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1 BEFORE THE WASHINGTON STATE

2 UTILITIES AND TRANSPORTATION COMMISSION

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4 WASHINGTON UTILITIES AND )

TRANSPORTATION COMMISSION, )

5 )

Complainant, )

6 )

v. )

7 ) DOCKET TE-151906

RIDE THE DUCKS OF SEATTLE, L.L.C., )

8 d/b/a SEATTLE DUCK TOURS, )

)

9 Respondent. )

)

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11 EVIDENTIARY HEARING

12 Volume III - Pages 52-188

13 ADMINISTRATIVE LAW JUDGE GREGORY KOPTA

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15 9:30 AM.

16 DECEMBER 21, 2015

17 Washington Utilities and Transportation Commission

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0057

1 OLYMPIA, WASHINGTON DECEMBER 21, 2015

2 9:30 a.m.

3

4 JUDGE KOPTA: Good morning. Let's be on the

5 record in Docket TE-151906, captioned Washington Utilities

6 and Transportation Commission vs. Ride The Ducks of Seattle

7 LLC.

8 My name is Gregory Kopta. I'm the

9 Administrative Law Judge presiding along with the

10 Commissioners. And with me on the bench are Chairman David

11 Danner and Commissioners Ann Rendahl and Philip Jones.

12 We are here today as a continuation of the

13 emergency adjudicative proceedings that the Commission

14 initiated pursuant to RCW 34.05.479. And that is a very

15 narrow statute that gives us very limited authority to take

16 only such action as is necessary to prevent or avoid

17 immediate danger to the public health, safety or welfare.

18 And at this point, Staff has or -- at least

19 let me take a step back. We have, the Commission has,

20 issued a previous order that prohibited the Company from

21 operating pending Staff's investigation of the Commission's

22 -- of the Company's operations.

23 And we are here today again pursuant to the

24 emergency adjudicative proceedings to determine whether that

25 still is an immediate danger to the public that justifies

0058

1 continuation or lifting of the suspension of the Company's

2 operating authority.

3 Commission Staff has also initiated a

4 complaint proceeding with the Commission. There are issues

5 that overlap between the complaint proceeding and

6 adjudication of the emergency adjudicative proceeding.

7 Those are two different proceedings. We will take up the

8 complaint at a later date.

9 For today's purposes, our issue is solely

10 whether there continues to be an immediate danger that

11 requires Commission action to prevent or avoid any public

12 danger.

13 So we have Staff's report. That covers both

14 proceedings, which is a common thing for the Commission

15 Staff to do, file a report, an investigation report in

16 support of any complaint that the Commission issues against

17 a company.

18 We will not be taking up the entirety of the

19 Staff's recommendations, only those that deal with the

20 emergency adjudication.

21 Others, other recommendations, we will take

22 up as part of the complaint proceedings that will be part of

23 subsequent proceedings that the Commission conducts.

24 So today, I want to start with getting

25 appearances from counsel, beginning with Commission Staff.

0059

1 MS. BROWN: Good morning, your Honor. Sally

2 Brown, Senior Assistant Attorney General, appearing on

3 behalf of Commission Staff. My contact information is as

4 previously noted.

5 JUDGE KOPTA: Thank you.

6 Public counsel?

7 MR. FFITCH: Good morning, Commissioners, your

8 Honor. Simon ffitch, Senior Assistant Attorney General for

9 the Office of Public Counsel, appearing on behalf of the

10 public today.

11 JUDGE KOPTA: Thank you.

12 And for the Company?

13 MS. BUCHANAN: Thank you, your Honor. Good

14 morning, your Honor, and good morning, Commissioners. Pat

15 Buchanan for Ride The Ducks Seattle; contact information

16 previously on file.

17 MR. FOBES: Good morning, your Honor. Duncan

18 Fobes for Ride The Ducks Seattle.

19 JUDGE KOPTA: Thank you. Does anyone else

20 wish to appear?

21 Hearing none, we will proceed.

22 Anything more from the Commissioners at this

23 point before we go on -- swear in the witness panel?

24 All right. Then let's do that.

25

0060

1 (Whereupon, the witness panel was

2 collectively sworn by Judge Kopta.)

3

4 JUDGE KOPTA: All right. Each of the

5 witnesses we will ask to give a brief presentation of the

6 party's position and any testimony that they have previously

7 filed, I know Mr. Tracey filed a declaration.

8 Before we do that, we had required the

9 parties to file exhibits that they were planning on using at

10 the hearing today. And I understand that the parties have

11 stipulated to the admission of all of those exhibits, which

12 I will identify right now.

13 Exhibit DP-1, which is the compliance

14 investigation report prepared by Staff.

