

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND)	DOCKET TE-151906
TRANSPORTATION COMMISSION,)	
)	ORDER 05
Complainant,)	
)	ORDER APPROVING JOINT
v.)	STIPULATION, LIFTING
)	SUSPENSION ON PROVISION OF
RIDE THE DUCKS OF SEATTLE,)	EXCURSION SERVICE USING
L.L.C. d/b/a SEATTLE DUCK TOURS,)	“TRUCK DUCKS,” AND
)	CONTINUING SUSPENSION ON USE
Respondent.)	OF “STRETCH DUCKS”
.....)	

BACKGROUND

- 1 On September 24, 2015, an incident occurred on the Aurora Bridge in Seattle involving a Ride the Ducks of Seattle, LLC d/b/a Seattle Duck Tours (Ride the Ducks or Company) vehicle that resulted in the tragic deaths of five people and serious injuries to many others. On September 28, 2015, the Washington Utilities and Transportation Commission (Commission) conducted emergency adjudicative proceedings pursuant to RCW 34.05.479 and entered Order 01, Notice of Emergency Adjudication and Order Suspending Certificate (Order 01). Order 01 suspended Certificate No. ES-00146 to operate and provide excursion services (Certificate) held by Ride the Ducks pending the results of a Commission staff (Staff) investigation and inspection of Ride the Ducks’ entire fleet of vehicles, drivers, and operations. The Commission found such swift action was necessary to prevent or avoid immediate danger to the public health, safety, and welfare.

- 2 On September 29, 2015, the Commission initiated a complaint proceeding pursuant to RCW 81.04.110 and WAC 480-07-305 alleging that Ride the Ducks has operated at least one of its vehicles in an unsafe manner resulting in the incident on September 24. The complaint alleges that Ride the Ducks has violated state and federal safety regulations and requests that the Commission suspend the Company’s Certificate until Staff has completed its investigation. Staff further requests that the Commission take such action as the results of that investigation warrant. Although substantial overlap exists between the issues in the emergency adjudication and the complaint, those are two separate proceedings governed by different statutory standards. This order addresses only the issue

raised in the emergency adjudication, specifically whether to continue the suspension of Ride the Ducks' Certificate. The Commission will take up the allegations in the complaint in subsequent proceedings in this docket.

3 On October 1, 2015, the Commission entered Order 02, Order Adopting Joint Stipulation and Continuing Temporary Suspension of Certificate (Order 02). Order 02 adopted a stipulation of Ride the Ducks and Staff, pursuant to which the Company's operating authority would remain suspended pending Staff's comprehensive investigation and inspection of the Company's vehicles and operations covering all safety aspects of the Company's operations.

4 The Commission conducted a status conference on November 3, 2015, and issued a notice on November 4, 2015, requiring Staff to file its investigation report by December 15, 2015, and scheduling a hearing on whether to continue the suspension of Ride the Ducks' Certificate for January 5, 2016. The Commission subsequently rescheduled the hearing for December 21, 2015, in response to the Company's motion to expedite the hearing date.

5 On December 15, 2015, Staff filed its Compliance Investigation Report (Report). The Report outlines the results of Staff's investigation of the Company's operations, vehicles, and records:

- *Vehicles.* Ride the Ducks owns 20 amphibious vehicles used to provide specialized land and water tours in Seattle. The Company identifies the vehicles as "Ducks" 1 through 12 and 14 through 21. Ten of the vehicles are so-called "Stretch Ducks," some of which are World War II-vintage vehicles manufactured by General Motors Corporation, and 10 are "Truck Ducks," generally newer vehicles manufactured by other companies. The "Truck Ducks" have a different chassis and axle system than the "Stretch Ducks." All 10 of the "Truck Duck" vehicles passed Staff's inspections. The Company immediately corrected the only defect Staff identified, a cracked tie rod end grease boot in Duck 11, and Staff verified the repair. Staff inspected the eight operational "Stretch Duck" vehicles, the type of vehicle involved in the incident in Seattle, and five passed inspection. The Company immediately corrected the defect in one vehicle, Duck 1, a faulty brake light, and Staff verified the repair. Two other "Stretch Ducks," Ducks 8 and 21, had leaking wheel hubs, which the Company has repaired or will repair. Staff conducted an in-depth inspection of the front wheel axle housings on three of the "Stretch Duck" vehicles and discovered small cracks along the metal plates that had been welded to each housing. The Company has hired a specialist to evaluate

the housings on all of its “Stretch Duck” vehicles and has pledged it will not operate these vehicles until the evaluation is complete.

