Exhibit No. (JLH-1T)

Docket TS-160479

Witness: Jack Harmon

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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| In re Application of MEI NORTHWEST LLC For a Certificate of Public Convenience and Necessity to Operate Vessels in Furnishing Passenger Ferry Service   |  | Docket TS-160479 |
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**TESTIMONY OF**

**JACK HARMON**

**PRESIDENT, ARROW LAUNCH SERVICE, INC.**

**November 1, 2016**

1. introduction
	1. Please state your name, position at Arrow Launch Service, Inc., and business address.

A: My name is Jack Harmon and I am and have been an owner of Arrow Launch Service, Inc. (“Arrow”) for the past 27 years. My business address is 830 Boathaven Drive Port Angeles, Washington 98362.

Q: Will you please provide a brief background of your experience regarding the operation of Arrow in general and familiarity with Arrow Launch Service, Inc. in particular?

* + 1. My family has owned commercial work boats for my entire life, with my crib literally being on a commercial fishing boat, with every dollar I’ve ever earned coming from the marine industry. Prior to coming to Washington State in 1989, I lived in Southern California and worked on various fishing vessels, both commercial and recreational commercial, and later, for several tug companies, ultimately going to work for launch companies in San Pedro, H10 Water Taxi and J & S Water Taxi. I also worked for Antone Sylvester Tug & Launch. I hold a U.S. Coast Guard Masters License 1600 gross tons, All Oceans, with an unlimited RADAR endorsement that includes Automatic Radar Plotting, with necessary endorsement to sail on international voyages. In addition, I am a USCG certificated “Person In Charge” of transferring dangerous liquids (PIC/DL) meeting the requirements for transferring oil products over water. I received my first Captain’s license at the age of 18 (over 40 years) and have operated vessels all over the West Coast and in the Gulf of Mexico. In 1989, my then partner and I purchased the former Sea Wolf Launch and Charters and its WUTC certificate and relocated our families from Southern California to Washington State. In the mid-1990’s my wife, Terri, and I bought out our partner and incorporated the company from its trade name Arrow Launch to its now corporate name Arrow Launch Service, Inc.
	1. Are you a member of any marine stakeholder groups or organizations?
		1. Yes, to name just a few, I am a member of the following organizations:
1. National Safety Council Waterborne Transportation Group
2. Puget Sound Marine Exchange Board of Directors
3. American Boat & Yacht Council
4. Puget Sound Harbor Safety Committee
5. Passenger Vessel Association
	1. Has the company grown during your tenure?
		1. Well, yes, in terms of reported revenues. When we bought the company in 1989, it had about $169,000 in annual gross revenues which we have now grown to approximately $6.5 million in gross annual sales including nonregulated revenues. In the course of that growth, we have expanded our fleet of launch vessels from three in 1989 to our current 12 vessels and operate launch terminals in all Puget Sound Ports, and have 42 employees
6. Summary of Testimony
	1. Can you briefly summarize the purpose of your testimony in opposing this application?
		1. I am testifying in support of Arrow’s Protest and in opposition to MEI Northwest LLC’s (“MEI”) application for a Certificate of Public Convenience and Necessity to operate launch service in the Puget Sound. My testimony is intended to establish for the Commission that Arrow provides a fully adequate and satisfactory service to all territories in which it serves and has never failed or refused to provide reasonable and adequate service to any customer in its certificated territory. I am also quite familiar with the topics about which Randy Esch testifies in support of MEI’s Application and believe my testimony will demonstrate why MEI’s Application should be denied by the Commission.
	2. Do you believe that the territories in which MEI is applying can support two full time, viable launch providers?
		1. No, I do not. As other industries have, many shipping companies have also entered into mergers which has resulted in fewer vessels calling on *all* West Coast Ports. The widening of the Panama Canal which just reopened accelerates this phenomenon. Further, larger ships are being built to haul more cargo per voyage, reducing the amount of ships required to call upon ports. Additionally, Alaskan crude output has steadily diminished, resulting in fewer US tankers operating between Alaska and West Coast ports. This in turn has resulted in more foreign flagged tankers transporting crude from other global locations. As identified below, foreign flagged vessels utilize a fraction of the launch service required by US flagged vessels. This does not include any of the impact of oil by rail on overall vessel traffic volume. This steady traffic decline, as evidenced by Puget Sound Marine Exchange historical arrival numbers (*see* Exhibit No. \_\_\_(JLH-2)) has and will affect all segments of the marine industry. This is also very visible in the consolidation and reduction of other marine providers. For example, Puget Sound at one time had five local ship chandlers (supplier), and now is down to one local chandler. Puget Sound also previously had several bunker (fuel) barge providers, and now is served by a single one. Additionally in response to many of these factors, the ports of Seattle and Tacoma joined forces in 2015, forming the NW Seaport Alliance, combining resources of both ports in an effort to combat the declining volumes of ship traffic in Puget Sound which is a significant threat to the economic well-being of the State of Washington.
7. APPLICANT CANNOT DEMONSTRATE ARROW LAUNCH SERVICE, INC. failed to PROVIDE REASONABLE or adequate service

Q: In support of your testimony are you sponsoring any exhibits which will be introduced in support of Arrow’s protest to the application?

A: Yes, I am sponsoring the exhibits below:

* + - 1. Exhibit No. \_\_\_ (JLH-2) is a true and correct copy of an e-mail chain between Jack Harmon and Neil Caldwell, Operations Manager for the Marine Exchange of Puget Sound, in which the annual vessel visits to the Puget Sound from 2013 to date are provided.
			2. Exhibit No. \_\_\_ (JLH-3) is a true and correct copy of the Certificate BC-97 of Arrow Launch Service, Inc.
			3. Exhibit No. \_\_\_ (JLH-4) is a true and correct copy of Arrow Launch Service, Inc.’s 2014 and 2015 WUTC Annual Report Fleet Schedules.
			4. Exhibit No. \_\_\_ (JLH-5) are true and correct copies of the launch schedules used by a number of Arrow’s customers including asterisked notations indicated by the customer.
			5. Exhibit No. \_\_\_ (JLH-6) is a true and correct copy of e-mails and a letter received from customers regarding Arrow’s service.
			6. Exhibit No. \_\_\_ (JLH-7) is a true and correct copy of the Puget Sound Marine Exchange’s data for vessel arrivals in 2015.
			7. Exhibit No. \_\_\_ (JLH-8) is a true and correct copy of an NTSB Marine Accident Brief regarding the sinking of the towing vessel, Delta Captain.