15 Exhibit DP-2, which are the qualifications of

16 David Pratt.

17 Exhibit WG-1, which are the qualifications of

18 Wayne Gilbert.

19 Exhibit BT-1, which is the declaration of

20 Brian Tracey.

21 And a joint stipulation of Staff and the

22 Company, which is Exhibit JP-1.

23 We will also have Exhibit PC-1, which are the

24 public comments that have been filed with the Commission up

25 to date. Public counsel will be compiling those and will be

0061

1 submitting a complete copy of all public comments for the

2 record in this proceeding by the end of the day on December

3 23; is that correct, Mr. ffitch?

4 MR. FFITCH: That's correct, your Honor.

5 Thank you.

6 (Exhibits DP-1, DP-2, WG-1, BT-1, PC-1,

7 and JP-1 admitted.)

8 JUDGE KOPTA: So all of those exhibits are

9 admitted.

10 And so I will turn then first to Commission

11 Staff to give their presentation. Ms. Brown?

12 MS. BROWN: With your permission, Mr. Pratt

13 would like to testify first.

14 JUDGE KOPTA: You may proceed.

15

16 TESTIMONY OF DAVID PRATT

17 Q (By Ms. Brown) Good morning, Mr. Pratt.

18 A Good morning.

19 Q Please state your name for the record, spelling

20 the last.

21 A My name is David Pratt, last name spelled

22 P-R-A-T-T.

23 Q How long have you been employed by the Commission?

24 A About ten and a half years.

25 Q And prior to that you worked for?

0062

1 A Prior to that, I spent 18 years at the Department

2 of Labor & Industries.

3 Q Are there any changes, revisions or additions to

4 the investigative report that you'd like to make known to

5 the Commission today?

6 A No.

7 Q Thank you.

8 JUDGE KOPTA: All right. Mr. Pratt, if you

9 would please give a brief summary of the report and the

10 joint stipulation that you filed on behalf of -- or the

11 Staff filed on behalf of both parties.

12 THE WITNESS: Thank you. Thank you, Judge

13 Kopta, Chairman Danner, Commissioner Rendahl and

14 Commissioner Jones. I'm happy to be here today to share the

15 results of this investigation.

16 If I could, I'd like to take just a brief

17 minute before I head into the results. And I'd be remiss if

18 I didn't thank all of the efforts of my team that worked on

19 this. This has truly been a team effort. It's been all

20 encompassing for the last three months.

21 So I'd like to be able to thank my motor

22 carrier safety Staff for all the efforts they put into this,

23 the work they put into this, the focus they put into this

24 investigation. That team is led by John Foster, who is our

25 motor carrier safety inspector; we have Wayne Gilbert,

0063

1 sitting to the right of me here, who was the actual lead of

2 the compliance investigation.

3 Also on my Staff that participated were

4 Francine Gagne, Sandy Yeomans, Matt Perkinson, Alan Dickson,

5 and Lindsay Martin.

6 And then additional Staff also participated

7 by helping me research and put together my report. That

8 would be Betty Young and Mike Turcott.

9 And then finally, I just want to thank all

10 the rest of my Staff that picked up the slack while all of

11 us were working on this case and making sure the rest of our

12 operations were able to continue. So thank you very much.

13 Staff recently completed our compliance

14 review investigation of Ride The Ducks Seattle. It took

15 approximately 85 days from the day we got into it.

16 I think one important note that we need to

17 make up front in this report is that normally when you do a

18 compliance investigation, you look at a sample of records

19 and drivers. And you glean the results from that sample.

20 In this case, because of the Commission's

21 request to do a thorough, very thorough job, and because of

22 the nature of this investigation, we looked at every driver

23 and every vehicle that this company has employed.

24 As a result of that, you're likely to see

25 more violations come up because of that. The sample we

0064

1 normally choose would have been about 25 percent of what we

2 did look at. So you're going to see a lot more violations

3 because we looked at a lot more. So I will review those

4 here in a minute.

5 I would also like to say that during this

6 investigation, company staff of Ride The Ducks were very

7 helpful, cooperative.

8 Their maintenance staff, when we were at

9 their facilities, were very helpful and participated with

10 what we needed them to do and completely stayed out of the

11 way when we needed them to stay out of the way. We

12 appreciate that.

13 We did also meet with company officials to go

14 over this report last Tuesday, December 15, in the

15 afternoon. Probably about two hours after we released the

16 initial report to the Commission, we met with them to go

17 over the results so they were aware of it and understood

18 what the findings were.

