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1 BEFORE THE WASHINGTON

UTILITIES AND TRANSPORTATION COMMISSION

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IN RE APPLICATION OF )

4 )

MEI NORTHWEST LLC )

5 ) DOCKET NO.

) TS-160479

6 FOR A CERTIFICATE OF PUBLIC )

CONVENIENCE AND NECESSITY TO )

7 OPERATE VESSELS IN FURNISHING)

PASSENGER FERRY SERVICE )

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10 EVIDENTIARY HEARING

11 Volume IV, Pages 333 - 582

12 ADMINISTRATIVE LAW JUDGE MARGUERITE E. FRIEDLANDER

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9:01 a.m.

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February 15, 2017

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Washington Utilities and Transportation Commission

17 1300 South Evergreen Park Drive Southwest

Olympia, Washington 98504-7250

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21 REPORTED BY: Nancy M. Kottenstette, RPR, CCR 3377

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September 16, 2016

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0337

1 OLYMPIA, WASHINGTON; February 15, 2017

2 9:01 a.m.

3

4 JUDGE FRIEDLANDER: We'll go on the

5 record. We are here for a continuation of the

6 Evidentiary Hearing in Docket TS-160479. I believe

7 we're going to begin with the examination of

8 Mr. Aikin.

9 MR. BENTSON: Yes, Your Honor.

10 Mr. Aikin, if you could go to that seat over

11 there, the judge will be the one that swears you in,

12 so please stand when you get to your seat.

13

14 MARC RELZY AIKIN, witness herein, having been

15 first duly sworn on oath,

16 was examined and testified

17 as follows:

18

19 JUDGE FRIEDLANDER: You can be seated.

20 Mr. Bentson.

21 MR. BENTSON: Thank you, Your Honor.

22

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

24 BY MR. BENTSON:

25 Q Good morning, Mr. Aikin. Could you please

0338

1 state your full name for the record and spell your

2 first and last name.

3 A Yes. My full name is Marc Relzy Aikin. My

4 first name is spelled M-A-R-C, last name A-I-K-I-N.

5 Q What company do you work for?

6 A I'm employed by Crowley Maritime, a subsidiary

7 of Crowley Petroleum Services.

8 Q What is your title at Crowley?

9 A I'm the director of engineering for the ATB

10 fleet.

11 MR. BENTSON: Your Honor, permission to

12 approach the witness with RSE-8?

13 JUDGE FRIEDLANDER: That's fine.

14 Q Mr. Aikin, I'm handing you what's been

15 previously marked as RSE-8, your shipper support

16 statement.

17 MR. BENTSON: Your Honor?

18 JUDGE FRIEDLANDER: I have it. Thank

19 you.

20 Q Mr. Aikin, do you recognize RSE-8?

21 A Yes, I do.

22 Q Is that the shipper support statement you

23 provided on behalf of MEI's application in this case?

24 A Yes. That is the statement I provided with

25 aid of my in-house counsel.

0339

1 Q Is there anything you wish to correct or

2 change on that statement?

3 A No, not at this time.

4 MR. BENTSON: Thank you. RSE-8 has

5 already been admitted in the record, so I think at

6 this time the witness is available for

7 cross-examination.

8 JUDGE FRIEDLANDER: Thank you.

9 Mr. Wiley or Mr. Fassburg.

10 MR. WILEY: Mr. Wiley.

11 JUDGE FRIEDLANDER: Thank you.

12

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

14 BY MR. WILEY:

15 Q Good morning, Mr. Aikin. My name is Dave

16 Wiley, and I'm counsel for Arrow Launch Service, Inc.,

17 which is the existing provider in the applied-for

18 territory.

19 A Good morning.

20 Q How long have you been with Crowley?

21 A Well, the first time was 13 years. The second

22 time was 14 years, and there was a ten-year break

23 between.

24 Q And could you tell me in the ten-year break

25 what did you do?

0340

1 A I was a consulting marine engineer and a

2 shipyard cost estimator.

3 Q So you've been in the maritime industry for a

4 long time; correct?

5 A Yes, I have.

6 Q Just briefly, can you give me a little bit of

7 background on your job titles and functions over the

8 years at Crowley?

9 A I started from a sailing engineer, worked my

10 way ashore as a port engineer, engineering manager. I

11 worked in Crowley's shipyard as a superintendent and

12 coordinator. I managed an engine rebuild facility for

13 Crowley. Currently, I'm director of engineering for

14 the West Coast.

15 Q And where are you based?

16 A Out of Seattle.

17 Q And how long have you been director of

18 engineering for the West Coast for Crowley?

19 A I would guess the title changed about three

20 years ago.

21 Q And when did you come to the Puget Sound area

22 for Crowley?

23 A 1980.

24 Q Okay. So have you been based here in your 13-

25 and 14-year stints?

0341

1 A No. Actually, I left -- I got all these

2 golden promotions ashore, so I moved south to San

3 Francisco Bay area, worked there, and then I moved to

4 L.A., worked in Long Beach.

5 Q And when did you return to the Puget Sound?

6 A 1993.

7 Q So in that -- well, 14 years you were in that

8 break as a consulting engineer for part of that time.

9 Was that in the Seattle area as well?

10 A Yes. That was in the Seattle area.

11 Q So when did you return in your most current

12 stint to Crowley?

13 A 2003.

14 Q And that was based in the Puget Sound or was

15 that based --

16 A Correct. That was in Seattle.

17 Q And you've been here ever since?

18 A Correct.

19 Q Can you tell us just briefly what your

20 interactions with the launch services are in your

21 capacity as director of engineering for Crowley?

22 A Launch services in general? Is that what you

23 mean?

24 Q Yeah, we'll start with general.

25 A Okay. As director of engineering, I am

0342

1 responsible for both our warehouse facilities in

2 Anacortes, Washington, and all of the repair

3 activities up and down the West Coast. I have a port

4 engineer that's stationed in southern California, and

5 my port engineers utilize launch services to perform

6 maintenance activities on board our tugs and ships.

7 And so our warehouse in Anacortes provides or utilizes

8 launch services for storing.

9 Q For stores and provisions?

10 A Stores and provisions, correct, slops

11 removals, things like that.

12 Q And describe, again, your port engineers'

13 interaction with launch service.

14 A Port engineers will order up a launch to

15 coordinate for a contractor primarily to take a

16 contractor out to anchor to attend the vessel to make

17 repairs.

18 Q So that would be passengers going out to

19 vessels?

20 A Correct.

21 Q Would it be a fair separation that your

22 warehouse facility deals, generally, with more freight

23 issues and your port engineers with more passenger

24 issues, or is it a mix of both?

25 A We co-mingle the activities when that makes

0343

1 sense because it's economically the better way to go.

2 So, generally, they are separate activities, but they

3 do co-mingle for efficiency.

4 Q And that's combination -- combining launches?

5 When you talk about co-mingling, you mean combining?

6 A Right. I'm putting stores on and I'm putting

7 personnel to go out to the vessel to take advantage of

8 that launch run.

9 Q So you would be combining, say, different

10 departments' requirements, warehouse, and engineering

11 in that combined launch; is that correct?

12 A Correct. And, in addition, we would have

13 crew. We would do crew personnel changes.

14 Q How many departments or divisions or entities

15 are there at Crowley, to your knowledge, who deal with

16 and order launch services? Can you state that for the

17 record, please?

18 A I would state that it would be probably --

19 well, within my group, there's three separate groups

20 that would order launch services.

21 Q Could you list those for the record, please.

22 A There might be four. So it would be the

23 engineer. So port engineers would be the primary ones

24 ordering it. And then you would have procurement,

25 which would be the warehouse and port captains.

0344

1 Q Port captains.

2 A And then crewing, marine personnel we called

3 it.

4 Q How about dispatch by Crowley, would they

5 potentially order launches?

6 A Yes. Dispatch could order launches acting as

7 an agent. So for some of our vessels, our dispatch

8 service acts as an agent but not all of our vessels.

9 Q We have had some testimony in this record on

10 direct examination about shippers' agents or

11 customers' agents. Could you describe what that is in

12 the context of dispatch acting as an agent?

13 A An agent would coordinate services for vessels

14 coming from sea or going to sea. So a vessel would

15 order through the agent coordination of launch,

16 stores, other services such as customs and border,

17 immigration, things like that, so the agent would act

18 on behalf of the owner.

19 Q The principal?

20 A The principal to order the launch or order

21 whatever services they may need.

22 Q So that's conduct by Crowley where it acts as

23 an agent, not a direct principal, but an agent for a

24 principal for vessel services; is that correct?

25 A Yeah. Not to confuse the issue too much, we

0345

1 treat different vessels differently depending on the

2 customer. For some of our vessels, our dispatch,

3 which is a separates division within the organization,

4 acts as an agent. Where for others, we actually use

5 an outside agency.

6 Q Do you know how big Crowley is in terms of --

7 I know it's privately held. In terms of its annual

8 revenues, it's in the billions, isn't it?

9 A Yes.

10 Q And it's an international company?

11 A Correct.

12 Q Based in Jacksonville?

13 A Based out of Jacksonville, correct.

14 Q Does operations, Crowley operations, have an

15 ability to order directly launch vessels as well?

16 A Yeah. When you say operations, that's what I

17 would refer to as a port captain.

18 Q Okay.

19 A That typically would be the operations group.

20 Q Is port engineering and port captains

21 different, or are they the same thing in your mind?

22 A They are different.

23 Q Could you just describe port engineering

24 versus port captains.

25 A So you can look at it this way. The simplest

0346

1 explanation is the port engineer deals with the

2 machinery. Port captain deals with the vessel, the

3 personnel, and the logistics of the operation of the

4 vessel.

5 Q But it's true that all of those separate

6 divisions within Crowley could place independent

7 orders for launch?

8 A Yes.

9 Q There's no real central clearinghouse at

10 Crowley, is there, for launch service ordering?

11 A No. We did make a concerted effort back in

12 late '15 to create a centralized ordering through our

13 warehouse facility to share common launches.

14 Q That's the launch combination issue, but it's

15 still the case, is it not, that these separate

16 divisions, five or six that you've listed, could order

17 launches separately?

18 A Absolutely.

19 Q What does engineering at Crowley specifically

20 do? I assume it's focused on vessel maintenance; am I

21 correct?

22 A You are correct.

23 Q And that's your particular area of expertise,

24 I take it?

25 A Correct.

0347

1 Q So you're sort of like -- I apologize. I may

2 not be using the right nomenclature. You're a vessel

3 engineer in terms of how it works?

4 A Correct.

5 Q All the operating systems, propulsion, all

6 that?

7 A Correct.

8 Q That's what you really are in charge of for

9 Crowley?

10 A Correct.

11 Q I'd like -- do you have that shipper support

12 statement? Yes, you do.

13 A Yes.

14 Q I'd like to focus on that, because that's

15 really the only evidence we have from you that I can

16 ask you about in this case.

17 A Sure.

18 Q That statement, if you look at page 2, you

19 signed that statement, kind of ominous looking, under

20 penalty of perjury. Do you see that?

21 A I see that.

22 Q And you're under oath here, as you know. So I

23 want to ask you about some of the statements.

24 A Certainly.

25 Q Yesterday Mr. Sevall from the WUTC Staff

0348

1 testified about a telephone survey he had done of some

2 of Arrow's customers, and the only one who expressed

3 dissatisfaction was Crowley. And he identified the

4 person with whom he spoke as a Lindy Evans. Are you

5 familiar with who she is?

6 A Yes, I am.

7 Q Mr. Aikin, would it be fair to say that the

8 bulk of the critiques in the information on ALS

9 service by Crowley in SS-8, the shipper support

10 statements, comes from Ms. Evans of procurement?

11 A The bulk of it?

12 Q Yeah. The majority of the information that

13 critiques Arrow service came from Ms. Evans?

14 A It's possible you could characterize that,

15 yes.

16 Q Are you aware that she has repeatedly told

17 Arrow that she is under a corporate mandate to cut

18 costs?

19 A I'm not aware of that specific language, but

20 it wouldn't surprise me if that was her belief, yes.

21 Q In preparation for your testimony today, did

22 you talk with Ms. Evans?

23 A Yes.

24 Q Okay. And -- but Ms. Evans isn't here to

25 testify?

0349

1 A Correct.

2 Q By the way, who asked you to sign and supply

3 this statement? You alluded to it with Mr. Bentson

4 briefly, but I want to understand better.

5 A It was our in-house counsel.

6 Q And it's true, is it not, that this statement

7 was prepared, in large part, by attorneys either for

8 Crowley or MEI or both?

9 A Not by MEI. It was all by Crowley.

10 Q Okay. And does the statement, to your

11 knowledge, rely in large part as well from Ms. Evans?

12 A Yes.

13 Q Okay. Can you tell us if it's true that what

14 Crowley is really seeking in supporting MEI's

15 application is some financial benefit?

16 A Crowley is seeking consistent service, timely

17 service, and competition in the marketplace. Our

18 market sector continues to grow. We are adding more

19 vessels. We utilize the anchorages in Anacortes to a

20 great extent. We have multiple vessels at anchor at

21 any given time in the north Puget Sound all needing to

22 be serviced. We have vessels in Port Angeles. We

23 have more vessels coming to this coast.

24 So we're concerned long-term that we need to

25 have quality service delivered in a timely fashion.

0350

1 And let me say that Arrow Launch has always done a

2 good job for us. I can't say that they have not done

3 a good job.

4 Q You can't say that they've ever failed or

5 refused to provide service to you, can you?

6 A No, I can't. I can say that --

7 Q What?

8 A I can say that they have delayed services, but

9 I cannot say that they've ever refused services.

10 Q Or failed?

11 A No.

12 Q Okay. We'll explore the delay issue.

13 A Sure.

14 Q But are you aware whether Crowley has, in

15 fact, sought reductions in rates from Arrow for

16 ancillary services, such as forklifts and cranes?

17 A Yes.

18 Q And in supporting the application for MEI,

19 would Crowley hope to get further reduction in

20 ancillary services through a competition?

21 A Through a competition, yes, we would hope that

22 would be the outcome, yes.

23 Q Referring to your statement, the second

24 sentence, I wanted to ask you briefly about that. You

25 talked about some delays. And when you make the

0351

1 statement referring to timing and reliability, do you

2 see that sentence there?

3 A Yes, I do.

4 Q Are you referring to the time the launch

5 vessel arrives at the ship or the dock, for instance,

6 the time you receive service from the launch? Is that

7 what you mean by delays?

8 A Yes. There would be the time in which the

9 launch departs or arrives at our vessel, either one.

10 Q In making that statement, do you have in mind

11 the instruction or protocol that you alluded to from

12 Ms. Evans of procurement at Crowley by which launches

13 should be combined, even if it causes a slight delay,

14 to maximize efficiencies?

15 A Could you explain that again? I'm not quite

16 sure I'm following.

17 Q Yeah. In making that statement about timing

18 and reliability problems, are you aware or have you

19 factored in at least the 2015 instruction that you

20 talked about that's still ongoing about combining

21 launches even if it should cause a slight delay to

22 maximize efficiencies for Crowley?

23 MR. BENTSON: Object as to form,

24 mischaracterizes the witness's testimony.

25 JUDGE FRIEDLANDER: I'm a bit confused

0352

1 as to where that statement came from in the first

2 place.

3 Q Okay. Mr. Aikin, do you see the second

4 sentence where you say "This has created timing and

5 reliability issues for us as our customers

6 (. . . major oil companies) work on a tight schedule"?

7 A Correct. I see that.

8 Q Have you factored in this protocol or policy

9 that you've discussed about combining launches in

10 making that statement assessing whether if that

11 combination of launches could cause a slight delay in

12 order to provide efficiencies for Crowley?

13 A If I understand your question, yes, we have

14 factored that in.

15 Q And it's true, is it not, that when you

16 combine launches for various departments to provide

17 more rate or cost efficiency that that could cause

18 some slight delays in arrival of ships -- of launches

19 at vessels, could it not?

20 A Certainly, it could. But if you coordinate

21 the launch properly, it shouldn't impact it.

22 Q But who is that coordination -- the

23 responsibility for that coordination? That's a

24 Crowley responsibility?

25 A Yes, it is. We know our vessels' schedules.

0353

1 We know our needs.

2 Q And so the internal communication about

3 enhancement of efficiencies is the burden of Crowley,

4 is it not?

5 A Correct, yeah.

6 Q With respect to these timing and reliability

7 issues that you speak of in that statement, are you

8 aware of any repeated attempts by Arrow to convene

9 meetings with Alan Jones, Mark Homeyer, and/or other

10 Crowley management personnel that were scheduled by

11 ALS, Arrow Launch, and Crowley and canceled by Crowley

12 that were never rescheduled by Crowley despite

13 requests by Arrow to do so.

14 A No, I'm not aware of that.

15 Q Are you aware of any e-mail traffic between

16 Arrow and Crowley where Arrow repeatedly attempted to

17 inquire as to ordering logistics that would enhance

18 communication between Arrow and Crowley?

19 A No, I'm not aware.

20 Q Did you, by any chance, happen to review the

21 surrebuttal testimony of Mr. Harmon regarding the

22 service history of Arrow to Crowley in the year prior

23 to the filing of the application?

24 A No, I did not.

25 Q Do you have any awareness or knowledge of the

0354

1 number of service orders that Crowley placed for Arrow

2 Launch in that interval?

3 A In -- I don't know the time interval, no. I'm

4 aware of what we've expensed.

5 Q The time interval, just for your information,

6 is from June 2015 to May of 2016.

7 A Okay.

8 Q And Mr. Harmon, the record will show,

9 testified about his review of all the invoices of

10 Crowley when we received your statement.

11 A Sure.

12 Q Would it surprise you to learn that in that

13 batch of invoices you placed two out of a 900-plus

14 number of orders for launch in that interval? You

15 personally placed two orders? Would that be a

16 surprise?

17 A Me, myself?

18 Q Yeah.

19 A No, that wouldn't be a surprise.

20 JUDGE FRIEDLANDER: Before you go on,

21 the 900 that you're talking about, is that 900 from

22 Crowley or 900 total for that time period?

23 MR. WILEY: It's 900 invoices from

24 Arrow to Crowley in that time period.

25 JUDGE FRIEDLANDER: And two were placed

0355

1 by Mr. Aikin?

2 MR. WILEY: Yes. And two were placed

3 by Mr.Aikin.

4 JUDGE FRIEDLANDER: Okay. Thank you.

5 BY MR. WILEY:

6 Q So your testimony was that wouldn't surprise

7 you? You're not --

8 A No. It wouldn't surprise me, because I

9 coordinate through our warehouse for launch services.

10 Q And that's primarily Ms. Evans who is in

11 charge of procurement?

12 A Ms. Evans or one of her subordinates would do

13 that or one of my other port engineers if I'm going

14 out.

15 Q And some of those port engineers, would that

16 be a Mr. Giorgio?

17 A Yeah, Giorgio.

18 Q And a gentleman named Louie whose last name --

19 A D'Andrea.

20 Q That's who you would be coordinating from.

21 Let's keeping going on in your statement.

22 MR. BENTSON: Can you spell those for

23 the record just for the court reporter.

24 MR. WILEY: Sure, if you can.

25 THE WITNESS: Mr. Giorgio is

0356

1 G-I-O-R-G-I-O, and Mr. D'Andrea is D, apostrophe,

2 A-N-D-R-E-A.

3 BY MR. WILEY:

4 Q Mr. Aikin, let's go on to your statement. The

5 third sentence there says: The lack of competition

6 reduces our ability to meet the needs of our

7 customers.

8 Can you tell us how the existence or absence

9 of competition, as opposed to vessel number

10 availability, would impact your needs to service

11 customers?

12 A Well, let me approach it from a slightly

13 different angle. We use launch services up and down

14 the West Coast in every port. San Francisco, if I

15 call Marine Express and they say, I'm sorry, I don't

16 have a launch available, I can call across the bay and

17 get the same service provided to Anchorage 9 without

18 any delay or disruption to my operation.

19 So if I have a machinist that earns $250 an

20 hour, it's important for me to get him on the vessel,

21 and I have a vessel that earns $35,000 a day. I need

22 to get him out there.

23 Q Timing is very important.

24 A Timing is very important, so I have options.

25 I have -- the same option exists in L.A., Long Beach

0357

1 and Los Angles, two separate launch services.

2 Q Let's talk about Long Beach. MEI is in Long

3 Beach.

4 A Yes.

5 Q Do you use them in Long Beach?

6 A Occasionally, we do, but, primarily, we use a

7 different company.

8 Q Why is that?

9 A Because of location relative to our office

10 down there and relative to where they typically anchor

11 and come in and out.

12 Q So let's go back to my original question. Can

13 you tell me how the existence or absence of

14 competition as opposed to numbers of vessel

15 availability impact your needs? In other words,

16 Mr. Aikin, if, say, there were 12 authorized launch

17 companies with one vessel each and one company with

18 12 vessels, how would that circumstance impact your

19 ability to serve your customers?

20 MR. BENTSON: Objection, compound.

21 JUDGE FRIEDLANDER: I don't think that

22 was a compound question, but if it helps you to answer

23 it to break it down, that's fine. I believe it was

24 just one question.

25 A So simple math would say, no, it wouldn't make

0358

1 a difference. But any launch company that has

2 12 vessels has a structure to support that. They have

3 to have vessel personnel that are rested and ready to

4 go. Now, I don't know Mr. Harmon's business. I don't

5 know his model, and I don't care to know it. But it

6 stands to reason that two companies have a better

7 opportunity to service my needs and not interrupt

8 vessel reliability and vessel delivery.

9 Q So you're saying that the number of vessels

10 has no bearing on the ability to serve you?

11 A Well, the total number of vessels does.

12 Q And you've said also in your testimony just

13 now that you don't know anything about Arrow-specific

14 vessel numbers or availability; is that correct?

15 A No, I don't.

16 Q You next say in a sentence in your statement

17 that "Crowley's operations run on a 24-hour basis. We

18 need a vendor who is able to provide prompt and

19 reliable service on a 24 hour basis to and from our

20 vessels"; correct?

21 A Correct.

22 Q Are you aware that Arrow provides service on a

23 24-hour basis?

24 A Yes, I am.

25 Q Do you know how long they have held themselves

0359

1 out to provide that service?

2 A How many years?

3 Q Yes.

4 A No, I do not.

5 Q Do you know anything about their availability

6 on nights, weekends, or holidays?

7 A They're available 24/7/365.

8 Q And you, in fact, have ordered them on a

9 Sunday evening at 7:00, haven't you?

10 A Yes, I have.

11 Q Did you have any problem in terms of their

12 availability at that time?

13 A I don't have specific recollection of that

14 particular event.

15 Q Would you acknowledge, then, that in the last

16 year you've utilized them after hours, nights,

17 weekends, and holidays?

18 A Absolutely.

19 Q So when you say you need a vendor to provide

20 prompt and reliable service on a 24-hour basis to and

21 from your vessels, that wasn't a criticism of Arrow?

22 A Not at all, none whatsoever.

23 Q The next sentence in your statement says "We

24 often need to hire multiple ferry vessels at the same

25 time to meet the requirements of our customers'

0360

1 schedule. This need is not currently being met.

2 Delays in transporting crew to our vessels have

3 occurred in the past. This puts our customers behind

4 schedule."

5 Could you tell us over the past year in the

6 period, again, from June 2015 to May 2016, the number

7 of occasions on which Crowley has had to hire multiple

8 vessels in the Anacortes/Vendovi area?

9 A I'm not aware of any to be honest.

10 Q So at no time in that period did you have --

11 A None in that period.

12 Q We've got to try to get -- the reporter is

13 trying to get both of us, so we're going to try not to

14 talk over each other.

15 So with respect to that sentence, you're not

16 aware of anything in the last year where -- any time

17 in the last year where Crowley had to hire multiple

18 vessels?

19 A That's correct.

20 Q Okay. So do you know if Arrow has ever been

21 asked to provide multiple, quote, ferry vessels,

22 unquote, and has been unable to provide them?

23 A I can't recall any particular time. I don't

24 have knowledge of that.

25 Q When you say that the need is currently -- is

0361

1 not currently being met, as you do in that statement

2 there, you're not suggesting that you have been unable

3 to obtain service from Arrow, are you?

4 A I'm not suggesting the service. I'm

5 suggesting the time.

6 Q And have you ever contacted Arrow Launch

7 Management to discuss their ability to satisfy your

8 time requirements?

9 A I have not.

10 Q Okay. Have you ever spoken with, for

11 instance, Mr. Jack Harmon about their availability to

12 Crowley?

13 A No.

14 Q In fact, didn't you just meet Mr. Harmon for

15 the first time today?

16 A Yes, I did.

17 Q Could you describe -- your statement says

18 "Delays in transporting crew to our vessels have

19 occurred in the past."

20 Can you describe every instance in which

21 delays in transporting crews to your vessels have

22 occurred in the past year due to service by Arrow

23 Launch?

24 A I think that's kind of an unrealistic

25 question. We just stated for the record there were

0362

1 900 invoices. I can't document that.

2 Q Are you aware whether any of those instances

3 involved any complaint by service -- about service by

4 Crowley to Arrow?

5 A I don't know. I can't --

6 Q I'll tell you we have all those invoices in

7 the hearing room, and I'm just asking you if you know

8 of any notation, any indication of problems with

9 service by Arrow?

10 A I don't know of a specific case. I know that

11 on several occasions -- and, you know, I can

12 document -- I think Jack has probably done a good job

13 of documenting those invoices, and they're very

14 accurate. And we don't have any issue with that, but

15 if I call the dispatch and the dispatcher says, well,

16 you want to get there at 03, but we don't have a

17 launch because I got to get a guy there, so about 04

18 will be okay, that's a delay. That's not a delay of

19 record. It's a delay to my operation.

20 Q And you think that's occurred?

21 A No. I know it has occurred to me personally.

22 Q When you talk about delay and notice that is

23 required for ordering service, does Crowley itself

24 have protocols about its customers about notice to

25 Crowley for ordering tugs?

0363

1 A Say that one more time, please.

2 Q When you talk about delay in service being

3 provided from 0300 to 0400, does Crowley itself have

4 protocols or policies with respect to its customers

5 about notice for ordering?

6 A Yes.

7 Q Okay. I'm going to hand you what's been

8 marked as MA-1. It's a cross-exhibit.

9 MR. WILEY: Is it MA-1 or MA-2, Your

10 Honor? I want to make sure I don't screw up the

11 record here.

12 JUDGE FRIEDLANDER: Just a second.

13 MR. WILEY: I believe it's 1.

14 JUDGE FRIEDLANDER: I believe it is as

15 well, but just let me check really quick.

16 Q So, Mr. Aikin, take a gander at that, if you

17 would.

18 JUDGE FRIEDLANDER: The schedule of

19 tugboat rates and terms?

20 MR. WILEY: Yes, Pacific Northwest

21 schedule of tugboat rates and tugs.

22 JUDGE FRIEDLANDER: That's MA-1.

23 BY MR. WILEY:

24 Q Do you see on that sheet a policy about notice

25 by Crowley?

0364

1 A Notice is required for ordering tugs, that

2 one?

3 Q Yes. Could you read it, please.

4 A Line 7?

5 Q Could you read that, please.

6 A "Any notification for service must be within

7 six hours of the time designated for tugs to arrive at

8 the vessel."

9 Q So Crowley has a policy for its customers

10 about advanced notice for orders, does it not?

11 A Yes, it does.

12 Q And I assume that when you say you want launch

13 on demand you do not expect a similar policy or a

14 one-hour or two-hour policy even to be imposed on

15 Crowley; is that correct?

16 A Yeah, that is correct.

17 Q I want to continue on with your statement

18 here. Again, I've asked -- could you be more specific

19 about -- when you say there's been delays in

20 transporting crews to our vessels, what time period

21 and what specific provider are you referring to?

22 A In this particular statement, it's referring

23 to Arrow Launch for provisions.

24 Q When did that happen and under what

25 circumstances, please?

0365

1 A I don't know the specific date. The

2 circumstances were launch delivery for stores to

3 vessels in the Puget Sound, north Puget Sound. And it

4 was multiple vessels were loaded and delivered to

5 vessels because there was not two vessels available

6 for the two requests we made.

7 Q Now, first of all, that is not first-hand

8 information that you have.

9 A No.

10 Q I assume it came from Ms. Evans again?

11 A Yes, you're correct.

12 Q Did she tell you when that occurred and what

13 ships were involved in that movement?

14 A No, she did not.

15 Q So it could have happened in 2012, or it could

16 have happened --

17 A Yesterday.

18 Q You don't know?

19 A I don't know.

20 Q How frequently has that happened, do you know?

21 A I would be speculating.

22 Q Do you know if anybody in -- you said you

23 haven't communicated with Arrow in the past about such

24 delays. Do you know if anybody else at Crowley has?

25 And if so, whom, so we can ask Mr. Harmon about that?

0366

1 A I believe Ms. Evans has.

2 Q But you don't know when that occurred?

3 A I don't know, no.

4 Q Or how many times that's occurred?

5 A (Witness shakes head negatively.)

6 Q If one of your customers had been put behind

7 schedule, as this statement says, due to delays in

8 transporting crews to vessels, wouldn't you expect

9 that Arrow would be -- would, A., have been notified;

10 and, B., demurrage would have been sought to be

11 recovered from Arrow Launch?

12 JUDGE FRIEDLANDER: What is demurrage

13 before I get an answer on that?

14 Q Let's, first, ask the witness what he

15 understands what demurrage or detention is in

16 transportation law parlance.

17 A Demurrage is a charge for delays as a result

18 of some fault.

19 JUDGE FRIEDLANDER: Okay. Thank you.

20 MR. WILEY: Thank you, Your Honor.

21 BY MR. WILEY:

22 Q If that had occurred, wouldn't you have

23 thought that Crowley would have sought to recover

24 demurrage from Arrow?

25 A Generally speaking, no. And the reason I

0367

1 wouldn't do that is the same reason I wouldn't -- I

2 don't penalize my contractors for doing what they can

3 do with the tools and the equipment they have. If I

4 have a contractor that goes on board and fails to

5 perform --

6 Q Then you would?

7 A -- then I would begin to seek through them.

8 But in the case of a launch, if the delay is

9 specifically just getting personnel on board and then

10 that personnel has to perform work in order to meet a

11 schedule, it's a compounding effect. It's hard to

12 quantify and say, okay, Arrow Launch you're

13 responsible for ten minutes here. This guy is

14 responsible -- it's not practical.

