forma.

9 Q And nothing that you have reviewed in that

10 testimony has changed your financial analysis that MEI

11 is fit to perform launch service operations for the

12 12-month period; isn't that right?

13 A Yes. Nothing has changed my mind that for a

14 12-month period they would not be solvent.

15 JUDGE FRIEDLANDER: I think you meant

16 that reverse. Nothing has changed your mind that they

17 will be solvent.

18 THE WITNESS: Yes. The going concern of

19 12 months is not an issue.

20 BY MR. BENTSON:

21 Q You have determined that they are financially

22 fit to operate?

23 A Correct.

24 JUDGE FRIEDLANDER: Thank you.

25 BY MR. BENTSON:

0286

1 Q Now, earlier, when you began your testimony,

2 if we rewind the clock a couple of hours ago, I

3 understood you to testify that you had not reached a

4 conclusion as to whether or not Arrow Launch was

5 providing adequate service for the region; is that

6 right?

7 A Are you talking about SS-1T? I think we were

8 on Page 5.

9 MR. FASSBURG: I have an objection to

10 the question. It misstated his prior testimony. He

11 specifically asked him about whether or not he changed

12 his conclusion or reached a conclusion about whether

13 Arrow Launch provided reasonable and adequate service.

14 That was not his prior testimony. It was whether they

15 failed or refused to provide it. There is a

16 distinction there.

17 JUDGE FRIEDLANDER: Aren't we past that

18 question now, though? I believe he is asking -- he is

19 asking a totally different question. Once the answer

20 has been given the objection has been -- is gone.

21 MR. FASSBURG: He didn't answer that

22 question.

23 JUDGE FRIEDLANDER: Could you ask the

24 question again, Mr. Bentson?

25 MR. BENTSON: Your Honor, I am happy to

0287

1 rephrase. I will say, for what it's worth, I think I

2 have given a lot of leniency to the other side in

3 recharacterizing the testimony of witnesses in their

4 cross. I would ask for the same sort of leniency as I

5 paraphrase. If it's a distinction with significance

6 we can talk about it.

7 BY MR. BENTSON:

8 Q Turning to -- I don't have the specific page.

9 You mentioned a page number on your testimony that you

10 were referring to.

11 MS. ENDEJAN: T1, Page 5 -- no. Sorry.

12 Page 7.

13 THE WITNESS: It's going to be on Page 6

14 or 7. That's the adequacy of service section in T1,

15 or 1T.

16 MR. BENTSON: That's not what I am

17 looking for. I'm sorry.

18 BY MR. BENTSON:

19 Q So I am on SS-1T, Page 7. If you look there

20 on Pages -- or the last two lines, Lines 15 and 16

21 there. "I am not prepared to conclude that Arrow

22 Launch has failed or refused to furnish reasonable and

23 adequate service within the meaning of the statute."

24 Did I read that correctly?

25 A That's correct.

0288

1 Q So if I understand correctly, when you came in

2 here today, that was your position, was that you

3 weren't prepared to give an opinion on that, Staff

4 wasn't; is that correct?

5 A That's correct. And it is still correct.

6 Q And also when you came in here today, Staff's

7 intention was to provide a position in its brief; is

8 that correct?

9 A I think I had -- I had said that we would, but

10 I -- that's only because of my understanding of the

11 process. You know, unless I give it here or there,

12 that would be it. Staff has concluded they are not

13 going to give a conclusion.

14 Q That's my point. I believe you testified

15 earlier on the record that -- that you wanted to hear

16 from Mr. Aikin first, before Staff formed an opinion,

17 but then after the colloquy with the judge, Staff --

18 the we recessed, and then after the recess Staff

19 determined at that time that they were no longer going

20 to provide an opinion at all; isn't that correct?

21 A The record should stand on its own and the

22 judge should be able to make a determination based off

23 the record. As far as failed or refused to furnished

24 reasonable or adequate service, Staff's opinion on

25 that shouldn't change the judge's mind. The record

0289

1 should stand on its own.

2 Q I am wondering what changed Staff's position

3 between when the recess began and when it ended, as to

4 why it didn't feel that was an appropriate issue for

5 Staff to weigh in on?

6 A Well, Staff -- Staff is the middle broker, we

7 are putting facts on both sides in this case, and to

8 not prejudice one intervenor or one applicant, we will

9 withhold from putting in a conclusion and we will let

10 the record stand.

11 Q So the concern was that by not providing that

12 opinion earlier, it would prejudice some of the

13 parties?

14 A Either MEI Northwest -- I believe it would it

15 would prejudice somebody. I am not a lawyer, but, you

16 know, if I put it forth in just a brief with no chance

17 for anyone to respond, then yes.

18 Q Is it possible that Mr. Aikin's testimony

19 tomorrow could have changed your opinion?

20 A Anything is a possibility, but I am not going

21 to guarantee it or anything.

22 Q So --

23 A I am not going to say that it would cause me

24 to have a conclusion, no.

25 Q Is it possible that Mr. Aikin's testimony

0290

1 could assist you in concluding whether Arrow Launch

2 has failed or refused to furnish reasonable and

3 adequate service within the meaning of the statute?

4 MR. FASSBURG: Objection. Asked and

5 answered. He is just rephrasing it. And it calls for

6 speculation.

7 JUDGE FRIEDLANDER: Before I rule on

8 that, why don't I do this. Staff had obviously voiced

9 the plan to formulate an opinion, formulate a

10 position, and put it in their brief. We are having

11 simultaneous briefs. That would not have allowed any

12 of the other parties, however Staff came out, to

13 question or counter Staff's position. It is possible

14 that Staff can still formulate a position if we revise

15 the procedural schedule.

16 I don't know if that helps you, Mr. Bentson,

17 get to the point of -- and Staff as well, get to the

18 point of a possible Staff position on the record. If

19 that's what we need to do, I am fine with that, but we

20 would have to amend the schedule to allow for that.

21 Right now we do not have any time built into the

22 schedule for parties to respond to a Staff position in

23 brief, and typically we don't. That is where the

24 legal positions are put down, it's not the first time

25 you hear a position.