19 This compliance review investigation did

20 result in a proposed unsatisfactory safety rating. The

21 factors that contributed to this unsatisfactory safety

22 rating were one violation of an acute regulation, six

23 violations of critical violations, and then at least two

24 accidents that occurred in the past year.

25 When you calculate a safety rating, you look

0065

1 at all those factors. And there is a software program and a

2 table that calculates it for you, but those factors are

3 built in, and that's what drove this company to an

4 unsatisfactory safety rating. So while we did see a total

5 of 442 violations, the rating itself was driven by seven

6 violations and two accidents.

7 But I would like to summarize very briefly

8 for you, if I could, the rest of those violations just to

9 put them in context for what we're doing here today.

10 We could say that this company violated 24

11 different regulations. That's the number. One of those was

12 acute. One was critical that occurred six times. Five of

13 these violations were what we call critical, but no pattern.

14 When you do a compliance investigation and

15 you look for violations that rise to the level of severity,

16 they either have to be more than one violation being found,

17 and it has to be more than 25 percent of the sample size.

18 So in some cases, these -- I said five

19 regulations were violated, but they did not rise to the

20 level of critical. Those were 131 occurrences of those

21 five.

22 And then finally, there were violations of 17

23 nonacute or noncritical violations. And we have 304

24 occurrences of those. Those 304 is what I would

25 characterize as paperwork or recordkeeping violations.

0066

1 So you break it down at 138 previous violations I

2 talked about, the acute and critical, and then nonpattern

3 type that led to the problems we're seeing here, and the

4 findings in my report.

5 I will say that generally when we do

6 compliance investigations, the company is still operating.

7 They're not already shut down, as in the case of this. When

8 the company receives an unsatisfactory safety rating, they

9 are generally allowed to continue operating for up to 45

10 days while they're required to meet some requirements to

11 prove that they have taken the steps necessary to show that

12 they're going to be in compliance now and in the future, and

13 that they meet what's called the Safety Fitness Standard,

14 which is found in 49 CFR Part 385.

15 I think we'll be talking about Part 385 a

16 bit. It's located in your appendix. It is in Appendix A,

17 pages 43 through 50, that you will find that Part 385

18 described.

19 In this case, because the company was already

20 shut down before the compliance review, we're doing things a

21 little different as far as how the recommendations I'm going

22 to make.

23 If Ride The Ducks provides an adequate safety

24 management plan within the 45-day period, per the 385

25 requirements, the safety rating could be upgraded to

0067

1 conditional.

2 If they do not provide an adequate safety

3 plan, which has to be reviewed and approved by Staff within

4 that 45 days, on the 46th day this company is placed out of

5 service and they are prohibited from operating.

6 I will also say that Staff does intend to

7 seek administrative penalties for many of the violations we

8 found, and Staff plans to move to amend the complaint in

9 this case to request administrative penalties, which will be

10 dealt with at a different hearing than this date.

11 That's a good general overview of my

12 investigation. I'm not sure how detailed you'd like me to

13 get.

14 I would also like to say that we did file a

15 stipulation last Friday, where the Company did agree to all

16 the findings that are in the report and they agreed to the

17 recommendations that are in the report. I'm prepared to

18 review those recommendations now, if you would like.

19 JUDGE KOPTA: I think that would be helpful.

20 THE WITNESS: Okay. If you'd like to turn to

21 page 7 of my report.

22 JUDGE KOPTA: And just as a precaution before

23 you start, just if you would, summarize the recommendations

24 that are at issue here today, not all of the

25 recommendations.

0068

1 THE WITNESS: Okay. You bet.

2 First recommendation, Staff recommends that

3 Ride The Ducks' excursion service carrier operating

4 authority should be restored and the Company should be

5 allowed to resume operations using its Truck Druck vehicles

6 only.

7 Following the 385 process, by January 29 is

8 the conclusion of our 45 days. That process started the day

9 we reported the findings to the Company on the 15th of

10 December. So by January 29, 2016, Ride The Ducks must

11 request and receive a change to its proposed unsatisfactory

12 safety rating. The request must include a written safety

13 management plan as outlined in Recommendation 2 on page 31

14 of this report.

15 There's a lot of sub steps to that. It

16 provides for a detailed description of the corrective

17 actions taken to address each specific violation. And it

18 outlines how the Company will stay in compliance with each

19 requirement in the future.

20 Recommendation, 3, Staff recommends that we

21 do some followup compliance reviews of this company, both in

22 6 months and again in 12 months. Those will be nonrated

23 reviews. They will simply be checking in to make sure that

24 they are following their safety management plan, that they

25 are implementing the parts that are required, and that they

0069

1 are on the right track.

