

Docket No. TS-160479 - Vol. III

In re Application of MEI Northwest LLC

February 14, 2017



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BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

In re Application of)
MEI NORTHWEST LLC)
Docket No. TS-160479)
For a Certificate of Public)
Convenience and Necessity to)
Operate Vessels in Furnishing)
Passenger Ferry Service)

EVIDENTIARY HEARING

Volume III, Pages 50 - 332

ADMINISTRATIVE LAW JUDGE MARGUERITE E. FRIEDLANDER

9:30 a.m.

February 14, 2017

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21	RSE-2	77 A Document Titled "Golden Gate Ship Traffic, Summary of Moves for 2015 and 2014" (17 pp.) (10/04/16)
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24	RSE-3	77 A Table Showing Various Puget Sound Ports and the Types and Number of Vessels Called to Them in 2015 (1 pg.)(10/04/16)
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5	RSE-5	77	A Copy of the Complaint of Seabulk International, Inc. Against Island Commuter Services, LLC and Arrow Launch, Inc. in the U.S. District Court for the Western District of Washington, Cause No. C01-1460R, dated November 13, 2001 (4 pp.) (10/04/16)
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10	RSE-6	77	A Copy of the Trial Brief of Arrow Launch, Inc. in the U.S. District Court for the Western District of Washington, Cause No. C01-1460R, dated August 23, 2002 (23 pp.) (10/04/16)
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14	RSE-7T	77	Prefiled Rebuttal Testimony of Randy S. Esch Regarding the Financial Fitness of MEI Northwest and Arrow Launch's Service Adequacy (19 pp.)(12/05/16)
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17	RSE-8	77	Applicant Statement of Crowley Petroleum Services, Inc., signed by Marc Aikin (3 pp.)(12/05/16)
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19	RSE-9CX	77	Arrow Launch Service, Inc. Certificate B-97 Tariff Rates (2 pp.)(02/08/17)
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21	RSE-10CX	77	Tariff No. 1 of MEI Northwest, LLC (3 pp.)(02/08/17)
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23	MA-1CX	77	Crowley Pacific Northwest Schedule of Tugboat Rates & Terms, Effective January 1, 2016 (2 pp.) (02/08/17)
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JLH-2	77	E-mail Chain Between Jack Harmon, Arrow Launch, and Neil Caldwell, Marine Exchange of Puget Sound listing the arrivals to Puget Sound and Greys Harbor Ports in 2013, 2014, 2015, and Part of 2016 (1 pg.)(11/02/16)
JLH-3	77	A Copy of Arrow Launch Service's Certificate for the Operation of Motor Propelled Vehicles from the Commission, Cert. No. BC-0097, dated October 13, 1997 (2 pp.) (11/02/16)
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14	JLH-9T	77	Prefiled Cross-Answering Testimony of Jack L. Harmon Regarding the Financial Fitness of MEI Northwest and the Adequacy of Arrow Launch's Existing Service (11 pp.) (12/05/16)
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7	JLH-14CX	77 Arrow Launch Service, Inc. Responses to UTC Staff Data 8 Request Nos. 1-3, Dated October 14, 2016 (4 pp.)(02/08/17)
9	JLH-15CX	77 Arrow Launch Service, Inc., Arrow 10 Marine Services, Inc. Standard Terms & Conditions of Services, 11 Undated; Obtained from Arrow's Website on Feb. 7 2017 (2 pp.) 12 (02/08/17)
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DS-2CX	77		Tariff of Pacific Cruises Northwest, Inc. d/b/a San Juan Cruises, Naming Passenger Fares and Rules and Regulations Governing Same Between Passenger Only Ferry Service Between: Bellingham and Friday Harbor, Effective July 17, 2013 (7 pp.)(02/07/17)
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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,

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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

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,

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

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

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

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 --

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

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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

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

TESTIMONY OF RANDY S. ESCH / MR. BENTSON

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1 would like to begin.

2
3 DIRECT EXAMINATION

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?

TESTIMONY OF RANDY S. ESCH / MR. BENTSON

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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

TESTIMONY OF RANDY S. ESCH / MR. BENTSON

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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

TESTIMONY OF RANDY S. ESCH / MR. BENTSON

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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

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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,

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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.

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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.

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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.

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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

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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.

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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

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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

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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

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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?

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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**

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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,

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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**

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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.**

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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

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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

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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

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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

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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?

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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?

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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?

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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.

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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

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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?

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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.

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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**

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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.**

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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

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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?

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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**

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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**

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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.**

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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 --**

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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

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1 privately held oil producers, refiners, or
2 transporters, like Conoco Phillips, 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

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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?

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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.

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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**

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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**

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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

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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.

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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

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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

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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

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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?

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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

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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.**

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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

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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.

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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

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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?

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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?

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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

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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.

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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.

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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?

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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?

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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.**

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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?

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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 --

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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**

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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

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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.**

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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

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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

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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.**

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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.

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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"?

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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

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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.

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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?

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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

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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

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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 thought 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?

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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**

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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

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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.

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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

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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

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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?

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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

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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 --

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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?

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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.**

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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

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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.**

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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**

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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.

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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

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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 --**

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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

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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

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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

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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

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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

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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.**

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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?**

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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.

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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

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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.**

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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?

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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.**

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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?

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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.**

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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?

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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?

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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?

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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

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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?

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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?

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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

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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

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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

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

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?

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

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?

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.

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?

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

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

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**

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;

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

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.

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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.

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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

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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.**

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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

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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

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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?

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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

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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.

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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

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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**

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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.**

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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.**

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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**

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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,

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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;

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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.**

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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.

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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.

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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

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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 EXAMINATION

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.**

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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

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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.

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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.

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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 DIRECT EXAMINATION

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**

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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

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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.**

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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?

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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?

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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

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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?

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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?**

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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.**

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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

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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**

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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?

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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**

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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

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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

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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,

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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**

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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 funds 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.**

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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:

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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**

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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**

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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.

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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

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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.**

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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

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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**

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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

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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

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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 --

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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.

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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**

TESTIMONY OF SCOTT SEVALL / MR. FASSBURG**253**

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.**

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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

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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**

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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

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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.**

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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

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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 **CROSS - EXAMINATION**

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."

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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.**

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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**

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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?

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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

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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.

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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

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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.

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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 --**

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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.

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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**

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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,**

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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**

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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?

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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**

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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**

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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.

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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.

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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.

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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**

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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

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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.**

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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.

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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?

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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 CROSS - EXAMINATION

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.**

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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.**

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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:

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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

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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.**

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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**

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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

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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.

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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.

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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

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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?

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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?

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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

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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

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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.

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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.

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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

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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

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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

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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

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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

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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.

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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.

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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 DIRECT EXAMINATION

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**

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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.

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1 MR. BENTSON: Yes, Your Honor.

2 Thank you.

3

4 CROSS - EXAMINATION

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**

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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?

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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

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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

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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.

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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

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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?

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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?

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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

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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.

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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

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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.

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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 **CROSS - EXAMINATION**

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

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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?

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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.

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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**

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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?

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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**

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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.

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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

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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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CERTIFICATE

STATE OF WASHINGTON
COUNTY OF KING

I, Sherrilyn Smith, a Certified
Shorthand Reporter in and for the State of Washington,
do hereby certify that the foregoing transcript is
true and accurate to the best of my knowledge, skill
and ability.

SHERRILYN SMITH