Q. Could you describe the territory serviced by Arrow?

A. Yes, pursuant to its Certificate of Public Convenience and Necessity, BC-97, submitted as Exhibit No. \_\_\_ (JLH-3), Arrow provides passenger and freight launch service throughout the Puget Sound as well as Grays Harbor.

Q. Please describe, generally, what services Arrow provides in those geographic territories?

A. Arrow provides launch service, transporting people to and from ships, as well as transportation of freight and goods, including food, supplies and equipment, to and from ships at anchor, underway or alongside docks.

Q. Can you describe for us the boats used by Arrow to provide those services?

A. Arrow owns and operates 12 United States Coast Guard Inspected and Certificated vessels, ranging in size from 40 to 74 feet (*see* Exhibit No. \_\_\_ (JLH-4)). Our boats are modernized with updated mechanical, navigation systems, operational and rescue systems, to name just a few of those systems, including: two RADARS, of which one RADAR overlays a chart plotter and the Automatic Information System (AIS) onto the display screen, two GPS units, two Marine VHF radios, a private radio that is encrypted for security, electronic engine controls, low and high voltage alarm monitoring system, Pilot house mounted CCTV monitor that views both the engine room and passenger areas, with all wiring meeting or exceeding USCG and/or ABYC standards. In addition, every Arrow vessel is equipped with an automated external defibrillator (AED), an advanced first aid kit (in addition to the first aid kits required by the United States Coast Guard), a pulse & blood pressure monitor, illuminated self-inflating man over board rescue pole, modern LED and redundant lighting, cold water rescue suit, custom engineered rescue davit with recovery gear. Arrow vessels are also equipped with life rafts that in the event of an emergency keep persons completely out of the water. These updates are identical on all Arrow vessels and allow our vessels to operate at very high performance levels; with all crew being continually trained and evaluated in the proper use of the above-referenced equipment, almost all of which are upgrades not mandated by the United States Coast Guard.

* 1. Are there various standards or criteria that Arrow’s boats are required to meet?
		1. Yes, in addition to the requirements of the U.S. Coast Guard, some of our customers subscribe to Oil Companies International Marine Forum (OCIMF) requirements, which are superior to what they view as the “minimum” requirements of the U.S. Coast Guard, and utilize either Offshore Vessel Inspection Database (OVID) or Ship Inspection Report Programme (SIRE) requirements. In order to serve all customers, Arrow’s vessels are compliant with these standards.
	2. Mr. Esch testified that he estimates one to two of Arrow’s boats would be unavailable at any given time. Is this an accurate estimation?
		1. Not at all. For Arrow, the annual average number of vessels offline at a given time is actually less than one. This is due to the fact that Arrow has a very aggressive preventative maintenance program that includes a fully-staffed shop of welders, electricians, mechanics and purchasing. Unlike what Mr. Esch describes, dry docking of Arrow USCG-inspected vessels is only required twice in five years, NOT every year. Also, when dry docking, our vessels are moved into our own inside repair facility. Being inside keeps us out of the weather and significantly shortens the maintenance out-of-service period.
	3. Mr. Esch also testified that for the San Francisco Bay, approximately 20 percent of launch vessels are not available for commercial use at any given time. Is this also true for Arrow in the Puget Sound?
		1. No, it is not.
	4. Why not?
		1. As noted above, Arrow follows a very aggressive preventative maintenance program, utilizing in-house welders, fabricators, electricians and mechanics as well as 8,000 square feet of inside/covered shore facilities to support the fleet. In addition, Arrow owns a plethora of spare parts, such as complete and ready to install new engines and transmissions, pumps, propellers, along with owning inventory for just about every part used on our fleet. Our vessels have been standardized so parts used on our boats are interchangeable, which keeps our fleet fully operational, minimizes any out of service time, which increases reliability of our fleet.
	5. What is the effect of vessel standardization?
		1. Arrow’s implementation of standardization allows interchangeability of parts or equipment which results in Arrow being more cost effective, reducing training time and expense, and affording our crews vessel familiarity throughout the fleet resulting in safe and efficient service to our customers. Additionally, because Arrow is a major service provider in Puget Sound, we schedule maintenance sequentially and there is no chance that we schedule a boat to be out of service at the same time as another launch company, as assumed in Mr. Esch’s testimony, thus eliminating complications in keeping our vessels in the water and in service.

**Q: Mr. Esch further testified that Arrow is underserving the public with its existing fleet, do you agree?**

A: No, I wholeheartedly disagree. Mr. Esch’s allegations of an inadequate fleet are without merit or any first-hand knowledge. Mr. Esch suggests another provider would result in newly built vessels. In MEI’s application, however the two boats it proposes to utilize by lease from its parent company are 38 years old, which is a similar age to some of our vessels. However, as I know all too well, age alone is rarely an accurate indicator of the condition of a vessel. Boat maintenance is a constant process so as to assure the equipment is safe, dependable and ready to work. Upgrades and standardization of systems are routine in our fleet. Even in ports with multiple operators, I am not aware of any launch company whose fleet isn’t populated with similarly aged vessels, which are in various conditions of quality and reliability based on the launch operator’s tolerance of maintenance expenses. We have looked at building new vessels many times in the course of our history; however, the capital expense of a new boat does not make financial sense when the maintenance costs of a vessel, new or old, begins immediately upon being placed in the water, and when the tariff rates to support that new equipment would need to be considerably higher.

* 1. Does Mr. Esch’s testimony about your equipment engage in other forms of speculation?
		1. Yes. Mr. Esch also speculated that with another operator’s emergence, we would likely repower our vessels. In California, MEI’s parent Company is eligible for re-power grants via the Bay Area Air Quality Management District’s Carl Moyer Memorial Air Quality Standards Attainment Program. It is my understanding that these grants (subsidies) will fund re-power (new engines) for marine vessels with maximum eligible grant funding up to 85% of the capital cost of new main engines and approved modifications required to the vessel. Washington State has no such equivalent program.