- *Records.* Staff discovered many violations of the Code of Federal Regulations (CFR) Part 49 during its inspection of Ride the Ducks’ records. Staff has given the Company an unsatisfactory safety rating based on one violation of an acute regulation, six violations of a critical regulation, and two recordable accidents in 2015, including the September 24 incident. Staff found 131 violations of five other critical regulations and 304 violations of non-acute/non-critical regulations, none of which factored into the safety rating. Staff notes that federal rules require carriers to request and receive a change in their safety rating within 45 days of an unsatisfactory rating. Under these rules, carriers may operate during the 45 days, during which time they must take corrective action and request and receive a change to an unsatisfactory safety rating. If a carrier continues to be in violation of applicable regulations at the end of the 45-day period, the Commission must prohibit that carrier from further operations.

6 Staff recommends as follows:

- (1) The Commission should restore Ride the Ducks’ excursion service operating authority and allow the Company to resume operations of its “Truck Duck” vehicles.
- (2) Ride the Ducks must request and receive a change to the unsatisfactory safety rating by January 29, 2016.
- (3) Staff should conduct follow-up compliance review inspections of Ride the Ducks in six months and in one year to verify the Company’s compliance with state and federal safety requirements.
- (4) Staff will conduct another compliance review inspection in two years and issue a safety rating based on the outcome of that inspection.
- (5) The Commission should require Ride the Ducks to provide Staff with the specialist’s evaluation of the front axle housings on the “Stretch Ducks” vehicles, and the Commission should require Staff to make a recommendation based on its review of that evaluation as to whether the Commission should permit the Company to return those vehicles to service.

(6) The Commission should assess penalties for Ride the Ducks' violations of state and federal safety regulations.

7 On December 17, 2015, Ride the Ducks filed a declaration of Brian Tracey that the Company proposed to introduce into the evidentiary record during the hearing. Mr. Tracey's declaration provides background on Ride the Ducks and states:

- Ride the Ducks requires a maintenance technician and the captain to check every vehicle every day before it is allowed to operate.
- Ride the Ducks' maintenance technicians have completed requirements to qualify as a United States Inspector of a Commercial Vehicle and Inspector of Commercial Vehicle Brakes, as well as a 90-day training course.
- Captains of Ride the Ducks vehicles all have commercial driver's licenses and are certified to operate marine vehicles. Captains must complete 240 hours of training, participate in ongoing training, drills, and safety briefings, and have a minimum of 120 hours of operational sea time.
- Ride the Ducks has committed to modify its operations to enhance safety, including no longer using the Aurora Bridge, adding a second staff member to lead every tour so that the captain is responsible only for operating the vehicle, and making ongoing modifications to the Company's vehicles such as adding more on-board video recording equipment and global positioning satellite tracking.

8 On December 18, 2015, Staff filed a Joint Stipulation of Staff and Ride the Ducks (Stipulation). These parties stipulate as follows:

- Ride the Ducks excursion service operating authority should be restored to allow the Company to resume operations of its "Truck Duck" vehicles effective December 21, 2015.
- By January 29, 2016, Ride the Ducks will request a change to Staff's unsatisfactory safety rating for the Company. The request will include a safety management plan that provides a detailed description of the actions Ride the Ducks takes to address each specific violation and outlines how the Company will comply with each requirement in the future. Staff will upgrade the Company's safety rating to "conditional" once Staff determines that the management plan meets the requirements in the Stipulation.

- Staff will conduct a follow-up compliance review inspection in six months and again in one year. Staff will conduct another review after two years and issue a safety rating for Ride the Ducks based on the outcome of that inspection.
- Ride the Ducks will not operate its “Stretch Duck” vehicles pending Commission approval. Staff recommends that Ride the Ducks be required to submit the results of its specialist’s evaluation of the front axle housing of its “Stretch Ducks” to Staff for review, after which Staff will make a recommendation to the Commission about whether to return those vehicles to service.
- Ride the Ducks will have a two-person crew (one driver and one narrator) on each tour, and the Company will implement a route change that excludes use of the Aurora Bridge.

