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BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION

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

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PREHEARING CONFERENCE - VOLUME I  
Pages 1-14

ADMINISTRATIVE LAW JUDGE MARGUERITE E. FRIEDLANDER

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1:32 p.m.

September 1, 2016

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

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A P P E A R A N C E S (continued)

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\* \* \* \* \*

1 OLYMPIA, WASHINGTON; SEPTEMBER 1, 2016

2 1:32 P.M.

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4  
5 JUDGE FRIEDLANDER: All right. We will go  
6 on the record. Good afternoon. My name is Marguerite  
7 Friedlander. I'm the administrative law judge assigned  
8 to this matter. We're here before the Washington  
9 Utilities and Transportation Commission on  
10 September 1st, 2016, for a prehearing conference and  
11 Docket TS-160479, an application filed by MEI Northwest,  
12 LLC for a certificate of public convenience and  
13 necessity to operate vessels in furnishing passenger  
14 ferry services.

15 The purpose of the prehearing conference  
16 today is to take appearances of the parties, address any  
17 intervention requests, discuss the procedural schedule,  
18 and any procedural matters that the parties wish to  
19 raise.

20 Before we proceed any further, let's take  
21 brief appearances from the parties. I already have your  
22 contact information, so you will just need to state your  
23 full name, spell your last name, and then indicate the  
24 party which you represent.

25 So we will begin with Mr. Bentson.

1 MR. BENTSON: Yes, Your Honor. Dan Bentson,  
2 B-e-n-t-s-o-n, for MEI.

3 JUDGE FRIEDLANDER: Thank you.

4 Appearing today on behalf of Arrow Launch  
5 Service?

6 MR. WILEY: Yes. Good afternoon, Your  
7 Honor. Dave Wiley appearing today on behalf of Protest  
8 and Arrow Launch Service, Inc.

9 JUDGE FRIEDLANDER: Thank you.

10 Appearing today on behalf of Staff?

11 MR. BEATTIE: Julian Beattie, B-e-a-t-t-i-e,  
12 Washington State Attorney General's Office, appearing as  
13 Staff Counsel.

14 JUDGE FRIEDLANDER: Thank you.

15 And appearing today on behalf of Pacific  
16 Cruises Northwest?

17 MR. SCHMIDT: This is Drew Schmidt,  
18 S-c-h-m-i-d-t.

19 JUDGE FRIEDLANDER: Okay. And you are going  
20 to have to speak up, Mr. Schmidt.

21 MR. SCHMIDT: Drew Schmidt, S-c-h-m-i-d-t.

22 JUDGE FRIEDLANDER: Thank you.

23 There was an indication before we went on  
24 record that there may be another intervention request.  
25 The Commission has not received this intervention

1 request, but my understanding is that the parties have  
2 received it from Puget Sound Express, Inc. Is there  
3 anyone on the line who is appearing today on behalf of  
4 this company?

5 Okay. And is there anyone here in person  
6 who is appearing today on behalf of this company?

7 No one is rushing forward.

8 Is there anyone else who wishes to put in an  
9 appearance?

10 Okay. Hearing nothing, let's go ahead and  
11 address the intervention request that we did receive  
12 from Pacific Cruises Northwest. I have read the  
13 intervention. Does anyone wish to object to the  
14 intervention?

15 I am not hearing anything, so I take it,  
16 then, that there are no objections to this petition, and  
17 I will grant the petition to intervene.

18 Is there anyone else who wishes to put in an  
19 intervention at this time? Considering the one  
20 potential company has not appeared today, and I do not  
21 hear any other indications, I will take that as a no.

22 The parties indicated off record that they  
23 have not arrived at a procedural schedule. I think what  
24 we will do is we will go off the record at this point  
25 and try to work one up. When we come back on the

1 record, we will discuss potential dates.

2 So we are off the record.

3 (Discussion held off the record from  
4 1:35 p.m. to 2:06 p.m.)