2 At the end of two years, presuming that all this

3 goes this way, at the end of two years Staff will go back

4 and do another full compliance review and investigation and

5 issue a safety rating at that time.

6 And while this is not really the topic today,

7 I just did want to touch on Recommendation 5. For the

8 Stretch Duck vehicles, Commission Staff is not making any

9 recommendation at this time other than to allow the Company

10 time to have a specialist that they've hired to come in and

11 further evaluate the axles on those vehicles that are the

12 subject of context here and to make a recommendation. Staff

13 does ask that those recommendations be provided to Staff.

14 We can review them and weigh in on those to the Commission

15 at that time there.

16 And I've already talked about the Staff will

17 be asking for administrative penalties.

18 JUDGE KOPTA: And just to clarify what we're

19 talking about, would you give a brief distinction between

20 Truck Ducks and Stretch Ducks in terms of the types of

21 vehicles the Company operates.

22 THE WITNESS: Sure. The Company operates ten

23 what we call Truck Ducks.

24 They also have ten Stretch Ducks. One of

25 those Stretch Ducks is out of service. That is Vehicle

0070

1 No. 6 that was involved in the incident on September 24.

2 Another one of their Stretch Ducks has not

3 yet been put into operation. So it's something they

4 originally purchased and they were doing some work on it.

5 It's never been used and so it's not included.

6 So we're really talking about eight Stretch

7 Drucks that are involved.

8 The Stretch Ducks are the vehicles that have

9 the alleged axle issues. I will say we do look at axles

10 during our investigation; did not find any obvious defects

11 in those axles.

12 JUDGE KOPTA: Okay. But they're two

13 different types of vehicles; is that correct?

14 THE WITNESS: Yes. And per the stipulation

15 that we've agreed, the Company has agreed, that if the

16 Commission supports it, that they would resume operations

17 only in the Truck Duck vehicles and they would not use the

18 Stretch Duck vehicles until the Commission approves it.

19 So if we could, I could turn to the

20 stipulation very briefly. And I said that the Company

21 agreed that they support the findings in their report. They

22 do not contest the violations. They agreed with the process

23 we described as far as 385. And they've agreed to put

24 together a safety management plan to address those

25 violations to prove to us that they can meet the safety

0071

1 fitness standard.

2 COMMISSIONER JONES: Mr. Pratt, Judge Kopta,

3 if I could, before we move on to detailed questions I think

4 it would be useful for everybody watching and listening

5 today to describe more generally the engineering details

6 between a Stretch Duck and a Truck Duck: Date of

7 manufacture, manufacturer, just if you could provide a brief

8 summary of that before we get into more detailed questions.

9 THE WITNESS: I may want to defer to the

10 Company for a bit of that, but I will do the best with what

11 I have.

12 You can turn to Appendix R. It starts on

13 page 175 of my report.

14 COMMISSIONER JONES: Okay.

15 THE WITNESS: This is a listing of the

16 vehicles that are owned and operated by the Company. You'll

17 see it says 21 vehicles in this table. There's really only

18 20, because there's no 13 on this list. I don't have them

19 broken down on the table, which is a Truck or which is a

20 Stretch.

21 But it shows that these vehicles were

22 manufactured as long ago as 1945. They've gone through

23 numerous refurburations and changes over those years,

24 probably as recently as very recent in the last year.

25 The difference is they use a different axle

0072

1 structure on the bottom of them. The Stretch Ducks have a

2 different axle on the front wheels than the other vehicles

3 do. They're basically the same size and dimensions, except

4 the Stretch Duck is a little longer.

5 COMMISSIONER JONES: What about the

6 chassis? Is the chassis the same?

7 I think in one of your statements you said

8 the chassis and the axle were different.

9 THE WITNESS: I need to ask the Company

10 regarding the chassis.

11 COMMISSIONER JONES: And then why isn't there

12 a column in here on the date of re-manufacturing or major

13 overhaul?

14 I mean, 1945 for Duck 1 seems like a long

15 time, while 1972 for Duck 16 is a little more recent.

16 THE WITNESS: I do not have that information.

17 COMMISSIONER JONES: You do not?

18 THE WITNESS: No.

19 COMMISSIONER JONES: Does the Company have

20 that?

21 THE WITNESS: I would expect they would.

22 COMMISSIONER JONES: Okay. I will hold that

23 for the Company. Thank you.

24 THE WITNESS: So finally, returning to the

25 stipulation, the last couple items that we've agreed to and

0073

1 stipulated on, is again the compliance reviews in 6 and 12

2 months, further compliance review in 12 months.

