

Docket No. TS-160479 - Vol. IV

In re Application of MEI Northwest LLC

February 15, 2017



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BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

IN RE APPLICATION OF)
)
MEI NORTHWEST LLC)
) DOCKET NO.
) TS-160479
FOR A CERTIFICATE OF PUBLIC)
CONVENIENCE AND NECESSITY TO)
OPERATE VESSELS IN FURNISHING)
PASSENGER FERRY SERVICE)

EVIDENTIARY HEARING

Volume IV, Pages 333 - 582

ADMINISTRATIVE LAW JUDGE MARGUERITE E. FRIEDLANDER

9:01 a.m.

February 15, 2017

Washington Utilities and Transportation Commission
1300 South Evergreen Park Drive Southwest
Olympia, Washington 98504-7250

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

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EXAMINATION BY BENTSON / AIKIN 337

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 DIRECT EXAMINATION

24 BY MR. BENTSON:

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

EXAMINATION BY BENTSON / AIKIN 338

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.**

EXAMINATION BY WILEY / AIKIN 339

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 **CROSS - EXAMINATION**

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?

EXAMINATION BY WILEY / AIKIN 340

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?

EXAMINATION BY WILEY / AIKIN 341

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**

EXAMINATION BY WILEY / AIKIN 342

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**

EXAMINATION BY WILEY / AIKIN 343

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.**

EXAMINATION BY WILEY / AIKIN 344

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**

EXAMINATION BY WILEY / AIKIN 345

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**

EXAMINATION BY WILEY / AIKIN 346

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.**

EXAMINATION BY WILEY / AIKIN 347

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

EXAMINATION BY WILEY / AIKIN 348

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?

EXAMINATION BY WILEY / AIKIN 349

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.**

EXAMINATION BY WILEY / AIKIN 350

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

EXAMINATION BY WILEY / AIKIN 351

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

EXAMINATION BY WILEY / AIKIN 352

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.**

EXAMINATION BY WILEY / AIKIN 353

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

EXAMINATION BY WILEY / AIKIN 354

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**

EXAMINATION BY WILEY / AIKIN 355

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 keep 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

EXAMINATION BY WILEY / AIKIN 356

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**

EXAMINATION BY WILEY / AIKIN 357

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**

EXAMINATION BY WILEY / AIKIN 358

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

EXAMINATION BY WILEY / AIKIN 359

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'

EXAMINATION BY WILEY / AIKIN 360

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

EXAMINATION BY WILEY / AIKIN 361

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**

EXAMINATION BY WILEY / AIKIN 362

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?

EXAMINATION BY WILEY / AIKIN 363

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?

EXAMINATION BY WILEY / AIKIN 364

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?

EXAMINATION BY WILEY / AIKIN 365

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?

EXAMINATION BY WILEY / AIKIN 366

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**

EXAMINATION BY WILEY / AIKIN 367

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.

EXAMINATION BY WILEY / AIKIN 368

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

EXAMINATION BY WILEY / AIKIN 369

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?

EXAMINATION BY WILEY / AIKIN 370

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?

EXAMINATION BY WILEY / AIKIN 371

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**

EXAMINATION BY WILEY / AIKIN 372

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

EXAMINATION BY WILEY / AIKIN 373

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**

EXAMINATION BY WILEY / AIKIN 374

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.**

EXAMINATION BY WILEY / AIKIN 375

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.**

EXAMINATION BY WILEY / AIKIN 376

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

EXAMINATION BY WILEY / AIKIN 377

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**

EXAMINATION BY ENDEJAN / AIKIN 378

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 **CROSS-EXAMINATION**

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?**

EXAMINATION BY ENDEJAN / AIKIN 379

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

EXAMINATION BY ENDEJAN / AIKIN 380

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**

EXAMINATION BY ENDEJAN / AIKIN 381

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.**

EXAMINATION BY ENDEJAN / AIKIN 382

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

EXAMINATION BY ENDEJAN / AIKIN 383

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.**

EXAMINATION BY BEATTIE / AIKIN 384

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 **CROSS - EXAMINATION**

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?