15 Q That brings up a point we talked about

16 yesterday. In the scheme of things, in the chain of

17 involvement for service to vessels at anchor, there's

18 a lot of players, aren't there?

19 A Yes, there are.

20 Q There's suppliers. There's vendors. There's

21 provisioners. So delays are hard to attribute to one

22 specific actor, which is what, I think, you were just

23 saying about demurrage claims. It's hard to identify

24 who's responsible?

25 A It's hard to apportion that responsibility.

0368

1 Q And so in instance -- let's talk about the

2 instance when Ms. Evans supposedly found a delay in

3 getting a launch to a vessel. Do you know personally

4 whether that was solely allocable as fault to Arrow,

5 or could it have involved vendors, provisioners, ships

6 chandlers, someone else, plural, in the chain of

7 service?

8 A I don't know.

9 Q For instance, when Crowley gets in a spot

10 about its own equipment, isn't it true that Crowley

11 has had to hire tugs from Foss during peak times to

12 provide tug assist to your own customers?

13 A Absolutely. We have a mutual arrangement to

14 do that.

15 Q So you do that frequently to cover equipment

16 availability issues?

17 A Because there's competition in the

18 marketplace. They have the ability to subcontract

19 out.

20 Q Let's say there wasn't competition in the tug

21 marketplace. Wouldn't Crowley just buy more tugs

22 potentially?

23 A If it was financially justifiable. That's a

24 pretty big nut to crack.

25 Q If a launch company wants to expand its fleet

0369

1 to better serve its customers, you wouldn't dispute

2 that they have a right to do that, would you?

3 A Absolutely not.

4 Q Let's go on to the next statement that you

5 make. It says "When a petroleum tanker operated by a

6 major oil company is behind schedule, it becomes a

7 serious problem for Crowley."

8 So I think I understand this one pretty

9 easily, but I want to check. So you're saying by this

10 that your oil companies' problems are your problems;

11 correct?

12 A Correct.

13 Q Okay. In your view, what factors are

14 associated with a delay in an oil tanker's schedule

15 while operating in the Anacortes/Vendovi area? In

16 your view, what factors are associated with a delay in

17 an oil tanker's schedule while operating in the

18 Anacortes/Vendovi area? What factors could involve --

19 A Could delay them?

20 Q Yes.

21 A Well, weather.

22 Q Right. That's the first one that I thought

23 of. What else?

24 A We already talked about launch service.

25 Q And provisioners?

0370

1 A Operations challenges, maintenance on board,

2 regulatory constraints, the dock itself not being

3 ready, other ships in the line. So all those factors

4 went in. There's a lot of variables.

5 Q That's what I wanted to ask you about. For

6 instance, would vessel traffic and available dock

7 space and anchorage space impact a vessel's schedule,

8 an oil tanker's schedule?

9 A Yes.

10 Q What type of notice do you feel -- looking at

11 your own policy about advanced notice, what type of

12 notice do you feel is reasonable to give a launch

13 provider about service to Crowley?

14 A I haven't really thought about that. I would

15 say a couple hours probably.

16 Q And you say six hours for Crowley's policy,

17 don't you?

18 A In this particular case, yes. This is a

19 separate division of Crowley that I'm not in, but,

20 yes. And I've never read that for the record.

21 Q But now that you see there's a six-notice

22 provision -- six-hour notice provision. Excuse me.

23 A Correct.

24 Q Does Crowley itself, in your view, ever play

25 any role in possible scheduling delays?

0371

1 A Does Crowley itself? Certainly.

2 Q Let's talk about -- we're nearing the

3 homestretch here. If this application is denied, how

4 would this affect your business that -- do you see

5 that question there in bold? It's the third block.

6 A Correct.

7 Q And then you have a series of sentences there

8 that I'm going to ask you about but probably as a

9 group rather than individually. When you say you

10 would be less able to provide a reliable, timely, and

11 cost-effective service for your major oil companies,

12 again, you agree that Arrow provides around-the-clock

13 service and -- is that a yes?

14 A Yes.

15 Q And, to your knowledge, the launch has the

16 launch vessels to serve multiple vessels, does it not?

17 A To my knowledge, yes.

18 Q When you say that less reliable, timely, and

19 cost-effective service for oil companies affects the

20 retail market, are you saying that the local,

21 regional, and national pump prices are, in fact,

22 affected by delays that Crowley experiences in the

23 Anacortes anchorage zone? I'm trying to understand

24 what you're saying there.

25 A Any delay in shipping creates additional

0372

1 costs.

2 Q As you've testified, the delay in shipping

3 could be caused by a host of actors; correct?

4 A Correct.

5 Q But I just wondered would that kind of broad

6 statement -- I realize counsel may have drafted it.

7 This, in turn, ultimately, impacts the retail market.

8 Can you be a little bit more specific about what you

9 mean? Are you talking about cost pass-throughs,

10 retail price adjustments? I'm just not sure what

11 you're saying there.

12 A Well, the additional cost of shipping would

13 reflect in the cost of transportation. Cost of

14 transportation is a fairly small percentage of the

15 cost of the goods at the pump, for example.

16 Q Yeah.

17 A It does impact our business within that

18 market, and it impacts our relationship in that

19 market.

20 Q It's pretty minor is my point and any

21 impact --

22 A To the retail market.

23 Q To the retail market; correct?

24 A Yes.

25 Q By this statement, I assume you are not

0373

1 suggesting that Arrow Launch Service delays could

2 increase the retail price of gas, are you? You

3 haven't established that there have been any delays

4 other than what you referred to. I hope you're not

5 blaming Arrow by that statement for retail gas price

6 increase.

7 A No.

8 MR. BENTSON: Objection, asked and

9 answered.

10 JUDGE FRIEDLANDER: And he has answered

11 it, so --

12 MR. WILEY: We're moving on.

13 JUDGE FRIEDLANDER: Yeah. We're moving

14 on.

15 BY MR. WILEY:

16 Q When you note your belief there that allowing

17 another company in the market would, quote, lower the

18 price charged to all customers in the area, what do

19 you mean specifically?

20 A Creating competition in any environment

21 creates more competitive pricing, and in this case,

22 it's regulated. So the rate that will be charged

23 won't change. So the number of launches times the

24 number of hours will still be the same. It's all the

25 other ancillary charges. All the other ancillary

0374

1 services is what we would anticipate --

2 Q And you understand, do you not, that all those

3 other ancillary charges, like forklifts, cranes, etc.,

4 are not regulated by this Commission whatsoever?

5 A Correct. I thought that's what I just tried

6 to state.

7 Q So your point is that competition will mean

8 that the regulated rates will not change, but the

9 ancillary service rates will; is that correct?

10 A Correct.

11 Q Okay. And you understand that to provide the

12 forklifts and cranes, etc., you don't need a

13 certificate from this Commission?

14 A Yes.

15 Q So you're aware, then, that MEI has proposed

16 tariff rates that match Arrow's rates?

17 A Yes, I am.

18 Q And those rates, then -- the rates that the

19 Commission has jurisdiction over would then not go

20 down if that tariff was approved?

21 A Correct.

22 Q Do you have any knowledge about the specific

23 tariff proposal that MEI made -- has filed in this

24 application?

25 A No, I do not.

0375

1 Q Are you aware that MEI intends to impose a

2 requirement that invoices greater than $5,000 are due

3 upon receipt?

4 MR. BENTSON: Objection, lacks

5 foundation.

6 MR. WILEY: Your Honor, it's in the

7 record. I'll show him the exhibit and show counsel

8 the exhibit if you want.

9 JUDGE FRIEDLANDER: Go ahead. Let's go

10 through the foundation.

11 MR. WILEY: Okay. Okay. Let me get

12 the exhibit.

13 Why don't we take just a couple-minute break

14 for me to pull it out.

15 JUDGE FRIEDLANDER: Okay. Thank you.

16 We'll go off the record for a couple minutes.

17 (A break was taken from 9:44 a.m. to

18 9:44 a.m.)

19 JUDGE FRIEDLANDER: Okay. We'll go

20 back on the record.

21 BY MR. WILEY:

22 Q I'm handing you what's been marked as RES-10.

23 A Okay.

24 Q I assume you've not seen that before?

25 A No, I have never seen this.

0376

1 Q I don't mean to put you on the spot,

2 Mr. Aikin, but if you go to the second page and read

3 the last note.

4 A The last note under "Terms."

5 MR. WILEY: If I can approach the

6 witness and point this?

7 JUDGE FRIEDLANDER: Yes.

8 A Okay. Net 30 days. On the 31st day past the

9 original invoice date, a 1 1/2 percent late charge

10 will be added per month to the outstanding balance

11 until full payment is received. Late charges are

12 automatically applied on every consecutive 30-day

13 payment interval and not subject to proration.

14 Invoices greater that 5,000 are due upon receipt.

15 Q So my question was: Were you aware of that?

16 And your testimony was you were not?

17 A No.

18 Q Thank you. To your knowledge, does Arrow

19 Launch have such a requirement about payment of cash

20 if the services exceed $5,000?

21 A I'm not aware.

22 Q And talking further about the competitive

23 advocacy that you've made here, are you aware that in

24 a regulated environment that a loss of customers to a

25 certificated provider might also have an adverse

0377

1 effect on prices? Do you understand that concept?

2 A No. But you could explain it.

3 Q In other words, if Arrow loses customers in a

4 high-density, lower-cost service area like Anacortes,

5 it's possible, is it not, that its remaining costs to

6 serve other areas could increase because it doesn't

7 have that revenue?

8 A Certainly.

9 Q So in that construct, prices could go up if

10 approved by the Commission if the carrier's costs were

11 going up; correct?

12 A Key phrase being "if approved by the

13 Commission."

14 Q That goes without saying. If the Commission

15 approved that, then it would have the converse effect

16 that you talked about at least to other customers

17 potentially?

18 A Right. But other operators would have the

19 same opportunity.

20 Q But for the existing provider, their cost

21 could go up, hence, their rates could go up, hence,

22 their customers' costs, the remaining customers that

23 the applicant can't serve, that could go up; correct?

24 A As I've stated, though, our concern is

25 long-term growth in our business, and that wouldn't

0378

1 impact it in that manner.

2 Q Speaking of that issue, Mr. Aikin, have you

3 discussed -- have you or anyone at Crowley, to your

4 knowledge, discussed Crowley's long-term growth plans

5 with your existing provider and asked them how they

6 could serve them and serve them with increased service

7 enhancements if you desire that?

8 A No, we have not.

9 MR. WILEY: No further questions at

10 this time, Your Honor.

11 JUDGE FRIEDLANDER: Okay. Thank you.

12 I have Ms. Endejan.

13 MS. ENDEJAN: Yes. Thank you.

14

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

16 BY MS. ENDEJAN:

17 Q Good morning, Mr. Aikin. My name is Judy

18 Endejan, and I represent Dr. -- I'm sorry. It's too

19 early. I represent Pacific Cruises Northwest, Inc.

20 A Good morning.

21 Q And I just have a few follow-up questions to

22 those asked by Mr. Wiley. And I believe he asked you

23 a question about the Crowley tariff, which is

24 Exhibit MA-1. Do you still have that in front of you?

25 A This document?

0379

1 Q Correct. Thank you. And he asked you some

2 questions about the six-hour notice period, and that

3 is in paragraph 7 of this. Do you see that?

4 A Yes, I do.

5 Q Okay. So if Crowley meets that six-hour

6 period, would it be fair to say that you would

7 consider that providing reasonable service?

8 A As stated previously, this is a business unit

9 that I'm not a part of, so I -- I would say -- if it

10 was my business unit, yes, I would say I would meet

11 it, but I can't speak for this one.

12 Q What I'm getting at here, Mr. Aikin, is kind

13 of your -- when you use the term "delay" what you mean

14 by that. When you use the term "delay," do you mean

15 delay by the provider who does not meet what you want

16 the provider to meet?

17 In other words, if you say I need you there in

18 half an hour and the provider says I can't get there

19 for an hour, do you consider that to be -- is that

20 what you mean by delay?

21 A That's an impact on our schedule, yes, but,

22 typically, it's not that short of time.

23 Q If the provider meets, you know, say in

24 Crowley's instance, the six-hour notice period, would

25 you consider that still delay if you call up and say I

0380

1 want a tugboat here in two hours and they can't get

2 there for six?

3 A I would still consider it a delay, but it

4 meets the terms of this particular tariff. So it's

5 still a delay to the operator who wanted it hour one

6 but didn't receive it until six, but still they're

7 within their task of contract, if you will.

8 Q And the task of contract, would you agree, is

9 intended to set up kind of the reasonable terms and

10 conditions of service?

11 A That's -- yes, I would say that's a good

12 interpretation.

13 Q Okay. Got it. And based on your testimony

14 here, you said our concern is long-term growth in our

15 business. You just said that.

16 A Correct.

17 Q I believe those are your exact words. So

18 would it be fair to state that a lot of the concerns

19 that you express in RSE-8 are more future oriented

20 toward meeting your future business objectives as

21 opposed to a statement about your past experience?

22 A Well, but our future projection is based on

23 our past experience. Our future concern is based on

24 past experience, and not to say that the past

25 experience has been bad, but there are incidents where

0381

1 it would predict potential problems in the future.

2 Q Okay. But they haven't occurred yet?

3 A We have had delays.

4 Q Okay. Well, and I believe that the last

5 portion of RSE-8 where you state "We believe that

6 allowing another company into the market . . . ,"

7 etc., your last sentence, that reflects, would it be

8 fair to say, Crowley's belief that competition is

9 always better?

10 A Correct, yes.

11 Q Okay. And is that also based on the

12 assumption that the market in which you're operating

13 can support more than one provider?

14 A Yes. That would be an assumption, yes.

15 Q Okay. And are you aware of the costs that a

16 provider such as Arrow must incur to be able to

17 provide launch services throughout the entire Puget

18 Sound region, not just Anacortes?

19 A I have a reasonable understanding. I don't

20 have any exact knowledge.

21 Q Okay. And, similarly, you have not studied

22 whether there would be sufficient demand to support

23 more than one launch provider throughout the entire

24 Puget Sound region?

25 A I haven't studied that, no.

0382

1 Q So, basically, you are not in a position to

2 say one way or the other today whether that would be

3 possible, that there would be sufficient demand to

4 support more than one provider?

5 A From a technical answer, no.

6 Q Okay. Thank you. And if I could hand you --

7 if I may approach the witness, Your Honor -- a statute

8 that is involved in this proceeding, which is

9 RCW 81.84.020.

10 Mr. Aikin, I'm not asking you as an attorney.

11 But have you ever seen this statute before?

12 A No, I have not.

13 Q And so you were not -- and you're not a

14 lawyer; correct?

15 A Correct.

16 Q So you wouldn't be in a position one way or

17 the other to state whether or not Arrow has failed or

18 refused to furnish reasonable and adequate service

19 within the meaning of this statute, are you?

20 MR. BENTSON: Your Honor, before the

21 witness answers, I object to that question. We've

22 already established he's not a lawyer. He's never

23 seen the statute before. He lacks foundation to

24 answer it. And, third, the -- well, I think those --

25 he doesn't have any advance notice of the cross-exam

0383

1 exhibits that Pacific Cruises plan to use on

2 Mr. Aikin. In any event, for all these reasons, this

3 question should be -- I object.

4 MS. ENDEJAN: Your Honor, it's a

5 statute. It's not something that has to be marked as

6 a cross-exhibit, and I'm just asking this witness's --

7 the purpose of this witness's testimony here today --

8 and maybe let me rephrase the question. That might

9 solve the problem.

10 JUDGE FRIEDLANDER: And taking into

11 account you're not an attorney, we understand that

12 will guide your answer.

13 BY MS. ENDEJAN:

14 Q So, basically, you're not here today to state

15 that Arrow has failed or refused to provide Crowley

16 with adequate service so that this Commission would

17 take action to allow another certificate-holder to

18 serve in the marketplace?

19 A No. In fact, we have a very strong

20 relationship with Arrow. We've used Arrow for many

21 years. We've been happy with their service. There

22 are periodic problems that we've had. Those are just

23 problems of operation. I don't want in any way this

24 to slander or blind my relationship with Arrow Launch.

25 No, I don't have that knowledge.

0384

1 MS. ENDEJAN: Thank you. Nothing

2 further.

3 JUDGE FRIEDLANDER: Thank you. Do we

4 have redirect?

5 MR. BENTSON: Is the Staff going to --

6 MR. BEATTIE: Your Honor, we did not

7 indicate any time, but Mr. Aikin's testimony has

8 raised some questions for Staff. So I'd ask for about

9 10 minutes of cross?

10 JUDGE FRIEDLANDER: I'm amenable to

11 that. I don't think there's any -- we're not bound by

12 the estimates, so please go ahead.

13 MR. BEATTIE: Thank you, Your Honor.

14

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

16 BY MR. BEATTIE:

17 Q Mr. Aikin, I'm Julian Beattie. I'm with the

18 State Attorney General's Office, and I'm representing

19 the Commission Staff in this proceeding.

20 Crowley is a user of launch services. Do I

21 have that correct?

22 A You are correct.

23 Q I believe I heard you say that you, as in --

24 when I say "you," I mean Crowley. Crowley uses launch

25 services to transport personnel?

0385

1 A Correct.

2 Q Can you tell me more about these personnel?

3 What do you mean by that?

4 A Well, we've got shipboard personnel, which are

5 our mariners. We have got regulators that we

6 transport out for vessel inspections. Indirectly,

7 pilots would be transported out and then repair

8 personnel, so contractors, and then Crowley personnel,

9 shoreside personnel.

10 Q Answer if you know. A Crowley vessel at

11 anchor, would you consider that to be public property

12 or private property?

13 A Private property.

14 Q Would Crowley allow anybody from the general

15 public to board one of its vessels at anchor that came

16 on a launch service on a launch?

17 A No.

18 Q Mr. Aikin, yesterday we heard testimony and

19 there has always been prefiled written testimony in

20 this matter that Crowley -- excuse me. That the

21 Commission has never received a complaint about Arrow

22 Launch's service from Crowley. Do you think that that

23 statement is accurate?

24 A I would have no way of knowing whether that's

25 accurate or not.

0386

1 Q Have you personally complained to the

2 Commission ever about Arrow Launch's service?

3 A No, I have not.

4 Q Do you know if anybody else within Crowley has

5 ever complained about Arrow Launch's service?

6 A I know that Lindy Evans has communicated with

7 the UTC about a variety of concerns, but I don't think

8 they were complaints. She was trying to understand

9 the process, the system.

10 Q Can you tell us a little more about that, what

11 you know?

12 A Part of her inquiry was around a solicitation

13 that we put out on the street. She wanted to make

14 sure that what we were doing was legal. So we put out

15 a solicitation for launch services in the Northwest --

16 actually, up and down the coast.

17 Q Are you aware that Ms. Evans contacted the

18 Commission in July of 2013 to make an inquiry about

19 Arrow Launch's charges?

20 A I don't know specifically, but that would not

21 surprise me.

22 Q Do you understand that Washington state

23 regulates launch services currently?

24 A Yes, I do.

25 Q Are you aware of any other state that

0387

1 regulates launch services?

2 A I do believe California does as well.

3 Q Can you tell us a little bit about

4 California's regulation?

5 A I don't know the regulations specifically, so

6 I can't really speak to it.

7 Q Do you know if California regulates the rates

8 of launch services?

9 A I'm not sure.

10 Q Do you know if California provides service

11 territory protection as in allows monopolies?

12 A No. I don't know.

13 Q You did testify that there are multiple

14 providers operating in particular markets in

15 California?

16 A Correct, in San Francisco and in Los Angeles.

17 Q Are you able to tell us anything about how

18 Arrow's rate structure compares to the rate structure

19 of companies operating in California launch services?

20 A Unfortunately, I don't compare those, so I

21 don't know. I don't see those invoices.

22 Q We heard some talk today about ancillary

23 charges versus charges that relate to launch boat

24 hours, if you will. Can you tell us anything about

25 how much -- what percentage of the money that Crowley

0388

1 pays to Arrow is for launch boat hours versus

2 ancillary charges?

3 A Again, I don't know the specific breakdown of

4 it.

5 MR. BEATTIE: Thank you. No other

6 questions.

7 JUDGE FRIEDLANDER: Thank you.

8 Redirect, Mr. Bentson?

9 MR. BENTSON: Thank you, Your Honor.

10

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

12 BY MR. BENTSON:

13 Q Mr. Aikin, you testified on cross-examination

14 that you are the director of West Coast engineering

15 petroleum services at Crowley?

16 A That's correct.

17 Q I don't know if we got a summary -- can you

18 give a short summary of what your job description is,

19 what your duties are in that position?

20 A The simplist form is I keep them running.

21 Q Do you care to elaborate on that?

22 A Yeah, a little bit. My responsibility is to

23 make sure that all the vessels that are under my care

24 and custody are within regulatory compliance, that

25 they meet all the standards, that they operate

0389

1 properly, that my engineers on board manage them

2 properly and maintain them according to the rules that

3 we've established internally as well as external

4 regulations.

5 Q And does your oversight for those

6 responsibilities does that extend across the entire

7 West Coast?

8 A Yes, it does.

9 Q You were asked about invoices. I think it was

10 900 and some odd invoices that were mentioned during

11 your cross-examination that Mr. Wiley mentioned. Do

12 you know how much Arrow invoiced -- the gross amount

13 Arrow invoiced Crowley in 2015?

14 A 2015 my recollection is about 980-ish,

15 somewhere in that range.

16 Q And how about in 2016, if you know?

17 A 2016 was less. We were at 750 approximately,

18 750,000, and that's just for the Northwest Arrow.

19 Q How often does Arrow -- does Crowley use Arrow

20 in Anacortes?

21 A Probably every day or darn near.

22 Q Do you know how many launch vessels Arrow

23 keeps in Anacortes every day?

24 A Not specifically. I've seen three of my own

25 eyes, but they move between Port Angeles and Anacortes

0390

1 on a need basis, I assume.

2 Q To your knowledge, do they typically keep four

3 vessels there?

4 A I've never seen four, but that -- I don't know

5 where Jack ties all his boats up.

6 Q The Staff, during their cross-examination,

7 asked you about being contacted by Lindy Evans about

8 Arrow Launch's charges, and you said that wouldn't

9 surprise you. Why is that? What is it about the

10 charging that wouldn't surprise you?

11 A Well, in 2013 Lindy took over the warehouse

12 facility, and we were growing the facility. And she

13 became very frustrated with that service.

14 Q Okay. Can you explain what the source of the

15 frustration was?

16 A The source of the frustration was that the

17 ancillary charges were fairly high and inconsistent in

18 the billings. The director of operations at the time

19 put some onus on her to look into it to get a handle

20 on it, because it was just a total -- it was the cost

21 of our business. So we wanted to manage that cost.

22 She was asked to look into it, and she became

23 frustrated trying to get answers and address the

24 details of the invoice.

25 Q Are you familiar with a practice in your

0391

1 industry sometimes referred to as triple

2 booking/triple charging?

3 A Well, double and triple charging, yes, I am

4 familiar with that.

5 Q What is that phrasing?

6 A Well, in the case -- what we were referring to

7 specifically with the launch services is if I have two

8 vessels out at anchor and another vessel is owned by

9 another customer and we need to provide service to

10 each of the two vessels of ours, one vessel -- one

11 launch could go to all three. Each individual vessel

12 was charged the standard tariff rate even though the

13 entire transaction took less than two hours.

14 Q Was that a source of Crowley's frustration?

15 A Yes, it was.

16 Q You mentioned that Crowley also had

17 frustrations with ancillary charges. Anything

18 specific? Any specific equipment -- forklifts,

19 cranes?

20 A There was crane service was one of the bigger

21 ones that I heard Lindy mention to me.

22 Q Why is that?

23 A The crane service --

24 MR. WILEY: Objection, hearsay. Your

25 Honor, I've got to have more foundation on this. This

0392

1 is all through Ms. Evans.

2 JUDGE FRIEDLANDER: I would like some

3 more foundation on it as well, Ms. Bentson.

4 MR. BENTSON: Your Honor, I'd just say

5 in response that Mr. Wiley asked extensive questions

6 of the witness according to what Ms. Evans told him.

7 He's come here as a representative of Crowley --

8 JUDGE FRIEDLANDER: Right.

9 MR. BENTSON: -- having spoken with

10 many of his subordinates, and rather than bring all of

11 them in, he's speaking on behalf of the company.

12 JUDGE FRIEDLANDER: I get that. What

13 I'm asking, though, is for more foundation,

14 specifically on the crane charges.

15 BY MR. BENTSON:

16 Q Okay. So, Mr. Aikin, what's your familiarity

17 with the crane charge problem that Crowley has?

18 A The crane that's located there was -- there's

19 a port crane that is in Anacortes, the Cap Sante

20 Marina, and that port crane had a -- if I -- as a

21 business within Anacortes, I could get the key and

22 operate it through a monthly charge to the port.

23 Arrow was charging a fairly high rate. I

24 don't know off the top of my head what that was, but I

25 was told it was a high rate for that use of that

0393

1 crane. And, yet, as -- the crew had used that crane,

2 but then they would also use their boom truck. It was

3 inconsistent as to what was being used and the charges

4 that were being incurred.

5 Q When you say the charges for the port crane,

6 are you referring to the labor cost of the crane

7 operator?

8 A No. It's operated by the individual. It's

9 got a cord that comes down. It's a boom. You push

10 the buttons, and you can operate yourself as a

11 business.

12 Q So it's not the labor charge that frustrated

13 Crowley. It was the actual cost of using port-owned

14 equipment?

15 A That we were --

16 MR. WILEY: Objection, leading,

17 extremely leading.

18 JUDGE FRIEDLANDER: And it's -- this

19 one is a bit compound. So try to take it a little bit

20 more slowly and ask it one at a time.

21 MR. BENTSON: It was an attempt to

22 summarize the testimony he had already given.

23 BY MR. BENTSON:

24 Q Mr. Aikin, if you can, what was the

25 frustration with the crane charge?

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1 A The frustration was they were excessive

2 considering what equipment was being used.

3 Q Was Crowley -- and was Crowley concerned by

4 the labor charge?

5 MR. WILEY: Objection, foundation,

6 hearsay.

7 JUDGE FRIEDLANDER: Mr. Bentson?

8 MR. BENTSON: Your Honor, he has

9 already testified that Crowley was concerned about a

10 charge with the crane. I'm trying to explore the

11 foundation of that frustration and complaint.

12 MR. WILEY: This appears to all be

13 based with conversations with Lindy Evans about her

14 perception of the crane. He's in Seattle managing

15 engineering. We're getting very detailed about this

16 issue right now, Your Honor, and I think it's hearsay.

17 MR. BENTSON: And, Your Honor, the

18 rules allow hearsay.

19 JUDGE FRIEDLANDER: I know. I'm going

20 to get to that. We have allowed a great deal of

21 latitude to Arrow, so I'm going to allow Mr. Bentson

22 and MEI a great deal of latitude to explore with

23 Mr. Aikin Ms. Lindy's concerns -- or Ms. Evans's

24 concerns. I apologize.

25 So I will allow the questioning, but I think

0395

1 we need to have a conversation after this about why

2 Ms. Evans is not here. Because it does appear that

3 she was the one mainly responsible for the interaction

4 with Crowley -- I'm sorry. With Arrow.

5 MR. BENTSON: Yes. Your Honor, we can

6 have that conversation.

7 JUDGE FRIEDLANDER: Please continue.

8 BY MR. BENTSON:

9 Q So, Mr. Aikin, if I understand correctly,

10 Crowley's concern was not about the labor charge?

11 A Yes. That's correct.

12 Q So the concern was with the equipment charge?

13 A The concern was with the equipment charge,

14 because it was equipment that Arrow, basically, didn't

15 pay for -- that doesn't pay for that other than a

16 $30-a-month charge to utilize that crane. Yet, there

17 was no savings passed on. There was no -- anyway,

18 there was no savings passed on. Let's put it that

19 way.

20 Q You testified during the Staff's

21 cross-examination to a solicitation Crowley sent to

22 launch service providers?

23 A Yes.

24 Q Can you tell us more about that solicitation?

25 A The solicitation was published through our

0396

1 procurement group to seek launch services up and down

2 the West Coast. So what we were looking to do was to

3 have a direct relationship with a launch provider to

4 provide consistent services in each of the ports.

5 Q Who was the solicitation sent to?

6 MR. WILEY: Your Honor, I am going to

7 object to this. You specifically limited our cross to

8 the statement by Mr. Aikin. Now we're going way far

9 afield with RFPs that were brought out by counsel. I

10 didn't know counsel was going to be asking questions.

11 Now here we're going way off the statement.

12 I objected and sought to strike the statement

13 because I claimed it wasn't proper rebuttal. Now here

14 this witness is becoming a much broader witness than

15 you intended by your ruling.

16 JUDGE FRIEDLANDER: And I did allow the

17 statements of Mr. Aikin regarding the RFP or the

18 proposal or the solicitation to go into testimony.

19 I'm going to allow it here, and I'm going to allow

20 some redirect on it because he did testify as to it.

21 BY MR. BENTSON:

22 Q Again, Mr. Aikin, who was that solicitation

23 sent to?

24 A It was Arrow Launch, Marine Express,

25 U.S. Water Taxi, and I think there was one other one

0397

1 in L.A. that I can't remember the name.

2 Q Do you know if it was sent to MEI?

3 A Yes. That would be Marine Express.

4 Q And did Crowley receive a response to that

5 solicitation?

6 A We received responses from MEI or Marine

7 Express and U.S. Water Taxi but not from Arrow.

8 Q To your knowledge, did you receive that

9 response before MEI applied for its certificate?

10 A I don't know the dates.

11 Q I'm sorry. I may have not heard you. Did you

12 receive response from Arrow Launch?

13 A No, we did not.

14 Q What was the purpose of the solicitation?

15 A The purpose of the solicitation was to look at

16 the cost options and potential savings for our launch

17 operations up and down the coast.

18 Q Was any other information provided in that?

19 Did it express satisfaction with current service

20 providers or anything to that effect?

21 A No. We didn't allude to whether we were happy

22 or sad. We just simply stated these were the services

23 we were looking to contract.

24 Q Why did you want to send that solicitation?

25 A It was -- it initiated out of the frustration

0398

1 that Lindy had in 2013.

2 Q You testified that your area of responsibility

3 extends to all the ports on the West Coast?