9 On December 21, 2015, the Commission conducted an evidentiary hearing. Staff presented the testimony of David Pratt, Assistant Director Transportation Safety, and Wayne Gilbert, Motor Carrier Safety Compliance Investigator, in support of the Report and the Stipulation. Ride the Ducks presented the testimony of Brian Tracey, the Company’s owner and CEO, and Roger Smedsrud, an expert on mechanics retained by the Company, in support of the Stipulation.

10 At the hearing, Public Counsel stated its support for the Stipulation. The parties also agreed to strike from the Stipulation the Company’s pledge to change its route to exclude use of the Aurora Bridge, agreeing that determination of routes must be made following consultation with the City of Seattle.

11 Patricia K. Buchanan and Duncan K. Fobes, Patterson Buchanan Fobes & Leitch, Inc., P.S., Seattle, represent Ride the Ducks. Sally Brown, Senior Assistant Attorney General, Olympia, represents Staff. Simon ffitch, Senior Assistant Attorney General, Seattle, represents Public Counsel.

DISCUSSION AND DECISION

12 The Commission has proceeded in this docket to date pursuant to RCW 34.05.479, Emergency adjudicative proceedings. The statute authorizes the agency to “take only such action as is necessary to prevent or avoid the immediate danger to the public health, safety, or welfare that justifies use of emergency adjudication.”¹ The Commission

¹ RCW 34.05.479(2).

suspended Ride the Ducks' Certificate to prevent or avoid the immediate danger to public safety posed by the Company's operation of vehicles that are the same as, or comparable to, the vehicle involved in the fatal collision in Seattle. Our sole inquiry at this point is to determine whether an immediate danger to public safety still exists that the Commission must prevent or avoid by continuing to suspend the Certificate, in whole or in part.

- 13 We conclude that no immediate danger to public safety exists that requires continued suspension of the entirety of Ride the Ducks' Certificate. We approve the Stipulation with certain amendments and allow the Company to resume operations of its "Truck Duck" vehicles. Consistent with the Company's representations, each excursion must include a second staff member to lead the tour so that the driver is responsible only for operating the vehicle. We prohibit Ride the Ducks from providing regulated excursion service using its "Stretch Duck" vehicles, however, until the Company has demonstrated those vehicles pose no immediate danger to public safety.
- 14 We do not reach these conclusions lightly. The Commission is committed to maximizing the safety of the transportation companies and services we regulate, but we must act within the confines of our statutory authority and based on the evidence before us. Only if we find an immediate danger to public safety can we continue to suspend Ride the Ducks' Certificate without further process.
- 15 We commend Staff for its thorough and comprehensive investigation of Ride the Ducks' operations, vehicles, and records. The results of Staff's examination provide a solid evidentiary foundation for our determinations. That evidence demonstrates that Ride the Ducks' operations are consistent with Commission regulations and the statutory requirements the Commission enforces. The "Truck Ducks" have passed Staff's rigorous inspection. The Company will use a second staff member on each tour so that the driver can focus on operating the vehicle safely. Under these circumstances, suspension of Ride the Ducks' Certificate with respect to "Truck Ducks" is no longer necessary to prevent or avoid an immediate danger to public safety.
- 16 Staff has also found several hundred violations of applicable safety regulations and has given the Company an unsatisfactory safety rating consistent with federal rules based on one acute and six critical violations, as well as the two reportable accidents. These are serious violations that present cause for concern, but none of them rises to the level of presenting an immediate danger to the public.² Under federal rules governing motor

² The acute violation is for permitting a driver to continue to drive after the Department of Licensing cancelled his license for failure to maintain a medical certificate. The critical violations

vehicle safety, which the Commission has adopted by reference,³ companies that receive an unsatisfactory safety rating are allowed a period of 45 days to remedy underlying violations comparable to those at issue here and to request a revised rating. Only if a company fails to do so after 45 days may the Commission suspend or revoke its operating authority. We find no basis in the evidence before us to treat Ride the Ducks any differently. The Stipulation, moreover, requires Ride the Ducks to comply with federal law by requesting and receiving a change to the unsatisfactory safety rating by January 29, 2016, including but not limited to developing a safety management plan the Commission approves, or once again have its authority suspended. We conclude that this process adequately addresses any potential safety issues arising from the Company's unsatisfactory safety rating under our limited authority to act pursuant to RCW 34.05.479.