Q. Have you in fact reevaluated your own vessel power systems?

A. Yes, we re-powered two of our prior international ferries, with new 4-cycle marine engines. That experience led us to affirm our retention of the reliable 2-cycle Detroit engines we currently use. In our experience, Detroit 71 series engines are simply the longest-lasting, most reliable, adaptable, easily maintained, and best option available to us today. Because the regulatory requirements of modern diesel engines continue to evolve, there is a patchwork of available engine models. Consequently, California operators, (including MEI), experience a patchwork of different engine manufacturers and models in their fleets which is not effective or efficient to maintain, complicates the operation and maintenance of a vessel to her crew, and ultimately leads to less reliable service.

* 1. Can you please characterize Arrow’s maintenance program in the context of operating systems like Detroit Diesel engines?
		1. Yes. A component of Arrow’s maintenance program is to regularly replace the propulsion systems in our boat(s) with new engines and transmissions. Because of our standardized fleet, we have new spare engines and transmissions in inventory and ready to put into service. When we replace the engines, we remove existing engines and replace them with our on-hand new units. By having on-hand propulsion components, we can accomplish this on average in two days. The removed engines are then disassembled to bare block, thoroughly inspected and tested, then built with new components to original manufacturer’s specifications. This system has worked very well for us and minimizes downtime, reduces expenses, in direct contrast to our experience and the limited availability of critical components or electronics necessary to repair and maintain the newer 4-cycle engines which, again, was our actual experience with new electronic engines.
	2. Mr. Esch testified Arrow has just eight launch boats. Is that true?
		1. No, that is not correct. As I previously mentioned, Arrow owns and operates 12 launch vessels.
	3. How does owning 12 launch vessels, as opposed to eight, impact Arrow’s ability to provide service?
		1. Simply, 12 vessels is four more (or 50% additional) vessels than Mr. Esch based his theories of our service on (Exhibit No. \_\_\_(RSE-1T), 7:14), and which our 2014 and 2015 Annual Fleet Report filing schedule confirms (See Exhibit No. \_\_\_ (JLH-4). Throughout our 27 year history, Arrow has always been able to provide service throughout the Puget Sound; but having 12 vessels, as of 2014, provides Arrow the enhanced flexibility to nimbly move its vessels to different ports where they may be needed, without impacting the ability to provide on-demand service elsewhere.
	4. How does Arrow determine where its vessels are needed to be positioned?
		1. Our in-house, round-the-clock dispatch team monitors ship traffic and their anticipated movements. Further, Arrow is in constant communication with its customers to schedule services and to ensure our boats are in the locations where they are needed. Therefore we have the ability to move vessels between the Ports as necessary to accommodate temporary spikes in demand, or to provide the best suited vessel for a specific customer job and/or weather conditions.
	5. Does Arrow permanently keep a certain number of boats and support equipment at each port?
		1. Yes we do. Arrow typically keeps four boats in each of our three regions. We do this in order to provide the optimal service possible; despite that, more often than not, we have two to three vessels sitting idle per region and waiting for a call from the customer. Specifically, four boats in the North Sound (Anacortes), four in the South Sound (Seattle/Tacoma) and four boats in the West Sound (Port Angeles). This combination allows us to move vessels to other ports as needed. In addition, we own and operate 13 forklifts, nine cranes, trucks and all the necessary rigging and equipment to support our customers’ requirements.
	6. What about in Grays Harbor?
		1. At present, we do not keep any boats in Grays Harbor. Though we have historically serviced Grays Harbor and will continue to provide service when called upon to do so, the Port of Grays Harbor offers a publicly-owned launch service, the tariffs for which are charged to ships in the Port regardless of whether they use a private provider’s service. This means any customer who wants to use Arrow would have to pay twice, once to the Port and once to Arrow.
	7. Mr. Esch testified he believed Arrow underserved Anacortes by keeping only two boats in the area when four are needed at its peak. Do you agree with that?
		1. No, Mr. Esch is again incorrect. As stated above, we keep four boats in each of our regions. Actually, quite often, with four boats moored in Anacortes, we have two or three sitting idle and it’s not uncommon to have all four sitting idle. Contrary to Mr. Esch’s statement that “if an American Tanker arrives it will require a boat for the day,” (Exhibit No. \_\_\_(RSE-1T), 15:14-15). The fact is that an American tanker with even the most robust requirements, orders service that is less than 12 hours of billable time in a 24 hour period. Most companies are scheduling two to eight trips a day, and cancelling service when ship’s crew fails to “sign up to use the launch” (*see*, Exhibit No. \_\_\_( JLH-5)).
	8. Are there high demand times where Anacortes requires four launch vessels?
		1. There are actually only a few times in the year that four boats are needed in Anacortes and in those rare instances, as noted, Arrow routinely has four boats in Anacortes. If any additional vessel above four were ever to be required, Arrow can easily relocate vessel(s) to any port requiring additional resources. I thus thoroughly disagree with Mr. Esch that Anacortes is or has ever been in our experience, “underserved.”
	9. Does Arrow interact with its Customers on efficient launch utilization?
		1. We in fact always communicate with our customers in order to satisfy their needs for service and their simultaneous need for economic efficiency by also often offering suggestions about combining services ordered for their vessels through *efficient* utilization of launch services. Further, as referenced above, because Arrow maintains a fleet of 12 launch boats, 42 crew persons, and a host of support items throughout Puget Sound we can assure that expeditious and broad geographic range of service for our customers.
	10. Mr. Esch conversely implied Arrow is stretched too thin by dedicating 25% of its capability to just 12.5% of its territory. Do you agree with this?
