

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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)

PREHEARING CONFERENCE - VOLUME I

Pages 1-14

ADMINISTRATIVE LAW JUDGE MARGUERITE E. FRIEDLANDER

1:32 p.m.

September 1, 2016

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

REPORTED BY: TAYLER RUSSELL, CCR #3358

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OLYMPIA, WASHINGTON; SEPTEMBER 1, 2016 1:32 P.M.

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

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

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

So we will begin with Mr. Bentson.

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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

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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

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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

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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

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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

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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,

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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.

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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

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 2
 3 STATE OF WASHINGTON
 4 COUNTY OF THURSTON
 5

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