3 And I think it's important to know that the

4 Company has stipulated along with us that they will not

5 operate the Stretch Duck vehicles until they have been

6 approved by the Commission to return to operations.

7 And also the two items the Company brought up

8 during this investigation that were made public that they

9 have stipulated here, I think there were some comments last

10 week regarding "they wrote letters but where's the

11 commitment."

12 The Company has stipulated in here that they

13 will have a two-person crew on their vehicles if they are

14 allowed to resume operations. That's a change from what

15 they currently do. Currently one person drives the vehicle

16 and gives the tour narration and other entertainment

17 factors. They have pledged going forward that they will

18 have a driver and a narrator, and the driver will only drive

19 and be responsible for driving, and the narrator will take

20 care of the tour and entertaining the passengers.

21 They have also stipulated that they will

22 implement a change to their routes -- and they have

23 submitted that change to us -- that they will no longer use

24 the Aurora Bridge in Seattle.

25 And I'll just finally say that those

0074

1 agreements are contained in the appendix. Appendix T is the

2 letter from Mr. Tracey outlining the change to the crew on

3 that there.

4 So that's what I have. Thank you.

5 JUDGE KOPTA: All right. Thank you,

6 Mr. Pratt.

7 Ms. Brown, do you have a second witness you'd

8 like to introduce?

9 MS. BROWN: Yes. Thank you.

10 Staff calls Wayne Gilbert.

11

12 TESTIMONY OF WAYNE GILBERT

13 Q (By Ms. Brown) Good morning, Mr. Gilbert.

14 A Good morning.

15 Q Could you please state your name for the record,

16 spelling the last.

17 A Wayne Gilbert; spelling last name, G-I-L-B-E-R-T.

18 Q And how long have you been employed by the

19 Commission?

20 A Nine months now.

21 Q And how did you spend your days prior to that?

22 A Mostly a lot of training, getting caught up on

23 everything like that with numerous courses all around the

24 country with federal training.

25 Q And then weren't you in the military?

0075

1 A Correct, 23 years.

2 Q And in your role in the military?

3 A Was transportation background, inspecting

4 vehicles, organizations that had vehicles, military

5 vehicles.

6 Q Okay. Thank you.

7 And your qualifications are set forth in one of

8 the exhibits that have been admitted to the record, correct?

9 A Correct.

10 MS. BROWN: WG-1. Okay. Thank you.

11 Proceed.

12 THE WITNESS: Basically my role in this

13 entire investigation was the compliance review itself,

14 inspecting the entire Company's records of operations to

15 include inspecting the vehicles, each of the 18 vehicles

16 that they had set forth.

17 We set up two different dates to actually

18 inspect the vehicles themselves.

19 We first inspected the Truck Ducks, the ten

20 Truck Ducks, and basically did a thorough inspection on

21 those, federal inspection on those, to insure the

22 operations.

23 We even went a little bit further. We had

24 them remove the boots of the vehicles on the axles just to

25 inspect the axles itself. Normally that would not be done

0076

1 in just a standard compliance review. We would just inspect

2 the vehicle itself. We went a little bit further and

3 actually did that.

4 The second time, we went back and actually

5 inspected the Stretch Ducks. We also had them -- after we

6 did our Level 5 inspection, just the vehicle itself, we also

7 had them remove the axles, the boots and everything like

8 that so we could get a clear picture of what the axles look

9 like.

10 During this investigation, we also went in,

11 thorough -- as Mr. Pratt explained, took apart the entire

12 Company's records. We would normally just take a sampling,

13 about a 25 percent sampling size of the records. We went

14 ahead and did a thorough investigation of all the records,

15 and actually discovered the violations as you've seen in the

16 report.

17 The safety fitness rating is determined on

18 six factors, and each factor is broken down.

19 The only factor that we did not look at,

20 because the Company does not do it, is Factor 5, which is a

21 hazardous material factor. So we completely threw that one

22 out.

23 The two factors that the Company did violate

24 would be the driver qualification files, and then of course

25 the accident factor. Mostly the driver qualification files

0077

1 is -- a lot of it was paperwork issue. About 90 percent of

2 it could have been avoided if the Company would have had

3 those paperwork files done.

4 JUDGE KOPTA: Does that conclude your

5 statement, Mr. Gilbert?

6 THE WITNESS: That concludes my statement.

7 JUDGE KOPTA: Thank you.

8 Ms. Buchanan, would you like to call your

9 witness.