0291

1 MR. BENTSON: Your Honor, I think MEI is

2 amenable to that solution. I would just suggest that

3 a solution like that is important because I think,

4 based on the witness's testimony, what we have

5 clarified is that Staff did intend to take a position,

6 but it wanted to have additional evidence, and then it

7 decided not to present a position, not because it

8 didn't think it could arrive at one, but because of a

9 concern that it would somehow prejudice the rights of

10 the parties.

11 And so it seems like that's the wrong tool for

12 the problem that we are facing here, when a tool like

13 the one Your Honor is suggesting would be better.

14 JUDGE FRIEDLANDER: Right. And I think

15 the witness is probably not in a position to make that

16 kind of a judgment on cross-examination. That's more

17 something procedurally that the rest of us should be

18 working out, whether or not Staff wants to take a

19 position, and if so, how we accommodate that

20 procedurally.

21 MR. BENTSON: And that's fine, Your

22 Honor. We can end the cross-examination there. I

23 felt those facts were going to be important on the

24 record if there would be no procedural change.

25 JUDGE FRIEDLANDER: Sure.

0292

1 MR. BENTSON: So that end my questions,

2 Your Honor.

3 JUDGE FRIEDLANDER: Okay. Thank you.

4 With that, Mr. Beattie, do you want to do

5 redirect and then we get to the procedural issue, or

6 do you want to address the procedural issue of

7 possible extension of the schedule and then do your

8 redirect?

9 MR. BEATTIE: Well, I think my redirect

10 will only take five minutes.

11 JUDGE FRIEDLANDER: Okay. Then that's

12 fine. Thank you.

13 MR. BEATTIE: Okay.

14

15 R E D I R E C T E X A M I N A T I O N

16 BY MR. BEATTIE:

17 Q Mr. Sevall.

18 A Yes, sir.

19 Q You testified about what you characterized as

20 the situation some 30 or 40 years ago with regard to

21 overlapping certificates, correct?

22 A Yes. That's Exhibit 2, SS-2.

23 Q And I think I remember you saying that you

24 think that situation no longer holds today, there is

25 no longer overlapping certificates. Do I accurately

0293

1 characterize your testimony?

2 A As far as none of those companies, but there

3 is Argosy, who has overlapping authority --

4 Q Okay.

5 A -- in Elliott Bay.

6 JUDGE FRIEDLANDER: Could you spell

7 that?

8 THE WITNESS: Yes. A-R-G-O-S-Y.

9 JUDGE FRIEDLANDER: Okay. Thank you.

10 THE WITNESS: They hold a certificate

11 for launch service in Elliott Bay.

12 BY MR. BEATTIE:

13 Q Would you please explain what you mean by

14 "overlapping"? Who does Argosy overlap with, if you

15 know?

16 A Arrow Launch.

17 Q Your understanding is that is currently going

18 on today?

19 A Yes. They continue to file annual reports,

20 both companies.

21 Q This may be a minor point, but I believe I

22 also heard you say that the Staff review of an

23 application consists of you and a manager. Is

24 regulatory services the only section within the

25 Commission that reviews an application?

0294

1 A We have an application section. They

2 initially get the application, but then regulatory

3 services does the financial review.

4 Q Okay.

5 Last question, and this refers to 81.84.020.

6 A I keep closing that binder.

7 Q And if you would please turn back to

8 Subsection 2.

9 A Subsection 2.

10 Q The last sentence reads as follows: "The

11 documentation required of the applicant under this

12 section must comply with the provisions of RCW

13 9A.72.085."

14 I know that you are not a lawyer. Do you know

15 what that statutory citation is in reference to?

16 A I believe that has to do with the penalty of

17 perjury or perjury.

18 Q So what is your understanding of what that

19 sentence means all put together?

20 A Is that the applicant wholly endorses their

21 submittance under the possible penalty of perjury.

22 Q When the applicant in this case told you

23 through its application that it has $300,000 cash on

24 hand, do you have any reason to believe that the

25 applicant perjured itself?

0295

1 A I have no reason to believe that.

2 MR. BEATTIE: Thank you. Those are all

3 my questions.

4 JUDGE FRIEDLANDER: Okay. Thank you.

5 I have no clarification questions, so

6 thank you for your testimony.

7 THE WITNESS: All right.

8 JUDGE FRIEDLANDER: And you are excused.

9 Before I call up Captain Schmidt, why don't we

10 go ahead and discuss the procedural schedule, how we

11 want to handle this, and whether the parties -- Staff

12 I believe does, if I'm -- I don't want to put words in

13 your mouth, but Staff did appear to want to make a

14 recommendation to the Commission, or at least take a

15 position on the application.

16 Does Staff still wish to do so, if they were

17 given additional time, or if the other parties were

18 allowed to have additional time to respond to it?

19 MS. ENDEJAN: Your Honor, I think the

20 fundamental problem would be, would we be able to

21 recall Mr. Sevall and cross-examine him on it and

22 see -- and Mr. Beattie is shaking his head.

23 I mean I guess I am sitting here, obviously a

24 newcomer to this, but the statement of Mr. Aikin is in

25 the record, Mr. Sevall has spoken with somebody at

0296

1 Crowley, the testimony of Mr. Esch has come in, and

2 I -- I am very sanguine about the fact that Mr. Aikin

3 is going to come here tomorrow and the sky is going to

4 open up and some piece of evidence is going to fall

5 out that will cause the Staff to completely change its

6 mind.

7 You know, I think that the record, as he said,

8 should sit where it's at and the Staff's testimony

9 should -- you have to draw a line in the sand. It is

10 what it is here today, otherwise, we are going to be

11 in this leapfrogging sort of situation, where anybody

12 can change anybody's testimony, depending upon what

13 the next witness says. I think that would lead to

14 procedural chaos.

15 MR. BENTSON: Your Honor, may I be

16 heard?