		1. First, as I previously stated, Mr. Esch based his theories of our operations on incorrect data which result in misleading percentages. Mr. Esch is assuming Arrow has just six boats in the water, with one to two dedicated to Anacortes and the remaining boats covering Puget Sound plus Grays Harbor. Yet another incorrect assumption. I cannot recall how many years it has been since we have had just “one to two boats in Anacortes.” As we have explained, Arrow operates 12 boats in Puget Sound, and boats are additionally moved to various ports as customer demand, weather and job suitability dictate. Mr. Esch’s testimony at page 4 further implies that *every day* “there are 3-4 ships in Anacortes awaiting berth that would use our services.” The fact is, there are *NOT* 3-4 *ships sitting idle everyday requiring service*, but when there are 3-4 ships at anchor, they are anchored where Arrow DOES provide service, and Arrow has never once been unable to service ships simultaneously. Finally, while Mr. Esch (Exhibit No. \_\_\_(RSE-1T), 7:15) observes that we have eight separate ports to reinforce his utilization theories, as I have explained, we organize operations in Puget Sound primarily in three different regions: North Sound (Anacortes/Vendovi), West Sound (Port Angeles), and South Sound (Seattle/Tacoma). In addition to the previously noted US flagged tanker vessels, there are also Foreign Flagged Vessels which require minimal service, such as grain ships, container ships, vehicle carriers, and tankers. Most of these vessels proceed from the ocean directly to their berths, requiring zero to two launches per visit. Nonetheless, the equipment and ability to respond to an emergency request from these vessels would not be available if it were not for the “regular” users who require regular availability of vessels and workforce.
	11. What are some utilization factors for your launches relative to the U.S. tankers?
		1. There are four U.S. tanker operators servicing the West Coast refineries with cargo from Valdez. When they have need to call on a Puget Sound refinery and require launch service they schedule “crew runs.” The primary function of a crew run is to offer crew member(s) shore leave (sometimes called “liberty launches”). However, other personnel such as repair technicians, owners’ representatives, the United States Coast Guard, the American Bureau of Shipping and others also ride on these crew runs. There is also a subset of U.S. tankers we serve called Articulated Tug and Barge (ATB). ATBs operate with smaller crews than conventional tankers because they are regulated as tugs. Unlike the U.S. tanker industry though, ATBs do not schedule runs to provide their crews “shore leave” and typically instead schedule runs to combine joining or repatriated crew simultaneously with repair technicians, resulting in 0-to 2 trips in a 24-hour period. Mr. Esch testifies that “when a US tanker arrives it will require a boat for the entire day” (RSE-T1, 15:14-15). The fact is that when a U.S. tanker arrives and if it anchors for a period long enough to require launch service, the US tanker operators may schedule between two to eight crew runs a day (*see* Exhibit No. \_\_\_ (JLH-5)). Unfortunately, as often happens, and as referenced in that exhibit, runs that have been scheduled are later deemed by the ship “not required,” and are then cancelled on short notice. These U.S. tankers transport Alaskan crude oil or refined derivatives to (and between) almost every refinery on the entire West Coast. External circumstances have decreased Puget Sound tanker arrivals. Refinery maintenance or shutdowns along with other market demands lead to situations where tankers that historically traded between Alaska and Puget Sound instead now operate almost exclusively between Alaska and California and/or Hawaii. A resultant decline in U.S. tanker traffic is corroborated by statistical arrival data from the Puget Sound Marine Exchange who tracks (all) arrivals into Puget Sound. Comparing the number of tankers calling on Puget Sound from Valdez demonstrates the severity of this decline; in 1992 there were 285 tankers. By 2015, just 89 tankers arrived in Puget Sound, a decrease of 69%. Despite this decline, launch resources (equipment and personnel) are still required to be available (and have always been) to provide reasonable and adequate service.
	12. Has Arrow ever refused to provide service to a customer in its territory?
		1. Absolutely not.
	13. Has Arrow ever failed to provide service to a customer because it was unavailable to do so?
		1. Again, absolutely not. In fact, Arrow prides itself on always providing excellent customer service and remains in constant contact with customers to anticipate their needs in advance to ensure service is provided in a timely and efficient fashion even when service is requested on very short notice. Frankly, without sounding immodest, I believe the industry and the WUTC would be amazed at the lengths Arrow dispatchers and crew go to assure timely, expedited service in every port of Puget Sound in which Arrow holds certificate authority.
	14. Mr. Esch also testified “[if] that means a customer has to wait until it is more convenient for Arrow Launch to provide services, then the customer will have to wait, even if Arrow Launch is capable of performing the services when asked.” Do you agree with this statement?
		1. No, first of all, who, why and how would that ever be in our best interest? Various customers and vessels operate differently from one another. Some vessel operators will place their orders 36 hours in advance of their requirements, while others will wait until the last minute to order service. We accommodate all of our customers’ needs as expeditiously as humanly possible and without complaint.
	15. What about emergencies on board ships, how does that impact scheduling?
		1. As an example, when a ship calls and reports, for instance, a medical emergency with a person onboard the ship who requires hospitalization, we will mobilize the closest and most appropriate equipment and crew to get that individual ashore. Nevertheless, I cannot think of a single time in which there was delayed service by Arrow to one vessel because of a medical issue on another vessel.
	16. Do you receive calls to transport medical emergencies ashore and why isn’t that done by the U.S. Coast Guard in most circumstances?
		1. Yes we do. In fact because we operate on 24/7/365 basis to vessels, we are more likely to have a vessel underway than the U.S. Coast Guard in many situations. Also, the Vessels we service have experience working with our boats and crew(s). Thus, we already have time-tested transfer protocols and working relationships established, and we know the nuances of individual ships or gangways on the ships, so we are actually better suited to provide a safe and timely transfer of personnel. In providing this service we are also most frequently called by cruise ships within our territory for emergency evacuations of personnel. The Coast Guard is ideal when a helicopter is the fastest route ashore due to the affected vessel’s location or condition of an injured person, meaning they can fly directly to a hospital, while we transport the patient ashore to a waiting ambulance. As a consequence, we work with first responders in all Ports, and when appropriate, we will arrange for an EMT or Paramedic crew to ride out to the ship with us so they can begin treatment onboard and then monitor a patient enroute to shore. And again, all Arrow vessels have AED’s and advanced first aid equipment and Arrow’s crew(s) are fully and routinely trained in that equipment.
	17. But, is the example given by Mr. Esch regarding the incident 16 years ago, in January, 2000 in Bellingham, reflective of a failure by Arrow to provide service?
		1. No, in fact, the incident in 2000 discussed by Mr. Esch demonstrates that Arrow did not fail to provide service to a customer. That incident also occurred during a unique time relative to the Puget Sound maritime industry and actually illustrates Arrow’s willingness to go to lengths to accommodate customer needs on demand. The use of the chartered vessel was limited to the pipeline explosion aftermath, and to the best of my recollection, was used on just two or three occasions.
	18. Why was that a unique time relative to the maritime industry in the Puget Sound?

