

Docket No. TS-160479 - Vol. III

In re Application of MEI Northwest LLC

February 14, 2017



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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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7	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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9	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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11	RSE-8	77	Applicant Statement of Crowley Petroleum Services, Inc., signed by Marc Aikin (3 pp.)(12/05/16)
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5	JLH-7	77	A Table of Various Types of Vessels and the Frequency of Their Arrivals in Ports Across the Puget Sound (1 pp.)(11/02/16)
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7	JLH-8	77	The National Transportation Safety Board Marine Accident Brief, Sinking of Loring Vessel Delta Captain, dated April 13, 2013, (4 pp.)(11/02/16)
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7	JLH-14CX	77	Arrow Launch Service, Inc. Responses to UTC Staff Data Request Nos. 1-3, Dated October 14, 2016 (4 pp.)(02/08/17)
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11	WTB-1T	77	Prefiled Response Testimony of Weldon T. Burton Regarding the Financial Fitness of MEI Northwest (9 pp.)(11/02/16)
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15	BW-1T	77	Prefiled Response Testimony of Brian Westad Regarding Arrow Launch's Service Quality (7 pp.)(11/02/16)
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3 SS-1T 77 Prefiled Response Testimony of  
4 Scott Sevall Regarding MEI  
5 Northwest's Fitness and the  
6 Sufficiency of Arrow Launch's  
7 Current Service (11 pp.)(11/02/16)  
8 (revised 12/05/16)

9 SS-2 77 Table Entitled "Summary Matrix of  
10 S.B.C. Orders" (2 pp.)(11/02/16)

11 SS-3 77 In the Matter of the Application  
12 of B-263 of Island Mariner, Inc.  
13 for Extension of Authority Under  
14 Steamboat Permit No. SBC-95  
15 Findings of Fact and Conclusions  
16 of Law and Proposed Order Granting  
17 Application, Order S.B.C.  
18 No. 363A, Hearing No. B-263  
19 (February 1, 1997)(1 pp.)  
20 (11/02/16)(revised 12/05/16)

21 SS-4T 77 Prefiled Cross-Answering Testimony  
22 of Scott Sevall Regarding the  
23 Financial Fitness of MEI Northwest  
24 (5 pp.)(12/05/16)

25 SS-5 77 Excel Table Entitled "Comparison  
of Estimated Expenses" (2pp.)  
(12/05/16)

DS-1T 77 Prefiled Cross-Answering Testimony  
of Drew Schmidt Regarding  
Potential Benefits of Competition  
in the Regulated Ferry and Launch  
Service Industry (5 pp.)(12/07/16)

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1 OLYMPIA, WASHINGTON; FEBRUARY 14, 2017

2 9:30 A.M.

3

4 JUDGE FRIEDLANDER: Good morning. My

5 name is Judge Friedlander, I am presiding over this

6 matter. We are here before the Washington Utilities

7 and Transportation Commission on February 14th, 2017.

8 We are here for an evidentiary hearing in Docket

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

10 Northwest, LLC, for a Certificate of Public

11 Convenience and Necessity to Operate Vessels in

12 Furnishing Passenger Ferry Service.

13 My plan today is to take appearances, address

14 any procedural issues, including admission of the

15 prefiled testimony and exhibits, and then swear in the

16 witnesses.

17 We will begin appearances today with MEI.

18 MR. BENTSON: Dan Bentson, Your Honor,

19 for MEI.

20 JUDGE FRIEDLANDER: Okay.

21 And could you spell your last name, include

22 your title, and who you brought with you.