17 JUDGE FRIEDLANDER: Yes.

18 MR. BENTSON: First of all, two issues

19 with counsel's argument. The first is there have been

20 several lines of questioning, particularly with

21 Mr. Esch, where he was told -- where it was objected

22 to as hearsay, and we were told we should not ask

23 Mr. Esch about that because Mr. Aikin will testify

24 tomorrow, and he is the best witness to testify to

25 that. If that's the case, then, it makes no sense to

0297

1 say that somehow Mr. Aikin's testimony isn't going to

2 provide anything relevant that might change somebody's

3 opinion in the case. I think that the factual

4 predicate of that is wrong.

5 The second point is that with respect to

6 Staff's position, the Staff's position would not be

7 new testimony, it would be an analysis of the

8 testimony already provided. Those are two separate

9 things. Just like this Court's decision won't be a

10 separate testimonial declaration, nor will my

11 briefing, nor will counsels' briefing. The Staff's

12 testimony is what it is. The analysis of those facts

13 is a legal determination, which all of the parties

14 have lawyers and will get to brief. No one is being

15 deprived of any opportunities here.

16 JUDGE FRIEDLANDER: Mr. Wiley?

17 MR. WILEY: Yes, a couple comments, Your

18 Honor.

19 First of all, with respect to the testimony

20 about Mr. Esch versus Mr. Aikin. Clearly, my

21 questions were directed to RSE-7, where he

22 incorporated RSE-8. I know what Mr. Aikin said and I

23 know what Mr. Esch said. I don't think it is fair to

24 combine those two strands. I think I was careful in

25 positing my question.

0298

1 Second point is, you know, I don't think it is

2 up to us to -- you know, I thought some of the

3 questions by counsel for the applicant about the Staff

4 position were forcing the issue. In other words, I

5 think that's a decision that the Staff should be

6 allowed to make, if it wants to remain neutral or if

7 it wants to take a position. If it does take a

8 position, I completely agree with Ms. Endejan, that we

9 should be allowed to probe it.

10 You know, let the chips fall where they may,

11 but I do think ultimately that's a Staff strategy

12 decision, about whether they wish to take a position

13 or not. In most cases, most application cases, Your

14 Honor, the Staff doesn't take a position, so I am used

15 to neutrality, whatever the evidence says. I don't

16 want to be forcing hands here on case strategy that I

17 don't think I have the -- you know, the right to do.

18 We are going to hear from Mr. Aikin tomorrow.

19 I don't know how Mr. Beattie feels about this, but

20 that was kind of my thought. I thought we were

21 boarding on intrusiveness in terms of case strategy.

22 I think that's really the Staff's call.

23 That's my view.

24 JUDGE FRIEDLANDER: I would like to hear

25 from Mr. Beattie first and then Mr. Bentson.

0299

1 MR. BEATTIE: So I agree that -- it's my

2 understanding that in an application case Staff is

3 typically neutral and often does not take a position.

4 For example, the last case -- well, I guess it is

5 still ongoing. In other cases, Staff's role, as I

6 understand it, and I believe that Mr. Sevall has made

7 comments to this effect also on the record, is to be

8 an honest broker, to help Your Honor ensure that there

9 is a complete and adequate record on which to make a

10 finding.

11 I believe that Staff could take a position,

12 but the way I see that playing out is that all of the

13 testimony is in, and then whether there has been

14 inadequate or unsatisfactory service by the incumbent

15 is essentially a legal determination, at worst a

16 mixed question of fact and law, and that's something

17 that Staff can address in its brief without

18 prejudicing any party.

19 It simply -- I mean it would be very odd to

20 ask a party in the middle of its testimony to suddenly

21 make a closing statement before the end of the trial.

22 I mean we are going to see what the evidence says and

23 then address the ultimate question.

24 JUDGE FRIEDLANDER: The only distinction

25 I would make is that in a closing argument you have

0300

1 already stated your position, so it's really just

2 reiterating that and drawing the attention of the

3 decisionmaker to all of the facts that you believe

4 support ultimate position. We haven't heard a

5 position from Staff, and so it's a bit different, I

6 think.

7 MR. BEATTIE: That's because Staff is a

8 neutral party.

9 JUDGE FRIEDLANDER: Okay. I understand

10 that.

11 So are you saying, then, that if Staff took a

12 position it would, A, be a question at most of mixed

13 facts, mixed law, and B, that the parties' due process

14 rights would then be adhered to or would not be

15 violated if they also were allowed to respond in

16 another brief to Staff's position?

17 MR. BEATTIE: Your Honor, I don't

18 recommend that there be another --

19 JUDGE FRIEDLANDER: Multiple rounds.

20 MR. BEATTIE: -- round of briefing.

21 This case was actually supposed to have

22 already taken place, in early January, and here we are

23 halfway through February. I don't advocate for that.

24 I don't believe that there needs to be

25 multiple rounds of briefing for counsel to argue with

0301

1 each other. I mean we are all going to state our

2 position on behalf of the parties we represent and

3 then Your Honor will decide who is right.

4 JUDGE FRIEDLANDER: Right. From my own

5 perspective, and again this is just maybe attempting

6 to draw out a little bit more from Staff in this way.

7 I think that it is unique in this situation, though,

8 because we have a party who is also testifying. It is

9 really Mr. Sevall who is taking the position, albeit

10 on behalf of Staff, when he has already filed

11 testimony not taking a position. Do you see what I'm

12 saying?

13 MR. BEATTIE: Sure.

14 JUDGE FRIEDLANDER: So Staff is taking a

15 position, but Mr. Sevall is really the one who is

16 making that determination, whereas the other

17 parties -- it is a bit of a -- a bit of an odd place

18 to be in, because then the other parties are not

19 having a chance to question Mr. Sevall on how he came

20 to this position. He is the only witness.

21 MR. BEATTIE: In my talks with my

22 client, the Commission Staff, I believe I can fairly

23 represent that they would be okay not taking a

24 position in a brief. The reason I am hesitant to say

25 that is because I am also -- as I just said, we see

0302

1 ourselves as trying to be helpful to the bench.