5 JUDGE FRIEDLANDER: We'll go back on the  
6 record. While off record, we did discuss a procedural  
7 schedule, which I will read into the record in just a  
8 moment. But first, I do want to indicate that discovery  
9 will be conducted pursuant to the Commission's discovery  
10 rules under the WAC 480-07. Do we need a protective  
11 order in this matter?

12 MR. WILEY: Your Honor, if there are  
13 financial informations requested, yeah. The problem is  
14 that we have a -- Mr. Beattie's also familiar with this  
15 issue, that we have an opinion out of your division that  
16 they are unavailable in non-8177 cases because that's  
17 the only industry that got covered by so -- and this is  
18 a pending issue that we do need to talk about in terms  
19 of how -- and maybe we will bring it to you. But  
20 financial information going into the public domain,  
21 either for the applicant or the protestant aside from  
22 the financial showing that they have to make in the  
23 record, is problematic without a protective order. So,  
24 you know, I don't know what we are going to do.

25 JUDGE FRIEDLANDER: Okay. Should the need

1 arise, then I guess we will just address it at that  
2 time.

3 Mr. Schmidt, were you going to add anything?

4 MR. SCHMIDT: No, I was not.

5 JUDGE FRIEDLANDER: Okay.

6 MR. BENTSON: Your Honor, if I could on that  
7 front with respect to the protective order, MEI and I  
8 would assume Arrow Launch would be willing to work  
9 cooperatively to see if we can't stipulate to some sort  
10 of terms of a protective order in the event that  
11 discovery that's problematic arises.

12 JUDGE FRIEDLANDER: I think the problem  
13 then, though, would be if you file the information  
14 because it becomes a matter of public record.

15 MR. BEATTIE: And even more than that, since  
16 Staff is a party, any information that flows through the  
17 Staff --

18 JUDGE FRIEDLANDER: Right, it also becomes  
19 considered a public record.

20 MR. BEATTIE: Somebody issued a public  
21 records request for that and it was lying in Mr. Young's  
22 file or my file --

23 JUDGE FRIEDLANDER: It would be able --

24 MR. BEATTIE: Yeah. And that's why, you  
25 know, a judge can issue a protective order, but I think



1 it would be trumped by the Public Records Act. And so  
2 it's really hard to keep this sort of stuff from the  
3 public.

4 MR. WILEY: In Title 81 cases right now,  
5 this is a very current, hot issue. We'd love it if you  
6 would issue a protective order, but I think if you went  
7 back and talked to Judge Kopta, he may disabuse you of  
8 that. That's another reason why discovery in Title 81  
9 cases get kind of dicey, and the salt waste industry  
10 addressed it legislatively with the Staff's --  
11 Commission Staff's very strong support.

12 I hope that we can continue to do that for  
13 other industries. I think maybe from what I am hearing  
14 from my colleague that on the financial issues, we could  
15 talk about how we could -- and then we would, of course,  
16 talk to Staff because if it's an issue that they might  
17 want to be involved in opining on, they got to know, but  
18 hopefully we can work around it.

19 JUDGE FRIEDLANDER: There is always the  
20 option, I believe, of inspection of documents without  
21 taking notes.

22 MR. WILEY: Yes.

23 JUDGE FRIEDLANDER: So Staff may be able to  
24 go look at documents, audit potentially without taking  
25 any -- without creating a record of their own. I don't

1 know, just a suggestion.

2 MR. WILEY: As you well know from rape  
3 cases, which you do a lot of, that creates problems on  
4 the record too. I mean, if we have documents that are  
5 proprietary that are coming into issue in the hearing,  
6 they can't -- you can't protect it from the record, from  
7 the evidentiary record of the hearing.