A: In June 1999, the Olympic Pipeline exploded near Bellingham, Washington. As a result of the shutdown of the pipeline, Arrow was concerned about the impact on ships supporting the oil transportation industry. At that time, Arrow owned five launch vessels, and realized that the increase in ship traffic was obviously temporary. It thus contracted a vessel from Island Commuter Service, LLC to assist in accommodating various vessel demands.

Q: Do you feel Mr. Esch is fair in relying on the allegations made in a personal injury lawsuit against Island Commuter Service in Bellingham to claim Arrow failed to provide adequate service even on an isolated occasion 16 years ago?

A: Absolutely not. In fact, those allegations don’t tell the whole story. That an incident occurred is highly unfortunate. However, that incident was more than 16 years ago and the fact it resulted in a personal injury lawsuit which was settled without fines or any fault attribution to any party is hardly evidence of any failure or refusal to provide regulated service by Arrow. Rather than selecting a random passenger ferry service in the San Juan Islands for a chartered vessel as Island Commuter II is portrayed by Mr. Esch, Arrow was quite familiar with the vessel it selected, “Island Commuter II,” which is why we chose that vessel. Actually, both the Captain and Deckhand were also launch crew employees of Arrow who both understood how to safely operate a launch vessel. Mr. Esch’s portrayal of Arrow as somehow unavailable to provide launch service and simply calling in a random boat operator to assist on the spot is completely false. Arrow well anticipated the surge in demand for service in 2000 and took appropriate actions to ensure its customers would be serviced in full compliance with WUTC regulations.

**Q: Has Arrow ever caused a customer vessel to be delayed?**

A: No.

**Q: Have any of your customers ever contacted Arrow alleging lost business opportunities, or that ships went to another port because of services performed by Arrow, including having sought remedy for a penalty or a demurrage claim to a customer vessel that was caused or contributed to by Arrow?**

A: Absolutely not. And, contrary to what Mr. Esch describes in his testimony Exhibit No. \_\_\_ (RSE-1T), 19:23-22:22) Arrow has never caused lost business opportunities or ships to go to other ports. Mr. Esch, incredibly, appears to implicitly attribute this to Arrow. The fact is that ships go to specific ports for their cargo requirements, not because of launch services(s). The documented decline of vessel traffic is not unique to Puget Sound ports. San Francisco is also experiencing declining vessel traffic, down by 468 arrivals (comparing 2011 to 2015) as Mr. Esch provides in his testimony (*see* Exhibit No. \_\_\_(RSE-2), pg. 2). Following this rationale, the launch service in San Francisco must be failing to “adequately serve” the shipping public.

Q: Mr. Esch is also claiming some unidentified Arrow customers have complained to him that Arrow informed them that no other companies can come into this market and that they consequently will not be flexible with their terms and conditions in order to promote better customer service. Is that true?

A: Once again, absolutely not. Arrow prides itself on providing exemplary customer service and holds its customer needs second only to safety. We are constantly in touch with our customers on scheduling and service levels and could not have remained in this market this long if we were not innovative, responsive and constantly promoting interaction with our customers to maximize service efficiencies. As a result of our work with our customers, to our knowledge, not one has ever suffered any increased expense, demurrage fee, or harm to its business from delay. Arrow has a policy that invokes the following principles: “early is on time and on time is late,” coupled with constantly striving for an A+ rating with those customers. Arrow periodically receives inquiries from new customers or employees of customers who are not familiar with the regulatory framework for launch service in Washington State and who seek to better understand that framework. In those cases, we make sure they understand that we have an open-door policy and that, should they ever feel their concerns are not being heard, the WUTC has a customer complaint process that is readily available to them. That process is also communicated during rate filings.

Q: Does Arrow also work with customers to be flexible on rates?

A: Our rates are an area where we consistently explain to our customers the regulated nature of the industry in the State of Washington. Some of our customers would like us to be flexible on rates, or to extend discounted payment terms because of their volume, or to give them commissions. As a company philosophy, we obviously eschew these practices, and as a regulated transportation company, we are not permitted to discriminate or afford preferences amongst customers. If a customer wants detailed input on the establishment or application of rates and what the Commission regulates they are, of course, invited by us to direct comments, questions or perspectives to the Commission during a rate filing or otherwise.

**Q:** **Do you think there could be any confusion about what constitutes a customer complaint?**

A: Absolutely not about service. About billing issues, late fees and payment terms there should not be any because they are uniformly applied in accordance with our tariff. As noted, some customers fail to observe that all of those factors are referenced in our regulated tariff and often request we offer “volume discounts” or other preferences that they may be used to in a deregulated environment that we cannot offer in Washington. Specifically, objections to net 30 day payment terms, late fees, or the inability to provide ”volume” or ”preferred discounts” could be wrongly characterized as a complaint about service. While customers who have asked us for these discounts and/or commissions may be displeased, it is my understanding that MEI is offering commissions and/or discounts to its California customers and that could explain why MEI may want to characterize the unavailability of those discounts and/or commissions here as “complaints” involving Arrow and its offerings.

**Q: By the way, have you heard complaints about MEI services in San Francisco?**

A: Yes.

**Q: What have you similarly heard from your own customers about MEI services in San Francisco?**

A: Over the last several years, we have had several of our customers tell us they wish we provided service in San Francisco which we responded by suggesting they talk with their current provider to address their concerns or service issues.

Q: What is Arrow’s philosophy when servicing a vessel?

A: For any given vessel we have two “customers”: first is the crew of the ship and second, but of equal importance, is the office or shore personnel who manage/operate the vessel, who have a primary interest in safe, dependable and cost-effective service. The crew onboard a vessel are effectively quarantined away from their homes and families for extended periods of time, typically 30-60 days on US crewed vessels, and six months to a year on foreign crewed vessels. I have served aboard vessels and understand this type of schedule monotony, which is why we deliver fresh doughnuts and newspapers to our customers’ vessels during morning runs. I view this philosophy of personal service to the vessel and her crew, in addition to satisfying the shore side management of the vessel, as a pillar of our success.

Q: Has Arrow ever received a complaint in response to solicitation of service inquiries?

A: No. In fact, we frequently receive positive responses and feedback like the ones we now provide as Exhibit No. \_\_\_ (JLH-6).