EXAMINATION BY BEATTIE / AIKIN 385

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.**

EXAMINATION BY BEATTIE / AIKIN 386

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

EXAMINATION BY BEATTIE / AIKIN 387

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

EXAMINATION BY BENTSON / AIKIN 388

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 simplest 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**

EXAMINATION BY BENTSON / AIKIN 389

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**

EXAMINATION BY BENTSON / AIKIN 390

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

EXAMINATION BY BENTSON / AIKIN 391

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

EXAMINATION BY BENTSON / AIKIN 392

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**

EXAMINATION BY BENTSON / AIKIN 393

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?

EXAMINATION BY BENTSON / AIKIN 394

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

EXAMINATION BY BENTSON / AIKIN 395

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**

EXAMINATION BY BENTSON / AIKIN 396

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**

EXAMINATION BY BENTSON / AIKIN 397

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**

EXAMINATION BY BENTSON / AIKIN 398

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?

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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

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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

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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

EXAMINATION BY WILEY / AIKIN 402

1 RE CROSS - EXAMINATION

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

EXAMINATION BY WILEY / AIKIN 403

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**

EXAMINATION BY ENDEJAN / AIKIN 404

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**

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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**

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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

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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

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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?

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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.

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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?

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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

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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

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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.

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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**

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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

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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.

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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

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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

EXAMINATION BY FASSBURG / BURTON 419

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 DIRECT EXAMINATION

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

EXAMINATION BY BENTSON / BURTON 420

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?

EXAMINATION BY BENTSON / BURTON 421

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.**

EXAMINATION BY BENTSON / BURTON 422

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

EXAMINATION BY BENTSON / BURTON 423

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**

EXAMINATION BY BENTSON / BURTON 424

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?

EXAMINATION BY BENTSON / BURTON 425

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.**

EXAMINATION BY BENTSON / BURTON 426

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.**

EXAMINATION BY BENTSON / BURTON 427

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?

EXAMINATION BY BENTSON / BURTON 428

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**

EXAMINATION BY BENTSON / BURTON 429

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**

EXAMINATION BY BENTSON / BURTON 430

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?

EXAMINATION BY BENTSON / BURTON 431

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

EXAMINATION BY BENTSON / BURTON 432

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.**

EXAMINATION BY BENTSON / BURTON 433

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?

EXAMINATION BY BENTSON / BURTON 434

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.

EXAMINATION BY BENTSON / BURTON 435

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.**

EXAMINATION BY BENTSON / BURTON 436

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?

EXAMINATION BY BENTSON / BURTON 437

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.**

EXAMINATION BY BENTSON / BURTON 438

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

EXAMINATION BY BENTSON / BURTON 439

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 --

EXAMINATION BY BENTSON / BURTON 440

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?

EXAMINATION BY BENTSON / BURTON 441

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?

EXAMINATION BY BENTSON / BURTON 442

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?

EXAMINATION BY FASSBURG / BURTON 443

1 MR. FASSBURG: I'll try to keep it
2 brief.

3 JUDGE FRIEDLANDER: Okay.
4

5 REDIRECT EXAMINATION

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.**

EXAMINATION BY FASSBURG / BURTON 444

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

EXAMINATION BY FASSBURG / BURTON 445

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**

EXAMINATION BY FASSBURG / BURTON 446

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?

EXAMINATION BY FASSBURG / BURTON 447

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?

EXAMINATION BY FASSBURG / BURTON 448

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**

EXAMINATION BY FASSBURG / BURTON 449

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

450

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 --

EXAMINATION BY WILEY / HARMON 451

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 DIRECT EXAMINATION

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

EXAMINATION BY WILEY / HARMON 452

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?

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 CROSS - EXAMINATION

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**

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**

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 conducive 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

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**

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**

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.**

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.