- 17 We also concur with the parties' agreement in the Stipulation to continue to keep the Company's "Stretch Duck" vehicles out of service pending Commission approval. Not only is this the type of vehicle that was involved in the Aurora Bridge incident, but three of those vehicles have cracks along the metal plates that are welded to the front axle housing. We find that "Stretch Duck" vehicles likely would pose an immediate threat to public safety if they were used to provide excursion services. Accordingly, we continue to suspend Ride the Ducks' authority with respect to the operation of these vehicles unless and until the Company can demonstrate that those vehicles no longer pose an immediate threat to public safety.
- 18 We clarify or accept the parties' revisions to the Stipulation in three areas. First, we clarify that the safety management plan that Ride the Ducks agrees to provide must satisfy not only the conditions in paragraph four of the Stipulation, but also the recommended practices detailed in the Report, Appendix L, pages 119-22. We find that a more prescriptive approach to describing the required safety management plan will enhance the Company's ability to receive Commission approval of that plan.
- 19 Second, we modify the language in paragraph seven of the Stipulation to state, "For the 'Stretch Ducks' vehicles, the company will submit the results of a specialist's evaluation of the front axle housings to staff for review. Commission Staff will then make a

were for failing to conduct random controlled substances testing at an annual rate of not less than the applicable annual rate of the average number of driver positions. Report at 24. At the hearing, Mr. Tracey testified, and Mr. Pratt confirmed, that the driver is no longer employed with Ride the Ducks. Mr. Tracey also testified that the Company has hired a new company to manage its drug and alcohol testing program and is hiring a nationally recognized safety consultant to assist Ride the Ducks in establishing a comprehensive safety management plan.

³ WAC 480-30-999.

recommendation to the commission about whether to return the ‘Stretch Ducks’ to service.” Ride the Ducks must seek reinstatement of its authority to provide service using these vehicles, but the process outlined in the Stipulation, as modified, is an appropriate procedural vehicle for presenting this issue to the Commission.

20 Third, we accept the parties’ deletion of paragraph nine of the Stipulation, which required the Company to implement a route change that excludes use of the Aurora Bridge. The City of Seattle, not the Commission, has jurisdiction to determine the route that Ride the Ducks will use for its excursion service.

21 The remaining recommendations in the Report do not address the issue in the emergency adjudication but would resolve the allegations in the complaint. Accordingly, we will take up those recommendations in the adjudication of the complaint.

ORDER

THE COMMISSION ORDERS:

- 22 (1) The Commission approves and adopts the Joint Stipulation of Commission Staff and Ride the Ducks of Seattle, LLC, as clarified and revised in this Order.
- 23 (2) The Commission lifts the suspension of Certificate No. ES-00146 to operate and provide excursion services held by Ride the Ducks of Seattle, LLC d/b/a Seattle Duck Tours using its “Truck Duck” vehicles.
- 24 (3) The Commission continues to suspend Ride the Ducks of Seattle, LLC d/b/a Seattle Duck Tours’ authority to provide excursion services using its “Stretch Duck” vehicles unless and until the Company demonstrates to the Commission’s satisfaction that those vehicles do not pose an immediate danger to public safety.
- 25 (4) Ride the Ducks of Seattle, LLC d/b/a Seattle Duck Tours must request and receive a change to its unsatisfactory safety rating by January 29, 2016, including but not limited to obtaining Commission approval of a safety management plan.
- 26 (5) Ride the Ducks of Seattle, LLC d/b/a Seattle Duck Tours must add a second staff member to lead every tour so that the driver is responsible only for operating the vehicle.

- 27 (6) The Commission will address the issues raised in the complaint in future proceedings in this docket.

DATED at Olympia, Washington and effective December 22, 2015.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DAVID W. DANNER, Chairman

PHILIP B. JONES, Commissioner

ANN E. RENDAHL, Commissioner