Q: Has Arrow ever received a complaint about failing or refusing to provide service lodged with the Washington Utilities and Transportation Commission?

A: No. To our knowledge, Arrow has never received a complaint at the Commission regarding our service.

Q: Mr. Esch also implied in his testimony that Arrow may have somehow intimidated its customers to the point where they are not willing to come forward and complain or otherwise support this applicant. Has Arrow done anything of this sort to intimidate or discourage its customers from speaking up?

A: No, and I find that idea truly absurd. Although Arrow has grown over the years, we are still a small, family-owned operation. Every one of our customers is a very large company that dwarfs us in size. For example, I cannot imagine how Arrow could possibly intimidate Shell Oil. Moreover, Arrow provides more than just regulated services and we well know our customers have many options with respect to those other services. It would be foolish of us to try to intimidate (implicitly or explicitly) any customer, because we would risk not only losing their business but would jeopardize Arrow’s very existence, our certificate, and along with it, the jobs and livelihoods of each of Arrow’s employees. Further, we operate a service company, not one that makes “widgets” or supplies material goods. We operate transparently with our customers within the structure and jurisdiction of the WUTC. Many customers actually solicit our feedback when they are considering new or special operations in our territory because they rely on our extensive knowledge and track record of providing safe and cost effective services to their vessels. Lastly, and with regularity, I personally captain our vessels in all Ports, directly interfacing with our customers while serving them, in addition to being accessible by any customer 24/7/365 via phone or email.

* 1. By the way, when you applied with the WUTC in the past to extend your launch certificate to additional areas, were you aware that you needed to present shipper witnesses who could address need for service?
		1. Absolutely, and several of our customer witnesses appeared at the hearing in support of our application and were subject to cross-examination accordingly. Further, the WUTC Application forms (such as in Exhibit No. \_\_\_(RSE-4), pg. 1, “Shipper Support” indication) advise parties of the process. Therefore, we presented several customer witnesses at our previous hearing.
1. rebuttal to testimony of randy esch regarding the public convenience and necessity and financial fitness of mei northwest llc’s APLLICIATION

Q: Have you reviewed Randy Esch’s Pre-filed Testimony regarding his estimate for unmet demand for service in the Puget Sound?

* + 1. Yes, I have.
	1. Do you take issue with any of the bases upon which he relies in reaching his conclusions?
		1. Yes, I absolutely do. For one thing, as shown, Mr. Esch based much of his testimony on inaccurate estimates of the capacity of Arrow to provide service. As I testified earlier, Mr. Esch alleged that Arrow had only eight launch vessels, when in fact Arrow owns and operates 12 launch boats, which is four more than what Mr. Esch speculated Arrow owns and operates. Additionally, as I also previously testified, Arrow keeps more of its boats in the water and operating than Mr. Esch projected. Mr. Esch also speculated that one to two of our boats would be unavailable for commercial use at any given time, leaving in his estimation, just six to seven boats in operation at once. In reality, on average, Arrow has 11-12 launch boats in the water. Additionally, Mr. Esch testified those boats were covering the Puget Sound *plus* Grays Harbor, but as I also testified earlier, due to negligible demand, Arrow doesn’t even keep a boat in Grays Harbor. I also take issue with some of Mr. Esch’s prognostications about the levels of demand for service which unfortunately have been materially declining, not increasing, in recent years, particularly involving the oil industry. Likewise, Mr. Esch failed to acknowledge that the proximity of the ports in Puget Sound allows us to move vessels between ports in several hours, which is vastly different than moving vessels between his operations say, in San Francisco and Los Angeles/Long Beach.
	2. What other specific problems did you find with his testimony regarding the demand for launch service in the Puget Sound?

A: To start with, much of his projection of service in Puget Sound is based on an extrapolation from data for San Francisco Bay. I believe the two areas are not sufficiently similar to ever use San Francisco Bay as a baseline for determining demand in Puget Sound. As an example of these differences, Mr. Esch testified that in San Francisco Bay, the pilots frequently use their own launch and projected a usage factor on the basis Puget Sound Pilots “frequently” require launches Exhibit No. \_\_\_(RSE-1T), 7:10) in Puget Sound. However here, the Puget Sound Pilots exclusively use their boats at Port Angeles and frequently and routinely receive free transportation from tugs and consequently only hiring a launch service when the “free” tug is unavailable. Further, Mr. Esch is also including an additional demand for launch service from the United States Customs and Border Protection. However, Customs and Border Protection (“CBP”) rarely, if ever, do at-anchor boardings in the North Puget Sound, and, if they do board a ship, it is rarely done as a single launch. CBP rides in conjunction with other scheduled launches. CBP is actually boarding their first vessel in North Puget Sound since 9/11/01, as I write this on October 13, 2016!

* 1. What is your reaction to the failure of MEI to provide any shipper/user support testimony in its case in chief?
		1. I was surprised frankly, that MEI went through the entire application process, prehearing conference and all this time and expense for parties and staff, to this point, and then, when it needed to put forward its application case in chief, it apparently had no direct evidence of need for service to present.
	2. What about MEI’s efforts to support its application indirectly through the applicant’s own testimony and references to unidentified prospective customers of theirs?
		1. To say that testimony is self-serving is an understatement. Those “sources” are totally unidentified and MEI attempts to discredit us on the basis of hearsay speculation and supposition that it knows cannot be refuted through cross-examination of those unidentified businesses or users of their proposed services. In fact, not only are those fabricated pronouncements on our service completely untrue, but we are here presenting our own testimony from some current customers to respond to it, despite never having a complaint about levels of service or having an opportunity to respond to phantom customer support of MEI.
	3. Do you agree that you have been “inflexible” or unmotivated to provide and enhance service in your 27 years of operation in Washington?
		1. Absolutely not, just the opposite. We are keenly aware of the standards in law and in the marketplace by which we are judged daily in performing regulated service. As noted, we always dialogue with our customers to meet both scheduled and on-demand service and have continuously expanded our fleet and our employment base over the years to meet those needs. In short we have continually invested in our infrastructure and personnel to meet and anticipate those needs.
	4. Have you ever sought to “put fear” in any of “your clients” as Mr. Esch suggests?
		1. Again, absolutely not. That is really an outrageous accusation in my view. We instead actually are constantly on guard and vigilant to always provide the most optimal caliber of service so as never to be accused of failing to “furnish adequate and reasonable service” as well as to always go above and beyond in meeting all customers’, large and small, launch service needs.
	5. Have you also had an opportunity to review the pro-forma financial statement and Randy Esch’s testimony regarding MEI’s financial fitness?
		1. Yes, I have.
	6. Do you believe there are any inaccuracies with the information they rely upon?
		1. Yes, numerous inaccuracies, omissions and erroneous assumptions.