23 MR. BENTSON: Yes. My last name is

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

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

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1 EXHIBIT INDEX (Continued)

2 EXHIBIT A R DESCRIPTION

3 DS-2CX 77 Tariff of Pacific Cruises  
4 Northwest, Inc. d/b/a San Juan  
5 Cruises, Naming Passenger Fares  
6 and Rules and Regulations  
7 Governing Same Between Passenger  
8 Only Ferry Service Between:  
9 Bellingham and Friday Harbor,  
10 Effective July 17, 2013  
11 (7 pp.)(02/07/17)

12 DS-3CX 77 Tariff of Pacific Cruises  
13 Northwest, Inc. d/b/a San Juan  
14 Cruises Providing Commercial Ferry  
15 Service in the Following  
16 Territory: Passenger Only Ferry  
17 Service Between: Bellingham and  
18 Friday Harbor, Effective July 17,  
19 2013 (2 pp.)(02/07/17)

20 DS-4CX 77 Pacific Cruises Northwest, Inc.  
21 Responses to UIC Staff Data  
22 Request Nos. 1-3 Dated Oct. 14,  
23 2016 (3 pp.)(02/08/17)

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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

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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,

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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

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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

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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

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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 --

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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

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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

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TESTIMONY OF RANDY S. ESCH / MR. BENTSON 70

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?

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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

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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

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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 Can 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 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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TESTIMONY OF RANDY S. ESCH / MR. WILEY 99

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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TESTIMONY OF RANDY S. ESCH / MR. WILEY 100

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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TESTIMONY OF RANDY S. ESCH / MR. WILEY 101

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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TESTIMONY OF RANDY S. ESCH / MR. WILEY 104

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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TESTIMONY OF RANDY S. ESCH / MR. WILEY 105

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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**TESTIMONY OF RANDY S. ESCH / MR. WILEY 106**

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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**TESTIMONY OF RANDY S. ESCH / MR. WILEY 107**

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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**TESTIMONY OF RANDY S. ESCH / MR. WILEY 108**

1 privately held oil producers, refiners, or  
 2 transporters, like Conoco Philips, BP, Shell, and  
 3 Crowley?  
 4 **A Yes.**  
 5 Q And those are generally multimillion or  
 6 multibillion dollar conglomerates, are they not?  
 7 **A They are.**  
 8 Q Are you saying that a sophisticated consumer,  
 9 like BP and Shell, would be intimidated by a  
 10 family-owned small business like Arrow Launch?  
 11 **A In the sense that they are the only provider**  
 12 **here. If this didn't work out, the relationship would**  
 13 **be tainted by the issues --**  
 14 Q Okay.  
 15 **A -- or the experience.**  
 16 Q When you say this relationship didn't work out  
 17 and would be tainted by the issues, can you please  
 18 explain what you said?  
 19 **A If we were not able to get a certificate, and**  
 20 **we brought all of them out, and they all came out**  
 21 **pointing fingers and telling Arrow that they weren't**  
 22 **happy with the service, and then ultimately the**  
 23 **certificate is not given, I mean what kind of position**  
 24 **are they left in?**  
 25 Q So you are saying that these customers would

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**TESTIMONY OF RANDY S. ESCH / MR. WILEY 109**

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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TESTIMONY OF RANDY S. ESCH / MR. WILEY 111

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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TESTIMONY OF RANDY S. ESCH / MR. WILEY 126

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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TESTIMONY OF RANDY S. ESCH / MR. WILEY 130

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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TESTIMONY OF RANDY S. ESCH / MR. WILEY 132

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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TESTIMONY OF RANDY S. ESCH / MR. WILEY 134

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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TESTIMONY OF RANDY S. ESCH / MR. WILEY 135

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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TESTIMONY OF RANDY S. ESCH / MR. WILEY 136

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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TESTIMONY OF RANDY S. ESCH / MR. WILEY 140

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 though you said that rates were  
 20 cheaper here than in California, so why would they do  
 21 that for cost reasons?  
 22 **A It's pretty similar to Long Beach.**  
 23 Q So now you are saying that Long Beach and the  
 24 State of Washington have comparable rates; is that  
 25 correct?