2 JUDGE FRIEDLANDER: Sure.

3 MR. BEATTIE: I am trying to get whether

4 you want Staff to take a position or think it would be

5 better if we just maintained neutrality.

6 JUDGE FRIEDLANDER: Right.

7 Ms. Endejan looks like she really wants to say

8 something.

9 MS. ENDEJAN: Thank you, Your Honor.

10 Here is the rub, here is the issue. It is

11 getting closure on an ambiguous statement that appears

12 in Staff's testimony on Page 7 of his open testimony.

13 Mr. Sevall says, "But before reviewing Arrow Launch's

14 response testimony and MEI's rebuttal testimony, I am

15 not prepared to conclude that Arrow Launch has failed

16 or refused to furnish reasonable and adequate service

17 within the meaning of the statute."

18 That is a very ambiguous sentence. What we

19 are trying to find today on cross-examination is are

20 we prepared to conclude or not to conclude. That's

21 what we are trying to find out. We don't want to be

22 surprised in a brief.

23 It appears that, you know, he has had the

24 opportunity to review all of the responsive testimony,

25 which is what he said he was waiting for, and he said

0303

1 today he is not going to change his opinion there,

2 that he can't conclude that they have failed to

3 provide reasonable service.

4 I kind of want this issue kind of resolved

5 here and now so that there are no surprises in the

6 brief, where Staff would all of a sudden say, well,

7 oh, we changed our mind, we are going to conclude that

8 there is a failure to provide reasonable service.

9 It is a little different situation and it's a

10 little bit more nuanced than that. So we just want to

11 know kind of the cards we are dealing with here.

12 MR. BENTSON: And I should clarify right

13 now, if Staff wants to take that position on the

14 record right now we wouldn't object to it.

15 I just want to clarify Mr. Wiley's comments

16 earlier, just to make sure I am being understood. I

17 am not suggesting that the Court or anyone else should

18 tell Staff what position it has to take, if it has to

19 take a position. My point was, is that we had -- the

20 Staff said they were waiting to take a position in the

21 brief. We took a recess because there was a concern

22 about how that would affect parties procedurally.

23 When we came back from that, the Staff decided they

24 were no longer going to take a position.

25 That did not seem to be based on evidence or

0304

1 something in the record, it seemed to be based on

2 concern for the parties' procedural rights. And the

3 answer to that would be -- not to get sideways with

4 Staff, but the best answer to that procedural problem

5 would be to allow response briefs to Staff's position,

6 which will simply be legal arguments and application

7 of the statute to the factual record that's been

8 established over the prefiled testimony and today and

9 tomorrow.

10 MR. WILEY: Your Honor, I agree with

11 most of what I just heard from both Mr. Beattie and

12 Mr. Bentson, except in the mixed question of law and

13 fact. We've got the fact witness here and we should

14 be allowed to probe the factual basis. The legal

15 basis is a different issue. I thought I was going

16 with Mr. Beattie's position until I heard that he

17 thought that on a mixed question of law and fact we

18 didn't get an opportunity to ask Mr. Sevall about why

19 the facts have changed and why his position is X.

20 It is nuanced. It is problematic. I agree

21 with Ms. Endejan, that if there are going to be facts

22 that are going to come out, we've got to have an

23 opportunity, and it isn't in briefing.

24 JUDGE FRIEDLANDER: Right. And I

25 understand that.

0305

1 I think perhaps what we should do is, we are

2 getting close to -- our schedule is running short

3 quickly. Since this all really revolves around

4 Mr. Aikin's testimony, perhaps we should table the

5 issue until tomorrow, revisit it. Because if what we

6 hear tomorrow is no different than what we have heard

7 today, there may not be any factual distinction and it

8 may remain a question of law only. If that's the

9 case, it's a briefable issue. If it's not, and there

10 are new facts that get raised, then we are going to

11 have to talk about procedural aspects of the case that

12 may need to be modified to address the parties'

13 concerns to something that has only come up in hearing

14 and not been addressed on testimony.

15 Does everyone agree that this is amenable?

16 MS. ENDEJAN: It's common sense. That's

17 a good idea.

18 JUDGE FRIEDLANDER: Okay.

19 MR. WILEY: Yes, Your Honor. Good

20 approach.

21 JUDGE FRIEDLANDER: Mr. Sevall, I

22 apologize. You have had to sit at the witness stand

23 while we discussed this.

24 THE WITNESS: Part of the job.

25 JUDGE FRIEDLANDER: You are excused.

0306

1 Thank you.

2 So we will table that.

3 Ms. Endejan, did you have something to say?

4 MS. ENDEJAN: No, Your Honor.

5 JUDGE FRIEDLANDER: Okay.

6 Why don't we call Captain Schmidt to the

7 stand. And if you will remain standing and raise your

8 hand.

9

10 DREW SCHMIDT, witness herein, having been

11 first duly sworn on oath, was

12 examined and testified as

13 follows:

14 JUDGE FRIEDLANDER: Thank you. You can

15 be seated.

16 Ms. Endejan.

17 MS. ENDEJAN: Thank you, Your Honor.

18

19 D I R E C T E X A M I N A T I O N

20 By MS. ENDEJAN:

21 Q Good afternoon, Mr. Schmidt. Could you please

22 state your name and spell it for the court reporter

23 and provide your title and business address?

24 A My name is Drew Schmidt, S-C-H-M-I-D-T, I am

25 the president of Pacific Cruises Northwest in

0307

1 Bellingham, Washington.

2 Q Thank you.

3 And do you have before you what has been

4 premarked as Exhibit No. DS-1T?

5 A Is that my cross-answering testimony?

6 Q Yes.

7 A Yes, I have it.

8 Q Yes. And I was going to ask you, this is your

9 cross-answering testimony filed on December 5th, 2016.

10 Do you have any additions or changes that you

11 would like to make to this testimony?

12 A I do not.

13 Q And if I asked you all of the questions that

14 appear in Exhibit DS-1T, would your answers remain the

15 same?

16 A Yes, they would.

17 Q And are they true and -- are they true and

18 correct to the best of your knowledge and ability?