4 A Correct.

5 Q And I believe you testified earlier that in

6 every other port except the Puget Sound on the West

7 Coast you have multiple launch service providers?

8 A Correct.

9 Q And does Crowley still support MEI's

10 certificate application?

11 A Yes.

12 MR. BENTSON: No further questions,

13 Your Honor.

14 JUDGE FRIEDLANDER: All right. Thank

15 you. Mr. Wiley, were you --

16 MR. WILEY: Yes, I have a few redirect

17 on the RFP as you suggested.

18 JUDGE FRIEDLANDER: Actually, that's

19 not redirect. That's recross.

20 MR. WILEY: Excuse me.

21 JUDGE FRIEDLANDER: And we don't allow

22 that.

23 MR. WILEY: So you're allowing redirect

24 but no recross on a topic that I didn't know was going

25 to come up?

0399

1 MR. BENTSON: Your Honor, redirect

2 examination of -- if I can be heard, redirect

3 examination of topics raised during the witness's

4 testimony are expressly allowed under

5 WAC 480.07.470(12). The witness testified about the

6 solicitation on cross, and I followed up with redirect

7 questions about it. The rules specifically allow that

8 to happen.

9 MR. WILEY: I'm not disputing the

10 rules, Your Honor.

11 JUDGE FRIEDLANDER: Let me ask

12 Mr. Bentson a question. Was anything about the

13 solicitation in the shipper support statement that was

14 filed on Mr. Aikin's behalf by MEI?

15 MR. BENTSON: The shipper support

16 statement, RSE-8, does not reference the solicitation,

17 but the solicitation was part of the circumstances

18 under which I think the process by which this whole

19 process began.

20 But the point is -- I'm not saying it was in

21 this statement. It was asked about -- I mean,

22 Mr. Wiley asked several questions about did you ever

23 communicate with Arrow any concerns? Were meetings

24 canceled with top management at Crowley? There was a

25 series of questions on whether anything was

0400

1 communicated to Arrow on -- and that was the purpose

2 of Crowley's cross. I think it would be dishonest to

3 ignore the fact that a solicitation was sent to Arrow.

4 JUDGE FRIEDLANDER: Mr. Wiley.

5 MR. WILEY: Yes, Your Honor. First of

6 all, if that was a comment at impugning our questions,

7 I really take issue with that.

8 Now, if I could say, Your Honor, that it is

9 completely true that no reference was made to an RFP

10 whatsoever in RSE-8, nor was it a subject of any

11 cross-examination by me. It was first raised,

12 apparently, by Mr. Beattie. I didn't know he was

13 going to be asking questions. He did. Then it was

14 followed up on in redirect by Mr. Bentson.

15 I think a few questions, because it's a

16 surprise, would be appropriate, and I don't intend to

17 go beyond the RFP issue. We will have testimony this

18 afternoon from Mr. Harmon about the RFP. So I can do

19 that, but I would like to ask Mr. Aikin a couple

20 questions.

21 MR. BENTSON: Your Honor, to clarify,

22 in no way did I mean to disparage Mr. Wiley who has

23 behaved like a gentleman throughout the entire

24 proceeding. I didn't mean to behave -- dishonest

25 might be the wrong word. I just meant the record

0401

1 itself wouldn't be accurate if it didn't reflect that.

2 If Mr. Harmon is going to testify to the RFP

3 later and Arrow has independent knowledge of it

4 through its own witness, I don't see the purpose of

5 the recross. I'll leave it at that.

6 JUDGE FRIEDLANDER: Mr. Beattie.

7 MR. BEATTIE: Just one point.

8 Mr. Wiley expressed surprise that this came out during

9 Staff's cross-examination. Actually, Staff didn't ask

10 a question about the RFP. It was volunteered by the

11 witness, and it was actually a surprise to the

12 questioner.

13 JUDGE FRIEDLANDER: Okay. Thank you.

14 And that's my recollection as well, that this was

15 something that Mr. Aikin brought up.

16 So I think it was perfectly acceptable for it

17 to be the subject of redirect if counsel wanted to

18 explore this, but I do believe that, in a very limited

19 circumstance, Mr. Wiley should have the opportunity

20 for recross. I do not want to open this up, though,

21 as a common practice. We don't usually allow recross.

22 MR. WILEY: Thank you. I agree, Your

23 Honor.

24

25

0402

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

2 BY MR. WILEY:

3 Q Mr. Aikin, briefly, when you say that Arrow

4 did not respond to the RFP, what's that statement

5 based on?

6 A It's based on no final solicitation response

7 that included the full comprehensive bid.

8 Q So are you saying that there was a preliminary

9 response, or are you saying that Crowley never

10 received a response from Arrow?

11 A There was communication from Arrow as well as

12 other bidders.

13 Q And are you disputing that on September 16,

14 2016, Arrow Launch submitted a response to the RFP?

15 A I did not say that --

16 Q Disputing that Arrow Launch submitted a

17 response to the RFP to Crowley on September 16, 2016?

18 A I don't believe their response included -- met

19 the intent of the proposal. I don't know.

20 Q Who is giving you this -- what's your

21 knowledge based on about that it didn't meet the

22 intent of the proposal?

23 A Conversations with Lindy Evans who was the

24 manager of that RFP.

25 Q Okay. Did she ever communicate, to your

0403

1 knowledge, or has anyone at Crowley ever communicated,

2 to your knowledge, that Crowley felt it wasn't in

3 complete response?

4 A That was the communication I received is it

5 was not in full response.

6 Q No. That's not my question.

7 A I'm sorry.

8 Q My question is: Did Ms. Evans or anyone else

9 at Crowley, to your knowledge, ever communicate to

10 Arrow Launch that their September 16, 2016, submission

11 was incomplete or otherwise unsatisfactory?

12 A I do not have first-hand knowledge of that.

13 Q So you wouldn't dispute it -- if there was

14 testimony from Mr. Harmon that there was no such

15 communication, you wouldn't dispute it?

16 A I wouldn't have the knowledge to dispute it.

17 Q So you really don't know anything about their

18 response, do you?

19 MR. BENTSON: Objection, asked and

20 answered.

21 JUDGE FRIEDLANDER: I'd like to hear

22 it. Please go ahead and answer.

23 A I'm aware of e-mail exchanges around the

24 context of the bid, and a statement I read last night

25 in an e-mail was that they were not going to provide

0404

1 pricing.

2 Q Is that in Washington or in California or

3 where?

4 A In Washington.

5 Q Okay. They provided their tariff, did they

6 not?

7 A I do not know.

8 MR. WILEY: No further questions, Your

9 Honor.

10 MS. ENDEJAN: Your Honor, could I just

11 ask one question?

12 JUDGE FRIEDLANDER: No. No. We don't

13 allow recross. What is this question regarding?

14 MS. ENDEJAN: It's about the

15 solicitation. It does not go beyond that.

16 JUDGE FRIEDLANDER: You get one

17 question. That's it.

18

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

20 BY MS. ENDEJAN:

21 Q Okay. Mr. Aikin, would you agree that Crowley

22 put out this RFP with the hope it would get just one

23 provider, one-stop shopping, for its needs, and,

24 thereby, it would save Crowley money in the long run?

25 A We were not under the illusion that we would

0405

1 have one single operator up and down the entire West

2 Coast. We would have multiple operators. One in each

3 port was the theory.

4 JUDGE FRIEDLANDER: Thank you. I have

5 no clarification questions. So I appreciate your

6 testimony. Thank you very much, and you're excused.

7 I think at this time we do need to have a

8 discussion about the availability of Ms. Evans,

9 because it would appear to me that MEI's case is

10 resting, if not entirely, on Crowley. And I have some

11 very big concerns about the fact that we've got a

12 witness who is testifying about significant billing

13 disputes when he's not necessarily the person

14 responsible for billing in the company, and Ms. Evans

15 appears to be that person.

16 Am I misunderstanding, Mr. Bentson?

17 MR. BENTSON: Well, Your Honor, just to

18 clarify, Crowley is not my client, so I do not get to

19 select who -- when a request is gone to Crowley, I

20 don't have control over who they provide in any sense.

21 The shipper support statement was submitted by

22 Mr. Aikin. It's his statement. That was who

23 Crowley --

24 JUDGE FRIEDLANDER: Let me ask you: Is

25 it his statement when he's testified that the bulk of

0406

1 it was filled out by Ms. Evans?

2 MR. BENTSON: Your Honor, I don't

3 believe that was his testimony. He did not testify,

4 to my knowledge, that Ms. Evans filled this out. He

5 said that the testimony -- he's consulted with

6 Ms. Evans and a lot of the content of what is in the

7 statement came from discussions with her. But he

8 consulted with the general counsel in drafting this

9 statement.

10 JUDGE FRIEDLANDER: I'm sorry to

11 interrupt. I think we need to review the transcript

12 and find out exactly what was said, because my

13 understanding is that he indicated under questioning,

14 cross-examination from Mr. Wiley, that the bulk of the

15 statement was related to information either provided

16 to him or originally sourced from Ms. Evans.

17 MR. BENTSON: Sorry, Your Honor. I

18 misunderstood your description of it. I thought you

19 said that Lindy Evans wrote the statement. You're

20 right. He did testify to that.

21 JUDGE FRIEDLANDER: So who has direct

22 knowledge of the information? Is it Mr. Aikin or

23 Ms. Evans?

24 MR. BENTSON: Well, it sounds like

25 Ms. Evans has the most personal knowledge, but he's

0407

1 testifying on behalf of a company. It's fairly

2 typical for a 30(b)(6) witness for a company to

3 testify on the company's behalf if they've done

4 appropriate research.

5 JUDGE FRIEDLANDER: If they've done

6 appropriate research, I would say yes. The problem

7 with this is many questions have been raised by the

8 interveners as to specifics that Mr. Aikin is not in a

9 position to answer. These are better left, in my

10 opinion, to Ms. Evans.

11 MR. BENTSON: And that's fair, Your

12 Honor. I don't -- how would the Court, I guess, ask

13 us to proceed? We can make a request to Crowley they

14 provide Ms. Evans at a later date. I don't know what

15 else I could do on that.

16 JUDGE FRIEDLANDER: I think we're going

17 to have to have Ms. Evans. And I don't know if this

18 is going to also open up another round of discovery or

19 not, but it's frustrating from my perspective that

20 when we proceed with shipper statement -- shipper

21 support statement I expect that that shipper is the

22 individual who has direct knowledge about what is

23 being stated in the support statement.

24 I understand that corporations are large.

25 They have multiple people who are in positions that

0408

1 are related to each other and can certainly adopt

2 someone's testimony. The problem is I've got an

3 engineer who is adopting testimony of someone who is

4 directly relating to billing and disputes relating to

5 billing.

6 MR. BENTSON: Your Honor, if I could

7 clarify just one thing --

8 JUDGE FRIEDLANDER: That's fine.

9 MR. BENTSON: -- is it is subject to

10 the data request. And after the Court opened up the

11 discovery, Arrow sent data requests to MEI about the

12 circumstances surrounding the shipper support

13 statement. We provided the e-mail that was sent from

14 MEI to Lindy Evans requesting the statement.

15 That was then forwarded to Crowley's general

16 counsel who responded and said the statement would be

17 signed by someone else. The person provided was

18 Mr. Aikin. This was not MEI -- I just -- I would just

19 want to implore the Court. MEI had no control over

20 who Crowley -- who at Crowley provided the statement.

21 And we, in fact, made the inquiry to Lindy Evans. We

22 can put this data request in the record, if necessary.

23 JUDGE FRIEDLANDER: Mr. Wiley, was any

24 discovery conducted by Arrow to ask direct questions

25 of Ms. Evans?

0409

1 MR. WILEY: No. Because they're a

2 third party. Crowley is a third party, so we can only

3 propound data requests to MEI. Clearly, I understand

4 your inquiry right here. Again, I think if you look

5 at the statements that we provided, they are from

6 people who order launches and who have direct

7 experience with Arrow Launch.

8 I can't control how the supporting shipper

9 corporately develops evidence and decides who they

10 want to put forward. That's the burden of the

11 applicant to resolve, not to protestant. And, Your

12 Honor, this would be a point where I move in a trial

13 for a directed verdict.

14 JUDGE FRIEDLANDER: Mr. Bentson, do you

15 have anything to say?

16 MR. BENTSON: Well, other than, Your

17 Honor, that the data requests -- I think Mr. Wiley

18 would not dispute that they did receive the data

19 request responses I just described. If the issue was

20 that Marc Aikin, who supervises not -- he's not the

21 black-line supervisor, but he's the dotted-line

22 supervisor of Ms. Evans. The fact that if they had a

23 problem with her supervisor providing the statement

24 and then coming to testify, I just don't know why this

25 wasn't raised earlier.

0410

1 JUDGE FRIEDLANDER: What does that even

2 mean, he's the dotted-line supervisor?

3 MR. BENTSON: That was his description

4 to me when I asked him what his role -- what his

5 supervisory role was with respect to Ms. Evans.

6 JUDGE FRIEDLANDER: Okay. I think I'm

7 going to take a break. I'm going to take a brief

8 recess. I'm going to consider this and consider the

9 potential that we may need to expand the procedural

10 schedule so that we can have Ms. Evans testify in

11 front of the Commission.

12 MS. ENDEJAN: Your Honor, if I might

13 propose an alternative -- and I know the motion for

14 directed verdict is pending. It would appear that

15 this statement should be stricken from the record

16 because the witness who was cross-examined by

17 Mr. Wiley and myself, clearly, is not in a position to

18 support the allegations contained in it.

19 If the statement is stricken, then -- and it

20 is the applicant's burden to put forth sufficient

21 evidence of alleged service issues as opposed to

22 billing issues, and it's clear that this statement

23 should not go into the record because it's not

24 supported by an individual with first-hand knowledge.

25 JUDGE FRIEDLANDER: Mr. Wiley?

0411

1 MR. WILEY: Yes, Your Honor. At this

2 time, as you know, we previously sought to strike the

3 statement. You denied that motion. At this time,

4 based on the testimony, based on the fact that he

5 found no service problems personally at all, I move to

6 dismiss MEI's application.

7 JUDGE FRIEDLANDER: Mr. Bentson, do you

8 wish to respond to that?

9 MR. BENTSON: Yes, Your Honor. First

10 of all, the statement -- MEI's certificate application

11 should not be dismissed at this stage. The purpose of

12 the -- the key argument here is that the witness

13 doesn't have personal knowledge, which is not a

14 requirement to testify at this hearing. The rules

15 expressly allow witnesses to rely -- to provide

16 hearsay testimony into the record. Crowley has done

17 that today. It's in the record. The evidence is

18 there.

19 The Court denied the motion to strike RSE-8

20 before. Counsel is rehashing the same arguments.

21 Those have been rejected. It's not about striking the

22 statement. The statement is already in the record.

23 It would have to be withdrawn.

24 Mr. Aikin has testified to these matters on

25 behalf of Crowley. He spoke with multiple people whom

0412

1 he supervises across the port in Anacortes and other

2 ports that he supervises. I think that information is

3 reliable and the type -- like I said, we rely on it in

4 a civil trial and a 30(b)(6) deposition.

5 If those were -- if that's the topic a

6 corporate designee is designated to speak to, they can

7 do inquiries including talking to specific people to

8 inform the company's opinion. So that's who he's here

9 testifying on behalf of the company itself. And if

10 they needed a specific fact witness with personal

11 knowledge, they had the opportunity to seek that after

12 they got our data request responses and after the

13 prefiled testimony was submitted.

14 JUDGE FRIEDLANDER: Mr. Wiley?

15 MR. WILEY: Your Honor, it's not our

16 burden to seek the appropriate witness for the

17 supporting shipper. This is a case where the

18 applicant's case in chief no support was put on

19 whatsoever. We, of course, then answered testimony,

20 and we got in rebuttal the support that should have

21 come first.

22 It is certainly not our responsibility to

23 identify the appropriate person who would not have

24 hearsay-based testimony to come to the proceeding.

25 That is the applicant's burden, and they have not met

0413

1 it, which is why I am now moving -- I could have moved

2 earlier at the initial applicant stage. My client

3 wanted to be able to respond. Now I'm moving. That

4 statement has no foundation. It's pure hearsay.

5 JUDGE FRIEDLANDER: I've heard enough.

6 I'm ready to rule. I'm denying the motion to strike

7 the exhibit. It's filed on behalf of a company, and

8 there are many employees in a company. What I believe

9 we have here is an employee -- maybe we have someone

10 who is a dotted-line supervisor but is not in direct

11 knowledge of the actual facts that are represented in

12 this statement. We need that person. We need

13 Ms. Evans to testify.

14 And Mr. Wiley is absolutely correct. This is

15 the burden of the applicant to have the correct

16 shipper -- the correct employee of the shipper's

17 company to testify, and I believe that's going to be

18 Ms. Evans. Based on the testimony we've received

19 today, we need to have Ms. Evans as the witness for

20 Crowley.

21 MR. BENTSON: Understood, Your Honor.

22 We can -- we'll make that inquiry of Crowley today.

23 MR. WILEY: Where does that leave us,

24 Your Honor, in terms of the protest in this case? We

25 have witnesses who are going to be here.

0414

1 JUDGE FRIEDLANDER: We're not

2 continuing the hearing, at least not until all of the

3 witnesses that we have scheduled to appear today have

4 appeared. But we may have to have an additional time

5 set up for Ms. Evans, and that includes adequate

6 cross-examination, clarification questions from the

7 bench.

8 MR. WILEY: Would I also be allowed to

9 put my applicant principal witness back on after she

10 testifies? That's what normally would happen in the

11 order.

12 JUDGE FRIEDLANDER: Here's where I'm at

13 a loss. We don't have her testimony in the record, so

14 I don't know what she's going to say and neither do

15 any of you. I assume she's going to adopt the shipper

16 support statement and elaborate on it, but I have no

17 knowledge of what she would be testifying to. I just

18 know that the person who is in the best vantage to

19 give me information is not here today.

20 So we will continue with the rest of the

21 scheduled hearing, and we'll have to establish at the

22 end of the hearing today an alternative time in which

23 we can have Ms. Evans testify before the Commission.

24 And I believe it would be advantageous to all of us if

25 she had some prefiled testimony in the record as well

0415

1 so that we can anticipate what she's going to say.

2 So why don't we go ahead and take a break now.

3 We'll reconvene with Mr. Harmon. And we'll reconvene

4 probably with, I'm imagining, Mr. Harmon, maybe

5 Mr. Burton before lunch. We'll take a lunch recess,

6 and then we'll come back and address the rest of the

7 witnesses.

8 In the meantime, Mr. Bentson, I would expect

9 that you're going to be contacting and in discussions

10 with Mr. Aikin as far as the availability of

11 Ms. Evans?

12 MR. BENTSON: Understood, Your Honor.

13 JUDGE FRIEDLANDER: Thank you. Let's

14 go ahead and take a 15-minute recess.

15 (A break was taken from 10:33 a.m. to

16 10:50 a.m.)

17 JUDGE FRIEDLANDER: I think we're ready

18 to go back on the record. Mr. Wiley had indicated

19 there was something that he wishes to address. And

20 then afterwards, I think we'll call Mr. Harmon up to

21 the stand.

22 MR. WILEY: Mr. Burton. Is that okay

23 with you, Your Honor?

24 JUDGE FRIEDLANDER: You're switching?

25 MR. WILEY: Yeah. Mr. Harmon is going

0416

1 to take so much longer, and we do have the shippers

2 coming in the early afternoon. We thought we'd put

3 Mr. Burton on and then the shippers and then

4 Mr. Harmon because he'll take much more time.

5 JUDGE FRIEDLANDER: Is there any

6 objection to that?

7 MR. BENTSON: No, Your Honor.

8 JUDGE FRIEDLANDER: Thank you. We'll

9 go ahead and do that.

10 MR. WILEY: Your Honor, my -- just a

11 point of technicality, we're within the

12 reconsideration period for orders right now, and I

13 would -- based on the testimony of Mr. Sevall

14 yesterday, I would ask you to reconsider Order 02 on

15 striking the testimony of Mr. Harmon's in surrebuttal

16 at page 10 because it's no longer a leap to attribute

17 that Staff survey attribution of dissatisfaction to

18 Crowley, and that's the basis upon which you struck

19 the testimony.

20 JUDGE FRIEDLANDER: Right. Because we

21 didn't have in evidence the six shippers that

22 Mr. Sevall had contacted, and now we know that Crowley

23 was one of them. So I will reconsider that and deny

24 the motion as to striking that portion of the

25 testimony.

0417

1 And, Mr. Bentson, I assume that you are

2 acknowledging -- you're willing to acknowledge that

3 Mr. Sevall has addressed that yesterday in his

4 cross-examination and answers that Crowley was,

5 indeed, one of the shippers he called?

6 MR. BENTSON: Your Honor, yes, I agree

7 with that statement. I could make the effort to argue

8 why I still think the motion to strike is valid, but

9 at this point, I'm not sure it would be worth the

10 gain. The Court has already ruled.

11 JUDGE FRIEDLANDER: Thank you. Yeah.

12 So I will -- it's noted in the transcript. I'm not

13 going to re-enter an order on it, but the motion is

14 denied.

15 So if we're ready to call Mr. Burton if

16 there's nothing else to address?

17 MR. BENTSON: Your Honor, just with

18 respect to the issue we were discussing before, I

19 don't know if the Court wants to wait on that. I did

20 have a chance to speak with Crowley during the recess

21 there, and Crowley needs 24 hours to respond to our

22 request that they provide Ms. Evans in response to the

23 Court's request. And so that's -- you know as much as

24 I know at this point.

25 JUDGE FRIEDLANDER: All right. That's

0418

1 fine. Is there -- so they need 24 hours. Why don't

2 we go ahead and do this: After we've handled

3 Mr. Burton, if there's time before the lunch recess,

4 we'll go ahead and discuss some possible dates for

5 testimony. And right now we'll just continue with the

6 scheduled testimony that we have for today.

7 MR. WILEY: Your Honor, I just wanted

8 to clarify. My motion for dismissal, you're either

9 denying it or taking it under advisement at this

10 point. I just wanted to remind you that was still

11 pending.

12 JUDGE FRIEDLANDER: Okay. I must have

13 misunderstood you, because I thought you said that in

14 trial you would have normally asked for a dismissal.

15 MR. WILEY: True.

16 JUDGE FRIEDLANDER: Are you asking for

17 dismissal?

18 MR. WILEY: Yes. Then I came back on

19 and said based on all of the circumstances developing

20 today I would move for dismissal.

21 JUDGE FRIEDLANDER: All right. And I'm

22 going to hold that in abeyance until we hear from

23 Ms. Evans. It would appear that the company MEI's

24 case is based almost entirely on Crowley's testimony

25 and statements, and I need to hear from Ms. Evans

0419

1 before I can make a ruling on that motion. So why

2 don't we call Mr. Burton up at this time.

3

4 WELDON BURTON, witness herein, having been

5 first duly sworn on oath,

6 was examined and testified

7 as follows:

8

9 JUDGE FRIEDLANDER: Thank you. You can

10 be seated.

11 Mr. Fassburg.

12 MR. FASSBURG: Yes.

13

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

15 BY MR. FASSBURG:

16 Q Good morning, Mr. Burton. Would you please

17 state your full name for the record and spell your

18 last name.

19 A Weldon Burton, B-U-R-T-O-N.

20 Q Mr. Burton, have you submitted prefiled

21 testimony in this proceeding?

22 A Yes, I have.

23 Q And I believe that is marked WB-1T?

24 A Yes.

25 Q Although I understand that's already been

0420

1 admitted, is this your testimony?

2 A That is correct.

3 Q Are you adopting it here today under oath?

4 A Yes, I am.

5 Q Do you have any corrections or revisions that

6 are necessary for your testimony?

7 A No, I don't.

8 MR. FASSBURG: With that, Your Honor,

9 we're ready for cross-examination.

10 JUDGE FRIEDLANDER: Okay. Thank you.

11 And Mr. Bentson.

12 MR. BENTSON: Thank you, Your Honor.

13

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

15 BY MR. BENTSON:

16 Q Good morning, Mr. Burton.

17 A Good morning.

18 Q I want to turn to your prefiled testimony

19 that's been labeled WB-1T. Do you have WB-1T in front

20 of you?

21 A Yes, I do.

22 Q If you could turn to page 1 of your personal

23 background section there, lines -- it looks like

24 lines 3 through 16. You worked with Arrow Launch

25 since 2013; is that right?

0421

1 A That is correct.

2 Q And one of your specializations as an

3 accountant is in providing litigation support

4 services; isn't that right?

5 A I've done numerous litigation support cases,

6 yes.

7 Q And you identify that as specialization in

8 your curriculum vitae?

9 A Yes.

10 Q Have you worked with Arrow's attorney in the

11 past?

12 A Yes, I have.

13 Q About what percentage of your work relates to

14 assisting Mr. Wiley's clients?

15 A This is the only common client I have with

16 Mr. Wiley at the present time. Occasionally, garbage

17 collection -- refuge collection companies certified by

18 this Commission will hire me and Mr. Wiley to work

19 with them on an issue at the Commission.

20 Q Did Mr. Wiley, is that who introduced you to

21 Arrow?

22 A Yes, he did.

23 Q And do you have any relatives or family

24 members that work for Arrow?

25 A No, I don't.

0422

1 Q Other than serving as Arrow's accountant, do

2 you have any other sort of relationship with the

3 Harmons or Arrow Launch?

4 A I do their individual tax returns.

5 Q Would you consider them friends?

6 A Yes. We have relationships.

7 Q I want to turn now to lines -- stay there on

8 page 1 and go over to page 2, but lines 24 through --

9 to line 7 of your testimony where you discuss kind of

10 a summary of your view of MEI's financial fitness. Do

11 you see that portion of your testimony?

12 A Are you referring to page 2, line 24 through

13 page -- and then through line 7 on page 3?

14 Q No. I'm sorry. I was referring to page 1,

15 line 24.

16 A I'm sorry.

17 Q Through line 7 of page 2.

18 A Yes.

19 Q You concluded that MEI's financial statement

20 was incomplete and didn't balance; isn't that correct?

21 A That is correct.

22 Q The reason you thought it was incomplete is

23 because no liabilities were listed?

24 A Or capital shown.

25 Q But one of the reasons that you concluded it

0423

1 was incomplete was the lack of liabilities listed?

2 A That's correct. It did not balance.

3 Q Is it possibility there were no liabilities?

4 A No. Mr. Esch testified yesterday that there

5 was a $300,000 loan to the parent company.

6 Q Okay. I'm going to take you back in time to

7 when you filed this testimony. At the time you filed

8 this testimony, were you aware of Mr. Esch's testimony

9 yesterday?

10 A No.

11 Q And so at that time, for all you knew at that

12 time, MEI had no liabilities; isn't that right?

13 A There were none shown.

14 Q And that's the same thing as saying you didn't

15 know if there were?

16 A No. There were none shown. I didn't have any

17 knowledge of their liabilities or capital structure

18 because they did not show any.

19 Q Did you -- at that time, when you provided

20 your testimony, did you treat $300,000 as a liability?

21 A Did I see $300,000 as a liability?

22 Q No. Did you treat it as a liability for

23 purposes of your analysis?

24 A I didn't know how to treat it, sir, because

25 there was no -- that would have required me to form a

0424

1 conclusion which I had no evidence.

2 Q So because you didn't know how to treat it,

3 was it not incorporated into your financial analysis?

4 A It was not included because it was not shown.

5 Q Did you conclude, as part of your analysis,

6 that MEI would operate at a loss of more than

7 $300,000 over the next 12 months?

8 A No. I concluded in my estimate that they

9 would operate at a loss of somewhere around

10 $90,000 for the first year.

11 Q Which is less than $300,000?

12 A Absolutely.

13 Q Now, you mentioned that Mr. Esch yesterday

14 during his testimony referred to the $300,000 as a

15 loan. Did you say that?

16 A That's what he said, yes.

17 Q Do you know the terms of that loan?

18 A He said there were no terms. There was, I

19 believe, an open loan for three years with no

20 interest.

21 Q Do you know whether it needs to be serviced in

22 the next 12 months?

23 A I have not seen any documents to that.

24 Q And it's your understanding there's no

25 interest on it?

0425

1 A That's what he said.

2 Q In fact, you don't even know for certain that

3 it is a loan?

4 A That's what he said, sir.

5 Q Do you know whether it's a loan?

6 A No. I've not seen any documents.

7 Q Have you reviewed RCW 81.84.020? Did you

8 review that statute before providing your testimony?

9 A I believe I read that statute, yes.

10 Q Had you read it before you provided your

11 prefiled testimony?

12 A I'm sure I have in the past, sir. I don't

13 specifically recall that.

14 Q Do you understand that that statute provides

15 guidance for determining whether an applicant is

16 financially fit to receive a certificate?

17 A Yes.

18 Q Is that the standard you were applying?

19 A I was applying a reasonable business standard,

20 sir. As a business, he's going to operate either

21 profitably or unprofitably, and I was attempting to

22 establish a reasonable profitability standard.

23 Q I'm sorry. Please finish your answer if I cut

24 you off.

25 A That was my answer.

0426

1 Q Okay. Do you see in that statute where

2 there's a reference to a 12-month time limit?

3 A I would have to take the time to read it

4 carefully. If you could specifically point to the

5 section, it would be helpful.

6 Q Sure. If you look at the first sentence in

7 subsection 2 --

8 A Yes.

9 Q -- do you understand that under that statute

10 the Commission is supposed to determine whether the

11 applicant had the financial resources to operate the

12 proposed service for at least 12 months based upon the

13 submission by the applicant of a pro forma financial

14 statement of operations?

15 A Yes.

16 Q And you were aware of that standard as you did

17 your financial analysis?

18 A That's correct.

19 Q Is it your understanding that the UTC Staff

20 has a statutory obligation to independently verify the

21 information submitted in MEI's pro forma?

22 A Yes, I am aware of that.

23 Q You believe that the Staff has an obligation

24 to independently verify the pro forma?

25 A I do, yes.

0427

1 Q So if an applicant submits a pro forma,

2 they're not supposed to take the statements at face

3 value?

4 A The Staff?

5 Q Yes.

6 A The Staff, I believe, takes the statement at

7 face value.

8 Q And is that what they're supposed to do, to

9 your knowledge?

10 A I don't know all the Staff rules, sir.

11 Q You don't know whether they're supposed to

12 take it at face value?