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

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**

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

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

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**

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

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

EXAMINATION BY WILEY / WESTAD 467

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 DIRECT EXAMINATION

25

EXAMINATION BY WILEY / WESTAD 468

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

EXAMINATION BY BENTSON / WESTAD 469

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**

EXAMINATION BY BENTSON / WESTAD 470

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**

EXAMINATION BY BENTSON / WESTAD 471

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?

EXAMINATION BY BENTSON / WESTAD 472

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.**

EXAMINATION BY WILEY / WESTAD 473

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 **REDIRECT EXAMINATION**

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.**

EXAMINATION BY WILEY / WESTAD 474

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

EXAMINATION BY FASSBURG / COLLINS 475

1 JUDGE FRIEDLANDER: You can be seated.

2 Mr. Fassburg.

3
4 DIRECT EXAMINATION

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.**

EXAMINATION BY BENTSON / COLLINS 476

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 **CROSS - EXAMINATION**

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**

EXAMINATION BY BENTSON / COLLINS 477

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?

EXAMINATION BY BENTSON / COLLINS 478

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?

EXAMINATION BY BENTSON / COLLINS 479

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.

EXAMINATION BY WILEY / COBURN 480

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 DIRECT EXAMINATION

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.

EXAMINATION BY WILEY / COBURN 481

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

EXAMINATION BY BENTSON / COBURN 482

1 Honor. I tender the witness.

2 JUDGE FRIEDLANDER: Thank you.

3 Mr. Bentson.

4 MR. BENTSON: Thank you, Your Honor.

5

6 CROSS - EXAMINATION

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.**

EXAMINATION BY BENTSON / COBURN 483

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.**

EXAMINATION BY BENTSON / COBURN 484

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.

EXAMINATION BY WILEY / COBURN 485

1

2

REDIRECT EXAMINATION

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

EXAMINATION BY WILEY / COBURN 486

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.**

EXAMINATION BY WILEY / COBURN 487

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

EXAMINATION BY BENTSON / HARMON 488

1 CROSS - EXAMINATION

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**

EXAMINATION BY BENTSON / HARMON 489

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

EXAMINATION BY BENTSON / HARMON 490

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.**

EXAMINATION BY BENTSON / HARMON 491

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**

EXAMINATION BY BENTSON / HARMON 492

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?

EXAMINATION BY BENTSON / HARMON 493

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

EXAMINATION BY BENTSON / HARMON 494

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.)

EXAMINATION BY BENTSON / HARMON 495

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**

EXAMINATION BY BENTSON / HARMON 496

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?

EXAMINATION BY BENTSON / HARMON 497

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**

EXAMINATION BY BENTSON / HARMON 498

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**

EXAMINATION BY BENTSON / HARMON 499

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**

EXAMINATION BY BENTSON / HARMON 500

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**

EXAMINATION BY BENTSON / HARMON 501

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**

EXAMINATION BY BENTSON / HARMON 502

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**

EXAMINATION BY BENTSON / HARMON 503

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

EXAMINATION BY BENTSON / HARMON 504

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?

EXAMINATION BY BENTSON / HARMON 505

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**

EXAMINATION BY BENTSON / HARMON 506

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

EXAMINATION BY BENTSON / HARMON 507

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

EXAMINATION BY BENTSON / HARMON 508

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

EXAMINATION BY BENTSON / HARMON 509

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**

EXAMINATION BY BENTSON / HARMON 510

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.**

EXAMINATION BY BENTSON / HARMON 511

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?

EXAMINATION BY BENTSON / HARMON 512

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?

EXAMINATION BY BENTSON / HARMON 513

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

EXAMINATION BY BENTSON / HARMON 514

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

EXAMINATION BY BENTSON / HARMON 515

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.

EXAMINATION BY BENTSON / HARMON 516

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

EXAMINATION BY BENTSON / HARMON 517

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**

EXAMINATION BY BENTSON / HARMON 518

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,**

EXAMINATION BY BENTSON / HARMON 519

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

EXAMINATION BY BENTSON / HARMON 520

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**

EXAMINATION BY BENTSON / HARMON 521

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.**

EXAMINATION BY BENTSON / HARMON 522

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**

EXAMINATION BY BENTSON / HARMON 523

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**

EXAMINATION BY BENTSON / HARMON 524

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?