19 A They are.

20 Q Thank you.

21 MS. ENDEJAN: I would tender the witness

22 for cross-examination.

23 JUDGE FRIEDLANDER: All right.

24 Thank you.

25 Mr. Bentson.

0308

1 MR. BENTSON: Yes, Your Honor.

2 Thank you.

3

4 C R O S S - E X A M I N A T I O N

5 BY MR. BENTSON:

6 Q Good afternoon, Captain Schmidt. With respect

7 to DS-1T -- I understand that Ms. Endejan represents

8 you today. Did she represent you at the time you

9 submitted DS-1T?

10 A No, she did not.

11 Q Okay.

12 Who drafted DS-1T?

13 A I did.

14 Q All right.

15 Did you type it yourself?

16 A Yes.

17 Q All right.

18 Did you send it to anyone for review before

19 submitting it?

20 A Did I send it to anyone for review before

21 submitting it? I think I had Mr. Wiley take a look at

22 it. I'm -- I'm not trying to dodge it, I just can't

23 remember, but I think I did.

24 Q What's your relationship with Mr. Wiley?

25 A He has represented me in multiple cases here

0309

1 over the years, but because there is -- he is

2 representing Mr. Harmon, I eventually picked

3 Ms. Endejan.

4 Q And is Wiley how -- how did you find out about

5 MEI's application, certificate application? Was that

6 through Mr. Wiley as well?

7 A I don't think so. I don't remember.

8 Q Did you speak with Mr. Wiley before you

9 decided to intervene in this case?

10 A I don't think so. I honestly don't remember.

11 Q Did he encourage you to intervene in this

12 case, do you remember that?

13 A No.

14 Q Did he provide you any assistance in how you

15 intervened in this case, anything you had to submit?

16 A No. I used a template of what I used before.

17 Q You mentioned that you sent him your prefiled

18 testimony before you submitted it. Did he give you

19 any guidance in advance of submitting that testimony?

20 A I don't believe so.

21 Q Do you know that he didn't give you guidance

22 or are you saying you are just not sure?

23 A I'm not sure.

24 Q So he may have given you guidance before you

25 submitted it?

0310

1 A It's possible.

2 Q All right.

3 After you sent it to him for review, did you

4 discuss it with him?

5 A I'm sure I did.

6 Q Okay.

7 What did you discuss?

8 A I don't remember. He usually corrects my

9 spelling for me --

10 Q Did you --

11 A -- and my -- and my grammar. I don't recall.

12 Q I'm sorry. I started to interrupt you.

13 Did you discuss anything of substance with

14 him?

15 A I do not remember.

16 Q Do you recall if he gave you any direction on

17 things you should change?

18 A I don't think so.

19 Q Do you recall if you changed anything?

20 A Probably my grammar, but beyond that I don't

21 remember.

22 Q Do you remember if you changed anything of

23 substance?

24 A I don't think I changed any of the substance.

25 MR. BENTSON: Your Honor, permission to

0311

1 approach the witness?

2 JUDGE FRIEDLANDER: That's fine.

3 MR. BENTSON: I am going to hand you,

4 sorry, my copy of this. These are the data requests

5 from Pacific Cruises. I don't have the number on

6 these ones. I know we have added numbers recently to

7 Captain Schmidt's exhibits.

8 So this is DS -- it is identified as a

9 cross-exam exhibit. I just can't recall the number

10 offhand.

11 JUDGE FRIEDLANDER: DS-4CX.

12 MR. BENTSON: Yes, 4CX. Got it.

13 So that's what I am handing the witness, is a

14 copy DS-4CX.

15 Judge, do you have one?

16 JUDGE FRIEDLANDER: I have it.

17 Thank you.

18 BY MR. BENTSON:

19 Q All right.

20 Captain Schmidt, do you recognize DS-4CX?

21 A Yes, I do.

22 Q Are these a copy of data requests that you

23 received from the UTC Staff?

24 A Yes.

25 Q Did anyone assist you in preparing your

0312

1 answers to these --

2 A No.

3 Q -- data requests.

4 Did you send your answers to Mr. Wiley for

5 review before submitting them?

6 A No.

7 Q Did you discuss your answers with Mr. Wiley

8 before submitting them?

9 A No.

10 Q Okay.

11 Now, you mention in your testimony -- I'm

12 turning here to Exhibit DS-1T, your cross-answering

13 testimony, that -- this is on Page 3, Lines 7 through

14 10. You discussed the Island Commuter Service.

15 A Yes.

16 Q And that Island Commuter Service is also

17 referenced on DS-4CX, in response to Staff Data

18 Request No. 2, isn't it?

19 A Yes.

20 Q So have you in the past provided vessels to

21 Arrow Launch when they had insufficient vessels to

22 provide launch services in the region?

23 A Yes, we -- well, as it says right there, we

24 did. Yes.

25 Q Okay.

0313

1 And that's referring to a time back in the

2 year 2000, in January of 2000, I believe?

3 A Correct.

4 Q Is January of 2000 the only time that Arrow

5 Launch has chartered vessels from you?

6 A I believe so.

7 Q Do you know that?

8 A I want to say yes, but I have been in business

9 a long time and my memory is short. I believe that to

10 be true.

11 Q Can you say with confidence that you haven't

12 chartered a vessel from Arrow Launch in the last five

13 years?

14 A Yes.

15 Q Okay.

16 How about in the last ten?

17 A Yes.

18 Q The last 15?

19 A I think so, yeah.

20 Q So it's somewhere -- ten for sure, 15 you're

21 not sure?

22 A The only one I recall is this instance right

23 here.

24 Q Okay.

25 Now, there was a lawsuit that arose out of

0314

1 that charter; isn't that correct?

2 A Yes.

3 Q All right.

4 And that involved a seaman named Steven

5 Neergaard [phonetic] --

6 A Yes.

7 Q -- is that correct?

8 Did you know Mr. Neergaard?

9 A I met him.

10 Q And if I understand correctly, at that time

11 there was a vessel called the Dynachem [phonetic] that

12 needed launch services and Arrow didn't have

13 sufficient vessels to service it; is that correct?