13 A I believe Mr. Sevall said they took it at face

14 value yesterday in his testimony.

15 Q Because it's supported with a sworn affidavit;

16 correct?

17 A That's correct.

18 Q When you were making your assessment of MEI's

19 financial fitness, did you conclude that MEI would not

20 be able to stay in operation for at least 12 months?

21 A No, I did not.

22 Q I want to turn now to lines -- stay on page 2,

23 beginning on line 12, and then it's your testimony

24 that's going to continue on page 3 through line 7.

25 Are you at that portion of your testimony?

0428

1 A Yes, I am.

2 Q And you're discussing in that part MEI's

3 projected revenues that were included on their pro

4 forma. Do you recall that part of your testimony?

5 A Yes, I do.

6 Q And you questioned MEI's projection of

7 $500,000 in annual revenues from launch services,

8 didn't you?

9 A That's correct.

10 Q But if you turn to page 3 at line -- beginning

11 on the end of line 4, the first sentence that begins

12 on line 4, you say and I quote: If they can maintain

13 four times a week launch service for eight hours per

14 day, they will achieve their targeted revenue, and the

15 sentence goes on.

16 But isn't that your statement? Did I read

17 that correctly?

18 A That is correct.

19 Q Your concern was just they couldn't verify the

20 customer support?

21 A That's correct. They have no verification of

22 customer support in the application.

23 Q If they had that verification, by your

24 calculations, they would hit that target; correct?

25 A By my calculations, they would have achieved

0429

1 at the tariff rates their revenue based on the hours

2 shown in the table.

3 Q Based on the parameters in the sentence I just

4 read?

5 A That's correct.

6 Q And were you in the hearing earlier today when

7 Mr. Aikin testified that Crowley alone in 2015

8 invoiced Arrow Launch 980-some-thousand dollars?

9 A I was here, and I heard that. And I have also

10 done an analysis of the Crowley launch services in the

11 Anacortes area only based on Arrow's records, and that

12 number is not that high. So I suspect -- and I can

13 only assume that Mr. Aikin was looking at Puget Sound

14 overall instead of just the Anacortes launch area.

15 Q So you understood that he was referring to the

16 Puget Sound area when he testified?

17 A That's correct.

18 Q And you understood he wasn't including the

19 areas outside the Puget Sound?

20 A That's my understanding.

21 Q Because Arrow Launch doesn't provide services

22 outside the Puget Sound; is that right?

23 A No.

24 Q No, they do not?

25 A They do not provide services. They have

0430

1 certificated territory in Grays Harbor, but they do

2 not provide service.

3 Q Do you understand that Anacortes is the port

4 in the Puget Sound that requires the most service by

5 Crowley?

6 A I don't know exactly who -- where Crowley

7 requires all their services, sir.

8 Q So you don't know whether Anacortes is

9 Crowley's kind of busiest area?

10 A I would only assume based on the work that

11 Arrow does there that it's a very busy port.

12 Q And there's, in fact, multiple refineries in

13 the Anacortes area which increases the amount of

14 petroleum traffic?

15 A That's my understanding.

16 Q Now, by regulations MEI is -- MEI, if their

17 tariff that they presented was granted, they'd be able

18 to bill in two-hour increments; isn't that right?

19 A That is what they put in their tariff, yes.

20 Q That's in Arrow's tariff as well?

21 A No. There's no two-hour minimum for regulated

22 services.

23 Q So Arrow doesn't bill in two-hour increments?

24 A Not in regulated services.

25 Q What are the billable increments for Arrow?

0431

1 A One hour.

2 Q And they're regulated services?

3 A That's correct.

4 Q I want to turn -- if you stay on page 3 but go

5 down to where your testimony begins on line 19 and it

6 will carry over onto page 4 through line 8, do you see

7 that portion of your testimony?

8 A Yes, I do.

9 Q And there you're discussing MEI's fuel cost

10 projections?

11 A Yes.

12 Q You were critical of those fuel cost

13 projections?

14 A Yes.

15 Q You questioned whether $15,000 was too low?

16 A That's correct.

17 Q Now, do your calculations there assume a

18 constant rate of 1,900 rpm or 75 percent throttle?

19 A That's approximately correct.

20 Q Have you ever operated a launch vessel?

21 A Yes. I've operated my personal private boat,

22 which is about the same size as launch services twin

23 diesel, and I've operated it for over ten years,

24 including travels to Alaska in it.

25 Q My question was a little bit different. Have

0432

1 you ever operated a launch vessel?

2 A No. I've ridden on launch vessels, but I've

3 not operated one because I don't have the Coast Guard

4 qualifications to operate that vessel.

5 Q And it's not your testimony today that your

6 personal boat is a launch vessel?

7 A That's correct. It is not a launch vessel.

8 It is a personal vessel.

9 Q You have never held a certificate to provide

10 launch services in Puget Sound?

11 A No, I have not.

12 Q This isn't just sour grapes over your

13 certificate being denied, is it?

14 A No. I never applied for one.

15 Q That last question was a joke. Little levity

16 for today.

17 Okay. So does a launch vessel ever operate at

18 a lower throttle, to your knowledge, than 75 percent?

19 A I'm sure they do when they start up at dock

20 and, hopefully, proceed at low speeds through the

21 harbor without creating any wake, and then when they

22 get to open water, I'm sure they open up full throttle

23 because they need to get their passengers and/or the

24 freight to the vessel they're servicing as soon as

25 possible.

0433

1 Q Do you know what throttle they operate at

2 while they idle?

3 A Generally, probably -- I'm sorry. About six

4 to seven hundred rpm.

5 Q And do you assign a percentage to that?

6 A It would be about 10 percent, 20 percent.

7 Q Do you have any way of -- any basis for

8 identifying what percentage of the time the vessel

9 operates at 75 percent throttle and what percent of

10 the time it operates at, say, less than 25 percent?

11 A Not specifically, no. I can only -- I can

12 only estimate that based on my personal experience of

13 operating pleasure boats within many areas where

14 launch services are provided.

15 Q So it's your personal experience that your

16 boat, generally, operates at 75 percent throttle?

17 A That's correct or greater.

18 Q But you've never operated a launch boat?

19 A That's correct.

20 Q And you don't know what percentage of the time

21 it sits idle?

22 A That's correct.

23 Q Did you assume, for purposes of your

24 calculation, that higher fuel costs by MEI would

25 result in a lower profit margin for them?

0434

1 A That's correct.

2 Q Couldn't higher fuel costs reflect more

3 service and thus increase revenue?

4 A Not necessarily, because fuel prices have gone

5 up by 20 cents a gallon since I made this calculation.

6 Q My question was a little different. I didn't

7 ask you if it was necessarily the case. I asked you

8 if it was possibly the case.

9 A There's a possibility.

10 Q Turning -- let's go down to page -- over to

11 page 4, beginning on line 9, and this portion of your

12 testimony carries over to page 5, line 4, where you

13 discuss MEI's labor cost estimates.

14 A That's correct.

15 Q Do you see that portion of your testimony?

16 A Yes, I do.

17 Q And you questioned whether the $220,000 MEI

18 allocated annual wages was sufficient?

19 A That's correct.

20 Q Does your -- now, your analysis assumes that

21 both the captains and the deckhands are paid hourly;

22 isn't that right?

23 A That is correct. That's standard in the

24 industry.

25 Q To establish -- now, wait a second there.

0435

1 Didn't you tell me this is the first time you've done

2 an application hearing for a launch service provider?

3 A But I've worked with Mr. Harmon's operation

4 and seen his operations, and they're all hourly wage.

5 Q But you don't know what information is

6 standard operating procedure provided to the

7 Commission to make this determination, do you?

8 A Say that again, please.

9 Q Do you have experience providing this type of

10 information to the Commission in the past?

11 A For motor launch companies?

12 Q For launch service providers.

13 A For launch service providers, no.

14 Q So you said your analysis assumes that both

15 captains and crews are paid hourly; correct?

16 A That's correct.

17 Q And to establish the hourly rates, you used

18 the 2016 marine employees compensation survey; isn't

19 that right?

20 A That's correct.

21 Q Do you know what the purpose of that survey

22 is?

23 A The state provides that survey as a service.

24 They identified in their introductions -- and I don't

25 remember -- I can't quote it specifically.

0436

1 Q Is it your understanding that that survey is

2 given to arbitrators to help them handle bargaining

3 discussions with respect to the Washington State Ferry

4 system?

5 A That is not the only -- I'm sure that that's

6 probably a use of that survey, yes.

7 Q But you don't think that's one of the primary

8 uses?

9 A I don't know all the primary uses of it, sir.

10 Q It could be the primary use?

11 A It could be, yes.

12 Q If the survey said that was a primary use,

13 would you believe it?

14 A I would have to look and see. I don't recall.

15 Q Have you read the entire survey?

16 A Yes, I have.

17 Q Do you recall the portion of the report that

18 says that discretion should be used when interpreting

19 the salary results, especially among samples of less

20 than 15 organizations?

21 A Yes, I do.

22 Q And, in fact, the average rate of captain pay

23 you choose, which was $48.18 per hour before taxes,

24 before it's burdened by taxes, that came from only a

25 single organization; isn't that right?

0437

1 A I believe it came from two organizations as

2 shown on the survey results.

3 Q Other than the Washington State Ferries, what

4 was the other organization?

5 A I don't remember, sir. I compared that figure

6 to the average salary per hour for Arrow's captains,

7 and they have apprentices and journeymen and,

8 basically, beginners. And their hourly wage was

9 higher by -- not 20 percent, per se. They had three

10 individuals or 20 percent of their captains were at a

11 higher rate than the $48.

12 Q You said 20 percent?

13 A Approximately, 20 percent. They had captains

14 at a lower rate -- just a minute. I don't have it

15 specifically with me, but they had a lower rate

16 dropping on down slightly lower than the $48.

17 Q We can come back to what Arrow pays their

18 captains. I want to get back to where you got this

19 48.18 per hour number that you testified to in your

20 prefiled testimony. That number came from not a

21 comparison with Arrow, but, initially, in your

22 testimony, it came from this compensation survey;

23 correct?

24 A It came from the compensation survey published

25 by the Office of Financial Management.

0438

1 Q That's right. And so for that $48.18 per hour

2 wage, as it's identified in the survey, it came

3 from -- it only came from one organization, the

4 Washington State Ferries; is that right?

5 A That's what they identified.

6 Q So it's actually just one organization, not

7 two like you testified earlier?

8 A They have all participants to -- they don't

9 give an average salary range in that row.

10 Q The only participant identified is the

11 Washington State Ferries?

12 A That's the identified participant, yes.

13 Q So that's a sample size -- even if there's

14 two, that's a sample size a lot smaller than 15;

15 correct?

16 A That's correct. I think they sent out

17 responses to 15 organizations -- or sent out

18 questionnaires to 15 organizations.

19 Q But 15 was also the threshold that the survey

20 itself provides for when you should use discretion

21 about clients' results; correct?

22 A That's correct. This was the reliable

23 information that was published at the time I prepared

24 my testimony.

25 Q You also identified, based on the survey, a

0439

1 pay rate for deckhands at $26.21 an hour before taxes;

2 isn't that right?

3 MR. WILEY: Line 19.

4 A Yeah. Just a minute. I'm looking at the

5 survey. 26.21, yes.

6 Q Okay. And that was based off of a survey of

7 just five organizations; correct?

8 A That is correct.

9 Q And that's a lot less than 15 too?

10 A That's -- again, that's five organizations for

11 able-bodied seaman.

12 Q But it's 10 organizations less than the

13 threshold provided by the survey?

14 A Correct.

15 Q Now, do you know whether MEI's captains are

16 salaried or hourly?

17 A I do not.

18 Q So some of those captains aren't paid by the

19 hour at all?

20 A I don't know.

21 Q Do you know whether some of the captains, in

22 addition to their captains duty, have other management

23 duties?

24 A I do not.

25 Q So that may be included as part of their --

0440

1 when their compensation is decided, those may be

2 included as well; is that right?

3 A I couldn't comment on that, because I have no

4 knowledge.

5 Q Do you think Arrow asks its captains to

6 provide management services without compensating them?

7 A I don't think they ask them to provide

8 management services. I think captains are the

9 captains of the vessel.

10 Q And you don't -- to your knowledge, they don't

11 provide any management services in addition to their

12 captains duties?

13 A I don't believe so.

14 Q So when you're talking about how you compared

15 this salary data to the rates that you picked -- the

16 hourly rates you chose from the survey, you were doing

17 that comparison -- were you just comparing that with

18 hourly employees at Arrow, or were you also comparing

19 it with salaried employees?

20 A Hourly.

21 Q You didn't compare it to their salaried

22 employees?

23 A No.

24 Q You didn't compare it to their salaried

25 captains?

0441

1 A No.

2 Q Didn't compare it to their salaried deckhands?

3 A No.

4 Q They probably don't have salaried deckhands?

5 A All their employees are paid on an hourly

6 wage, all the vessel employees, I should say. Excuse

7 me.

8 Q What I'm referring to is a deckhand. Is that

9 what you're going for there? The captains are still

10 salaried. You're not contradicting yourself?

11 A No. I don't believe all our captains are

12 salaried either.

13 Q But some are?

14 A There may be one or two.

15 Q The more senior ones?

16 A Pardon me?

17 Q The more senior captains?

18 A Probably.

19 Q And so you determined that Arrow's captains,

20 the hourly paid ones, make -- that all those captains

21 make 48.18 an hour or more before taxes?

22 A I said about 20 percent of those, their

23 captains, made greater than 48.18.

24 Q And so that means 80 percent don't make

25 greater than 48.18 per hour; isn't that right?

0442

1 A You could interpret that.

2 Q And then for the deckhands, did you determine

3 that Arrow's deckhands make $26.21 an hour before

4 taxes?

5 A Once again, I determined a portion of Arrow's

6 deckhands made above that and a portion made below.

7 And they have starter deckhands, you might say, and

8 then apprentice and then journeymen.

9 Q What portion -- what percentage portion did

10 you determine made more than that $26.21 per hour

11 threshold?

12 A I believe it was 15 to 20 percent again.

13 Q So that means between 80 and 85 percent of

14 their deckhands made less than $26.21?

15 A Once again, you can interpret that, yes.

16 MR. BENTSON: Thank you. I have no

17 further questions.

18 JUDGE FRIEDLANDER: Thank you. We

19 don't have anybody -- any other parties scheduled for

20 cross-examination. Is there a wish for

21 cross-examination?

22 MR. BEATTIE: No.

23 MS. ENDEJAN: No, Your Honor.

24 JUDGE FRIEDLANDER: Thank you.

25 Redirect?

0443

1 MR. FASSBURG: I'll try to keep it

2 brief.

3 JUDGE FRIEDLANDER: Okay.

4

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

6 BY MR. FASSBURG:

7 Q Good morning, Mr. Burton.

8 A Good morning.

9 Q You were asked a question about 81.84.020. Is

10 it your understanding that the applicant is required

11 to submit a pro forma financial statement?

12 A That is correct.

13 Q What is your understanding of what a financial

14 statement should include?

15 A The application requires not only a balance

16 sheet but a pro forma statement of operations for

17 12 months forward.

18 Q Can you explain for the Commission what is a

19 balance sheet?

20 A A balance sheet lists assets, liabilities, and

21 equity, and, generally, assets are listed on the

22 left-hand side of the financial statement.

23 Liabilities are on the right-hand side, and equity is

24 also on the right-hand side. But some people do it

25 differently.

0444

1 Q On the application submitted by MEI, which I

2 believe has been previously marked as an exhibit -- I

3 believe it was RSE-4 -- was there a balance sheet that

4 matched the description that you just gave?

5 A There was. In Section 12 of the application,

6 there is a provision for a financial statement. There

7 were assets listed with no liabilities shown with a

8 handwritten notation "See financial statement

9 attached."

10 Q Now, on the financial statement attached, is

11 there anything that matches the description of a

12 balance sheet that you've just provided?

13 A No. That was the pro forma financial

14 statement. I would have to call it results of

15 operations or profitability.

16 Q On that financial statement, is there anywhere

17 that liabilities are included?

18 A No.

19 Q Back on the page within the application itself

20 under Section 12, does it ask for liabilities to be

21 listed?

22 A Yes, it does.

23 Q And the statement which refers to the

24 financial statement included is the only writing in

25 that portion other than what's been whited out; is

0445

1 that correct?

2 A That's correct.

3 Q So is this a complete application and

4 financial statement in your opinion?

5 A Excuse me. No. No, it's not a complete

6 financial statement.

7 Q When you were providing financial analysis or

8 CPA services with respect to reviewing a financial

9 statement, if you were to find that it is missing a

10 key component of what you say is the core description

11 of the financial statement, do you believe it would be

12 prudent to investigate what information is missing?

13 A Yes, I do.

14 Q You were asked a little bit about whether or

15 not you had ever captained a launch vessel, and I

16 believe you provided some response with respect to

17 your personal experience.

18 Can you tell us about the boat that you own?

19 A The boat I own is a 56-foot what's called a

20 pilothouse trawler built in 1982. I personally

21 repowered it in 2005. It had small Perkins diesels in

22 it. I put John Deeres in it.

23 Q Does the boat have similar dimensions to the

24 launch vessels used by Arrow Launch?

25 A It's 56-foot long and has a breadth of about

0446

1 15 feet, so it's somewhat equivalent. It's

2 fiberglass. It's not steel or aluminum.

3 Q What about with respect to the engines?

4 A The John Deere engines that I put in were

5 about 265-horsepower each, which is somewhat

6 equivalent to the one launch vessel that MEI is

7 proposing to bring up here. I believe it's called

8 Stephanie Lynn.

9 Q Do you believe that based upon your personal

10 experience with use of your vessel you have the

11 experience to opine upon a fuel calculation?

12 A Yes, I do. When I was doing the engine

13 repower, I was studying the fuel graphs and fuel

14 extensively, not only with mechanics, but with marine

15 architects.

16 Q You were asked a question a little while ago

17 with respect to the revenue available to Arrow as

18 testified -- I'm sorry. Let me restate that.

19 You were asked a little while ago with respect

20 to the revenue available to Arrow from Crowley as

21 testified by Mr. Aikin. I want to ask you a follow-up

22 to that.

23 Is it your understanding that the revenue in

24 the Anacortes area for which MEI Northwest has applied

25 is less than the figure provided by Mr. Aikin?

0447

1 A That's my understanding, yes.

2 Q So it is not, in fact, something in the range

3 of $900,000 that Arrow earns in the Anacortes area

4 from Crowley?

5 A That's correct.

6 Q You were also asked with respect to the ship

7 captains' pay, specifically with respect to what

8 Crowley pays its ship captains. Do you have any

9 understanding of whether or not ship captains are

10 eligible for overtime?

11 A I do not know.

12 Q With respect to a loan between companies, does

13 the IRS impute interest on a loan if there's none

14 stated?

15 A Absolutely.

16 Q So if the documentation ultimately provided in

17 response to the bench request by MEI were to show

18 there are no stated terms, would it be fair to say

19 that, nonetheless, the IRS will impute that interest

20 should be provided?

21 A The IRS has an imputed interest standard which

22 they apply when there's no interest rate stated in a

23 loan document.

24 Q Can you elaborate on that for us and explain

25 what they do?

0448

1 A I can't quote you the specific interest rate

2 right now. It's somewhere, I think, in the range of 2

3 to 3 percent. I would have to go check the federal

4 statutes, but, basically, if they determine that it is

5 a loan, they will impute interest to the borrower and

6 also to the provider. So the provider has interest

7 income; the borrower has interest expense.

8 Q Mr. Burton, were you here in the room

9 yesterday when I asked Mr. Sevall questions?

10 A Yes, I was.

11 Q Do you have an understanding of the meaning of

12 the term "cream skimming"?

13 MR. BENTSON: Objection, Your Honor,

14 outside the scope of cross.

15 JUDGE FRIEDLANDER: Mr. Fassburg?

16 MR. FASSBURG: I think that's actually

17 a fair statement. I can move on.

18 BY MR. FASSBURG:

19 Q Just touching again on your personal use of

20 your vessel, I believe you mentioned you had operated

21 it to Alaska. Have you also operated that vessel down

22 to Mexico?

23 A I have crewed for similar vessels for friends.

24 I have not personally run my personal vessel to

25 Mexico. I have acted as crew several times from

0449

1 Puerto Vallarta to San Diego and then San Diego on up

2 to San Francisco and up the coast.

3 Q And that also was part of the experience that

4 you have in understanding fuel calculations?

5 A That's correct. Because on the coast of Baja,

6 it's 900 miles and one fuel stop.

7 Q So you were asked a few questions about the

8 survey upon which you provided your estimations of

9 what the crewing should cost MEI. Despite the fact

10 the survey includes a disclaimer, was that the best

11 information available to you with respect to what

12 those crew pay -- or what crew members should be paid

13 in the Anacortes area?

14 A That is one. There was another survey done by

15 Labor and Industries, which I chose to ignore, in

16 Skagit County because it discussed prevailing wages,

17 and this is not a prevailing wage job, as I understand

18 it.

19 MR. FASSBURG: Thank you for your time,

20 Mr. Burton. No further questions.

21 JUDGE FRIEDLANDER: Thank you. And I

22 have no clarification questions. So thank you for

23 your testimony and you're dismissed.

24 So we have Mr. Westad.

25 MR. WILEY: They're all coming on after

0450

1 the lunch break, Your Honor. That's when I scheduled

2 them.

3 JUDGE FRIEDLANDER: Right. But we

4 still have some time left. Are we going to get into

5 Mr. Harmon's testimony then?

6 MR. WILEY: Can we take a break right

7 now to check on that so I can talk about it? We

8 hadn't planned that. I thought his testimony was

9 going to take longer.

10 JUDGE FRIEDLANDER: That's fine.

11 MR. BENTSON: Your Honor, if it helps,

12 I don't object to an early lunch break so they can put

13 their witnesses on in the order they want to. I don't

14 have a problem with that.

15 MR. BEATTIE: Another possibility is I

16 could finish my cross before -- well within before

17 noon --

18 JUDGE FRIEDLANDER: Okay. All right.

19 MR. BEATTIE: -- of Mr. Harmon. We

20 could get that out of the way.

21 JUDGE FRIEDLANDER: Yeah. That's true.

22 I was hoping to give MEI the first bite at Mr. Harmon.

23 MR. BENTSON: I don't have an objection

24 to Staff's proposal.

25 JUDGE FRIEDLANDER: Then if --

0451

1 Mr. Wiley, why don't you have a conversation with your

2 client, and we'll go off the record for five minutes.

3 (A break was taken from 11:30 a.m. to

4 11:34 a.m.)

5 JUDGE FRIEDLANDER: I think we are

6 ready to go back on the record. I'll go ahead and

7 swear Mr. Harmon in, and then we'll begin with

8 foundation.

9

10 JACK HARMON, witness herein, having been

11 first duly sworn on oath,

12 was examined and testified

13 as follows:

14

15 JUDGE FRIEDLANDER: Mr. Wiley or

16 Mr. Fassburg?

17 MR. WILEY: Me, Your Honor. Thank you.

18

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

20 BY MR. WILEY:

21 Q We're improvising a little bit for efficiency

22 sake on time. Bear with me if I'm a little rocky on

23 the exhibits right now.

24 Mr. Harmon, could you please state and spell

25 your last name and provide your business address for

0452

1 the record.

2 A Jack Harmon, H-A-R-M-O-N, P.O. Box 2376, Port

3 Angeles, Washington.

4 Q Would you please try to speak into the

5 microphone.

6 A I'm sorry. I thought the red light had me.

7 Is that better?

8 Q Mr. Harmon, what company are you associated,

9 please?

10 A Arrow Launch.

11 Q And what is your position with Arrow Launch?

12 A President.

13 Q And in the context of your presidency and

14 ownership of Arrow Launch, did you cause to be filed

15 in this proceeding certain prefiled testimony?

16 A Yes, I did.

17 Q And calling your attention, Mr. Harmon, to

18 Exhibits JLH-1T, JLH-9T, and JLT-10T, is that, in

19 fact, the testimony to which you just referred?

20 A Yes, it is.

21 Q In looking at Exhibits JLH-1T, 9T, and 10T, do

22 you have any present revisions at the current time?

23 A No, I do not.

24 Q And do you, in fact, adopt Exhibits JLH-1T,

25 9T, and 10T as your testimony in this proceeding?

0453

1 A Yes, I do.

2 MR. WILEY: Your Honor, I believe I

3 have no further questions right now on foundation, and

4 I tender the witness to Mr. Beattie.

5 JUDGE FRIEDLANDER: Thank you.

6 Mr. Beattie.

7 MR. BEATTIE: Thank you, Judge.

8

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

10 BY MR. BEATTIE:

11 Q Mr. Harmon, if you could, please turn to

12 page 5 of your opening testimony, JLH-1T, line 24,

13 please.

14 A You said 24?

15 Q Yes, please. And here you testified that

16 Arrow provides launch services transporting people to

17 and from ships as well as the transportation of

18 freight and goods, including food, supplies, and

19 equipment to and from ships at anchor underway or

20 alongside docks.

21 Now, this may not seem very important, but

22 just to help those of us in the room that don't

23 understand this terminology, could you just tell us

24 what "at anchor" means?

25 A "At anchor" means when a ship is at anchor in

0454

1 the various ports which we have certificated authority

2 in Puget Sound.

3 Q How about the word "underway"?

4 A "Underway" is the thing the ships will come to

5 the certain ports, not drop their anchor, and continue

6 to a dock or continue to the ocean. That's

7 "underway."

8 Q Okay. And at risk of sounding kind of silly

9 here, can you tell me if there's anything I need to

10 know about the phrase "alongside docks," or is that

11 self-explanatory?

12 A That's pretty self-explanatory.

13 And I apologize. I'll wait until you finish

14 your question.

15 Q I want to know more about the people that you

16 transport. Can you tell me about a typical passenger

17 on one of Arrow's launches?

18 A I think it was stated fairly clearly by most

19 of the previous testifiers with the exception that it

20 really is a -- the public. In my opinion, I believe

21 in previous Commission orders, it speaks directly to

22 the fact that it's -- the public may not be the

23 general public, the commercial public.

24 We could take and quite often do -- I would

25 disagree with Mr. Aikin's statement earlier. It's

0455

1 quite often, maybe not -- maybe that's a wrong term.

2 But it does happen that we would take a chief

3 engineer's wife, a chief engineer's son, a chief

4 engineer's family/friend to one of the Crowley ATBs.

5 What we do is we make sure that the ship is

6 going to give them permission to board, but we will

7 take jointing crews. We will take chandlers. We will

8 take repair technicians, so just about anybody we'll

9 take to or from the ship, Department of Ecology,

10 Department of Agriculture. So I can't think of

11 somebody -- literally, children, infants, the general

12 public.

13 Q If you took a spouse of a crew member, for

14 example, would you charge that spouse a separate fare?

15 A There has actually been times where the

16 individual will want their own launch, their own time

17 frame, not conductive to the time frame that the

18 schedule has been set by the ship's master or the

19 ship's agents. And in those cases, we will ask who is

20 paying for this -- you or the ship or the agent? And,

21 quite often, they'll say we're paying for it. We'll

22 bill them direct.

23 Q Do you sell tickets?

24 A We give them an invoice. I don't think a

25 ticket is really relevant to whether it's the general

0456

1 public or not, but we don't sell tickets.

2 Q Well, actually I didn't ask you whether

3 tickets was relevant to anything. I just wanted to

4 know how your operation works, and it sounds like your

5 answer is, no, you do not sell tickets?

6 A My answer is, no, we do not sell tickets.

7 Q Do I understand correctly that you transport

8 both passengers and freight at times in the same

9 vessel?

10 A That's correct.

11 Q What percentage of your business, measured in

12 terms of gross earnings, would you say comes from

13 transporting passengers as opposed to freight?

14 A Are you asking percentage of business or

15 percentage of the vessel's revenue as my understanding

16 the RCW says?

17 Q Gross earnings.

18 A Okay. Gross earnings of the vessel or gross

19 earnings of the company?

20 Q Gross earnings of the company.

21 A In passengers or freight?

22 Q I asked for a ratio or a percentage.

23 A So it varies year by year. It may be

24 70 percent passengers/30 percent freight. It could go

25 50 percent passengers/50 percent freight. But the fee

0457

1 base that we pay the UTC under our rate methodology

2 for almost 30 years, 27 or 28 years, is that it's

3 based on the gross earnings of the vessel.

4 And in our case, almost all of our vessels

5 exceed the 10 percent in passengers, and so we pay the

6 fee base to the Utilities and Transportation

7 Commission on the full gross of the vessel, whether

8 it's freight or passengers. So it doesn't matter.

9 We don't even really monitor it, because our

10 vessels are as the -- you'll see there's a document

11 that's in -- I believe it's my testimony -- and I

12 apologize to the Court in this testimony I didn't get

13 my own exhibits. If I speak to an exhibit and you

14 need to see it -- but it's actually requested by the

15 UTC at our annual report time in May, and it lists all

16 of our equipment that we use, the regulated equipment,

17 and that equipment is listed and fee based on

18 100 percent of the gross of the vessel. So passengers

19 it's 10 percent.

20 Q That was quite a bit of information. I do

21 want to zero in. It sounded as though you did say you

22 could not measure passengers versus freight or you do

23 not measure or both?

24 A No. I didn't say that. I said it's

25 immaterial to us. It's measured and it's actually

0458

1 articulated on our annual report, so you have that

2 information in the Staff's files.

3 Q Just indulge me. It's material to my question

4 now. Are you saying you do not have the information

5 or cannot obtain it or what are you saying?

6 A I'm saying that I feel that I've answered your

7 question, and if you want to know specifically what

8 year the percentages are passengers versus freight,

9 we'd have to go to the annual reports because it's

10 actually in the annual report.

11 Q Okay. And, Mr. Harmon, what did your attorney

12 just hand you?

13 A I believe he handed me the exhibits that were

14 attached to JLH-1T. As I just explained to the Court,

15 I didn't grab these exhibits. There's a copy of our

16 certificate. There's the fleet report that's included

17 in our annual report. There's several example launch

18 schedules from ships that set their schedules which we

19 run from a fixed -- on a fixed schedule by the ship's

20 master or its agents. There's e-mails from several of

21 our customers in which we have solicited -- the

22 purpose of this e-mail, I quote, it's from me --

23 Q Okay. I'm going to have to cut you off here.

24 Are you just telling us what's in your exhibits?

25 A Yes, that's what you asked me.

0459

1 Q I just wanted -- if your counsel hands you

2 something, I'm entitled to know what it is.