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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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**TESTIMONY OF RANDY S. ESCH / MR. WILEY 170**

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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**TESTIMONY OF RANDY S. ESCH / MR. WILEY 171**

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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**TESTIMONY OF RANDY S. ESCH / MR. WILEY 172**

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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**TESTIMONY OF RANDY S. ESCH / MR. WILEY 173**

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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TESTIMONY OF RANDY S. ESCH / MR. WILEY 174

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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TESTIMONY OF RANDY S. ESCH / MR. WILEY 175

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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TESTIMONY OF RANDY S. ESCH / MR. WILEY 176

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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TESTIMONY OF RANDY S. ESCH / MR. WILEY 177

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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TESTIMONY OF RANDY S. ESCH / MR. WILEY 178

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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TESTIMONY OF RANDY S. ESCH / MR. WILEY 179

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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TESTIMONY OF RANDY S. ESCH / MR. WILEY 180

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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TESTIMONY OF RANDY S. ESCH / MR. WILEY 181

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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TESTIMONY OF RANDY S. ESCH / MR. WILEY 182

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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TESTIMONY OF RANDY S. ESCH / MR. WILEY 183

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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TESTIMONY OF RANDY S. ESCH / MR. WILEY 185

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

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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

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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?

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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

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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?

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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.

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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?

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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

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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

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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**

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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;

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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

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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 CROSS - EXAMINATION

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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TESTIMONY OF RANDY S. ESCH / JUDGE FRIEDLANDER 221

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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TESTIMONY OF SCOTT SEVALL / MR. BEATTIE 222

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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TESTIMONY OF SCOTT SEVALL / MR. BEATTIE 223

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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TESTIMONY OF SCOTT SEVALL / MR. FASSBURG 224

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 CROSS - EXAMINATION  
 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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TESTIMONY OF SCOTT SEVALL / MR. FASSBURG 225

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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TESTIMONY OF SCOTT SEVALL / MR. FASSBURG 226

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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TESTIMONY OF SCOTT SEVALL / MR. FASSBURG 227

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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TESTIMONY OF SCOTT SEVALL / MR. FASSBURG 228

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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TESTIMONY OF SCOTT SEVALL / MR. FASSBURG 229

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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**TESTIMONY OF SCOTT SEVALL / MR. FASSBURG 230**

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 Kermod.**

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**TESTIMONY OF SCOTT SEVALL / MR. FASSBURG 231**

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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**TESTIMONY OF SCOTT SEVALL / MR. FASSBURG 232**

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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**TESTIMONY OF SCOTT SEVALL / MR. FASSBURG 233**

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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TESTIMONY OF SCOTT SEVALL / MR. FASSBURG 234

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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TESTIMONY OF SCOTT SEVALL / MR. FASSBURG 235

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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TESTIMONY OF SCOTT SEVALL / MR. FASSBURG 236

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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TESTIMONY OF SCOTT SEVALL / MR. FASSBURG 237

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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TESTIMONY OF SCOTT SEVALL / MR. FASSBURG 238

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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TESTIMONY OF SCOTT SEVALL / MR. FASSBURG 239

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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TESTIMONY OF SCOTT SEVALL / MR. FASSBURG 240

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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TESTIMONY OF SCOTT SEVALL / MR. FASSBURG 241

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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**TESTIMONY OF SCOTT SEVALL / MR. FASSBURG 242**

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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**TESTIMONY OF SCOTT SEVALL / MR. FASSBURG 243**

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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**TESTIMONY OF SCOTT SEVALL / MR. FASSBURG 244**

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**

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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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TESTIMONY OF SCOTT SEVALL / MS. ENDEJAN 268

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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TESTIMONY OF SCOTT SEVALL / MS. ENDEJAN 269

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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**TESTIMONY OF SCOTT SEVALL / MS. ENDEJAN 270**

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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**TESTIMONY OF SCOTT SEVALL / MS. ENDEJAN 271**

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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**TESTIMONY OF SCOTT SEVALL / MS. ENDEJAN 272**

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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**TESTIMONY OF SCOTT SEVALL / MS. ENDEJAN 273**