14 A I believe, yeah. I think they needed an extra

15 vessel because there was such extra demand happening

16 at the time.

17 MS. ENDEJAN: Your Honor, I am going to

18 lodge a continuing objection on the grounds of

19 relevancy for some of the reason that were stated.

20 This is an incident that occurred 15 years ago. It

21 was isolated in nature. I think it really doesn't

22 have any relevancy to the current condition of the

23 service provided by Arrow Launch as we sit here today.

24 It is just here to prejudice the Commission.

25 JUDGE FRIEDLANDER: Mr. Bentson?

0315

1 MR. BENTSON: Your Honor, I disagree

2 that it is here to prejudice anyone. These are facts

3 that are relevant to whether or not -- one of the

4 factors under the RCW, which is whether or not Arrow

5 has adequately served the region. Moreover, some

6 of -- some of the information directly goes to the

7 veracity of other witness testimony presented in this

8 matter.

9 JUDGE FRIEDLANDER: Mr. Wiley?

10 MR. WILEY: Your Honor, if I might

11 interpose an objection as well. The test period for

12 sufficiency of service in most, if not all,

13 transportation applications before the Commission is

14 the year prior to the filing of the application. This

15 was, by answer to the data request, 17 years ago, Your

16 Honor. The relevancy, in terms of measuring the

17 sufficiency of service based on an incident that

18 happened 17 years ago, is not at all material, in my

19 view, and does not go to the scope of the service that

20 the Commission would examine to determine whether

21 there is reasonable and adequate service being

22 furnished.

23 JUDGE FRIEDLANDER: So when you are

24 talking about the test year, aren't you referring to a

25 rate case?

0316

1 MR. WILEY: No. No, Your Honor.

2 Application cases as well look at the year prior to

3 the filing of the application to measure the

4 sufficiency of service.

5 JUDGE FRIEDLANDER: And is that based in

6 statute or regulation?

7 MR. WILEY: It's based on case law of

8 the Commission. I can cite you to numerous cases in

9 Title 81, that I would be happy to provide, where you

10 look. The conventional test period is a year prior to

11 the filing of the application. Post-improvement

12 evidence is looked at to see whether it is in response

13 to an application, but anything past a year prior to

14 the filing of an application is remote.

15 Sometimes the Commission would look two to

16 three years potentially, but 17 years ago? Your

17 Honor, this market has substantially changed, as the

18 testimony by Mr. Harmon in our case shows. So 17

19 years ago just is so remote that it's -- it's -- I

20 don't know what kind of questions we are going to

21 continue in this vein.

22 JUDGE FRIEDLANDER: Mr. Bentson?

23 MR. BENTSON: Well, respectfully, Your

24 Honor, these exhibits were submitted -- the exhibits

25 referencing this incident were submitted back in

0317

1 October, with my client's direct filed testimony. If

2 opposing counsel had issues with those being part of

3 the record, that would have been the time to challenge

4 them on their sufficiency or to cite any case law, so

5 that we would have had the fair opportunity to

6 respond.

7 With respect to their relevance, I think the

8 relevance is still really germane, in that the

9 testimony of Mr. Harmon is only that Arrow Launch's

10 services since -- in the last 17 years have increased.

11 Their revenues have increased, their fleets have

12 increased, and so the need for launch service vessels

13 has increased. I think that's -- so I think this is

14 still relevant to how they deal with situations when

15 the demand is higher than their capacity.

16 JUDGE FRIEDLANDER: An accident from 17

17 years ago is relevant to higher launch rates? Is that

18 what you are trying to say?

19 MR. BENTSON: Well, it goes to the -- it

20 goes to the veracity of the witness testimony provided

21 on distinguishing this case earlier.

22 JUDGE FRIEDLANDER: Veracity of which

23 witness?

24 MR. BENTSON: Mr. Harmon's direct filed

25 testimony.

0318

1 JUDGE FRIEDLANDER: But you are asking

2 Captain Schmidt.

3 MR. BENTSON: I am asking Captain

4 Schmidt about that to draw out the facts about what

5 actually happened with that incident, what the terms

6 of their agreement was.

7 MR. WILEY: Your Honor, this is outside,

8 way outside the scope of the direct. You know, if

9 every regulated company was held to standards of 17

10 years ago, I think that we would have unbelievable

11 numbers of applications, Your Honor. I mean how

12 remote is too remote? How material is immaterial? I

13 mean this is one incident. We didn't ask about their

14 incident that we had testified about more recently.

15 This is just so outside the scope of Mr. Schmidt's

16 direct. I don't understand why --

17 MS. ENDEJAN: That's the -- Your Honor,

18 that's the fundamental problem, is that Mr. Schmidt is

19 here to testify about the overlap issue and the

20 benefits of competition. He is not here as a service

21 quality witness for Arrow. This -- it is far outside

22 the scope, and in addition to being, you know, wildly

23 irrelevant.

24 JUDGE FRIEDLANDER: I think what I am

25 going to do is, I am sustain the objection as to

0319

1 Captain Schmidt. I will revisit the issue for

2 Mr. Harmon's testimony tomorrow, but I am going to

3 need some kind of indication how this is relevant to

4 the application at hand, because at this point 17

5 years is -- it is quite remote.

6 MR. BENTSON: Thank you, Your Honor. We

7 will revisit tomorrow.

8 JUDGE FRIEDLANDER: Thank you.

9 BY MR. BENTSON:

10 Q Captain Schmidt, would you consider Mr. Harmon

11 a close friend?

12 A Yes.

13 Q How long have you been friends?

14 A 25 years.

15 Q And there is only about seven companies that

16 hold certificates to provide -- operate commercial

17 ferry services in the Puget Sound; isn't that right?

18 A Yeah. I'm friends with all of them.

19 Q And both you and Mr. Harmon are two of those

20 seven companies; isn't that right?

21 A Yes.

22 Q So it is safe to say you have a vested

23 interest in not seeing overlapping certificates

24 granted?