10 MS. BUCHANAN: I do have a procedural matter

11 if the Commissioners have no questions for Mr. Gilbert.

12 JUDGE KOPTA: At this point, we're holding

13 questions until all witnesses have given their statements.

14 MS. BUCHANAN: Thank you, your Honor.

15 My procedural matter would be that I do have

16 a witness available to answer Commissioner Jones' question.

17 So I would make a motion to call that witness at this time

18 if that would be of assistance to your Honor and the

19 Commissioners.

20 JUDGE KOPTA: I think that would be helpful.

21 Is this one of the witnesses you had identified

22 previously?

23 MS. BUCHANAN: Yes, your Honor: Mr. Roger

24 Smedsrud.

25 JUDGE KOPTA: If you would like to call him,

0078

1 that's fine.

2 MS. BUCHANAN: Respondents would call

3 Mr. Smedsrud.

4 (Roger Smedsrud, having been duly sworn,

5 testified as follows.)

6 MS. BUCHANAN: Good morning, Mr. Smedsrud.

7 And we did previously, your Honor, have an

8 exhibit with Mr. Smedsrud's CV. And so we would offer that

9 as well at this time if that would be of assistance to the

10 Commissioners and yourself.

11 JUDGE KOPTA: Well, now that is he

12 testifying, it probably makes sense. And I understand that

13 that was also one that also the parties stipulated to.

14 So that would be Exhibit RS-1, which is the

15 curriculum vitae of Mr. Smedsrud. And this is admitted.

16 (Exhibit RS-1 admitted.)

17 MS. BUCHANAN: Thank you, your Honor.

18

19 TESTIMONY OF ROGER SMEDSRUD

20 Q (By Ms. Buchanan) Mr. Smedsrud, could I please

21 have you state your full name and spell it for the record?

22 A My name is Roger Wesley Smedsrud; S-M-E-D-S-R-U-D.

23 Q And your current business address, please?

24 A 12866 SE 262nd Place in Kent, Washington.

25 Q What do you do for a living?

0079

1 A I run my own business, Mechanical Inspection

2 Analysis.

3 Q Would you describe for us your qualifications in

4 that arena?

5 A I've been -- I got started in 1971, actually 1969.

6 But I've been doing this type of investigative

7 work and mechanic work for the City of Seattle for 33 years,

8 which I retired in 2001 as a senior mechanic shop and acting

9 shop operations supervisor of over 2500 different types of

10 vehicles, many of them the heavy equipment, and including

11 fire and police, medic units, dump trucks, about everything

12 you can think of was -- I have been directly working on,

13 working for, and supervising over.

14 Q Okay. And have you had an opportunity to inspect

15 both the Truck Ducks and the Stretch Ducks, at least to

16 familiarize yourself with make and models and details as

17 such?

18 A Yes. The main investigation I've done,

19 inspections I've done, has been on the Truck Duck; some of

20 the Stretch Duck because I don't have all the information

21 available to see.

22 But with the Stretch Ducks, as far as what I've

23 heard, we have -- the Truck Ducks here have Rockwell axles.

24 And all three axles are Rockwell, front steering and the two

25 rear dual axles. They're all 12,000 pounds. That gives you

0080

1 a 36,000-pounds capacity, which is well above the operating

2 weight of the Duck.

3 The GMC's, meaning the Stretch Ducks, they're

4 basically the same size. It has GMC front axles and rear

5 except on 19, 20 and 21. They have Eaton rear axles.

6 They're all in the same 12,000-pound category.

7 I've inspected every one of the Truck Ducks from

8 stem to stern. And I found absolutely nothing of any issues

9 to them. That was mechanical things, even right down to how

10 the flooring was attached, everything else, just to see if I

11 could find anything. And I found nothing.

12 JUDGE KOPTA: Mr. Jones, did you have a

13 question that you wanted to pose to Mr. Smedsrud?

14 COMMISSIONER JONES: Could you get Exhibit R

15 in front of him, please.

16 MS. BUCHANAN: Yes.

17 THE WITNESS: Excuse me. There's one other

18 thing I want to say. The GMC's -- and that's like 1 through

19 6, 8, number 8, and then 19, 20 and 21, those are the

20 Stretch Ducks. And those are the '42 through '45s.

21 A lot of the Truck Ducks, you know, are '52s,

22 '72s, as you can see in here. And they're even built up in

23 the '80s and some even still used in the '90s.

24 COMMISSIONER JONES: So Mr. Smedsrud, I want

25 to clarify for the record, the Truck Ducks on this exhibit

0081

1 are Ducks 7 through 18; is that correct?