3 A Yeah. I'm trying to tell you which one it is.

4 It really isn't identified any other way than what I

5 just started to read.

6 Q Okay. That's fine. Why don't we take a look

7 at one of the exhibits that Staff has prepared for

8 purposes of your cross-examination.

9 MR. BEATTIE: Your Honor, I'm trying to

10 find the number.

11 JUDGE FRIEDLANDER: That's fine. I

12 think it's -- actually, I need to find it too.

13 MR. BEATTIE: JLH-11CX.

14 JUDGE FRIEDLANDER: Thank you.

15 MR. BEATTIE: I apologize. I --

16 MR. WILEY: I have it. But can we just

17 identify what CX is? Is it the terms and conditions?

18 MR. BEATTIE: This is Arrow Launch's

19 tariff.

20 MR. WILEY: Okay.

21 MR. BEATTIE: Do you have a copy of

22 that handy?

23 MR. WILEY: I'm handing him one.

24 BY MR. BEATTIE:

25 Q Okay.

0460

1 A Yes, sir.

2 Q If you could turn to what is labeled "Tenth

3 revised page 1." It's also page 2 of the exhibit.

4 A Could you tell me what it says again? "Tenth

5 revised page."

6 Q Page 2 of 3 of the exhibit.

7 A Okay.

8 Q Perhaps that's easier.

9 A I have a "Tenth revised page 1."

10 Q Correct.

11 A I have a "Seventh revised page 2. Tenth

12 revised" -- yeah. These are both the same documents.

13 One is -- these look identical. I'm trying to see

14 what the difference is between those two.

15 Q If you could please turn your attention to

16 "Tenth revised page 1."

17 A So that's the first page.

18 Q Yes, please.

19 THE WITNESS: Was I -- excuse me. Was

20 I accidentally just handed two copies of the same

21 thing?

22 MR. WILEY: Yes, you were.

23 THE WITNESS: I just wanted to -- was

24 that a trick question, Dan? Part of your humor?

25 MR. BENTSON: Your lawyer handed you

0461

1 two of the same thing. That's not my fault.

2 MR. WILEY: True.

3 A I apologize. Yes, I'm looking at page --

4 "Tenth revised page 1," yes, sir.

5 Q And, again, Mr. Harmon, this may seem obvious.

6 But do I understand correctly that by looking at your

7 tariff that Arrow Launch charges by the hour?

8 A Yes, we do.

9 Q It would be accurate to say that Arrow Launch

10 does not charge by any other method, for example, per

11 head, per ticket sold, etc.?

12 A That is correct.

13 Q Is it true that Arrow Launch has no time

14 schedule?

15 A That would not be true. We -- that would not

16 be true.

17 Q What is your time schedule?

18 A We offer two types of service. We are --

19 predominantly, it's scheduled service by the ship's

20 master, the ship's agent, or its representative. The

21 ship's master, I apologize, for the Court's

22 information, happens to be the ultimate authority on

23 the vessel.

24 So as one of these documents that we just

25 discussed earlier, it's a schedule that's set by the

0462

1 ship's captain and often modified by the ship's

2 captain or the ship's agent. In between the scheduled

3 services, often the services are either interrupted by

4 the ship and cancelled or additional services

5 scheduled. But it's a schedule that's set by the

6 ship's master, its agent.

7 Q So it's not a schedule that's external to the

8 demands of your customers; correct? Do you understand

9 what I mean?

10 A No. I apologize. I do not.

11 Q Let me put it this way: Do you have a boat

12 that leaves, for instance, pick a time, 8:00 a.m.

13 every morning?

14 A 7:30.

15 Q Every single morning?

16 A If a ship's captain has scheduled it, yes.

17 Q If a ship's captain has scheduled it?

18 A Yes. Or its agent or its owners.

19 Q Sure. But the point is you operate on demand

20 as opposed to on a set schedule; correct?

21 A We would call that a set schedule, and we do

22 have on-demand service as well.

23 Q Well, perhaps we have a difference in

24 terminology. But it sounds as though you're

25 confirming that you operate based on the needs of your

0463

1 customers and not based on a schedule external to your

2 customers?

3 A Not meaning to argue with you, but, actually,

4 I'm operating on a schedule that I've been told by the

5 Commission by rule that we need to -- that launch

6 services has been defined as providing scheduled

7 service set by the ship's captains, agents, or its

8 owners. I believe that's under the definition in the

9 rules for the launch servicer.

10 Q Okay. But you do not operate, for example, if

11 nobody has called you that day?

12 A If there's not a request for the service,

13 that's correct. There will be -- the vessel won't

14 leave. That's correct. Where is it going to go? So

15 correct.

16 Q Right. And one last question about time

17 schedule. You've said that you do, in essence, have a

18 type of time schedule. Is that filed publicly with

19 the Commission?

20 A No, it's not.

21 Q Okay. I would like to start a new line of

22 questioning. If you could, please turn to your

23 rebuttal testimony, and that's JLH-9T.

24 MR. WILEY: Mr. Beattie, is it

25 cross-answering testimony; correct? Entitled

0464

1 cross-answering --

2 MR. BENTSON: Yeah. That's probably

3 the correct name.

4 THE WITNESS: I'm confused.

5 Q Page 8.

6 A I have it.

7 Q Lines 15 through 16.

8 MR. WILEY: Page?

9 MR. BEATTIE: Page 8.

10 Q I will submit to you that in this testimony

11 you have critiqued Staff for, in your view, supporting

12 competition because, quote, it feels good. And I want

13 to know where in Staff's testimony Mr. Sevall said he

14 supports competition because it, quote, feels good?

15 MR. WILEY: Objection, argumentative.

16 JUDGE FRIEDLANDER: I didn't hear any

17 argumentative tone to the question, so I'd like the

18 witness to answer it.

19 A To answer your question right now, I need his

20 statement so I could review it to where I made that

21 conclusion.

22 Q Okay. It's not very long. Maybe your

23 counsel --

24 A But I don't have it in front of me. I don't

25 have Mr. Sevall's testimony. But if you get me

0465

1 Mr. Sevall's testimony, I'll go through it and try to

2 get to that line that led me to that conclusion.

3 MR. WILEY: You're referring,

4 Mr. Beattie, to the testimony of Scott Sevall,

5 November 1, 2016?

6 Q Perhaps I could save some time and ask you

7 just to tell us why you think that -- why you

8 characterize Staff's testimony in that manner? Do you

9 really believe that Staff supports competition because

10 it, quote, feels good?

11 A That was my conclusion after reading

12 Mr. Sevall's testimony, yes.

13 Q What's the basis for that conclusion?

14 A Okay. I apologize. Then let me go re-read --

15 just because that was my feelings. You're asking me.

16 That was my conclusion and my feelings after reading

17 the testimony. Do you want me to go to the line and

18 tell you which one it is?

19 Q I think I will just move on.

20 A It's my conclusion.

21 Q Okay. I will also submit to you that there's

22 been much discussion in the various testimonies today

23 about whether MEI or any of its witnesses or any other

24 witnesses did any studies to determine whether the

25 market could support an additional launch service

0466

1 provider. Do you know what I'm referring to?

2 A In a vague way, yes, I understand what you're

3 saying.

4 Q Did Arrow provide any studies or do any

5 research to determine that the market could not

6 support another provider?

7 A As Mr. Aikin's testimony today showed, the

8 revenues to Arrow from Crowley alone have decreased

9 significantly in the last year.

10 Q So you rely on Mr. Aikin for your conclusion?

11 A I think that's a leap, Mr. Beattie. I rely on

12 the statistics that are in my financials that show

13 that the revenues from Crowley have significantly

14 decreased along with other customers has decreased.

15 Those are irrefutable facts. That's not just some

16 nebulous conclusion. That's a fact. The dollars have

17 decreased.

18 MR. BEATTIE: Okay. I think I'm

19 finished with this witness. Thank you.

20 THE WITNESS: Thank you.

21 JUDGE FRIEDLANDER: Thank you. I

22 assume we want to save redirect for after the entirety

23 of cross-examination?

24 MR. WILEY: Yes, Your Honor.

25 THE WITNESS: Unless you can get it

0467

1 done in five minutes.

2 MR. BENTSON: I need a sandwich.

3 JUDGE FRIEDLANDER: In that case, how

4 long do we need for lunch? We're doing fairly well on

5 time.

6 MR. WILEY: I'd say an hour and

7 15 minutes.

8 JUDGE FRIEDLANDER: Why don't we just

9 make it 1:30, and we'll come back at 1:30. We're off

10 the record.

11 (A luncheon recess was taken from

12 11:54 a.m. to 1:30 p.m.)

13 JUDGE FRIEDLANDER: If you would, go

14 ahead and stand and raise your right hand.

15

16 BRIAN WESTAD, witness herein, having been

17 first duly sworn on oath,

18 was examined and testified

19 as follows:

20

21 JUDGE FRIEDLANDER: Thank you. You can

22 be seated.

23

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

25

0468

1 BY MR. WILEY:

2 Q Mr. Westad, good afternoon. Could you please

3 state and spell your last name and provide your

4 business address for the record.

5 A Yes. My name is Brian Westad, B-R-I-A-N,

6 W-E-S-T-A-D.

7 Q And by what company are you employed, please?

8 A I'm employed by Inchcape Shipping Services.

9 Q What is your business address for the record,

10 please?

11 A Business address is 1011 Southwest Klickitat.

12 Do you need me to spell that?

13 Q Sure.

14 A K-L-I-C-K-I-T-A-T, Klickitat Way, No. 103,

15 Seattle, Washington 98134.

16 Q And what is your title at Inchcape Shipping,

17 please?

18 A My title is port manager of Puget Sound.

19 Q And, Mr. Westad, did you cause to be filed

20 testimony in this matter under your name?

21 A Yes.

22 Q And it's been identified as BW-1T. Is that,

23 in fact, the testimony that I just asked you about?

24 A Yes.

25 Q And do you have any changes or revisions to

0469

1 that testimony?

2 A Not at this time, no.

3 Q Do you adopt that testimony as your sworn

4 testimony for admission into the record in this

5 proceeding?

6 A Yes, I do.

7 MR. WILEY: No further questions, Your

8 Honor. I tender the witness.

9 JUDGE FRIEDLANDER: Thank you.

10 Mr. Bentson.

11 MR. BENTSON: Thank you, Your Honor.

12

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

14 BY MR. BENTSON:

15 Q Good afternoon, Mr. Westad. Can you explain

16 to me Inchcape Shipping is a shipping agent; is that

17 correct?

18 A Yes, we are.

19 Q And can you explain what the shipping agent

20 does exactly?

21 A Yes. The shipping agent is, basically, a

22 representative for the principal connected to the

23 ship. It could be either the charter or it could be

24 the owner. The charter or the owner -- historically,

25 a vessel -- or an owner or charter is responsible for

0470

1 the vessel wherever it is in the world.

2 So you could have the owner who is in Germany

3 and their ship is in Singapore. So pretty much by

4 law, maritime law, and historical precedent, they have

5 to have representation at the port of which the vessel

6 is in. So they hire what's called a ship agent to act

7 on their behalf. We have the authority to work with

8 that vessel, handle all government regulations

9 regarding that vessel, as well as provide any services

10 they may need through vendors in the local area.

11 Q And is one of those services acting as kind of

12 a middleman and arranging launch services for the

13 principal?

14 A Yes.

15 Q And do you do that here in Puget Sound?

16 A Yes.

17 Q And the only launch services provider in Puget

18 Sound currently is Arrow Launch Services; isn't that

19 right?

20 A No. They're not the only ones that provide

21 the service, no.

22 Q What other companies provide launch services

23 that you arrange for your principals?

24 A Well, the ones that are available, are, I

25 believe, Argosy Cruises, another one called Seattle

0471

1 Tourist or -- I honestly don't remember the name of it

2 because I've never used it. The other launch service

3 provided in an unofficial matter, you could say, would

4 be the towage companies being Foss and Crowley.

5 Q Okay. So you arrange launch services for Foss

6 and Crowley?

7 A They will at times -- the services that we

8 need -- these are actually very specific to piloted --

9 pilotage. Pilots will -- if a vessel is at anchor and

10 a -- and the pilot needs to get to the ship by law has

11 to move with the ship. Wherever the ship goes, they

12 have to have a pilot on board. Your options are to

13 either use a launch service like Arrow, or you can use

14 tugs that will pick up the pilot if they're in that

15 area and take it to the ship or take them to the ship.

16 Q Okay. So just to make sure I understand, are

17 Crowley and Foss included in your base of principals

18 that you provide these -- arrange these services for?

19 A Well, they're not principals. They're

20 vendors. They provide other services for that ship in

21 which they bill us for.

22 Q I see. So you're arranging the tug services

23 from Crowley and Foss --

24 A Foss, yes.

25 Q -- for your principals?

0472

1 A Yes.

2 Q And you're also arranging launch services for

3 your principals from Arrow Launch?

4 A Yes.

5 Q And safe to say, Inchcape isn't a direct

6 consumer of those launch services? You're sort of a

7 middleman between the principal and the company

8 providing those services?

9 A At times myself or my staff have to go out to

10 the vessel in which we use Arrow Launch Services for.

11 You can use a launch service either for personnel --

12 that could be crew, that could be technicians, that

13 could be regulatory authority such as Coast Guard or

14 United States Customs and Border Protection -- or they

15 could be the agents that need to go on board, grab

16 some official documents, and bring it back. In a way,

17 you could say that Inchcape can be a recipient of the

18 services as well.

19 Q Does Inchcape own its own vessel?

20 A In the world?

21 Q In the Puget Sound.

22 A No.

23 Q And so you don't need launch services for

24 Inchcape's vessels in the Puget Sound?

25 A We don't have vessels or boats, yeah.

0473

1 Q Now, with respect to BW-1T, which I think you

2 have a copy of in front of you?

3 A Yes.

4 Q Did you type BW-1T?

5 A No.

6 Q Who typed it?

7 A I believe it was the law offices of David's

8 firm.

9 Q And then after they typed it, they provided it

10 to you for review?

11 A Yes.

12 Q Did you make any corrections?

13 A I don't believe so, no.

14 MR. BENTSON: Thank you. I have no

15 further questions.

16 JUDGE FRIEDLANDER: Thank you.

17 Any redirect?

18 MR. WILEY: Yes.

19

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

21 BY MR. WILEY:

22 Q Mr. Westad, when you said you didn't provide

23 any corrections, you were involved in drafting the

24 statement with our offices, were you not?

25 A That's correct, yeah.

0474

1 Q And as a matter of fact, the information in

2 the statement came from you, did it not?

3 A Yes.

4 Q And it's all accurate and fully comprehensive

5 to the best of your knowledge?

6 A Yes. Upon reviewing it, it's all accurate and

7 representative of my testimony.

8 Q You said -- in response to Mr. Bentson's

9 question about other launch or launch-like companies,

10 is your testimony regarding tugs that they provide a

11 launch type of service in transporting passengers to

12 vessels for you?

13 A Yes.

14 MR. WILEY: No further questions.

15 JUDGE FRIEDLANDER: Thank you. And I

16 have no clarification questions, so thank you for your

17 testimony and you're excused.

18 Are we going now with Ms. Collins?

19 MR. WILEY: Yes.

20

21 DEBRA K. COLLINS, witness herein, having been

22 first duly sworn on oath,

23 was examined and testified

24 as follows:

25

0475

1 JUDGE FRIEDLANDER: You can be seated.

2 Mr. Fassburg.

3

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

5 BY MR. FASSBURG:

6 Q Good afternoon, Ms. Collins. Will you please

7 state your full legal name and spell your last name

8 for us.

9 A Debra K. Collins, C-O-L-L-I-N-S.

10 THE REPORTER: Can you spell your first

11 name.

12 THE WITNESS: D-E-B-R-A.

13 Q And with whom are you employed?

14 A Blue Water Shipping Company.

15 Q Did you cause to be filed prefiled testimony

16 in this proceeding?

17 A Yes.

18 Q Do you have a copy of that in front of you?

19 A Yes, I do.

20 Q And is that the exhibit labeled at the top

21 DC-1T?

22 A Yes.

23 Q Have you had an opportunity to review that

24 prefiled testimony?

25 A Yes, I have.

0476

1 Q Are you adopting that testimony here today for

2 admission into the record?

3 A Yes.

4 Q And I understand you're here today to provide

5 testimony on behalf of Arrow Launch; is that correct?

6 A Yes, it is.

7 MR. FASSBURG: I have no further

8 questions, and we'll tender the witness.

9 JUDGE FRIEDLANDER: Thank you.

10 Mr. Bentson.

11 MR. BENTSON: Thank you, Your Honor.

12

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

14 BY MR. BENTSON:

15 Q Good afternoon, Ms. Collins.

16 A Hi.

17 Q Now, you were in the room previously when

18 Mr. Westad just testified; is that correct?

19 A Yes.

20 Q You work for a shipping agent as well?

21 A Yes.

22 Q And did you generally agree with Mr. Westad's

23 explanation or would you describe what a shipping

24 agent does differently?

25 A No. It's pretty accurate depending on what

0477

1 type of agent you are.

2 Q And the type of agent you are is similar to

3 Mr. Westad that you act as sort of the middleman

4 between the principals and the service providers, such

5 as launch service providers, in the Puget Sound?

6 A Yes.

7 Q And you have worked for Blue Water since 2004?

8 A Correct.

9 Q During that period, have all of your

10 responsibilities been in Puget Sound?

11 A Yes. Well, also Grays Harbor.

12 Q And in both Grays Harbor and the Puget Sound,

13 the only launch service provider you've worked with in

14 those areas is Arrow Launch; isn't that correct?

15 A In Puget Sound. There is no launch service in

16 Grays Harbor besides tugs.

17 Q And with respect to your testimony, DC-1T, did

18 you type that yourself?

19 A No.

20 Q Did you draft it longhand and then send it to

21 someone else to be typed?

22 A No.

23 Q Did you have a conversation with Mr. Wiley or

24 someone in his office and then they provided you a

25 typed copy?

0478

1 A Yes, they provided me a copy.

2 Q Was that a verbatim transcript of your

3 conversation or sort of a paraphrase?

4 A No. It was accurate.

5 Q But was it a verbatim copy, verbatim

6 transcript --

7 MR. WILEY: Objection.

8 Q -- of what you discussed?

9 MR. WILEY: Objection, Your Honor. I

10 mean, this wasn't sworn -- it wasn't a deposition.

11 When he says verbatim, I don't know what he's

12 implying.

13 JUDGE FRIEDLANDER: Mr. Bentson?

14 MR. BENTSON: Your Honor, we can see if

15 the witness understands the question. If she doesn't,

16 I can try again.

17 JUDGE FRIEDLANDER: All right. Go

18 ahead.

19 BY MR. BENTSON:

20 Q Ms. Collins, do you understand what I mean by

21 verbatim transcript?

22 A Yeah. Whatever I told him, he wrote down, and

23 then I got the final one. That's --

24 Q Do you understand the difference between a

25 verbatim transcript and a paraphrase?

0479

1 A Well, verbatim would be what I said.

2 Paraphrase would probably be -- I'm not really sure,

3 to tell you the truth.

4 Q That's no problem. Right here in this

5 courtroom today there's a court reporter, and she's

6 taking a verbatim transcript down of what we're

7 saying.

8 A Right.

9 Q But sometimes I have a conversation loosely

10 with someone, and then I say this is the gist of what

11 they said. This is generally what they said. I'm

12 asking: When you provided this statement when they

13 typed it, did they type up a verbatim transcript of

14 the conversation you had or was it just a paraphrase?

15 A As far as I know, it was what I said.

16 Q And so then they provided you the written

17 transcript and you reviewed it?

18 A Yes.

19 Q And you didn't have any changes to it?

20 A As far as I know, no.

21 MR. BENTSON: No further questions.

22 JUDGE FRIEDLANDER: Thank you.

23 Any redirect?

24 MR. FASSBURG: I don't think I do.

25 JUDGE FRIEDLANDER: Okay. Thank you.

0480

1 Mr. Wiley, were you going to say something?

2 MR. WILEY: No. I was just getting

3 ready for the next witness.

4 JUDGE FRIEDLANDER: You were grabbing

5 the mike.

6 MR. WILEY: Sorry.

7 JUDGE FRIEDLANDER: I have no

8 clarification questions, so thank you for your

9 testimony and you're excused.

10 Mr. Coburn.

11

12 DOUG COBURN, witness herein, having been

13 first duly sworn on oath,

14 was examined and testified

15 as follows:

16

17 JUDGE FRIEDLANDER: Thank you. You can

18 be seated.

19 Mr. Wiley.

20

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

22 BY MR. WILEY:

23 Q Mr. Coburn, thank you for your appearance here

24 today. Could you please state and spell your first --

25 spell your last name for the record, please.

0481

1 A Doug Coburn, last name is spelled C-O-B-U-R-N.

2 Q By whom are you employed?

3 A General Steamship.

4 Q What is your business address, please?

5 A I have to look and remember what that is,

6 because I don't write it very often. Suite 360,

7 19020 33rd Avenue West in beautiful Lynnwood,

8 Washington.

9 Q What is your title at General Steamship,

10 please?

11 A Assistant vice president.

12 Q And, Mr. Coburn, did you cause to be filed in

13 this proceeding in the application of MEI Northwest,

14 LLC, an exhibit that's been identified as DSC-1T?

15 A I did, yes.

16 Q And is that your testimony of General

17 Steamship in this proceeding?

18 A Yes, it is.

19 Q And do you have any corrections or revisions

20 to that testimony?

21 A No, I do not.

22 Q Do you, in fact, adopt that testimony as your

23 sworn testimony for admission into in this record?

24 A Yes.

25 MR. WILEY: No further questions, Your

0482

1 Honor. I tender the witness.

2 JUDGE FRIEDLANDER: Thank you.

3 Mr. Bentson.

4 MR. BENTSON: Thank you, Your Honor.

5

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

7 BY MR. BENTSON:

8 Q Mr. Coburn, you were in the courtroom as well

9 when Mr. Westad of Inchcape testified; is that

10 correct?

11 A That is correct.

12 Q And General Steamship is also a shipping agent

13 like Inchcape?

14 A That is correct also, yes.

15 Q Did you generally agree with Mr. Westad's

16 description of what a shipping agent does?

17 A Yeah. I think he did a very good job

18 actually.

19 Q Anything you want to add to that?

20 A No. I'd say it was pretty clear.

21 Q And then -- so it's safe to say General

22 Steamship, like Blue Water and Inchcape, acts as a

23 middleman between the principals and the service

24 providers, such as launch service providers?

25 A That's correct.

0483

1 Q If I understand correctly from DSC-1T, you

2 began working with Arrow in 1989?

3 A Uh-huh. When they first started, that's

4 correct.

5 Q And have they been the sole launch service

6 provider since '89, or was there a period where there

7 was some overlap?

8 A There was a period there was some overlap.

9 There was still Seattle Harbor Tours or Argosy of

10 Seattle.

11 Q And about -- I guess with the exception of

12 Argosy, do you recall when Arrow became the sole

13 launch service provider?

14 A No, not right off the top of my head.

15 Q Is Arrow Launch the sole launch service

16 provider you deal with in the Puget Sound?

17 A Yes, definitely.

18 Q Have you ever dealt with a different launch

19 service provider in the Puget Sound?

20 A Well, I did before Arrow came into the

21 picture, yes.

22 Q Before '89?

23 A Before '89 and maybe early -- for a year or so

24 after, because I don't think they started in all the

25 ports in Puget Sound when they started.

0484

1 Q Was your testimony also typed by Mr. Wiley's

2 office?

3 A Yes.

4 Q Or did you type it yourself?

5 A Oh, no. I didn't type this up. I'm too lazy

6 for that.

7 Q Did you make any corrections?

8 A Yes.

9 Q Can you show me what corrections you made or

10 do you recall?

11 A No. I would have to go back and look.

12 Q Do you recall of anything substantive or was

13 it pretty minor?

14 A I think overall it was pretty minor. I might

15 have added something to it once I had a chance to look

16 at it and think about it.

17 Q But sitting here today, you don't recall what

18 you added?

19 A No.

20 MR. BENTSON: I have no further

21 questions, Mr. Coburn.

22 JUDGE FRIEDLANDER: Thank you. Any

23 redirect?

24 MR. WILEY: Yes, a couple questions,

25 Your Honor.

0485

1

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

3 BY MR. WILEY:

4 Q Mr. Coburn, before 1989, what was the launch

5 services like that you had experienced before the

6 advent of Arrow?

7 A Unprofessional.

8 Q And by that could you compare, for instance,

9 the communication interaction that you have with Arrow

10 versus what you had before?

11 A Well, it was a lot different because they were

12 covering -- the other launch operators were covering

13 different areas, so it wasn't as easy to get things

14 done when there was movement between different ports.

15 It just made it a little more difficult, and, quite

16 frankly, the service that was provided was not

17 anywhere near as safe. They usually just had a

18 driver, and then we had to jump on the Jacob's ladder.

19 Q Do you see any difficulty posed by dealing

20 with multiple providers as opposed to one provider in

21 terms of simplicity of logistics and service ordering?

22 MR. BENTSON: Objection, outside the

23 scope.

24 MR. WILEY: Your Honor, he just -- I'm

25 following up on his answer which was in response to

0486

1 Mr. Bentson's question, and I think it's a fair

2 question based on his comparison of 1989 and what --

3 who he used before. And he just said he used multiple

4 providers, and I'm asking him if there were

5 difficulties posed by using multiple providers.

6 MR. BENTSON: You're asking him in the

7 past tense, not the future potential?

8 MR. WILEY: Yeah. Right now I'm asking

9 him in the past tense to be consistent with the scope

10 of the cross.

11 JUDGE FRIEDLANDER: Okay. I'll allow

12 that.

13 BY MR. WILEY:

14 Q Were there complications posed in terms of

15 communicating with multiple launch providers in the

16 past?

17 A Well, yes, there was just because you're

18 talking about different ports and ships moving not all

19 the time going necessarily to one location, sometimes

20 going to multiple ports.

21 Q Do you have a preference about dealing with

22 one versus multiple launch providers?

23 A One is definitely simpler and easier for all

24 the logistics that we have to handle to have one

25 provider, yes.

0487

1 MR. WILEY: No further questions, Your

2 Honor.

3 JUDGE FRIEDLANDER: Thank you. I have

4 no clarification questions, so you're excused, and

5 thank you for your testimony.

6 THE WITNESS: Thank you.

7 JUDGE FRIEDLANDER: Are we ready now to

8 bring up Mr. Harmon?

9 MR. HARMON: I'd like to take five

10 minutes. I'd like to thank the witnesses and use the

11 washroom.

12 JUDGE FRIEDLANDER: That's fine. We'll

13 take a very quick five minutes.

14 (A break was taken from 1:49 p.m. to

15 1:54 p.m.)

16 JUDGE FRIEDLANDER: We'll be back on

17 the record. Mr. Harmon has taken the witness stand,

18 and I believe we have cross-examination from MEI.

19 MR. BENTSON: Yes, Your Honor.

20 JUDGE FRIEDLANDER: And you're

21 reminded, Mr. Harmon, that you're still under oath.

22 So Mr. Bentson.

23 MR. BENTSON: Thank you, Your Honor.

24

25

0488

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

2 BY MR. BENTSON:

3 Q Good afternoon, Mr. Harmon.

4 A Hi.

5 Q We're going to be referring today mainly to

6 your testimony in JLH-1T. Do you have that in front

7 of you?

8 A Yes, I do.

9 Q And so the first area I'd like to focus on is

10 on page 2 of that testimony if you can get that in

11 front of you.

12 A Okay.

13 Q Now, between lines 7 and lines 25, you give a

14 little of your personal background.

15 A Yes.

16 Q So you started working in the maritime

17 industry at a pretty young age, it sounds like?

18 A Yes.

19 Q And why don't you tell us a little about that.

20 A As my testimony says here, my crib was on a

21 boat literally. My family owned commercial work

22 boats. It might not say my crib was on a boat. I'll

23 have to re-read it again, but that is the fact. My

24 crib was literally on a commercial fishing boat, and

25 almost every dollar I've earned in my entire life has

0489

1 been on the water in some form or another as outlined

2 here. This is a fairly accurate description of my --

3 the history.

4 Q I understand. And I apologize for speaking

5 while you were talking.

6 A That's okay.

7 Q So it sounds like if your crib was on a boat

8 it was a family business? Your family was in the

9 industry?

10 A That would be correct.

11 Q And that started out you were in southern

12 California at the time?

13 A That's correct.

14 Q That's where your family business was?

15 A That's correct.

16 Q And you eventually in 1989 moved up to the

17 Puget Sound area?

18 A That's correct.

19 Q Was that when you purchased Seawolf?

20 A That's correct.

21 Q And at the time you purchased Seawolf, they

22 already had a UTC certificate; is that right?

23 A That's correct.

24 Q And so that's why you were able to at that

25 time immediately begin to perform launch services

0490

1 because the company you purchased had the certificate?

2 A That's correct.

3 Q And you didn't have to apply for a certificate

4 at that time?

5 A There was a transfer process, transfer it from

6 Seawolf to Arrow.

7 Q So is that, yes, you didn't have to apply for

8 a certificate at that time?

9 A I apologize. I don't know if that's a legal

10 term in the transfer application process if that's

11 applying or not. I'd have to defer to counsel,

12 because I don't know if that's an application. I

13 mean, it's a process.

14 Q That's fair. It wasn't meant to be a trick

15 question.

16 A Yes. I just don't know the answer.

17 Q But, as you testified, you purchased a company

18 that had the certificate, and then some sort of

19 transfer occurred?

20 A Yeah. You have to come to the Commission, and

21 there's a process that's an application process.

22 Q And then a few years later -- because at the

23 time you purchased Seawolf, you purchased it with a

24 business partner?

25 A That's correct.

0491

1 Q And, eventually, you and your wife bought out

2 that business partner and reorganized into Arrow

3 Launch?

4 A That's correct.

5 Q And since that time, with the exception of

6 Argosy, have you been the sole launch service provider

7 in the Puget Sound?

8 A That's not correct.

9 Q Who have been the other launch services

10 providers?