**Q: Now let’s turn to Mr. Esch’s Pro Forma Financial Statement / Exhibit No. \_\_\_(RSE-4). Do you have any specific concerns with these various itemized projections?**

A: Yes. Our review of Mr. Esch’s testimony and financial exhibits leads to serious doubts about the basic accuracy of the projections about costs of service. For instance, in Mr. Esch’s testimony Exhibit No. \_\_\_ (RSE-1T, 21:2) he states “[w]e would crew a boat around the clock” and then says Exhibit No. \_\_\_ (RSE-1T,12:24) “[w]e think 4 to 6 full-time employees would be appropriate.” Using my 40 plus years’ of experience in both vessel crewing requirements and financial operations of launch companies, I can assure the Commission that the cost of “crewing a vessel” 24/7/365 combined with any need to randomly crew a second boat, when including the expense of holiday pay, overtime hours, benefits and taxes will far exceed his estimated $220K of annual wages. Further, MEI has failed to include any meals or lodging in its pro forma other than a $2,500 figure that it is unclear as to whether that is crew relocation travel or administration travel from San Francisco or both. Additionally, it is unclear to what $102K expense for “Launch Charter” and “Admin Support/Corporate Fee” relates. Moreover, while I realize that our monthly cost of providing phones for 12 boats, key personnel and launch terminals throughout Puget Sound is significantly more than MEI would project, I’m unaware of how he can possibly provide “Communications” for $2,000 a year. Is that just for a land line and two pagers, possibly?

**Q: Are there some other material expense line items you would question?**

A: Yes. Health care for six people at $33K a year would be inadequate except possibly with a very high deductible plan and an under 35 year old risk pool in today’s market as that amounts to less than $500 per month per employee. MEI also projects a cost for “Professional Fees” of $4K. In my experience, that is significantly low and would not include even routine CPA or Attorney fees let alone the professional fees for prosecution of this application. Regarding his estimates for “Vessel Maintenance,” again MEI boats are about the same age as ours. If we next take MEI’s total aggregate annual estimate for “vessel maintenance” - $12K, “subcontractors and Boat Yards” - $15K and “mechanical maintenance” - $8,500 and combine those figures, totaling $35,500, it clearly demonstrates that MEI is anticipating not having one (1) major engine OR transmission failure. Whether the engines/transmissions are a day old or many years, the reality is that they are comprised of mechanical rotating parts that are subject to failure. If even just one of those parts fails, MEI’s projected $35,500 for maintenance would be woefully inadequate. Additionally, if the Coast Guard in any inspection were to require even a small portion of a launch vessel’s hull plate to be replaced, which does occur, MEI’s $35,500 annual maintenance figure could well be exhausted by that expense alone, not to mention the occasional misfortune of bent propellers. That budgeted amount would thus pale in comparison with the reality of these types of fairly routine maintenance “expenses.”

**Q: Finally, do you have a comment on MEI’s estimate of $30,000 annually for vessel insurance?**

A: Yes. MEI pro forms insurance to be $30,000. Again, in my 40 years of experience, and having just renewed a policy that has the purchasing power of a sizable fleet coupled with the fact that one of our customers now is requesting to have launches carry $25 million minimum liability levels, for two launch vessels in liability coverage, it’s simply hard to believe MEI can credibly represent an annual cost of $30K for insurance.

**Q: Do you see other anomalies or problems with MEI’s testimony?**

A: Yes. First, Mr. Esch or Puget Sound Marine Exchange (PSME) apparently unintentionally requested or provided the incorrect data set to MEI. Specifically, the PSME vessel count information provided to Mr. Esch, and used in his Exhibit No. \_\_\_ (RSE-3) is actually “Berth Arrivals” or counts for Puget Sound, meaning, when one ship arrives, *each* *movement* that the ship makes generates a “count,” thus including one vessel multiple times. This results in inflated data for these purposes.

**Q: Do you have anything more reliable to demonstrate Puget Sound vessel activity?**

A: Yes, a more accurate report to compare to Mr. Esch’s San Francisco Bay Marine Exchange Report (Exhibit No. \_\_\_ (RSE-2) “Total Arrivals”) would be the attached PSME report (Exhibit No. \_\_\_ (JLH-7)). To be clear, the SF Bay Marine Exchange actually counts “ship arrivals” as each ship passes under the Golden Gate Bridge when inbound from the ocean. In contrast, the Puget Sound Marine Exchange document MEI relied upon counts each movement of the vessel inside Washington, including multiple berth changes.

**Q: Do you have any other critiques of Mr. Esch’s Puget Sound vessel activity projections?**

A: Yes. We fundamentally disagree with the speculative nature of utilizing ship traffic volumes to correlate to launch service requirements. The combined Ports of Seattle and Tacoma account for approximately 68% of all vessel traffic entering Puget Sound as corroborated by (Exhibit No. \_\_\_\_ (JLH-7)). As measured by the PSME, though, those arrivals account for only 19% of Arrow’s launch activity. This demonstrates the fallacy of using these types of statistical data in an attempt to represent future launch utilization.