EXAMINATION BY BENTSON / HARMON 525

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.**

EXAMINATION BY BENTSON / HARMON 526

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

EXAMINATION BY BENTSON / HARMON 527

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,**

EXAMINATION BY BENTSON / HARMON 528

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

EXAMINATION BY BENTSON / HARMON 529

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.**

EXAMINATION BY BENTSON / HARMON 530

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**

EXAMINATION BY BENTSON / HARMON 531

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.**

EXAMINATION BY BENTSON / HARMON 532

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

EXAMINATION BY BENTSON / HARMON 533

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?

EXAMINATION BY BENTSON / HARMON 534

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**

EXAMINATION BY BENTSON / HARMON 535

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.

EXAMINATION BY BENTSON / HARMON 536

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.**

EXAMINATION BY BENTSON / HARMON 537

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?

EXAMINATION BY BENTSON / HARMON 538

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

EXAMINATION BY BENTSON / HARMON 539

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,

EXAMINATION BY BENTSON / HARMON 540

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**

EXAMINATION BY BENTSON / HARMON 541

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

EXAMINATION BY BENTSON / HARMON 542

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

EXAMINATION BY BENTSON / HARMON 543

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 --

EXAMINATION BY BENTSON / HARMON 544

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

EXAMINATION BY BENTSON / HARMON 545

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**

EXAMINATION BY BENTSON / HARMON 546

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.**

EXAMINATION BY BENTSON / HARMON 547

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,

EXAMINATION BY BENTSON / HARMON 548

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

EXAMINATION BY BENTSON / HARMON 549

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

EXAMINATION BY BENTSON / HARMON 550

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.**

EXAMINATION BY BENTSON / HARMON 551

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**

EXAMINATION BY BENTSON / HARMON 552

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?

EXAMINATION BY BENTSON / HARMON 553

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?

EXAMINATION BY BENTSON / HARMON 554

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

EXAMINATION BY BENTSON / HARMON 555

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**

EXAMINATION BY BENTSON / HARMON 556

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

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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

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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.

EXAMINATION BY WILEY / HARMON 559

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.**

EXAMINATION BY WILEY / HARMON 560

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**

EXAMINATION BY WILEY / HARMON 561

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**

EXAMINATION BY WILEY / HARMON 562

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,

EXAMINATION BY WILEY / HARMON 563

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

EXAMINATION BY WILEY / HARMON 564

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.)

EXAMINATION BY WILEY / HARMON 565

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.**

EXAMINATION BY WILEY / HARMON 566

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

EXAMINATION BY WILEY / HARMON 567

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.**

EXAMINATION BY WILEY / HARMON 568

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.

EXAMINATION BY WILEY / HARMON 569

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.

EXAMINATION BY WILEY / HARMON 570

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,**

EXAMINATION BY WILEY / HARMON 571

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**

EXAMINATION BY WILEY / HARMON 572

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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THE REPORTER: Would you like to order
a copy of the transcript?

MR. BENTSON: Yes.

MR. WILEY: Yes.

MS. ENDEJAN: We would like a copy.

(The hearing concluded at 3:50 p.m.)

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CERTIFICATE

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STATE OF WASHINGTON
COUNTY OF KING

I, Nancy M. Kottenstette, a Certified
Shorthand Reporter in and for the State of Washington,
do hereby certify that the foregoing transcript of the
evidentiary hearing on February 15, 2017, is true and
accurate to the best of my knowledge, skill, and
ability.

I do further certify that I am a disinterested
person in this cause of action; that I am not a
relative of the attorneys for any of the parties.

IN WITNESS WHEREOF, I have hereunto set my
hand and seal this 28th day of February, 2017.

Nancy M. Kottenstette, RPR, CCR