11 A There were quite a few, several almost in

12 every port, so I believe that Mr. Sevall identified

13 most of those certificates in his exhibit. I believe

14 it might have been SS-2. I apologize, but it

15 articulated the 1977 era of the issuance of the

16 certificates. There was quite a few certificates.

17 Q Sorry. So I'm talking about the 1990s after

18 you formed Arrow Launch. When you formed Arrow

19 Launch, there were multiple launch service providers?

20 A That is correct.

21 Q And I don't recall hearing Mr. Sevall testify

22 to that. Do you know who those other launch service

23 providers were?

24 A I don't know all of them, and, again, that

25 was -- 1989 was a long time ago. So are you talking

0492

1 about in 1989 or are you talking about in 1977?

2 Q Neither. I'm talking about after you formed

3 Arrow Launch.

4 A Well, Arrow Launch was formed in 1989.

5 Q I misunderstood that from your testimony. I

6 thought you reorganized into Arrow Launch later in the

7 '90s?

8 A It's always been Arrow Launch. Arrow Launch a

9 partnership and then Arrow Launch, Inc. So to me, I

10 apologize, when you say Arrow Launch, I go to 1989

11 when it started and forward.

12 Q No apology necessary. I'll try to clarify.

13 What year did you incorporate Arrow Launch?

14 A I'd have to go back and look at the records.

15 It was '90, '91, '92, '90.

16 Q So just a couple years after you came up?

17 A Yeah.

18 Q And is that the same time that you bought out

19 your business partner?

20 A Yes, I believe that was.

21 Q Since that time, have there been other launch

22 service providers besides Arrow?

23 A Yes.

24 Q When did Arrow become the exclusive launch

25 service provider in Puget Sound?

0493

1 A I don't believe we are the exclusive launch

2 provider in Puget Sound, because there's other launch

3 providers.

4 Q Who do you consider your competition in that

5 market?

6 A There's, for sure, Argosy is still providing

7 launch service. The tugs themselves, Crowley and

8 Foss, on a regular basis provide launch service. I

9 don't know to what degree they do. I do know that

10 it's quite often.

11 Q Do you consider Crowley and Foss competitors

12 of Arrow Launch?

13 A To an extent, yes.

14 Q Just to your tug services or also to your

15 launch services?

16 A No, to launch service.

17 Q If we can go to page 4 of your testimony --

18 and this is a section -- lines 1 through 22 of page 4,

19 you're addressing why you believe the Puget Sound

20 can't support two launch service providers; is that

21 right?

22 A Line 3 says, no, I do not.

23 Q But that's in -- line 3 is in response to a

24 question that says, reading lines 1 and 2 -- I'll read

25 and you can follow along -- do you believe that the

0494

1 territories in which MEI is applying can support two

2 full-time viable launch providers? Did I read that

3 correctly?

4 A Yes, you did.

5 Q So I'm trying to clarify. You testified

6 earlier you believe there's multiple launch service

7 providers. Here you're testifying that the Sound can

8 only support one, not two. Can you clarify that for

9 me? I think there is an answer. I don't know how to

10 articulate it.

11 MR. WILEY: Your Honor, I'm going to

12 make an objection, a form objection, to the question,

13 because the question that's keying this is the

14 territories in which MEI is applying. His question

15 goes broader than the application scope. I think -- I

16 don't want the witness to be confused by that.

17 JUDGE FRIEDLANDER: I think with that

18 caveat the witness can answer to the best of his

19 ability and the best of his knowledge.

20 THE WITNESS: So what's the question

21 again, please?

22 MR. BENTSON: Can it be read back, Your

23 Honor?

24 JUDGE FRIEDLANDER: That's fine.

25 (Record read back as requested.)

0495

1 A I'm not sure really how to answer your

2 question. I'm not sure to the extent that Crowley or

3 Foss provide launch services except for I do know a

4 significant amount to the pilots. I'm not sure what

5 the annual report would sustain for Argosy, but I do

6 know that our revenues have decreased. I do know that

7 ships coming into the Puget Sound have decreased.

8 There's many factors that are impacting our

9 business, and if this MEI application was granted and

10 if the revenues that they project are taken from our

11 bottom line, I don't see how two launch service

12 companies could survive.

13 Q And that's what I'm trying to get at. What's

14 the area in which you're saying two launch services

15 can't survive?

16 A Well, that's a -- I would have to ask you

17 what's the area? To me it's -- no launch service

18 provider has been able to sustain themselves in a

19 significant port. There were other launch providers.

20 They've, for multiple reasons, put their businesses up

21 for sale, gone out of business. It's a very

22 fluctuating-type business.

23 In other words, there's -- there are demands

24 in certain ports. They're seasonal. They're very

25 much seasonal. Whether it's an oil port or a grain

0496

1 port, they are very much seasonal. And if you

2 don't -- if you're not diversified as a launch company

3 and large enough to have facilities and locations

4 throughout Puget Sound, when you're very slow in Port

5 Angeles -- right now we're very, very, very slow in

6 Port Angeles and have been for months. So we can only

7 hope that our south sound grain ports are busy. If

8 they're in their off seasons, then, hopefully, our

9 north sound oil ports are busy.

10 Historically, no launch service has been able

11 to sustain itself in a single port of operation. So

12 it may seem a little complicated because it's Puget

13 Sound, but it's a -- geographically, there are huge

14 differences in the types of services that are -- types

15 of ships that are calling on the different ports.

16 Q Okay.

17 A I hope I've answered your question.

18 Q Unfortunately, no, but that may be the fault

19 of the questioner. Maybe we can unpack it a little

20 bit. Do you know which -- what are the territories

21 you understand that MEI is applying to provide launch

22 services in?

23 A I believe Anacortes.

24 Q Are there any other territories that you

25 believe they're applying to operate in?

0497

1 A I don't think so.

2 Q So when you say that you do not believe the

3 territories in which MEI is applying can support two

4 full-time viable launch providers, you're referring

5 just to Anacortes?

6 A No. I'm referring to any port in Puget Sound

7 couldn't sustain two viable launch operators.

8 Q Including Anacortes?

9 A Including -- yeah, that was -- yes.

10 Q The -- and you're -- Arrow is the exclusive

11 launch service provider in Anacortes?

12 A No. Because we have the competition from the

13 tugs in Anacortes a lot.

14 Q So you can see my confusion there?

15 A I apologize. I can't.

16 Q You say that it can't support more than one,

17 but you're now telling me there's more than one.

18 Which is it?

19 A There's one certificated launch service

20 provider in Anacortes that's operating today that I

21 know of. I believe the Staff's documentation shows

22 that there's actually other certificates. I don't

23 know what the other launch providers are doing. I

24 know if you put -- maybe it's -- all I can tell you is

25 that if there's a further erosion of the revenues for

0498

1 Arrow Launch, it could and would be very devastating.

2 Q Is it your testimony today that there are

3 other launch service providers operating in Anacortes

4 besides Arrow?

5 A Yes.

6 Q Can you identify those other launch service

7 providers?

8 A Crowley, Foss.

9 Q Anyone else?

10 A Not that I'm aware of.

11 Q Now, so it's the Anacortes area that you're

12 referring to that you don't think can support two

13 launch service providers or any single port. You've

14 clarified that.

15 A Thank you.

16 Q And you give some reasons for that in your

17 testimony here on page 4; isn't that correct?

18 A Yes.

19 Q One of those reasons is mergers in the

20 marketplace. That's the first reason you identify?

21 A Yes.

22 Q And the reason you identify that reason is --

23 you're implicit in that is that mergers will result in

24 fewer ships calling on the port; isn't that right?

25 A Mergers have resulted in fewer ships calling

0499

1 on the port, on Puget Sound as a port.

2 Q How about on Anacortes?

3 A On Anacortes, yes.

4 Q Which mergers have caused fewer ships to call

5 on Anacortes?

6 A There at one time was three different

7 companies all operated by British Petroleum --

8 Keystone -- I apologize. I hope I can remember the

9 other name, because there was three different ship

10 companies. Keystone -- three different ship

11 companies, and they've all merged into Alaska Tanker

12 Company. That's one of them.

13 Other companies have flat stopped providing

14 service. Texaco, Chevron no longer provide service.

15 ARCO has sold, and they've downsized to five ships

16 where ARCO used to have a fleet of about nine to ten.

17 SeaRiver Maritime used to have a huge fleet. They've

18 downsized quite a bit. And maybe that's not a merge,

19 but they've downsized huge. They used to have five or

20 six ships that call on Puget Sound, and now they're

21 not even calling on Puget Sound.

22 We have had one SeaRiver ship this year for

23 about four days, and last year I don't think we had

24 them at all, so reorganization of shipping lines. The

25 mergers. Keystone -- and I apologize. I just can't

0500

1 think of the name. There were three major shipping

2 companies that all operated about five to seven ships

3 of their own giving you about 15-plus ships, 16,

4 almost 20 ships have now formed ATC, and they operate

5 four ships. That's the major -- that's the main

6 merger.

7 Q Are you aware of any mergers in which you had

8 companies that merged together into one entity but it

9 didn't result in a decrease of vessel traffic, you

10 just had the same number of vessels operating under

11 the same company name?

12 A No.

13 Q That's never happened in your experience?

14 A No.

15 Q Do you have -- you testified that the number

16 of ships operating is decreasing. Do you know

17 specifically that it's decreasing in Anacortes?

18 A The number of ship visits, yes.

19 Q When you say it's decreasing, what time period

20 are you considering when you judge that decrease?

21 A That was an annual basis.

22 Q So between 2015 and 2016?

23 A And even prior to that. I would say that the

24 peak -- I'm going off of memory here. I'm going to

25 say the peak traffic was 2011, 2012. I'm just going

0501

1 off of memory. It may be somewhere in this document,

2 but it was quite a few years ago. And it's just been

3 on a steady decrease since then.

4 Q You also mention in your testimony on page 4

5 another reason you give is that larger ships are now

6 being used.

7 A Yes.

8 Q And it's your testimony that larger ships

9 being used results in fewer ships and thus a decrease

10 in launch services required?

11 A Puget Sound has a stipulation that no more

12 than 120,000 deadweight tonnage ship can come into

13 Puget Sound. What all of the majors have done is

14 they've built bigger ships, 225s. Most of them are,

15 like, 225,000 deadweight tons.

16 And what they'll do is instead of having two

17 120s -- ARCO was the perfect example of that. Most of

18 ARCO's ships were 120 deadweight tons, 90,000

19 deadweight tons, or 70,000 deadweight tons. What they

20 did is ConocoPhillips built larger

21 225,000-deadweight-ton vessels. Those vessels that go

22 to Valdez, load a full load of cargo, and then go to

23 Los Angeles or Long Beach and discharge and discharge

24 either a partial load so then they can come into the

25 Puget Sound. And they have dual load marks, and

0502

1 they're calling them a 120. And then they'll allow it

2 into Puget Sound.

3 Sometimes that same ship will actually go --

4 or reverse that. It will go to Valdez and just load

5 to the 120,000-deadweight-ton limit and then come to

6 Puget Sound. But it's reduced -- the federal

7 government allowing the multiple load lines on a

8 single vessel has made it now you don't need two 120s.

9 You can buy a 225 and run it as a 120 when it fits

10 your market needs to come into Puget Sound.

11 Q But if I understood you correctly, you can't

12 bring the 225 to Puget Sound?

13 A You can bring that same ship into Puget Sound.

14 It's registered both -- many of the class societies

15 will call your ship a 225 if it's loaded to a 225

16 level. But when you only load it to a 120 level, even

17 though it has the ability to carry 225,000 deadweight

18 tons of cargo, you load it to 120, you're legal to

19 come into Puget Sound. So that signal, 225, can

20 replace two 120s or a couple of 70s.

21 Q Do larger ships sometimes require more launch

22 services?

23 A No.

24 Q Larger ships never require more crew?

25 A Actually, the crewing is about the same. Most

0503

1 of -- if anything, in fact, since 1989 the U.S. crews

2 have been able to downsize slightly. They used to

3 have 37, approximately 37, crew persons. Today

4 they're 28 to 30. And with the advent of the ATBs,

5 ATBs they run a nine-person crew.

6 Q But it's not your testimony today that since

7 1989 the demand for launch services has been

8 decreasing in Puget Sound?

9 A I believe what I said from 2011 it's been

10 decreasing, about 2011. It did do a peak. When we

11 purchased the business -- it's not so much that the

12 pie is getting smaller. The pie is about the same.

13 Whether it's 1989 or 2017, the pie is the same.

14 Arrow's size of the pie got a little bit bigger.

15 As a matter of fact, the pie is getting a

16 little smaller since about 2011, but Arrow's pie --

17 because we had to, to be able to sustain ourself

18 because we would have been out of business. We would

19 have been one of those failed companies if we would

20 have stayed only in Anacortes. We would have been one

21 of those failed companies if we stayed only in Port

22 Angeles.

23 Port Angeles right now is virtually zero

24 revenues for months. I think today we have an

25 American tanker there. We're blessed we have an

0504

1 American tanker there today. You can see what I'm

2 saying. There's months upon months where Seattle or

3 Tacoma there are zero ships, nothing.

4 Q So let me see if I understand your pie analogy

5 that you just testified to. So you're saying that

6 Arrow -- the growth we've seen in Arrow is because the

7 size of Arrow's pie has been growing?

8 A Uh-huh, yes.

9 Q And that's because of you started to -- is

10 that growth coming from other launch service providers

11 no longer competing with you?

12 A No. It's because our seeing that we're going

13 to go out of business in Anacortes only, so we've

14 sought other opportunities.

15 Q Was there a time when you only operated in

16 Anacortes?

17 A Yes, there was.

18 Q For how long was that?

19 A Probably not very long, just several months

20 when we first started getting going. Actually, our

21 customers said we would like to see you in Port

22 Angeles as well.

23 Q When you purchased the Seawolf certificate or

24 transferred the Seawolf certificate, did that cover

25 the entire sound or just Anacortes?

0505

1 A The entire Puget Sound.

2 Q But it took a few months before you started

3 operating in other ports?

4 A Yes, sir.

5 Q How many years until you were operating across

6 all the ports in Puget Sound?

7 A We right away started in Anacortes

8 immediately. And within several months, we stationed

9 at least one boat in 1989 in Port Angeles. And

10 probably within two years maybe, three years at the

11 most, we stationed a boat in Seattle. And there were

12 multiple providers in those ports at that time as well

13 in Seattle and Tacoma, but our customers said your

14 service is superior. We love you in Port Angeles.

15 We'd like to see you in Seattle.

16 Q So when we talk about your pie analogy and

17 Arrow's pie growing, that all came from just operating

18 in new ports?

19 A Not all of it, no.

20 Q Where did the other growth come from?

21 A Some ancillary sales, you know, some waste

22 stream management, some other opportunities like that.

23 Q It didn't come from eliminating competition?

24 A I would assume that as they went out of

25 business -- I can't tell you what percentage the

0506

1 previous launch services were providing versus and/or

2 when we got a significant portion of the launch

3 services because it was a slow process over several

4 years.

5 Q So there were some launch service providers

6 that went out of business over that time?

7 A Yes.

8 Q And that contributed to Arrow's pie growing?

9 A Possibly.

10 Q And then you said at some point Arrow's pie --

11 that growth peaked?

12 A I would -- I would say so. If you want to put

13 it that way, yeah. I'd put it like that. The pie --

14 I kind of look at the amount of ships that come into

15 Puget Sound as a pie. That's why I'm telling you in

16 my statement I feel that the pie is getting smaller is

17 because there's less ships coming into Puget Sound.

18 Q And that shrinking pie began in 2011, if I

19 understand your testimony correctly?

20 A Approximately, yes, sir.

21 Q On page 14 when you talk about the number of

22 tankers, it's a statement -- you can turn there if you

23 want. You may just remember. You testified that you

24 looked at the number of oil tankers, and you compared

25 the number of oil tankers -- the 285 oil tankers in

0507

1 1992 and said in 2015 there were only 89 oil tankers.

2 Do you recall that part of your testimony?

3 A Yes.

4 Q And you said that that was a 69 percent

5 decrease in the market?

6 A That's correct.

7 Q What I'm -- over that time period, what I'm

8 having a hard time understanding is it seems Arrow has

9 done quite well during that period.

10 A Was that a question? I apologize.

11 Q Yes. Is that correct, that Arrow has done

12 quite well between 1992 and 2015?

13 MR. WILEY: Your Honor, quite well

14 isn't really very well defined. Could we have some

15 parameters on the question so it could be answered?

16 MR. BENTSON: Your Honor, may I be

17 heard?

18 JUDGE FRIEDLANDER: Yes, please.

19 MR. BENTSON: If Mr. Wiley has an

20 objection to the question, that's fine, but if the

21 issue --

22 MR. WILEY: Object to the form.

23 MR. BENTSON: If the -- I'm not sure

24 that's an objection when we're outside of a

25 deposition. But when it comes to a question, if it's

0508

1 an issue of understanding, it should be the witness

2 who determines whether or not the question is

3 understandable, not his counsel.

4 JUDGE FRIEDLANDER: Did you understand

5 the question, Mr. Harmon?

6 THE WITNESS: Your Honor, I really

7 don't. May I explain to you why I don't understand

8 the question?

9 JUDGE FRIEDLANDER: That's fine.

10 THE WITNESS: Quite well to you may be

11 significantly different to me. I would disagree and

12 say not quite well. Arrow Launch has operated under

13 the revenue guidelines of the Utilities and

14 Transportation Commission.

15 They've established a rate methodology about

16 27 years ago working with them of a 7 percent net

17 profit before taxes and interest on the bulk of our

18 business. So you take interest and taxes out of that

19 7 percent and that brings out a percentage of quite

20 well to a real tight margin. I think that we've been

21 innovative. We've worked really hard.

22 Quite well is really -- we're blessed to be in

23 the Northwest doing what we like to do. My wife and I

24 bought Arrow Launch because we wanted to surround

25 ourselves with people that like to take care of other

0509

1 people in the launch industry, but there's huge

2 sacrifices. It's a 24/365. So quite well -- we've

3 done -- if I say fine, I don't know if I'm answering

4 his question. We've done okay. I wouldn't say quite

5 well, no, sir.

6 That's why it's a vague question, and I

7 apologize. I'm not trying to not answer your

8 question, but it's a very difficult -- it's real tight

9 margins.

10 Q Your answer is perfectly fine, Mr. Harmon.

11 And I'll make you a deal. If I don't understand your

12 answer, I'll ask you to clarify; and if you don't

13 understand my question, please ask me to clarify. We

14 can do that moving forward.

15 A Fair enough.

16 Q Now, in 1989 when you purchased Arrow Launch,

17 you grossed $169,000 that year?

18 A Yes, sir.

19 Q And you now gross $6.5 million a year.

20 A Gross revenues of regulated and nonregulated

21 sales in that time frame, yes.

22 Q And the 169,000 figure in '89 was regulated

23 and nonregulated services; correct?

24 A It would have probably been predominantly

25 regulated. We've had to think out of the box to try

0510

1 to figure out how we're going to stay in business.

2 Q There weren't other revenues in '89 that

3 you're not capturing that number, are there?

4 A No, sir.

5 Q So by my calculation, the growth between '89

6 and your 6.5 million year is, roughly, 4,000 percent.

7 Does that seem close enough to you of an estimate?

8 A Fine.

9 Q It's certainly a lot more than 7 percent a

10 year?

11 A There's some mathematical issues. There's a

12 price of a dollar today versus in 1989, but it still

13 comes down to a 7 percent net profit.

14 Q But that increase identified is correct? It's

15 in your testimony.

16 A The increase that's in here is very accurate

17 testimony, yes, sir, on regulated and nonregulated

18 revenues for Arrow Launch that are reported to the

19 UTC.

20 Q And your fleet has grown during that time as

21 well?

22 A Yes, sir.

23 Q You started out in '89 with just three

24 vessels?

25 A That's correct.

0511

1 Q You now have 12 vessels according to your

2 testimony.

3 A That's correct.

4 Q So that's a growth of about 400 percent in

5 terms of your fleet size.

6 A Okay. If you say so.

7 Q Three times four.

8 How many employees did you have in '89?

9 A I can't recall in 1989 how many employees we

10 had.

11 Q Did you have less than ten?

12 A I couldn't honestly tell you how many

13 employees we had in 1989.

14 Q Do you have any idea if it was less than 20?

15 A For the sake of making you happy, we'll say it

16 that was ten.

17 Q You don't need to make me happy.

18 A So my answer is I can't remember exactly how

19 many employees we had in 1989.

20 Q My question is a little different. I'm not

21 asking you to remember exactly how many employees you

22 had. I'm asking if you remember if it was less than

23 ten?

24 A I can't remember.

25 Q Do you remember if it was less than 20?

0512

1 A I can't remember.

2 Q Do you know if it was less than 42?

3 A I can't remember.

4 Q So you don't know if you've grown at all in

5 terms of the number of employees since 1989?

6 A I'm sure that we've grown the number of

7 employees that we have in 2017 versus 1989.

8 Q And you have 42 employees, as I understand

9 from your testimony, right now?

10 A FTEs, yes, full-time employees, yes. Plus

11 another handful of part-time.

12 Q And you know there's growth between 1989 and

13 today. You just don't know how much?

14 A Of the employee pool?

15 Q Yes.

16 A Yes.

17 Q You've recently entered into three new leases

18 in Port Angeles; isn't that right?

19 A Correct.

20 Q And each of those leases is for a five-year

21 term?

22 A Fifteen-year term. Excuse me. You're

23 correct. They're five years with two five-year

24 options.

25 Q And you requested the two five-year options?

0513

1 A Yes.

2 Q Because you foresee yourself being there at

3 least 15 years?

4 A I hope so.

5 Q And you have to pay monthly rent of those

6 leases?

7 A Yes.

8 Q And you have to post bond for utilities on

9 those issues?

10 A Actually, the bond I'm not sure if it's for

11 the utilities. It's a requirement of the municipality

12 that we made those leases with that you have a bond.

13 It's actually a bond on the lease payments. It's not

14 on the utilities.

15 Q You have to pay excise taxes with respect to

16 those leases?

17 A Yes.

18 Q And to obtain those leases from the Port of

19 Port Angeles, you had to make certain submissions?

20 MR. WILEY: Objection, Your Honor,

21 outside the scope of direct and relevance.

22 JUDGE FRIEDLANDER: Mr. Bentson.

23 MR. BENTSON: Your Honor, the witness

24 testified on direct that there's been -- the market is

25 diminishing, and Arrow has been diminishing. It

0514

1 peaked in 2011. It's fighting for a smaller piece of

2 the pie. I'm just trying to explore to cross-examine

3 the witness on the basis of that if it's really true

4 that Arrow is shrinking or whether it's expanding and

5 growing.

6 MR. WILEY: Your Honor, what does

7 facilities leases have to do with growth necessarily?

8 People move their offices. I mean, I don't see any

9 parallel between the fact that Arrow's volume in oil

10 shipping has decreased versus their taking out leases

11 in their home headquarters.

12 MR. BENTSON: Your Honor, if Mr. Wiley

13 would like to clarify on redirect, the purpose of this

14 could somehow show that it's not relevant when he

15 argues it in his brief. That's fine. I think they're

16 fair questions to ask about what Arrow Launch is doing

17 as a business when we've had direct testimony given

18 that they're shrinking.

19 MR. WILEY: Your Honor, he made

20 constant objections about outside the scope of direct.

21 I'm making one and making a record on that. This is

22 not relevant to anything that was in the direct

23 examination.

24 JUDGE FRIEDLANDER: Where did these new

25 leases come from? Where did this information come

0515

1 from, if not in direct?

2 MR. WILEY: They were filed as

3 cross-exhibits by the applicant, Your Honor.

4 JUDGE FRIEDLANDER: And how did the

5 applicant get that information, if not from the

6 company?

7 MR. WILEY: Apparently, they either got

8 it off the website. We checked to see if there had

9 been a public records request at the port. There

10 hadn't been, so it appears they got them off the

11 website of the port.

12 MR. BENTSON: Your Honor, the Port of

13 Port Angeles, that information was available online,

14 and so I have a good faith -- the standard for asking

15 questions on cross-examination would be I have a good

16 faith basis for the questions I do. The witness has

17 clarified that.

18 MR. WILEY: In depositions, that might

19 be true, Mr. Bentson; but in Commission proceedings,

20 we are not allowed to stray outside the scope of

21 direct examination and cross-examination. We didn't

22 put these issues or leases into the record, and we

23 never raised discussion about Port of Port Angeles

24 leases. They just are not relevant to the issues the

25 Commission is addressing.

0516

1 JUDGE FRIEDLANDER: Well, I have to say

2 this: Relevance or not, Mr. Harmon has already

3 answered the fact that -- the questioning has already

4 gone too far to reel it back in. We're already there.

5 He's already admitted that the leases are out there.

6 I'm going to allow questioning for now, but I hope

7 that you're going to develop some relevancy.

8 Otherwise, I'm striking this, and we're cutting it

9 off.

10 MR. BENTSON: Thank you, Your Honor.

11 BY MR. BENTSON:

12 Q Mr. Harmon, as part of applying for those

13 leases, did Arrow represent to the Port of Port

14 Angeles that at that time it currently had

15 40 employees?

16 A I can't remember how many -- there were

17 discussions with the property manager who would have

18 said, How many employees do you have or what are you

19 hoping to do in the future?

20 We would hope to grow our business. We would

21 hope to -- ironically, we're not anticipating the

22 launch service to grow. We're hoping to do some

23 other -- we're just hoping that we can sustain

24 ourselves. Those leases are replacement leases. We

25 had previously been in like facilities through private

0517

1 entities, and those entities have either gotten one

2 facility with BK. The other person retired, and we

3 just -- it's a like-for-like swap of facilities.

4 The exact same facilities that we leased in

5 those three leases are the exact same types of

6 facilities that we've been in for the last almost

7 27 years. So, if anything, we did it -- it actually

8 slightly reduced our expenses, because we've seen this

9 decrease in revenue. And that's the fact of the

10 matter. It's just a like-for-like swap of the

11 facilities.

12 Q And as part of your application for those

13 leases, did you also project that you would be

14 increasing your workforce to 50 employees in the next

15 three years?

16 A We had discussions that we hope to be able

17 to -- we had discussions all over the board regarding

18 what the use of the facilities would be for.

19 Remember, this is with the property manager, not

20 directly with the Commissioners. And so they would

21 say, What do you want to use the facilities for? What

22 are you going to do with them? How many employees do

23 you have? What are the positives that you see maybe

24 happening? But we actually had to share the negatives

25 that we may be see happening. So we were all over the

0518

1 board in disclosing to the port staff the intended use

2 of the facilities.

3 Q My question was a lot narrowing than your

4 answer. My question was about the projection that you

5 currently had 40 employees and you projected in three

6 years you would have 50. Did you represent that to

7 the Port of Port Angeles?

8 A Is that in my testimony?

9 Q It's not in your testimony. I'm asking you

10 whether or not you made that representation.

11 A Well, if it's not in my testimony, I don't

12 know -- I apologize. Because, like I said, I've

13 represented quite a few different things to the port

14 regarding those leases.

15 Q So is the answer you don't know whether you

16 made that representation?

17 A That would be my answer then.

18 Q Do you anticipate Arrow to continue to grow?

19 A I couldn't -- I honestly couldn't answer that.

20 Not that I don't want to. I don't know what's going

21 to happen. I see our revenues decreasing. For the

22 first time ever in 2016, we had to lay some people

23 off. We've never laid people off before ever, and we

24 laid some captains off, some deckhands off. And we're

25 devastated about that. We've never laid anybody off,

0519

1 and that was directly in relationship to reduction in

2 income.

3 Q From launch services?

4 A Yes, sir.

5 Q How many employees did you have before the

6 layoff?

7 A Probably over 50 full-time. Right about 47, I

8 think it was, 48, 47, 48 FTE.

9 Q So you went from 47 to 42?

10 A Approximately, yes.

11 Q When was that?

12 A I believe it was January 2016.

13 Q Do you recall what Arrow's gross revenues were

14 in 2011?

15 A No, I do not.

16 Q Do you recall if it was greater than

17 6.5 million?

18 A No, it was not.

19 Q Was it lower than 6.5 million?

20 A Yes, it was.

21 Q Was it more than million dollars lower than

22 6.5 million?

23 A I apologize. I couldn't tell you.

24 Q Do you have any -- given some of the hard

25 times, do you have any plans to sell any of your

0520

1 vessels?

2 A Not currently, no.

3 Q Did you have two of your vessels listed as for

4 sale earlier in 2016?

5 A They were for sale, but they would never have

6 been sold without either a replacement vessel. That's

7 why we didn't sell them because we couldn't find

8 adequate replacement vessels for those two boats.

9 Q During the period that you had listed those

10 two vessels for sale, were they still providing launch

11 services?

12 A Absolutely.

13 Q Do you have plans to lay off additional

14 employees due to this diminishing need for launch

15 services?

16 A I hope not.

17 Q Do you have any plans to sell any vessels?

18 A No.

19 Q Let's go to page 11 of your testimony. And if

20 you look at line 3, that's where we're going to start.

21 Between line 3 and then the next page, page 12,

22 line 12, you're talking about operations in Anacortes

23 in this general portion of your testimony. Do you see

24 that section of your testimony that I'm identifying?

25 A I'm sorry. Where did you say specifically

0521

1 talking about Anacortes?

2 Q Begins at 11, 3.

3 A On page 11, line 3?

4 Q Yes. And then ending at page 12, 12. So the

5 questions will be on that section of your --

6 A And then ending on page 12, line 12?

7 Q Yes. That's the section I want to focus your

8 attention on.

9 A Give me a moment.

10 Q So --

11 A Could you give me a moment, please.

12 Q Sure. I'm sorry.

13 A Thank you. Ending on 12, 12?

14 Q 12?

15 A Page 12, line 12?

16 Q Yes.

17 A One moment. Thank you.

18 Q Okay. If you look at page 11, line 5, you say

19 that Arrow typically keeps four boats in each of our

20 three regions; is that correct?

21 A Yes, sir.

22 Q And you go on to testify that four of those

23 boats are kept in the north sound, which in

24 parentheses you refer to Anacortes?

25 A Yes, sir.

0522

1 Q If you turn to page 12 and you look at line 6,

2 you say that there were actually only a few times in

3 the year that four boats are needed in Anacortes. And

4 in those rare instances, as noted, Arrow routinely has

5 four boats in Anacortes. Did I read that correctly?