**Q: What about Mr. Esch’s annual revenue projection?**

A: I also question his projected $500K in revenue. In MEI’s testimony ((Exhibit No. \_\_\_\_ (RSE-1T), 8:20-22) Mr. Esch says “…and we believe after looking at the number of ships entering Puget Sound, our experience in other ports, and speaking with some of our customers, that $500K [annually] in launch services is a very realistic number.” There are numerous mistakes here. Again, the information MEI provides was gleaned from the incorrect data set in the Puget Sound Marine Exchange Report and the San Francisco/Golden Gate Area Marine Exchange. After reviewing that information, as I said previously, it is clear that Mr. Esch’s testimony (Exhibit No. \_\_\_ (RSE-1T), 5:23) misinterprets the actual arrivals numbers for Puget Sound, thereby overinflating his represented number to 3,165 instead of using the actual far fewer number of arrivals of 2,484 (Exhibit No. \_\_\_\_ (JLH-7). I also hasten to add, that I have communicated Mr. Esch’s observations about San Francisco launch activity experience (Exhibit No. \_\_\_\_ (RSE-1T), 5:24, 6:21-24), with Westar owner Mary McMillan, who is the other major launch company in the Bay area. She disagrees with the premise that “at any given time period, about 20% of the potential launches are not available for commercial use.” She also disputes MEI’s statement that “with all the service available in the Bay area, there are still occasions during the year when both companies cannot provide for all of the needs of the vessels.” Yet, even putting aside Westar’s statements and assuming MEI’s ratio of 10 launches in the SF Bay area versus Arrow’s 12 vessels in Puget Sound and using his erroneous, inflated Puget Sound ship arrival numbers, Arrow still has more launch vessels per ship as compared to the San Francisco/Bay Area launch providers, referenced by Mr. Esch (Exhibit No. \_\_\_(RSE-1T), 6:14). Moreover, contrary to MEI’s fundamental assumption in counting ship arrival data, not all ships arriving in Puget Sound go to anchor; the majority in fact go right to a dock, never requiring launch services.

* 1. Would you have any of your own concerns about MEI’s track record?
		1. Yes, MEI’s track record for maintaining its vessels appears to be questionable and, as demonstrated, seriously understates necessary maintenance expenses in its pro forma. I also know of at least one recent incident in which an 85’ tug owned and operated by MEI’s parent company sank off the coast of California due to a cause which, while never specifically determined, appears to be related to questionable vessel maintenance. Exhibit No. \_\_\_ (JLH-8) is the National Transportation Safety Board Marine Accident Brief regarding the incident.
	2. Can you please elaborate on this analysis?
		1. Yes. Based on my review of the facts in this report, the incident occurred one day after the boat departed Alameda, near San Francisco. The tug was towing a barge to Long Beach, when the tug experienced uncontrolled flooding in its engine room, with the crew “abandoning the tug within about 10 minutes after the flooding began.” In the case of all vessels (including Arrow’s), the watertight integrity between compartments is critical. Apparently, on MEI’s tug, the steering room filled with water and the watertight integrity between the steering compartment and engine compartment was compromised, ultimately flooding the engine room and sinking the tug with 18,000 gallons of diesel aboard. At a minimum, if the vessels MEI intends to charter from its parent company are of a comparable condition, MEI will undoubtedly incur considerably more maintenance expense than the $35,500 maximum combined figure it included in its pro forma.
	3. Do you have anything in closing you would like to add?
		1. I could go on and on, line-by-line through Mr. Esch’s testimony correcting inaccuracies about our services or equipment. I will resist that further inclination now except to make a few final observations. For instance, Mr. Esch attempts to denigrate our equipment by noting we still maintain two single-engine vessels in our fleet. We do not conceal the fact we operate within our fleet, two single-engine vessels and use them on a regular basis. Indeed, efficiencies exist in our operations where speed is not an issue, and using the two more economical single engine vessels saves fuel and half the propulsion maintenance costs. Mr. Esch also testified that Arrow did not operate any tugs or barges to “accommodate large amounts of cargo” (Exhibit No. \_\_\_\_ (RSE-1T, 7:12). First, Mr. Esch is again incorrect. We do own and operate a deck barge. Secondly, *all* of our vessels carry freight, with three that “accommodate large amounts of cargo,” including for us, up to 35 pallets of freight per vessel. More importantly, Arrow has always delivered every piece of freight we have been asked to throughout our 27 years, all to the satisfaction of our customers. In Esch’s testimony (Exhibit No. \_\_\_\_ (RSE-1T), 20:11-15) he further unilaterally speculates about potential effects of delays to shipping. It is truly absurd to allege, by unsupported rhetoric, that these alleged inadequate levels of service could have existed and been tolerated for 27 years, without complaint from some of the largest corporations in the world.
	4. Would you draw any conclusions about MEI’s own ability to serve?
		1. Yes. MEI’s website lists six crew boats (launch boats) with one being a 105 foot offshore crewboat, which is not an efficient vessel to operate as a harbor launch, leaving MEI currently with five available launches to service its entire Los Angeles/Long Beach, San Francisco, and proposed Puget Sound area customers. Here recall, MEI proposes to send two of those five launches to Puget Sound. This utilization proposal seems frankly preposterous, becoming even more so when you use Mr. Esch’s theory that 20% of his fleet is offline at any given time.
	5. Does this conclude your testimony?
		1. Yes it does.

Docket TS-160479

CERTIFICATE OF SERVICE

I certify that on November 1, 2016, I caused to be served the original of the foregoing document to the following address via FedEx to:

Steven V. King, Executive Director and Secretary

Washington Utilities and Transportation Commission

Attn: Records Center

PO Box 47250

1300 S. Evergreen Park Dr. SW

Olympia, WA 98504-7250

I further certify that I have also provided to the Washington Utilities and Transportation Commission’s Secretary an official electronic file containing the foregoing document via the WUTC web portal; and served a copy via email to the following parties:

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| --- | --- |
| ***For Washington Utilities and Transportation Commission Staff:***Julian BeattieOffice of the Attorney GeneralUtilities and Transportation Division1400 S. Evergreen Park Drive SWP.O. Box 40128Olympia, WA 98504-0128Phone: (360) 664-1225Email: jbeattie@utc.wa.gov | ***For MEI Northwest, LLC:***Mr. Dan BentsonBullivant, Houser, Bailey, PC1700 Seventh Ave, Suite 1810Seattle, WA 98101Email: dan.bentson@bullivant.com |
| ***For Pacific Cruises Northwest, LLC:***Captain Drew M. SchmidtPresidentPacific Cruises Northwest, Inc.355 Harris Avenue, Suite 104Bellingham, WA 98225Phone: (360) 738-8099Email: drew@whales.com | ***Administrative*** ***Law Judge***Judge Marguerite E. FriedlanderWashington Utilities and Transportation CommissionEmail: mfriedla@utc.wa.gov |

Signed at Seattle, Washington this \_\_\_\_day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_ 2016.

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