2 THE WITNESS: Truck Duck No. 8 is -- excuse

3 me. Vehicle No. 8 is a Stretch Duck.

4 COMMISSIONER JONES: Okay. I'm going to

5 cross that off the list.

6 Anything made by GMC is a Stretch Duck?

7 THE WITNESS: That's correct. The three 23's

8 are the GMC's.

9 COMMISSIONER JONES: And the Truck Ducks that

10 Staff is asking us to allow operation again, it comes from a

11 variety of manufacturers including Studebaker, Kaiser,

12 Jeep--

13 THE WITNESS: Reo and American General; that

14 is correct.

15 COMMISSIONER JONES: You said the major

16 difference, though, is the Rockwell axle, as opposed to a

17 GMC axle.

18 And from a safety standpoint -- we're talking

19 about safety today -- is there any other important safety

20 distinction between Stretch Ducks and Truck Ducks?

21 THE WITNESS: I've not inspected all of the

22 Stretch Ducks, mainly on the Truck Ducks. I am -- with the

23 Truck Ducks, the difference -- there's nothing on a Truck

24 Duck that is original Duck, you know, from the '50s or

25 anything else.

0082

1 The Stretch Ducks, the only thing that I'm

2 aware of, and what I've done so far, is the only thing

3 that's original on it is the axles.

4 COMMISSIONER JONES: And this is a general

5 question, but the date of engineering the chassis, the axle

6 system, the design, the overall system of both the Stretch

7 Ducks and the Truck Ducks, is it accurate to say that they

8 were engineered and designed in the 1940's and '50s?

9 THE WITNESS: The axles themselves, I mean,

10 you have different manufacturers.

11 They all come under the same engineering

12 qualifications. A two-and-a-half-ton, which these are all

13 two-and-a-half-ton axles, no matter who they're built, were

14 built at that time.

15 And over the years of inspecting different

16 incidences and of these type of vehicles, years don't always

17 matter because it's still in the same weight categories.

18 And generally, as I've always seen in my

19 experience in 40-some years, military likes to build things

20 a little even heavier than they even need.

21 COMMISSIONER JONES: Okay. And is that true

22 -- is that your assessment too, Mr. Gilbert? You worked in

23 the military -- that age of these major components doesn't

24 matter as much as adherence to nationally recognized

25 specifications?

0083

1 MR. GILBERT: Correct, as long as the

2 maintenance is upkept on them.

3 COMMISSIONER JONES: Okay. That's all have I

4 on that one. Thank you.

5 MS. BUCHANAN: Thank you. And that would

6 conclude our direct exam.

7 JUDGE KOPTA: All right. Do you have a

8 second witness that you would like to present?

9 MS. BUCHANAN: Yes, your Honor. Respondents

10 would like to call Mr. Tracey.

11

12 TESTIMONY OF BRIAN TRACEY

13 Q (By Ms. Buchanan) And Mr. Tracey, I'll have you

14 start, please, by stating your full name.

15 A Brian Tracey.

16 Q And what is your current occupation?

17 A I'm the president and CEO of Ride The Ducks of

18 Seattle.

19 MS. BUCHANAN: And with your permission, your

20 Honor, Mr. Tracey has a statement would he like to make.

21 JUDGE KOPTA: Please

22 THE WITNESS: Good morning. My name is Brian

23 Tracey. I'm the president and CEO of Ride The Ducks of

24 Seattle. I want to thank Chairman Danner, Commissioners

25 Jones and Rendahl, and Judge Kopta for giving me the

0084

1 opportunity to sit before this Commission today and discuss

2 these really important issues.

3 Before I begin, though, I'd like to take a

4 moment to recognize and acknowledge everybody who was

5 involved in the accident. There isn't a moment in the day

6 that I don't think about the people that were injured in the

7 accident and the families that have lost loved ones.

8 And you know, Ride The Ducks of Seattle is a

9 family as well. And all 130 of us grieve with them. You

10 know, there are no words that I can offer to them to make

11 their burden any lighter or their pain any less. But I want

12 them to know that we care and we extend our condolences and

13 our prayers.

14 When we first learned the horrible news about

15 the accident on September 21, the first thing we did was

16 immediately shut down and suspend all of our operations.

17 At that time, I stood up and declared that

18 until I could assure this body and the public that the Ducks

19 were safe, we would not ask for the privilege to resume

20 operations.

21 At that time, I also said that we would

22 dedicate all of our resources and our entire organization to

23 assist in the investigation. And since that day, we've had

24 the privilege -- and I mean the word privilege -- to work

25 with Dave Pratt and his team.