8 JUDGE FRIEDLANDER: Sure.

9 MR. WILEY: So we have got some issues here.

10 JUDGE FRIEDLANDER: Sure.

11 MR. BENTSON: And understood there's some  
12 unique features there, but my thought would just be  
13 that, you know, it's best to instead of trying to craft  
14 any sort of protective order now or make a blanket  
15 decision, it probably makes sense for us to see if there  
16 is a request that will involve the disclosure of  
17 confidential and sensitive information, at which point  
18 we can try to craft a creative and mutually agreeable  
19 solution since obviously both -- at least I think both  
20 of our clients, there potentially would be sensitive  
21 information that could come up that they wouldn't want  
22 part of public records.

23 JUDGE FRIEDLANDER: That's fine. I'm  
24 amenable to that solution. I don't think we have to  
25 have one right now. Once the need arises, though,

1 please give me some lead time as far as trying to get  
2 some solution for all of you to continue to conduct  
3 discovery of potentially proprietary or sensitive  
4 information.

5 So, Mr. Schmidt, there won't be a protective  
6 order at this point, and then should you or any of the  
7 others need it, you will need to come to me as soon as  
8 possible.

9 MR. SCHMIDT: Okay. Thank you.

10 JUDGE FRIEDLANDER: Sure.

11 Now, we've been starting to ask if the  
12 parties are willing to consent to electronic service  
13 amongst each other. Do the parties agree to that?

14 MR. WILEY: Yes for the Protest.

15 MR. BENTSON: Yes for MEI, Your Honor.

16 JUDGE FRIEDLANDER: Thank you.

17 MR. SCHMIDT: Yes.

18 JUDGE FRIEDLANDER: I'm sorry, Mr. Schmidt?

19 MR. SCHMIDT: Yes for us.

20 JUDGE FRIEDLANDER: Okay. Thank you.

21 And Staff?

22 MR. BEATTIE: For Staff, yes.

23 JUDGE FRIEDLANDER: Okay. Thank you.

24 I'm not going to require it of service of --  
25 consent of service from the Commission to be electronic.

1 We usually designate one representative and one attorney  
2 on behalf of each party who receive hard copy service.  
3 If each of the parties can get me, and with the  
4 exception of Staff, unless you have someone other than  
5 Mr. Young who wants to be lead on this and receive the  
6 hard copy.

7 MR. YOUNG: I will do it.

8 JUDGE FRIEDLANDER: Okay. That's fine.

9 So if each of the parties stave -- Staff  
10 will get me by email, one attorney physical address for  
11 service of process, and one Company or entity  
12 representative service of process physical address, that  
13 would be excellent. I can put those in the prehearing  
14 conference order, and they will be available for the  
15 parties to reference at the back of the order in the  
16 appendixes.

17 For purposes of document filing with the  
18 Commission, please submit and file an original and three  
19 copies, and with a courtesy copy I should mention to the  
20 judge, to me, with each filing you make with the  
21 Commission.

22 Are there any other issues that we need to  
23 address at this prehearing conference before we adjourn?

24 MR. BEATTIE: Have you read the procedural  
25 schedule into the record yet?

1 JUDGE FRIEDLANDER: I'm sorry. That's a  
2 very good reminder. Thank you. I was saving that until  
3 last, and it was going to be absolutely last.

4 So the procedural schedule as agreed to by  
5 the parties would be direct testimony from the Company,  
6 MEI, due October 4th, response testimony from all  
7 parties who wish to file with the exception of MEI due  
8 on November 1st, rebuttal testimony and any  
9 cross-answering testimony from parties would be due  
10 December 5th, discovery cutoff, the end of discovery,  
11 would be December 9th, 2016, the evidentiary hearing  
12 would be scheduled for January 5th and 6th, if  
13 necessary, December -- I am sorry, of 2017, and  
14 simultaneous initial briefs would be due on  
15 February 17th, 2017.

16 Is there anything else before we adjourn?  
17 All right. Hearing nothing, we are adjourned. Thank  
18 you.

19 (Adjourned at 2:14 p.m.)  
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C E R T I F I C A T E

STATE OF WASHINGTON  
COUNTY OF THURSTON

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

\_\_\_\_\_  
Tayler Russell, CCR