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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**TESTIMONY OF SCOTT SEVALL / MS. ENDEJAN 274**

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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**TESTIMONY OF SCOTT SEVALL / MS. ENDEJAN 275**

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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**TESTIMONY OF SCOTT SEVALL / MS. ENDEJAN 276**

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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**TESTIMONY OF SCOTT SEVALL / MS. ENDEJAN 277**

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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TESTIMONY OF SCOTT SEVALL / MS. ENDEJAN 278

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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TESTIMONY OF SCOTT SEVALL / MS. ENDEJAN 279

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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TESTIMONY OF SCOTT SEVALL / MS. ENDEJAN 280

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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TESTIMONY OF SCOTT SEVALL / MS. ENDEJAN 281

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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TESTIMONY OF SCOTT SEVALL / MS. ENDEJAN 282

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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TESTIMONY OF SCOTT SEVALL / MR. BENTSON 283

1 **A Yes.**

2 Q Okay.

3 MS. ENDEJAN: No further questions.

4 JUDGE FRIEDLANDER: Thank you.

5 Mr. Bentson?

6 MR. BENTSON: Thank you, Your Honor.

7

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

9 BY MR. BENTSON:

10 Q Good afternoon, Mr. Sevall, or "Sevall." I

11 apologize.

12 Am I saying it right, the second one?

13 **A Yes.**

14 Q Thank you.

15 **A Now it is officially on the record.**

16 Q All right.

17 Mr. Sevall, there has been a lot of talk about

18 this \$300,000 loan to MEI. Could you turn to RCW

19 81.84.020(2), which I believe we were looking at

20 earlier?

21 **A 81.84.020?**

22 Q Yes. Subsection 2.

23 **A Subsection 2.**

24 Q Do you have that in front of you, Mr. Sevall?

25 **A I do.**

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TESTIMONY OF SCOTT SEVALL / MR. BENTSON 284

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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TESTIMONY OF SCOTT SEVALL / MR. BENTSON 285

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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TESTIMONY OF SCOTT SEVALL / MR. BENTSON 286

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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TESTIMONY OF SCOTT SEVALL / MR. BENTSON 287

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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TESTIMONY OF SCOTT SEVALL / MR. BENTSON 288

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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TESTIMONY OF SCOTT SEVALL / MR. BENTSON 289

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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TESTIMONY OF SCOTT SEVALL / MR. BENTSON 290

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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TESTIMONY OF SCOTT SEVALL / MR. BENTSON 291

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 REDIRECT EXAMINATION  
 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 posing 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 C R O S S - E X A M I N A T I O N  
 8 BY MR. BEATTIE:  
 9 Q Captain Schmidt, I would like to explore with  
 10 you what you might think to be the differences between  
 11 launch service and commercial ferry service. I would  
 12 like to start by asking you whether you agree with me  
 13 that there is a distinction between those two  
 14 services?  
 15 MR. FASSBURG: Objection, Your Honor.  
 16 When I attempted to explore that issue earlier,  
 17 Mr. Beattie objected and said that ferry has no  
 18 relevance to this application proceeding. Now he is  
 19 asking questions about the distinction between ferry  
 20 and launch service. That is absolutely contrary to  
 21 his prior objection.  
 22 JUDGE FRIEDLANDER: Mr. Beattie?  
 23 MR. BEATTIE: Your Honor, there was  
 24 quite a bit of testimony from Mr. Esch about the  
 25 differences between -- or what launch service is. I

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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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TESTIMONY OF DREW SCHMIDT / MR. BEATTIE 324

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 CERTIFICATE

2

3 STATE OF WASHINGTON

4 COUNTY OF KING

5

6 I, Sherrilyn Smith, a Certified

7 Shorthand Reporter in and for the State of Washington,

8 do hereby certify that the foregoing transcript is

9 true and accurate to the best of my knowledge, skill

10 and ability.

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18 SHERRILYN SMITH

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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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