6 A Yes, sir.

7 Q So if four boats are rarely needed in

8 Anacortes, why do you keep four boats there?

9 A Because if I need that fourth boat, it's

10 there. The way that our customer base has worked out

11 is it works very efficiently to have four boats in the

12 north sound, four in the west sound, four in the south

13 sound. And then based on weather conditions, customer

14 needs, we can relocate as best fits the customers.

15 Q So if four vessels are typically there but

16 rarely required, does one of those vessels typically

17 sit idly throughout the day?

18 A Quite often two or three vessels sit idly for

19 all day, days upon days, and then you'll end up with

20 several days that you need two boats, two hours that

21 you need three boats. This gives us the flexibility

22 if we need that fourth boat. If we had a starter

23 fail, if we had a mechanical issue, if we needed to

24 send a boat to another location.

25 So it gives us the flexibility to move vessels

0523

1 around to match our customers' needs. So basing them

2 in these satellites of Anacortes, Port Angeles, and

3 Seattle/Tacoma, that works very efficiently for our

4 customers' needs.

5 Q Are there multiple refineries in the Anacortes

6 area?

7 A Yes.

8 Q Does that increase the amount of petroleum

9 traffic that you see in that area?

10 A I'm sorry. I don't understand your question,

11 because I'm not intimately aware of the input and

12 output of each actual refinery and what it's going to

13 need on -- so you'll have to restate your question,

14 because I apologize. It was unclear to me.

15 Q No apology necessary, and that's what I prefer

16 you do if you feel you don't understand the question.

17 Do more petroleum vessels, vessels carrying petroleum,

18 call on the Port of Anacortes than would normally call

19 on a port of that size?

20 A That size, what do you mean? You can't really

21 compare Anacortes is a -- there's four refineries in

22 the north sound, but there's actually refineries in

23 the south sound. And there's also storage facilities,

24 multiple storage facilities, British Petroleum has a

25 location. Conoco has a location. Kinder Morgan has a

0524

1 location, Manchester Fueling Depot in Seattle.

2 So trying to say a port of this size doesn't

3 really fit into this question. So I apologize. Your

4 question is still I don't quite understand what you're

5 asking me.

6 Q It's okay. You said there's four refineries

7 in the north sound?

8 A Yes, sir.

9 Q So there's a relationship between the

10 refineries and the vessels that carry petroleum into

11 that region; is that correct?

12 A Yes, sir.

13 Q Are there other areas in the Puget Sound that

14 have four refineries?

15 A They have multiple refineries. I'm not

16 positive of the actual refining capabilities of Kinder

17 Morgan. I know the Manchester Fueling Depot, I

18 believe, is a just a fueling depot, but there's

19 multiple refineries. Tacoma has a couple of

20 refineries. U.S. Oil, Targa, so there's other

21 refineries in -- so trying to base it as a port --

22 Q Well, in your testimony on page 11, you divide

23 your operations into three regions.

24 A Yes, sir.

25 Q You identify the north sound?

0525

1 A Uh-huh.

2 Q You identify the south sound; yes?

3 A Yes.

4 Q And you identify the west sound; correct?

5 A Yes, sir.

6 Q You just testified there's four refineries in

7 the north sound.

8 A Yes, sir.

9 Q Are there four refineries in the south sound?

10 A No, not to my knowledge.

11 Q Are there four refineries in the west sound?

12 A No.

13 Q Okay. Thank you. Is Crowley your largest

14 customer in Anacortes?

15 A I don't believe so.

16 Q Who is your largest customer in Anacortes?

17 A By Anacortes I couldn't tell you. I'd have to

18 go look at my books. I didn't prep for that question.

19 I didn't think it would be asked who was our largest

20 Anacortes customer, so I don't know. I don't know. I

21 don't have that answer for you.

22 Q Were you in the hearing today when Mr. Aikin

23 testified regarding triple booking and triple

24 charging?

25 A Yes.

0526

1 Q Do you recall that testimony?

2 A Yes.

3 Q Do you disagree with his characterization that

4 that's the way Arrow bills?

5 A I don't know if you would call it triple

6 booking or triple charging. That was a term that I

7 hadn't heard before. Arrow does have, as MEI has

8 applied for, a line in its tariff. This is a rate

9 design issue that's been blessed by the UTC staff that

10 it's per vessel.

11 So when I say vessel, I mean, for the sake of

12 this discussion and for the Court, I'd like to say

13 that a vessel is a ship and a launch is a launch. So

14 the rate design allows the launch to simultaneously go

15 to multiple vessels and bill each vessel.

16 So if you want to call that triple billing --

17 or what did you call it? Triple booking? I don't

18 know if I would call it triple booking or triple,

19 because it may only be two ships or maybe five, but

20 it's not. But so that's a rate design question that

21 MEI has applied for the exact same rate.

22 Q Let me ask you a hypothetical and see if I

23 understand your testimony. So if there are two

24 vessels sitting out in the north sound and there are

25 three personnel, say, two from Crowley and one from

0527

1 another customer, and they need -- one of these

2 personnel and one of the Crowley personnel need to get

3 to Vessel A and the other Crowley personnel needs to

4 get to Vessel B and they all go out on the same

5 launch, does Crowley have to pay you twice and the

6 other customer pay you once for that one trip?

7 A Each -- by rate design, each ship is assessed

8 a two-hour minimum as MEI would be doing.

9 Q So does Crowley have two charges, then, one

10 for each vessel?

11 A Yes, they would.

12 Q And the other company is also charged for that

13 trip?

14 A I'm sorry. Maybe I misunderstood your

15 question. It sounded like we went to two Crowley

16 vessels.

17 Q Yes. There were three employees, two from

18 Crowley and one from another company, say Foss.

19 A Okay.

20 Q If the Crowley and the Foss employee need to

21 go to Vessel A and the other Crowley employee has to

22 go to Vessel B and Arrow takes one launch to do both

23 in one trip, there would be three charges; correct?

24 A No, sir, incorrect. There would be two

25 charges. Vessel A would get a two-hour minimum bill,

0528

1 and Vessel B would get a two-hour minimum bill.

2 That's all that's assessed. That's why when you're

3 calling it double or triple, I'm confusing, and I

4 wouldn't call it that.

5 Q You're limiting it to the vessel, not to the

6 individuals?

7 A Yes, sir.

8 Q And it's your testimony today that by

9 regulation you're required to bill it that way?

10 A That's correct. I didn't say by regulation.

11 I said by tariff. By our UTC-approved tariff as is

12 the same tariff that MEI has applied for.

13 Q You received the solicitation last year from

14 Crowley?

15 A Two solicitations, sir.

16 Q There was one that Mr. Aikin testified to

17 earlier today. Was that one of those two or do you

18 know?

19 MR. WILEY: Your Honor, I'm just noting

20 for the record that these are all way in excess of the

21 direct exam testimony. If you disallow the objection,

22 I just need to make a record here. We're going so far

23 outside on all these questions.

24 JUDGE FRIEDLANDER: I would say,

25 though, yesterday we dealt with and even today dealt

0529

1 with the solicitation, and it was discussed who should

2 actually be answering these questions. We don't have

3 Ms. Evans here today.

4 MR. WILEY: I understand.

5 JUDGE FRIEDLANDER: And there's a

6 question as to whether or not Crowley responded to the

7 solicitation -- not Crowley. I apologize. Arrow

8 responded to the solicitation, and so I feel that this

9 is relevant.

10 MR. BENTSON: And, Your Honor, I would

11 just add on page 12 there's a reference to how the

12 customers are satisfied with their needs and

13 communication with customers, so I think it is

14 relevant to ask about the substance of those

15 communications.

16 BY MR. BENTSON:

17 Q Mr. Harmon, you received -- you said you

18 received two solicitations from Crowley last year?

19 A That's correct.

20 Q What was the first solicitation?

21 A The first solicitation was, basically, for a

22 national -- nationwide waste management contract.

23 Q What was the second solicitation?

24 A The second solicitation was for launch

25 services and other ancillary services.

0530

1 Q I just want to focus on that second

2 solicitation.

3 A Okay.

4 Q Did you understand when you received it that

5 Crowley had sent that to multiple launch service

6 providers?

7 A I was unaware of who they may or may not have

8 sent it to.

9 Q Do you recall responding to that solicitation?

10 A Yes, sir.

11 Q How did you respond to that solicitation?

12 A I had a couple of questions regarding the

13 solicitation, drafted my response, less the answers to

14 the -- my questions. I didn't get answers from -- and

15 the RFP requested that the responder contact Lindy

16 Evans for specific questions. We sent -- I sent the

17 questions to -- when I say "we," my staff and I

18 prepared it. Sent our questions to Ms. Evans.

19 After -- there was -- in the RFP, I believe,

20 there was a time line of which they were -- questions

21 needed to be submitted. We submitted the questions

22 and never heard on anything on the questions, so I

23 sent an inquiry to Ms. Evans about are we going to get

24 the answer to our questions.

25 And I ended up with an e-mail back from

0531

1 Crowley's counsel that they wouldn't be answering the

2 questions, and so then I submitted my final response

3 to the best that I could not having complete

4 information on the RFP. I submitted it to Lindy Evans

5 with a read receipt, to Marc Aikin with a read

6 receipt, to my staff, to myself.

7 When I say my staff, my operations manager so

8 we just had our own copy. And I can't think of who

9 else, but I actually have -- if the Court would like

10 to see it, I have a picture of the e-mail that I sent

11 to Mr. Aikin regarding that submission.

12 MR. WILEY: Yes, Your Honor. We will

13 mark and identify that when he is -- at the next

14 break. Okay?

15 JUDGE FRIEDLANDER: So you're asking to

16 have this as one of Mr. Harmon's exhibits?

17 MR. WILEY: Yes, Your Honor. It's come

18 into dispute, and I think it's very relevant.

19 JUDGE FRIEDLANDER: Are there

20 objections to this exhibit?

21 MR. BENTSON: Your Honor, I don't know.

22 I would like to see it first myself. I haven't seen

23 it, so if we could see it at the break, we could talk

24 about it. Without seeing it, I can't say, but I don't

25 necessarily have an objection to it.

0532

1 JUDGE FRIEDLANDER: Anyone else?

2 All right. That's fine.

3 BY MR. BENTSON:

4 Q Mr. Harmon, I just want to break down -- that

5 answer was -- there's a lot in there. I'd like to

6 unpack it.

7 So with respect to -- you did receive the

8 solicitation about launch services; correct?

9 A Yes.

10 Q And if I understand you correctly, you

11 responded initially not with answers to the questions

12 but with your own questions about the solicitation; is

13 that right?

14 A That's correct.

15 Q And then in response to that, you received a

16 response from Crowley's general counsel saying they

17 weren't going to answer your questions; is that right?

18 A That's correct.

19 Q And then you after that provided a response,

20 to the best of your knowledge, to the questions you

21 received?

22 A To the RFP.

23 Q To the original set of questions?

24 A Yes, to the two original RFPs.

25 Q Do you recall what your questions to Crowley

0533

1 were in response to solicitation?

2 A At this moment, I don't.

3 Q Did you bring a copy of that e-mail with you

4 today?

5 A I don't. I don't have it with me right now.

6 Q Is that something you could easily access?

7 A Yeah, I think I could get it.

8 Q Okay. Did you interpret Crowley's

9 solicitation to in any way the questions to be

10 critical of Arrow services?

11 A No.

12 Q So the questions didn't have anything to do

13 with -- your questions that you raised back didn't

14 have anything to do with being upset about being

15 questioned?

16 A No, no. As a matter of fact, I'd have to go

17 revisit, but I believe they just said they wouldn't be

18 answering any questions. So I wasn't sure if other

19 people asked questions as well or if it was just

20 directed to my questions.

21 Q Prior to that time, had you communicated at

22 all with Lindy Evans about Crowley service in

23 Anacortes?

24 A Yes.

25 Q Had she ever expressed dissatisfaction?

0534

1 A Quite the contrary. Quite often she praised

2 our services, thanks for the instant-on services.

3 There was times she would call and say she had forgot

4 to schedule this or that somebody else needed

5 something right away and you guys are awesome. She

6 recently raved about our slops removal and the process

7 and specifically the rates.

8 Q Outside of what you've heard in this hearing,

9 are you aware of any other criticisms from Ms. Evans?

10 A I wouldn't call it a criticism, no. I

11 wouldn't call it a criticism. Outside of this arena,

12 no.

13 Q Just what you've heard in testimony while

14 you've been sitting in here?

15 A Yes, sir.

16 Q Was it important to you to know why Crowley

17 wanted to send that solicitation to you and other

18 launch service providers?

19 A I figured that was their procurements or

20 contracts people. I wasn't surprised. There's other

21 agencies that -- other shipping customers that want to

22 make sure that they have their liability portions with

23 their vendors their I's dotted and their T's crossed,

24 so I assumed it was predominantly that. It also did

25 include certain sections of that original waste stream

0535

1 management portion in this RFP. So I assumed that it

2 was just tying the two together for a corporate

3 structure. I wasn't surprised at it.

4 Q Are you surprised that Crowley is supporting

5 MEI's certificate application?

6 A I was surprised that anybody -- I wasn't

7 surprised to hear that Mr. Aikin praised our services.

8 I wasn't surprised to hear his subordinates who have

9 told me recently what amazing services that we do. I

10 wasn't surprised that Lindy has said we do an awesome

11 job.

12 I was surprised that somebody wouldn't --

13 yeah, I was surprised that they were supporting MEI,

14 but I wasn't surprised on the part of trying to get

15 more favorable rates on other services.

16 Q I want to turn now to page 16 of your

17 testimony. If you go down to beginning on line 14,

18 then we'll go through that page and on to the second

19 page.

20 A So start on page 16.

21 Q Line 14.

22 A And then go to when?

23 Q The relevant section ends 17, 19. Do you want

24 to read that first?

25 A Yes, sir.

0536

1 Q Let me know when you're done.

2 A Okay.

3 Okay. Thank you.

4 Q Now, if you go to page 17, lines 13 through 15

5 that you just read, it says in that second -- the

6 second -- first full sentence that begins on line 13:

7 Actually, both the captain and deckhand were also

8 launch crew employees of Arrow who both understood how

9 to safely operate a launch vessel. Did I read that

10 correctly?

11 A Yes, sir.

12 Q So that's referring to the time that Arrow

13 chartered the Island Commuter II back in 2000?

14 A Yes, sir.

15 Q And in your testimony, you said that the

16 captain and the deckhand were both Arrow employees; is

17 that right?

18 A Yes, sir.

19 Q The captain's name was Loran Cap?

20 A That's correct.

21 Q And the deckhand's name was Max Joyce?

22 A Correct.

23 Q Are you familiar with the difference between a

24 time charter and a bareboat charter?

25 A Not specifically with the time charter, no.

0537

1 Bareboat charter, fairly, but -- so to distinguish

2 between the two, no, I'm not an expert in charters.

3 Q Do you understand that on a time charter --

4 I'm going to explain the difference real quick so we

5 have the same terminology. On a time charter, the

6 charter uses the vessel and crew of the owner; and on

7 the bareboat charter, the charter just gets the boat.

8 MR. WILEY: Your Honor, I'm objecting.

9 The counsel is testifying. The witness has said he

10 doesn't know the difference. Now counsel is trying to

11 instruct him on the difference. He's asked the

12 question. The witness doesn't know. We're hearing

13 testimony now from the counsel.

14 MR. BENTSON: Your Honor, I was

15 defining my terms so that Mr. Harmon would understand

16 the question.

17 JUDGE FRIEDLANDER: I'll let it proceed

18 for now.

19 BY MR. BENTSON:

20 Q Does that distinction make sense, Mr. Harmon,

21 between the time charter and the bareboat charter?

22 A As you defined it to move forward with this

23 discussion, go ahead.

24 Q Do you understand that the Island Commuter II

25 was time chartered?

0538

1 A I can -- all I can tell you regarding that

2 incident is that Loran Cap at that time was working

3 for me full-time, not for Island Commuter. Whether he

4 was on the Island Commuter as -- he also worked in the

5 summer months -- it sounds like this went off. It

6 just changed. Sorry.

7 He also worked in the summer months for

8 Pacific Cruises Northwest -- or I can't remember the

9 name of the entity at the time. I believe it was

10 Island Commuter. But so -- but he worked in the

11 wintertime, which that was, for Arrow Launch.

12 Q So it's your testimony today that Captain Cap

13 was an Arrow Launch employee at the time of this

14 charter?

15 A Who paid Loran's wage that day, I cannot

16 recall, but I can tell you that in that time period he

17 worked for us full-time.

18 Q Now, I don't have a separate copy of RSE-6,

19 but your counsel may have a copy. RSE-6, it's Arrow's

20 trial brief in that action.

21 THE WITNESS: Can I ask a question,

22 Your Honor?

23 JUDGE FRIEDLANDER: Who are you asking

24 the question?

25 MR. WILEY: Of the Court. Can I ask

0539

1 what an incident which there was no fault assessed

2 ultimately 16 years ago has to do with the relevance

3 of this case, Your Honor?

4 JUDGE FRIEDLANDER: I'm allowing for

5 the time being Mr. Bentson to establish that

6 relevance. If at the -- if at a certain time he does

7 not establish that relevance, then the rest of the

8 testimony will be stricken as will the questions.

9 And we discussed this yesterday, Mr. Bentson,

10 so that should come as no surprise.

11 MR. BENTSON: Yes, your Honor, and I

12 think we're there.

13 MR. WILEY: So we're asking about a

14 trial brief at this point?

15 JUDGE FRIEDLANDER: Which I believe is

16 related to the incident 16 or 17 years ago, so, yes.

17 MR. WILEY: Correct. The trial brief

18 has been handed to the witness, RSE-6.

19 JUDGE FRIEDLANDER: Mr. Bentson.

20 BY MR. BENTSON:

21 Q And, Mr. Harmon, if you could, turn to page 4

22 of RSE-6. The page numbers are on the bottom of the

23 page.

24 A Okay.

25 Q And if you look under the subsection 3,

0540

1 discussion, Arrow involvement, and you go down to the

2 bottom of the page and we're dealing with the third to

3 last full sentence, so it begins on line 22 begins

4 with "in fact." Do you see that on line 22?

5 A Yes.

6 Q It says: In fact, in the past Island had

7 performed launch service on behalf of Arrow with the

8 Island Commuter II and Island crew.

9 I'm going to go on and read the next sentence.

10 Schmidt readily agreed to provide the vessel Island

11 Commuter II and it's captain, Loran Cap. Since it was

12 wintertime, Island Commuter did not have its regular

13 summer workforce, so Schmidt asked Harmon if Arrow

14 could provide a deckhand. Did I read that correctly?

15 A Yes.

16 Q So what that's referring to is a time where

17 you time chartered a vessel from Captain Schmidt who

18 testified here yesterday; correct?

19 A I can't recall whether it was a time charter

20 or not, but I can recall that Loran Cap worked for

21 Arrow Launch full-time then. It's a little bit

22 semantics of a 16-year-old case whether a person that

23 worked for Arrow Launch in the winter and Island

24 Commuter in the summer on the same boat when he was

25 working for me in the winter on my water taxis and

0541

1 familiar with that boat whether he was an Arrow

2 employee or an Island Commuter employee.

3 But if that's what this shows, this was

4 prepared by Boyer Mahan, which was the attorneys for

5 our insurance company. It was not prepared for by me.

6 So all I can tell you is the facts that revolve around

7 the case, and those are the facts.

8 Q Okay. Can you turn to page 5 and look at

9 line 12, the sentence that begins on line 12 about

10 halfway through. It says: In this case, since the

11 vessel was at all pertinent times under the control,

12 possession, command, and navigation of Island's

13 employee, Captain Cap, it is apparent that Arrow did

14 not bareboat charter the Island Commuter II. Did I

15 read that correctly?

16 A That's what it says.

17 MR. WILEY: Your Honor, again, an

18 objection to form of these questions. This is a legal

19 brief which means it's a legal argument by the

20 insurance company lawyer for Arrow. This is not

21 facts. These are legal arguments. He's being asked

22 to critique the validity of the status of time versus

23 bareboat charter, which is part of the legal argument

24 that's being cited in the brief.

25 MR. BENTSON: Your Honor, may I be

0542

1 heard?

2 JUDGE FRIEDLANDER: Yes.

3 MR. BENTSON: This is entirely factual

4 submission submitted by Arrow. Whether or not Captain

5 Cap was an employee, it's directly contrary. A

6 briefing Arrow submitted in front of a federal court

7 says the exact opposite of Mr. Harmon's testimony.

8 I'm allowed to point that out. That's a deep

9 inconsistency here.

10 JUDGE FRIEDLANDER: Okay. So are you

11 asking him to confirm what the brief says, or are you

12 asking him of what the brief is saying is correct?

13 MR. BENTSON: I'm asking which is true.

14 His testimony says that the employees were Arrow's

15 employees. His brief says that was filed on behalf of

16 his company by his attorneys who represented him as

17 the only client in that case, not as insurer under

18 Washington law, said that it was a time charter,

19 hence, the employees belonged to Captain Schmidt. I'm

20 asking which is true.

21 JUDGE FRIEDLANDER: I'm confused,

22 Mr. Wiley. Was this brief filed on behalf of Arrow or

23 not?

24 MR. WILEY: Apparently, it was filed --

25 he's correct. Under Washington law, the insurance

0543

1 company, the insurer, represents both the insured and

2 the insurer.

3 JUDGE FRIEDLANDER: Right. This was

4 filed as a trial brief of defendant.

5 MR. WILEY: Of Arrow Launch.

6 JUDGE FRIEDLANDER: So this was filed

7 on Mr. Harmon's behalf?

8 MR. WILEY: Apparently so, Your Honor.

9 It is legal argument, though. It is not fact. It's

10 an argument made by a counsel for the insurance

11 company and Arrow in 2000 or 2001, whenever the brief

12 was filed.

13 JUDGE FRIEDLANDER: I think Mr. Harmon

14 can answer about the facts relating to the case, and

15 whether or not there's legal argument involved in

16 that, we'll address it at that time. But the facts of

17 the incident involved in the trial brief and the

18 summation and in the trial brief Mr. Harmon can

19 answer. So please go ahead, Mr. Bentson.

20 BY MR. BENTSON:

21 Q I'll ask a direct question of fact. If you

22 look on the bottom of page 5, beginning on line 23,

23 the sentence that begins there, it says: The

24 essential terms of the agreement -- it's referring to

25 the agreement between Arrow and Island Commuter --

0544

1 were -- or Island. Excuse me. The essential terms

2 were that Island would provide the vessel and the

3 captain while Arrow would provide the deckhand and pay

4 the charter hire. Did I read that correctly?

5 A You read this correctly. Yes, you did.

6 Q And so I'm asking: Is that statement true or

7 false?

8 A I can't tell you the argument that was being

9 made by the attorneys at the time.

10 Q I'm not asking for the argument. I'm asking

11 is it true or false that the essential terms of your

12 agreement with Captain Schmidt were that Island would

13 provide the vessel and the captain? Was that your

14 agreement?

15 MS. ENDEJAN: Your Honor, I've got to

16 chime in here in terms of the amount of time that this

17 inquiry is wasting for the Court and for everybody

18 because this has nothing to do with the seminal issue

19 in the case, which is whether or not within the past

20 12 months Arrow has failed or refused to furnish

21 reasonable and adequate service.

22 And this questioning is asking him about an

23 agreement that's not in evidence from 15 years ago for

24 which there's no evidence that he's ever seen it. And

25 I guess I'm just wondering where this is all leading

0545

1 and how it possibly relates to the seminal issue in

2 the case.

3 JUDGE FRIEDLANDER: As I said before,

4 Ms. Endejan, I'm allowing it up to a certain point.

5 Now, I'm hoping we're going to get to the relevant

6 part here. In the meantime, I do believe that

7 Mr. Harmon can answer as to the facts of an agreement

8 that -- to whether or not he remembers is his own --

9 is up to you. But you can answer the facts that

10 were -- that surround the trial brief that was filed

11 on your behalf.

12 A Should -- I can answer this. To the best of

13 my remembrance -- so I have two answers. What this

14 says in paper is what it says in paper. I can't tell

15 you the defense of the insurance company's attorney

16 and Island Commuter's attorney how they worked with

17 and came up with this exact language. I just -- that

18 wasn't my job.

19 I can tell you that the financial arrangement

20 was so that the consideration that was given to Island

21 Mariner, Island Mariner paid for the actual wage of

22 the captain with the caveat that Arrow would only have

23 accepted Loran Cap because he was an Arrow employee as

24 a launch crew member in the wintertimes and because he

25 was extremely familiar with the safety sensitive

0546

1 position and the intricate workings of the Island

2 Commuter II.

3 Q So it's of your testimony today that Captain

4 Cap was Arrow's employee at the time of this incident?

5 A I'm not -- I can't tell you under a legal

6 definition whose employee he was. He was the only one

7 that we would have accepted as the captain on that

8 boat, but he also worked for Arrow on Arrow's

9 launches.

10 So in this particular case, in this case,

11 you'll have to leave it to the courts to tell you

12 whose employee he was. What I just represented to you

13 is exactly what would have been represented to the

14 insurance attorneys and to the courts at that time

15 because I'm not going to tell them what's not the

16 truth.

17 Island Commuter paid for the captain, I

18 believe, was the arrangement, but it was -- we would

19 only accept him as the captain because he was our

20 captain.

21 Q When was the last time Arrow had to charter

22 other vessels to provide launch services?

23 A I think this was the last time.

24 Q You haven't done it in the last ten years?

25 A No.

0547

1 Q You haven't done it in the last 15 years?

2 A Well, we're -- now when you say 15 years,

3 because I'm going to have to look at the time line of

4 this --

5 Q This was 17 years ago.

6 A Last 15 years, no.

7 JUDGE FRIEDLANDER: So, Mr. Bentson,

8 are you coming to the relevancy of how this relates?

9 MR. BENTSON: Your Honor, I think it is

10 relevant that when Arrow provided evidence to a

11 federal court it argued vigorously that Captain Cap

12 was not its employee. The witness has testified in

13 this proceeding that Captain Cap was actually Arrow's

14 employee.

15 That was a -- that is not part of the legal

16 argument of this brief. That is one of the factual

17 assertions this brief relied on. Let me finish,

18 Mr. Wiley, please.

19 MR. WILEY: I'm not interrupting you.

20 MR. BENTSON: That is -- that goes

21 directly to the witness's voracity, which is a proper

22 subject of cross-examination, whether a witness is

23 being completely candid with the tribunal. So I think

24 that's entirely relevant to this proceeding. I'm done

25 asking questions about it if that makes a difference,

0548

1 and we can move on to another topic.

2 JUDGE FRIEDLANDER: Well, I want to

3 know if we just wasted time, though. Will you please

4 read back, the court reporter, Mr. Harmon's answer as

5 to whether or not the captain was, in fact, Arrow's

6 employee?

7 (Record read back as requested.)

8 JUDGE FRIEDLANDER: All right. Thank

9 you. Let's move on.

10 MR. BENTSON: Thank you, Your Honor.

11 BY MR. BENTSON:

12 Q Mr. Harmon, if we can turn to page 18 of your

13 testimony. And if you begin on line 14, it says after

14 your -- after the direct answer to the question, the

15 next sentence says: Arrow prides itself on providing

16 exemplary customer service and holds its customer

17 needs second only to safety. Did I read that

18 correctly?

19 A What lines are we going to? Do this like

20 we've been doing. What lines are you going to have me

21 reviewing here?

22 Q I'm going to do it my way. So start on

23 line 14, and I'm going to read the sentence. And it's

24 going to carry over on to line 15, and I'll ask you to

25 follow along. Do you see the sentence that begins

0549

1 with Arrow?

2 A No, I don't.

3 Q Okay.

4 A Okay. I see on line 14, yes.

5 Q It says: Arrow prides itself on providing

6 exemplary customer service and holds its customer

7 needs second only to safety. Did I read that

8 correctly?

9 A Yes.

10 Q I'm going to continue on: We are constantly

11 in touch with our customers on scheduling and service

12 levels and could not have remained in this market this

13 long if we were not innovative. Did I read that

14 correctly?

15 A Yes.

16 Q So you're testifying here that Arrow is very

17 sensitive to its customers' needs and demands. Is

18 that a fair characterization of what you're testifying

19 to?

20 A Yes.

21 Q And you say you haven't received any

22 complaints from your customers.

23 A Correct.

24 Q You don't consider Crowley's solicitation to

25 you and other launch service providers to be a

0550

1 complaint?

2 A No.

3 Q You say on line 20 that some of the evidence

4 that you -- that you're providing these exceptional

5 services that you've never been asked to cover the

6 moorage fee for one of your customers; is that

7 correct?

8 A Which line?

9 MR. WILEY: Twenty.

10 Q Line 20.

11 A That's correct.

12 Q Is it -- how long of a delay would have to

13 occur before the moorage fee would be assessed?

14 A You'd probably have to check with an agent,

15 such as the shippers' witnesses that were here this

16 afternoon. You could have asked them that question.

17 They would tell you that. I've heard of companies

18 assessing it -- could you re-ask the question again or

19 have her read it back?

20 Q I'm just asking if you know. If you don't

21 know, that's okay. I'm asking whether you know how

22 long it takes -- how long of a delay it takes before a

23 company is usually assessed a moorage fee?

24 A It would depend. I don't know. That's too --

25 again, I apologize. That's too vague of a question.

0551

1 There's too many different parameters.

2 Q Is the moorage fee typically assessed after a

3 day?

4 A Again, that's an open-ended question. It

5 could be after 15 minutes.

6 Q Okay. That's typical?

7 A I couldn't tell you what typical is. We've

8 never been assessed a demurrage fee.

9 Q Do you think a delay of two or three hours

10 would typically result in a demurrage fee?

11 A Absolutely.

12 Q Based on your customer responsiveness that you

13 describe in your direct testimony, were you surprised

14 yesterday when Mr. Sevall testified that three of your

15 six largest companies in Anacortes favored

16 competition?

17 A The word competition, no. I'm not surprised

18 anybody saying I would like competition.

19 Q They wanted competition in the launch services

20 market; isn't that correct?

21 A I paid a dollar for this bottle of water. If

22 I could get it for free, I'd take it for free, but I'm

23 not sure how long I would be able to get the bottle of

24 water for free without paying the dollar.

25 Competition, that's a very complicated question in the

0552

1 state of Washington under regulated methodology for

2 launch services.