25 A Absolutely. That's why I'm here.

0320

1 MR. BENTSON: Thank you. I have nothing

2 further.

3 JUDGE FRIEDLANDER: Thank you.

4 Mr. Beattie?

5 MR. BEATTIE: Thank you, Judge.

6

7 C R O S S - E X A M I N A T I O N

8 BY MR. BEATTIE:

9 Q Captain Schmidt, I would like to explore with

10 you what you might think to be the differences between

11 launch service and commercial ferry service. I would

12 like to start by asking you whether you agree with me

13 that there is a distinction between those two

14 services?

15 MR. FASSBURG: Objection, Your Honor.

16 When I attempted to explore that issue earlier,

17 Mr. Beattie objected and said that ferry has no

18 relevance to this application proceeding. Now he is

19 asking questions about the distinction between ferry

20 and launch service. That is absolutely contrary to

21 his prior objection.

22 JUDGE FRIEDLANDER: Mr. Beattie?

23 MR. BEATTIE: Your Honor, there was

24 quite a bit of testimony from Mr. Esch about the

25 differences between -- or what launch service is. I

0321

1 think for a complete record we need to know a

2 commercial ferry service is.

3 MR. FASSBURG: I would agree to that,

4 subject to Mr. Sevall being recalled so that I could

5 ask him the questions Mr. Beattie objected to that

6 were sustained.

7 MS. ENDEJAN: And, Your Honor, I would

8 also add an objection regarding the scope of the

9 cross-examination and the purpose for which this

10 witness is being offered. He is not being offered to

11 talk about the difference between launch services and

12 ferry services. He is talking about his experience as

13 a businessman in connection with the overlap issue and

14 the ability to sustain competition in a limited market

15 area.

16 JUDGE FRIEDLANDER: So I am trying to

17 remember back hours ago to what each of the attorneys

18 was asking, cross-examination.

19 Mr. Fassburg, I believe you had asked what

20 the -- you were going into the competitiveness of

21 overlapping carriers with regard to commercial ferry

22 service, whereas Mr. Beattie was asking the question

23 of the definition of the two. As long as Mr. Beattie

24 refrains from asking about the competitive overlap of

25 commercial fares and the Commission's jurisdiction, I

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1 am fine with allowing the line of questioning, just to

2 get at the -- Captain Schmidt's understanding of the

3 difference between the two services, because he does

4 have experience in this area and with the industry.

5 MR. BEATTIE: Thank you, Your Honor.

6 BY MR. BEATTIE:

7 Q Captain Schmidt, would you agree that your

8 ferry operates over a regular route?

9 A No. It runs between fixed termini.

10 Q Okay.

11 Can you explain the difference?

12 A Well, my particular ferry route, we change our

13 course every day to look for whales.

14 Q Okay.

15 What are your fixed termini?

16 A My fixed termini are Bellingham and Friday

17 Harbor.

18 Q Bellingham and Friday Harbor, are those public

19 ports?

20 A Yes.

21 Q Okay.

22 So me, as a member of the general public,

23 could I use your service?

24 A Yes.

25 Q How would I go about doing so?

0323

1 A You would pay me money and I would take you

2 for a ride.

3 Q Would you sell me a ticket?

4 A Yes.

5 Q Okay.

6 If I want to ride your boat, do I need to

7 charter the entire vessel or can I buy an individual

8 fare?

9 A You can buy an individual fare.

10 Q And do you also have one-way fares or is it

11 all round trip?

12 A We have one-way fares.

13 Q Okay.

14 Do you have before you -- I see you have some

15 paper. Do you have Exhibit DS-2CX, which is a Staff

16 cross-exhibit prepared for you?

17 A No.

18 MR. BEATTIE: Your Honor, may I hand the

19 witness DS-2CX?

20 JUDGE FRIEDLANDER: Yes, please.

21 A Thank you.

22 Oh, so I do have it. Not with the number on

23 it.

24 BY MR. BEATTIE:

25 Q Would you please turn to Section 2.

0324

1 A Section 2.

2 JUDGE FRIEDLANDER: It's on the last

3 page.

4 A Okay. The last page. Got it.

5 BY MR. BEATTIE:

6 Q Is this your fare schedule?

7 A Yes, it is.

8 Q Are these standard fares for every customer?

9 A Yes, they are.

10 Q Is the fare per hour or per ticket?

11 A Per ticket.

12 Q I would ask you now to look at the next

13 exhibit, which I don't know if you have marked, but I

14 will tell you that it is your time schedule.

15 Do you see that in front of you?

16 A Yes, I do.

17 Q Thank you.

18 Can we agree that you operate on a fixed

19 schedule?

20 A Yes.

21 Q Okay.

22 So I would be correct in then saying that you

23 do not operate an on-demand service, correct?

24 A I do not.

25 Q I would like to shift gears and have just one

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1 final line of questioning, and this is about your

2 prefiled testimony.

3 A Okay.

4 Q Do you have a copy of that before you, sir?

5 MS. ENDEJAN: It would be your

6 testimony, Exhibit DS-1T. It's your --

7 A Yes.

8 BY MR. BEATTIE:

9 Q If you could please turn to Page 3.

10 A Okay.

11 Q Line 20.

12 A Okay.

13 Q Here you explain that the ferry you currently

14 operate, Pacific Cruises Northwest, used to complete

15 with a ferry known as Island Mariner; is that right?

16 A Correct.

17 Q And on the next page of your testimony,

18 Page 4, starting on Line 1, you testify, "The

19 commercial ferry companies which have been placed in

20 competition with each other in the past haven't been

21 able to make it."

22 Do you believe that Island Mariner went out of

23 business due to competition?

24 A Yeah, they went broke, you know, ultimately.

25 The guy died, but they -- all of the companies that we

0326

1 were in competition with couldn't make it.

2 Q I don't mean to put this in crass terms, but

3 could the guy dying have also had something to do with

4 the --

5 A He stopped actually operating his regulated

6 service in 2010, even though he kept telling you guys

7 he was running.