3 Q Can you please turn to page 25 of your

4 testimony.

5 A Okay.

6 Q And look at line 13. Do you see line 13 on

7 page 25, Mr. Harmon?

8 A Yes, I do.

9 Q And on that line it's fair to say that you

10 challenge MEI's estimate of $220,000 in labor costs,

11 annual labor costs?

12 A Yes.

13 Q Do you know how much MEI pays its captains in

14 San Francisco?

15 A No, I do not.

16 Q Do you know whether they're salaried or

17 whether they're hourly?

18 A I do not.

19 Q Do you know whether the rates that they're

20 able to charge in San Francisco are higher or lower

21 than the rates they would be able to charge on their

22 tariff here in the sound?

23 A No, I do not.

24 Q Are Arrow's captains salaried or are they

25 hourly?

0553

1 A We have a mixed blend of both.

2 Q I believe your accountant testified earlier

3 that 20 percent of your captains are salaried?

4 A I couldn't tell you the percentage.

5 Q How many captains does Arrow have?

6 A About 22.

7 Q And if you go down to line 23 of page 25, you

8 also criticize MEI's health care estimate of $33,000.

9 A Yes, sir.

10 Q You pay for health care for all of your

11 employees?

12 A Yes, sir.

13 Q Does some of your employees opt out of that?

14 A We've just had a benefits change, so I

15 couldn't tell you how many, if anybody, has opted out

16 of it or not. So there might be -- there may be one

17 that's opted out. I couldn't tell you.

18 Q How many of your deckhands are over the age of

19 35?

20 A Probably a third of them.

21 Q Do you find that premiums are typically

22 cheaper for a younger workforce?

23 A Generally.

24 Q Do deckhands tend to be entry level positions

25 in your industry?

0554

1 A No.

2 Q If we go to page 26, line 18, you also

3 criticize MEI's insurance estimate of $30,000.

4 A What line? I'm sorry. Eighteen?

5 Q Line 18, page 26.

6 A Yes, sir.

7 Q When you're criticizing that estimate is

8 unrealistic, are you making that estimate -- are you

9 thinking about the cost of obtaining a whole new

10 policy or just adding a vessel to an existing policy?

11 A It would actually depend on the coverage

12 limits that they have. It would depend on the

13 deductibles that they have. That would be -- in my

14 opinion, that would be a great rate to get, either as

15 a fleet policy or as a single -- and multivessel, I

16 believe, that's for two boats. It would be difficult

17 to get it for 30 grand. You might be able to, but you

18 would have to probably reduce your -- increase your

19 deductibles and change your -- you'd have to work on

20 it.

21 Q And you have to purchase insurance for Arrow's

22 12 vessels; correct?

23 A Yes.

24 Q And if you had to add a 13th vessel to Arrow's

25 fleet, do you estimate it would cost more than $30,000

0555

1 to do that?

2 A For a single boat?

3 Q Yes, for the policy premium.

4 A Because I looked at this as for multiple

5 vessels. I believe they represented they're bringing

6 two boats, so it's my understanding that pro forma

7 listed this 30,000 total for both boats.

8 Q I understand. Let's deal with my question

9 first. So you have 12 vessels right now.

10 A Yes.

11 Q And you purchase insurance for them.

12 A Yes.

13 Q Do you have a whole and owner's policy on

14 those?

15 A Yes.

16 Q You have a P & I policy?

17 A Yeah.

18 Q When you talk about the premium, you're

19 talking about the whole insurance program; correct?

20 A Yes.

21 Q And do you anticipate that if you wanted to

22 add a vessel to your insurance program it would cost

23 $30,000 to do so?

24 A It would depend on the boat and the

25 deductibles and the parameters around the policy that

0556

1 I would get. Probably close to the 20,000 for a

2 single vessel minimum. That's why I think 30,000 is

3 too little for two boats.

4 Q To be added to an existing insurance program?

5 A Yes, sir.

6 Q Do you agree that if MEI can bill four times

7 per week for eight hours in launch services it can

8 achieve its targeted revenue goal?

9 A Could you point me to where I commented on

10 that here?

11 Q Well, on page 27 at line 23, you reject their

12 $500,000 annual revenue goal.

13 A What line on this page 27?

14 Q Line 23, page 27.

15 A I don't believe I made my analysis on how you

16 just stated your question.

17 Q So I'm asking you about -- you reject their

18 revenue goal for a reason, I take it?

19 A Yes.

20 Q So I'm asking you about that opinion.

21 A Okay.

22 MR. WILEY: Are you referring him to

23 his testimony on page 28, Counsel? Are you just

24 talking about something else?

25 MR. BENTSON: I'm referring to the

0557

1 testimony I just cited on page 27 where he says that

2 he thinks the $500,000 revenue pool is too high.

3 MR. WILEY: Your Honor, just to be

4 clear, he explains why he says that on page 28. So I

5 think it's not fair not to refer the witness to the

6 next page.

7 JUDGE FRIEDLANDER: I think we're

8 getting into the weeds. The witness can look at the

9 next page of his testimony.

10 BY MR. BENTSON:

11 Q Mr. Harmon, do you agree with your

12 accountant's testimony earlier today?

13 A Yes.

14 MR. BENTSON: Thanks. I have no

15 further questions.

16 JUDGE FRIEDLANDER: Thank you. Do we

17 have any redirect?

18 MR. WILEY: Your Honor, can we take our

19 break now this afternoon? I'd like to tie up some

20 questions.

21 JUDGE FRIEDLANDER: That's fine. Is 10

22 minutes enough?

23 MR. WILEY: How about 3:30? Is that

24 okay?

25 JUDGE FRIEDLANDER: Is that all right

0558

1 with everyone?

2 MS. ENDEJAN: It's fine with me.

3 MR. BEATTIE: Is it typical to take a

4 break at mid-witness?

5 MR. WILEY: Midafternoon it is.

6 MS. ENDEJAN: It's typical to take a

7 midafternoon break.

8 JUDGE FRIEDLANDER: I don't think that

9 it typically is. I think we usually finish with a

10 witness first. It depends on how long Mr. Wiley's

11 redirect is going to take.

12 MR. WILEY: I'm trying to cut the

13 questions down right now, which is why I want to

14 break, but --

15 JUDGE FRIEDLANDER: How long do you

16 think it's going to take? How long do you project?

17 MR. WILEY: Twenty minutes.

18 JUDGE FRIEDLANDER: I can wait. Is

19 everyone else fine with that? Can we just go ahead

20 and continue through? And then afterwards we're going

21 to need to discuss procedure and post-hearing

22 scheduling.

23 MR. WILEY: I'm going to need a couple

24 minutes to get my notes in order. I don't think

25 that's asking too much of people, I hope.

0559

1 JUDGE FRIEDLANDER: That's fine.

2 MR. BENTSON: Your Honor, we would be

3 amenable to a two-minute comfort break for some

4 people.

5 MR. WILEY: We appreciate it.

6 JUDGE FRIEDLANDER: That's fine. We'll

7 be off the record for a couple minutes.

8 (A break was taken from 3:19 p.m. to

9 3:23 p.m.)

10 JUDGE FRIEDLANDER: We'll go back on

11 the record. Mr. Wiley, if you're ready to continue

12 with redirect.

13 MR. WILEY: I may be jumping around a

14 little bit, Your Honor, so bear with me because I'm

15 trying to get all these questions back together.

16

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

18 BY MR. WILEY:

19 Q First of all, Mr. Harmon, let's talk a little

20 bit about the questions by Mr. Beattie. He was asking

21 you about the type of public that you serve. In your

22 view, is that the shipping public or how would you

23 describe it?

24 A It's the public. It's any person can get on

25 the vessel.

0560

1 Q And so that means that a vessel -- a launch

2 service is a common carrier to the public? Is that

3 what you're saying?

4 A Yes.

5 Q He asked you about revenue decline that you

6 had been experiencing and asked you to also parse out,

7 if you could, the percentage of gross earnings that

8 pertain to passenger versus freight service, and your

9 testimony, as I recall, was it fluctuated year to

10 year; is that correct?

11 A That is correct.

12 Q Was 2015, no pun intended, the high-water mark

13 of your gross revenues in launch service in the state

14 of Washington?

15 A Yes.

16 Q You never had a year like 2015 since or

17 before; is that correct?

18 A Correct.

19 Q If you would, why was 2015 an unusual year?

20 A There was a one-time operation in Puget Sound

21 that involved a vessel called The Polar Pioneer, which

22 was a rig and a fleet of support vessels that

23 descended upon Puget Sound for probably about a

24 10-month period in which they prepared to go drill in

25 the Chukchi Sea, so there was a significant influx in

0561

1 service to that fleet.

2 Q That was an incident that was reported widely

3 in the press about environmental protests and the home

4 porting in the Port of Port Angeles of that equipment

5 for a while, was that not?

6 A Unfortunately, yes.

7 Q Now, I want to talk a little bit about -- and

8 I hope I don't jump around too much. But there's been

9 testimony both on cross-examination from Mr. Bentson

10 and on direct examination of Mr. Aikin today about an

11 RFP submission. Is it your testimony that, in fact,

12 Mr. Aikin was incorrect and that you had, in fact,

13 submitted a full response to the RFP to Crowley?

14 A Yes.

15 Q And the discussion that you were referencing

16 regarding questions on the RFP that were invited in

17 that RFP, you submitted those questions before the

18 deadline for them to be submitted; correct?

19 A Yes.

20 Q And is it your testimony that you did not get

21 any response or you got a response that said that

22 Crowley would not answer those questions?

23 A I can't remember the exact verbiage in the

24 response e-mail from Ms. Shemesh, but it was that they

25 wouldn't be responding to -- I can't remember if it

0562

1 was Arrow's questions or to questions, period. So I

2 don't know if other respondents had also asked

3 questions and they just weren't responding to any of

4 the questions.

5 Q And Ms. Shemesh is the in-house counsel for

6 Crowley; is that correct?

7 A That's correct. For that project as far as I

8 knew, yes.

9 Q And with respect -- you were asked a question

10 by Mr. Bentson as to whether you would construe the

11 RFP for launch service as a complaint, and you said

12 you didn't believe so. There was also testimony that

13 that RFP was sent to U.S. -- what's it called U.S.?

14 A I think Mr. Aikin said that it went to --

15 Q MEI. And who was the other contractor?

16 A U.S. Water Taxi, I believe.

17 Q And MEI?

18 A Correct.

19 Q Would you consider that to be a complaint

20 about their service in that they were also sent the

21 RFPs?

22 A No.

23 Q Now, have you brought proof today that you

24 did, in fact, submit the RFP response to Crowley

25 including copies to Mr. Aikin, Ms. Evans, Tracy Odom,

0563

1 and Julia Shemesh?

2 A Yes.

3 MR. WILEY: Okay. Your Honor, during

4 the break, I handed out an exhibit of which we only

5 have three copies. I'll get Mr. Beattie one since we

6 had to burden the records center to get those copies.

7 Q But, Mr. Harmon, is that a screenshot of an

8 e-mail by which you transmitted an RFP to Crowley for

9 launch services?

10 A Yes.

11 Q And that is dated September 16, 2016; is that

12 correct?

13 A Yes.

14 Q And, again, Mr. Aikin is copied on that

15 e-mail, is he not?

16 A Lindy Evans is first, Marc Aikin is second,

17 Tracy Odom is third, Julia Shemesh is fourth, and it

18 was copied to Tracy Odom, Jeff Randall, Jeremy

19 Johnson, and to my wife, Terri Harmon.

20 Q And would you then state whether Mr. Aikin's

21 testimony that you didn't respond to that RFP was

22 correct or incorrect?

23 A I'm sorry. Could you ask me the question

24 again?

25 Q Would you then state whether Mr. Aikin's

0564

1 testimony with respect to whether you transmitted that

2 RFP response to Crowley was correct or incorrect?

3 A Regarding this RFP, he must have been

4 incorrect.

5 Q I'm talking about the launch proposal, the

6 RFP.

7 A If he was looking at the launch RFP, he was

8 somehow mistaken.

9 Q Now, Mr. Bentson asked you a series of

10 questions --

11 JUDGE FRIEDLANDER: Mr. Wiley, before

12 you go on, are you asking for this to become an

13 exhibit?

14 MR. WILEY: Yes.

15 JUDGE FRIEDLANDER: Are there any

16 objections to admission of this exhibit? And I

17 know -- can Mr. Beattie look on yours? Do you have a

18 copy?

19 MR. WILEY: Mr. Beattie has reviewed my

20 company, and MEI has no objection, Your Honor.

21 JUDGE FRIEDLANDER: Okay. I'll

22 designate this as JLH-16 for the record, and it's so

23 admitted.

24 MR. WILEY: Thank you, Your Honor.

25 (Exhibit JLH-16 was admitted.)

0565

1 Q Mr. Bentson asked you a series of questions

2 about ship visits, ship volumes, and decreases in

3 traffic. Is it your testimony that that began in the

4 Anacortes area or in Puget Sound in general, could you

5 clarify, in 2011?

6 A It was either 2011 or 2012. It was somewhere

7 right around that time frame.

8 Q And is that still your testimony?

9 A Absolutely.

10 Q And when you were asked about your pattern of

11 revenues related to your overall activity as Arrow

12 Launch Service has reported to the Commission, is it

13 true that you report gross revenues?

14 A Yes.

15 Q And that may have nothing to do with net

16 profit or revenue margin under this system, might it?

17 A You're correct.

18 Q Okay. In 2017 have you also seen the pattern

19 of decreased vessel traffic continue?

20 A In 2017?

21 Q Yeah.

22 A This current year? The first portion of this

23 year, we have started out slow. We've had a few

24 pretty good weeks, and we're hoping that the trend

25 will continue. But yes.

0566

1 Q You mentioned Port Angeles, for instance. It

2 sounds like traffic has been significantly down there.

3 Is that still the case?

4 A We have an American tanker right now, so I'm

5 crossing my fingers it stays for a while.

6 Q With respect to American tankers, there was

7 testimony yesterday that you -- that launch companies

8 put customers to back of the line when there's an

9 American tanker in port, is that correct, in terms of

10 Arrow Launch's experience?

11 A No.

12 MR. BENTSON: Objection, Your Honor,

13 outside the scope of cross.

14 JUDGE FRIEDLANDER: Mr. Wiley.

15 MR. WILEY: Well, Your Honor, you've

16 allowed a lot of leverage. There was testimony

17 yesterday regarding ships going to the end of the

18 line. He's just indicated that there's an American

19 tanker in port. I thought it was an appropriate

20 question with respect to that.

21 JUDGE FRIEDLANDER: I don't believe

22 that he was asked cross on this, though, and I am

23 going to deny that question. So the objection is

24 sustained.

25

0567

1 BY MR. WILEY:

2 Q You also were talking about layoffs of

3 employees, and you seemed to be hard hit by that. You

4 indicated that that occurred in January 2016?

5 A I believe that's what month it was.

6 Q And why did that occur, please?

7 A Decrease in business.

8 Q And could you be a little bit more specific in

9 terms of does that mean you didn't have business to

10 support their wages?

11 A Correct, exactly, their wages, their benefits.

12 Q There was a question from Mr. Bentson about

13 the application of your tariff, and you testified that

14 that was a matter of rate design. And you explained

15 that both you and MEI proposes the same charge of

16 design based on vessel. He also asked you if that was

17 a requirement by regulation. Will you clarify what

18 your understanding of that question was?

19 A My understanding -- I'm sorry. My

20 understanding of his question? You'll have to ask it

21 again. I apologize.

22 Q In other words, is that by regulation or by

23 tariff design under an approved tariff by the

24 Commission?

25 A Approved tariffs by the WUTC.

0568

1 Q When you were asked -- and I do not want to

2 belabor the question about the employee status of your

3 vessel operator 17 years ago. But when you said

4 that's a question for the Court, is it true that the

5 issue of the status of employees is -- can be a very

6 complicated legal question that involves litigation?

7 A Yes.

8 MR. BENTSON: Objection, foundation.

9 JUDGE FRIEDLANDER: Mr. Wiley.

10 MR. WILEY: I don't understand that

11 objection.

12 MR. BENTSON: Your Honor, is the

13 witness, a nonlawyer, seriously being asked whether

14 employment -- the status of employment is a

15 complicated legal question? He's not a lawyer.

16 That's not -- it doesn't address the questions I

17 asked, and it's not something the witness, at least so

18 far as I know, is qualified to address.

19 JUDGE FRIEDLANDER: Actually, I think

20 it does address an answer to one of your questions

21 where Mr. Harmon mentioned that, as a nonlawyer,

22 that's something that is left up to the courts. So I

23 believe it does answer the question -- it was in

24 response to one of your questions, so the objection is

25 overruled.

0569

1 A And I believe I answered it.

2 Q And your answer was yes?

3 A Yes.

4 MR. WILEY: Now, there was testimony

5 also about -- Your Honor, and if I get an objection to

6 the scope, this relates to Mr. Aikin's testimony,

7 which we haven't -- you've raised significant

8 questions about the foundation for his testimony

9 about -- should I reserve this until we resolve the

10 issue whether Ms. Evans is going to be here, or do I

11 get to ask a follow-up to that line of testimony that

12 lacked foundation for an explanation by Mr. Harmon?

13 JUDGE FRIEDLANDER: Ask me the

14 question, and I'll let you know. Because is this

15 something that is better addressed by Ms. Evans?

16 MR. WILEY: It could potentially be a

17 cross-examination question for Ms. Evans, but I

18 certainly would want Mr. Harmon to respond to it. It

19 relates to the crane issue in the Port of Anacortes.

20 JUDGE FRIEDLANDER: That is something

21 that was asked of Mr. Aikin.

22 MR. WILEY: Correct.

23 DFS ATTORNEY2: It was not brought up

24 in cross-examination. I would prefer it not be

25 addressed by Mr. Harmon at this time.

0570

1 BY MR. WILEY:

2 Q Okay. Mr. Bentson was asking you about your

3 use of -- about Crowley and Foss and the competition

4 that you cited in providing launch service. One

5 question may have been confusing. And to clarify,

6 Mr. Harmon, does Arrow provide tug service to its

7 customers?

8 A No.

9 Q Arrow does not have any tugs in its fleet,

10 does it?

11 A No.

12 Q We had a series of questions about the growth

13 of the pie, the slice of the pie, that got very

14 muddled. My question for you is whether the growth in

15 Arrow's slice of that shrinking pie that you referred

16 to includes increases in nonregulated service

17 revenues.

18 A Yes.

19 Q As a matter of fact, that's a very important

20 part of your revenue stream currently, is it not?

21 A Yes.

22 Q What is the benefit of diversifying your

23 revenue streams with respect to regulated versus

24 nonregulated service?

25 A The most immediate benefit is, hopefully,

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1 sustainability of the company being financially fit.

2 The offshoot of that is employee retention, quality

3 wages, wages and benefits for its employees.

4 Q With respect -- going back to the decline in

5 revenues, I meant to ask you: Do you have a

6 preliminary idea -- obviously, you'll report to the

7 Commission by May 1 as is required in the annual

8 reports. Do you have a preliminary idea about how

9 much your 2016 revenues declined in relation to 2015?

10 A I think it's going to be right at a million

11 dollars.

12 Q And that's your best estimate now?

13 A Yes.

14 Q Again, going back to the 2000 episode and

15 17 years ago, one more question, in that circumstance,

16 did you feel that Arrow failed or refused to provide

17 service to its customers?

18 A No. Actually, if the service hadn't been

19 provided, the incident -- although unfortunate, the

20 incident wouldn't have happened. The service was

21 being provided. The fact that we used -- it didn't

22 impact our Anacortes customers by using -- keeping

23 Anacortes boats in Anacortes and using the Island

24 Commuter II, which was located in Bellingham. And the

25 Coast Guard anchored the ship in Bellingham. It was

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1 only logical to use the Island Commuter II there in

2 response to --

3 JUDGE FRIEDLANDER: I'm sorry to

4 interrupt. Let me just stop you, because it was my

5 understanding that cross-examination was limited to

6 the voracity to showing -- an influence on voracity of

7 Mr. Harmon based on conflicting statements with

8 current testimony and a brief that was filed on his

9 behalf.

10 I don't believe there were any questions

11 regarding the reliability or the service quality that

12 was being provided. I don't believe that it was being

13 used at that time for those purposes under

14 cross-examination. Is that correct, Mr. Bentson?

15 MR. BENTSON: That was my

16 understanding, Your Honor.

17 JUDGE FRIEDLANDER: Well, you would

18 know what you were using --

19 MR. BENTSON: Yes, Your Honor. That

20 was why it was offered today.

21 MR. WILEY: Your Honor, I couldn't

22 tell. I thought it was broader than that by virtue of

23 some of the rephrasing of the questions. If that's

24 your understanding, you know, you get to make those

25 rulings, but I thought he was going to the incident as

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1 an example of not being able to provide service, etc.

2 JUDGE FRIEDLANDER: And I didn't take

3 it that way, and Mr. Bentson has clarified that wasn't

4 the reason it was intended to be used for. I'm

5 tempted to strike the whole discussion because of the

6 narrow purpose it was given for and the fact that

7 Mr. Harmon has already said it's a legal question that

8 he's not willing to answer. I will grant you -- we

9 spent a good deal of time on it. I will stop you,

10 though, and stop Mr. Harmon from answering this line

11 of questioning.

12 MR. WILEY: Your Honor, if -- I assume

13 you're still taking under advisement whether you're

14 going to strike the whole line?

15 JUDGE FRIEDLANDER: Yes, I am.

16 MR. WILEY: Thank you. No further

17 questions.

18 JUDGE FRIEDLANDER: I have no

19 clarification questions for you, so thank you for your

20 testimony and you're excused.

21 So let's go ahead and discuss Ms. Evans, her

22 testimony, and especially cross-examination is going

23 to be very important.

24 Yes, Mr. Bentson.

25 MR. BENTSON: Your Honor, I have some

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1 new information on that front.

2 JUDGE FRIEDLANDER: Okay.

3 MR. BENTSON: I was contacted -- I

4 received a response from Crowley, and they are willing

5 to permit Ms. Evans to file prefiled testimony and be

6 subject to cross-examination.

7 JUDGE FRIEDLANDER: All right.

8 Mr. Wiley.

9 MR. WILEY: Of course, I object to

10 that, Your Honor. It's not only out of time, but

11 there's been multiple bites at the apple in terms of

12 supporting this application with testimony. It's

13 prejudicial, and it's very costly.

14 JUDGE FRIEDLANDER: Okay. Explain to

15 me how it's prejudicial first.

16 MR. WILEY: First of all, it's

17 prejudicial in terms of cost attrition and having to

18 come back and back and back. They put on their case

19 now. This was the two days scheduled for hearing.

20 Now, you know, the fact that they put on a

21 witness who was not sufficiently -- did not have

22 sufficient foundation to answer their questions about

23 service is, again, not the protestant's burden. Here

24 we are, second day of hearing, they've had one witness

25 now which they put on in, quote, rebuttal, unquote.

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1 Now we've got a fundamental witness that

2 should have been put on in their filing in October who

3 is now, supposedly, coming back to address all the

4 material elements of the case. I think it's unfair

5 and costly and prejudicial from that standpoint. I

6 think Ms. Endejan probably has something to say about

7 the impact on her client as well.

8 MS. ENDEJAN: Yes, Your Honor. This

9 will cause my client to incur additional costs, and I

10 would concur with Mr. Wiley in that the applicant here

11 had the opportunity and the burden of proof here. And

12 I think that it's inappropriate for, basically, the

13 Commission to assist the applicant in making its case

14 by requiring a witness to come forward and do

15 something that if the applicant had intended to use

16 Crowley as an example of how Arrow is not providing

17 service within the meaning of the statute, well, then

18 it should bear the brunt of its failure of proof here

19 and not my client who is an intervener but involved.

20 And we thought that this would be the end of

21 the case here with briefing, and I don't see the

22 reason why, as a matter of law, applying proper

23 burdens of proof, why this case should not be

24 dismissed for failure of proof. And what appears to

25 be happening now is the Commission is calling -- is

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1 allowing the applicant to, Lord only knows,

2 manufacture what kind of proof to bootstrap its way

3 into some kind of claim that Arrow is not providing

4 adequate service within the meaning of the statute.

5 It was not contemplated for in the schedule,

6 and I concur I think it's unfair and expensive for

7 everybody here to keep having to show up for something

8 that they should have thought of in the first place.

9 JUDGE FRIEDLANDER: Mr. Bentson.

10 MR. BENTSON: Yes, Your Honor. Well,

11 it's interesting. My perspective on this narrative is

12 a little different, and MEI objects to any suggestion

13 that it manufactured any evidence in this case. It

14 is -- I mean, that doesn't even deserve comment.

15 But MEI has -- this is an interesting game

16 we're playing. MEI presents a witness, and every time

17 the other side challenges the sufficiency of that

18 witness's testimony, they say we need this other

19 witness. And then when we agree to provide that

20 witness, it's like MEI didn't present that witness in

21 the first place. That's been the trend of this all

22 the way down.

23 Mr. Esch in his prefiled testimony submitted

24 evidence of customer complaints. They questioned

25 that, and they said there's no -- these customers

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1 don't exist. And so Mr. Aikin's testimony was

2 presented. They then said we want to cross-examine

3 Mr. Aikin, and so Mr. Aikin was produced. And he came

4 and he was subject to cross-examination. Now today

5 they say Mr. Aikin's is insufficient. We need Lindy

6 Evans, but it's prejudicial to us to allow Ms. Evans

7 to testify. I don't understand how I can win in that

8 situation.

9 JUDGE FRIEDLANDER: Do you disagree,

10 though, that Mr. Aikin was unable to answer very basic

11 cross-examination questions relating to his own

12 shipper statement?

13 MR. BENTSON: Respectfully, Your Honor,

14 I don't agree. Mr. Aikin testified on behalf of

15 Crowley as a -- in my view, as tantamount to a

16 corporate designee. He was familiar --

17 JUDGE FRIEDLANDER: I'm sorry.

18 Corporate designee, what are you referring to?

19 MR. BENTSON: As a representative of

20 the company.

21 JUDGE FRIEDLANDER: Okay. I get that.

22 MR. BENTSON: He signed the shipper

23 support statement. He did have specific instances

24 which he could use to back up the testimonial claims

25 he made. He did rely on hearsay, but that's permitted

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1 in this hearing. That seems to be the only real

2 objection here is that it's not so much we think Lindy

3 Evans will say something different than Mr. Aikin.

4 It's we think that the -- the argument seems to be

5 she's the only one with personal knowledge. So

6 Crowley has agreed to produce her, and MEI incurs all

7 the same costs as the other parties by having to do

8 that.

9 JUDGE FRIEDLANDER: Staff.

10 MR. BEATTIE: Thank you, Judge. I have

11 discussed this matter with Staff at multiple breaks,

12 and we wish to say that we concur with Mr. Wiley on

13 this matter.

14 One thing I will add from a Staff perspective

15 is -- well, I'd like to make two points. First, I

16 think it's consistent with remarks I've made before

17 that Staff sees itself as a neutral party. And part

18 of that is that when an applicant comes before, the

19 Commission Staff doesn't see its role as helping that

20 applicant win its case, only helping shepherd the

21 applicant through the process. We think that's also a

22 proper role for the Commission. So if the applicant

23 hasn't met its burden of proof, that should simply be

24 the answer.

25 The second point I'll make is that if the

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1 Commission were to grant the protest, which would have

2 the effect of dismissing the application, it's without

3 prejudice to the applicant -- and by that I mean the

4 applicant is free to refile its application at a later

5 date with some of the testimony that has been

6 identified as important.

7 JUDGE FRIEDLANDER: Thank you. And so

8 then, Mr. Bentson, if I'm understanding your position

9 correctly, you don't feel that it's necessary to put

10 on Ms. Evans's testimony; is that correct?

11 MR. BENTSON: I feel it's necessary

12 based on the Court's statements that you needed to

13 hear from Ms. Evans to determine -- to make a proper

14 determination. I feel Mr. Aikin's testimony was

15 sufficient, and that was all -- that was -- everyone

16 was on notice that he was going to be the testifying

17 witness. He testified to his statement.

18 And the other avenues of testimony that he

19 provided were opened up on cross-examination questions

20 by the other parties, not by something MEI did. We

21 were allowed under the authority of the WACs to

22 explore that and we did that. And that evidence is in

23 the record.

24 I think at the very least, it would be

25 premature to dismiss MEI's certificate application

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1 without at the very least having briefing on the

2 record that we've created over the last two weeks.

3 JUDGE FRIEDLANDER: Again, just to

4 clarify, you don't think that Ms. Evans's testimony is

5 necessary?

6 MR. BENTSON: I believe Mr. Aikin's

7 testimony along with Mr. Esch's testimony is

8 sufficient to sustain my client's burden. However, we

9 have no objection if the Commission feels it would be

10 helpful to make a just and equitable decision to going

11 forward with having Ms. Evans testify.

12 JUDGE FRIEDLANDER: Mr. Wiley.

13 MR. WILEY: Yes, Your Honor, you have

14 our motion for dismissal that you can take under

15 advisement. With that acknowledgment by Mr. Bentson,

16 I would suggest that you should await either further

17 argument or assessment of the record, but it sounds

18 like they don't feel that any additional proof is

19 necessary from Crowley. And we can proceed with

20 resolution of this case.

21 JUDGE FRIEDLANDER: I would agree. I

22 think that we're done. We will have briefs, and I

23 will take the motion to dismiss under advisement.

24 Is there anything further before we adjourn?

25 All right. Hearing nothing, thank you.

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1 THE REPORTER: Would you like to order

2 a copy of the transcript?

3 MR. BENTSON: Yes.

4 MR. WILEY: Yes.

5 MS. ENDEJAN: We would like a copy.

6 (The hearing concluded at 3:50 p.m.)

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3 STATE OF WASHINGTON

4 COUNTY OF KING

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6 I, Nancy M. Kottenstette, a Certified

7 Shorthand Reporter in and for the State of Washington,

8 do hereby certify that the foregoing transcript of the

9 evidentiary hearing on February 15, 2017, is true and

10 accurate to the best of my knowledge, skill, and

11 ability.

12 I do further certify that I am a disinterested

13 person in this cause of action; that I am not a

14 relative of the attorneys for any of the parties.

15 IN WITNESS WHEREOF, I have hereunto set my

16 hand and seal this 28th day of February, 2017.

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Nancy M. Kottenstette, RPR, CCR

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