8 Q I guess what I am getting at, and I ask you to

9 agree, that it is possible that, you know, his age may

10 have had something to do with him giving up his

11 certificate, or his death, and not solely due to

12 competition, as your testimony suggest.

13 A He was broke long before he died.

14 MR. BEATTIE: Thank you.

15 BY MS. ENDEJAN:

16 Q Can you give us --

17 MR. BEATTIE: I'm finished.

18 MS. ENDEJAN: Okay. Thank you.

19 JUDGE FRIEDLANDER: Redirect.

20

21 R E D I R E C T E X A M I N A T I O N

22 BY MS. ENDEJAN:

23 Q With respect to Island Mariner, you stated

24 that you knew that he was broke long before he died.

25 How do you know that?

0327

1 A He owed me a lot of money.

2 Q And did he repay that money?

3 A No.

4 Q Can you tell us approximately how much he owed

5 you?

6 A Somewhere in the neighborhood of $200,000.

7 Q Okay.

8 And did he owe you that before -- when did he

9 owe you that money?

10 A Started in 1999, and worked its way up from

11 there.

12 Q And when did -- and who is the "he" that we

13 are referring to?

14 A We are referring to Terry Buzzard.

15 Q Okay.

16 When did Mr. Buzzard pass away?

17 A December of 2016, I think -- or 2015. Yeah,

18 2015.

19 Q Okay.

20 And he stopped operating the San Juan Express

21 in 2010?

22 A The Island Mariner Cruises.

23 Q Island -- I'm sorry. Excuse me. Island

24 Mariner Cruises. Okay. I'm sorry, I misspoke.

25 A He stopped running regulated service. He

0328

1 still ran a whale watching service, if that matters.

2 He was still around.

3 Q Does the fact that you are friends with

4 Mr. Harmon in any way influence what you believe to be

5 your observation of what happens when there is

6 competition among vessel operators in a particular

7 geographic area?

8 A No. No, it doesn't influence it. I think

9 overlapping -- there is a reason you guys put rules in

10 place, to keep us -- keep from having overlapping

11 certificates, so that these companies could survive.

12 I am on the same page with him, but -- so it doesn't

13 matter whether we are friends or not.

14 Q And Mr. Harmon did not pay you for your

15 testimony?

16 A Absolutely not.

17 Q Okay.

18 MS. ENDEJAN: No further questions.

19 JUDGE FRIEDLANDER: Thank you.

20 I have no clarification questions, so the

21 witness is dismissed. Thank you for your testimony.

22 So let's talk about tomorrow and when we are

23 going to start. We have quite a few witnesses:

24 Mr. Aikin, Mr. Harmon, Mr. Burton, Mr. Westad --

25 MR. WILEY: Westad.

0329

1 JUDGE FRIEDLANDER: Okay.

2 -- Ms. Collins and Mr. Coburn.

3 Normally, we would start the second day

4 appearing at 9:30. I can go earlier than that if we

5 need to. We can also take witnesses out of order.

6 MR. BENTSON: I just don't have that

7 kind of access to him, really.

8 Unfortunately, Your Honor, Mr. Wiley and I

9 worked this out earlier, in trying to schedule this.

10 I understand he is -- he is insistent that he not --

11 none of his witnesses appear until after our case is

12 done. Mr. Aikin is not -- is not available until

13 9:30. I don't have -- or was not planning to come

14 until 9:30. I don't have the kind of access to

15 Mr. Aikin, because he is not my client, to change that

16 at this hour.

17 I am not trying to be difficult, Your Honor, I

18 just don't have that kind of access.

19 JUDGE FRIEDLANDER: No, I --

20 MR. WILEY: Are we still on --

21 JUDGE FRIEDLANDER: -- understand.

22 MR. WILEY: -- the record, Your Honor?

23 JUDGE FRIEDLANDER: We are.

24 MR. WILEY: Okay.

25 JUDGE FRIEDLANDER: Only because I would

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1 like the record to reflect when we are --

2 MR. WILEY: Okay.

3 JUDGE FRIEDLANDER: -- actually coming

4 back.

5 MR. WILEY: Okay.

6 JUDGE FRIEDLANDER: Mr. Wiley, would it

7 be possible for you to put on some of your witnesses

8 prior to Mr. Aikin's testimony?

9 MR. WILEY: Your Honor, I have -- it

10 really wouldn't, other than the possibility, if I can

11 consult with my client about possibly putting

12 Mr. Burton on and then being interrupted.

13 The concern I have, Your Honor, is that our

14 witnesses, Coburn, Westad, and Collins, are scheduled,

15 just like Mr. Bentson's witnesses are, at a specific

16 time. I want them on and off tomorrow, just like he

17 wants his witness on and off tomorrow. And I have

18 scheduled them for the afternoon, the first thing in

19 the afternoon, by best guess.

20 So we will work our case around that, but we

21 really would -- you know, it's hard for us to testify

22 in response if we don't know completely what the case

23 is, particularly with the importance of Mr. Aikin.

24 JUDGE FRIEDLANDER: Okay.

25 So why don't you consult with your client

0331

1 about Mr. Burton.

2 MR. WILEY: Okay.

3 JUDGE FRIEDLANDER: And we will go off

4 the record shortly.

5 (A brief recess.)

6 JUDGE FRIEDLANDER: I just want to say

7 that, before we adjourn, we will be back on the record

8 at nine o'clock tomorrow morning, on February 15th.

9 Is there anything else before we adjourn for

10 today?

11 MR. BENTSON: I don't think so.

12 JUDGE FRIEDLANDER: All right.

13 Thank you.

14 MR. WILEY: Thank you.

15 JUDGE FRIEDLANDER: We are off the

16 record. Thank you.

17 (Hearing adjourned 4:23 p.m.)

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1 C E R T I F I C A T E

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3 STATE OF WASHINGTON

4 COUNTY OF KING

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6 I, Sherrilyn Smith, a Certified

7 Shorthand Reporter in and for the State of Washington,

8 do hereby certify that the foregoing transcript is

9 true and accurate to the best of my knowledge, skill

10 and ability.

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17 SHERRILYN SMITH

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