0085

1 Over a period of three months, Mr. Pratt and

2 his team pored over every facet of our operation. They

3 reviewed thousands and thousands of documents. They

4 examined every policy and procedure. And they examined

5 every single vehicle stem to stern. Their attention to

6 detail and thorough investigation was complete and

7 exhausting.

8 And I hope and I believe that they will tell

9 you that RTDS bent over backwards to respond to their every

10 request.

11 As the owner of Ride The Ducks, I'll tell you

12 that I hoped that the investigation would reach the same

13 conclusions as the four previous inspections done in 2003,

14 2006, 2010, and 2013 that gave the Company the highest and

15 best rating possible.

16 That was not the case. Mr. Pratt and his

17 team found that we fell short in a number of areas,

18 especially in the records keeping department.

19 I want to state that I make no excuses for

20 those violations. In fact, as the owner of Ride The Ducks,

21 I take complete responsibility for the shortcomings.

22 We've already addressed many of the problems,

23 and we're going to make sure that we fix every one of them.

24 In fact, we welcome the report, and I'm

25 bolstered by the incredible level of detail in Mr. Pratt's

0086

1 report. His extraordinarily thorough examination of our

2 operations have given us a road map to make Ride The Ducks

3 of Seattle the safest commercial tour operating in the

4 nation, which was my pledge back in September and it's my

5 pledge right now.

6 Because of Mr. Pratt's review, we've had an

7 opportunity to get a head start on all the work ahead of us.

8 To assist, we've hired one of the nation's leading

9 transportation safety consultants. And we're confident that

10 we will be able to extinguish any safety concerns that this

11 panel may have when we present our safety management plan

12 before January 29.

13 It's worth noting that long before the UTC's

14 team completed the compliance investigation, Ride The Ducks

15 of Seattle made a number of decisions about future

16 operations, addressing concerns raised by the community.

17 First, we decided that we will no longer use

18 the Aurora Bridge in our route.

19 Secondly, we've announced that we're adding a

20 second crew member to each tour to provide the guest

21 entertainment and also to be a second set of eyes on the

22 road to look for hazards, while the driver focuses solely on

23 operating the vehicle.

24 Finally, we've done some significant upgrades

25 to our Ducks video safety system, adding cameras around the

0087

1 Duck that gives the driver a 360-degree view. That, coupled

2 with the second crew member, will enhance the safety of our

3 passengers as well as the people that we share the road

4 with.

5 Again, we've taken these steps voluntarily in

6 our quest to be the safest commercial carrier in the nation.

7 I'd also like to take a moment to address the

8 letter that you received from Mayor Murray's office. The

9 letter raises concerns about our return to service, citing

10 its unsatisfactory rating and concerns over the new route

11 over the Fremont Bridge to avoid the Aurora Bridge.

12 Since we received that letter, we asked for

13 and we were granted a meeting with the mayor's staff. I

14 want to express to you what I expressed to them. We are

15 willing, eager, and anxious to sit down and work with them

16 to address each and every one of their concerns.

17 And finally, I just want to leave you with

18 one thought. There isn't a person or an organization that

19 is more intent on creating the safest carrier in the nation

20 than me and the 130 employees that work for Ride The Ducks.

21 I have to say I'm really proud of the company that we've

22 built in almost 20 years, but I'm much more proud of the

23 team that I work with every single day, 130 of the most

24 committed and amazing people that anyone would ever spend

25 time with. After the accident, they were right there, eager

0088

1 to assist Dave Pratt and his team. And they've stood

2 alongside me. Even the ones that were laid off, all they

3 ask is, "What can we do to help? What can we do to

4 help?" I could not have a better crew.

5 And I hope that soon that the members of this

6 Commission will allow Ride The Ducks of Seattle to return to

7 service so that we will have the opportunity to prove that

8 we are the safest commercial carrier in the nation.

9 Thank you so much for this opportunity to

10 speak.

11 JUDGE KOPTA: All right. Thank you,

12 Mr. Tracey.

13 Does that conclude all of your witnesses,

14 Ms. Buchanan?

15 MS. BUCHANAN: Indeed, yes, your Honor.

16 JUDGE KOPTA: My understanding is that

17 counsel have no questions at this point for the witnesses,

18 so I will go directly to the Commissioners.

19 Mr. Chairman, do you have some questions?

20 CHAIRMAN DANNER: Yes, I do. Thank you.

21

22 QUESTIONS BY THE COMMISSIONERS

23 CHAIRMAN DANNER: Good morning, everyone.

24 So let me start with just a few mechanical

25 questions for Mr. Pratt. So the Company will submit a plan

0089

1 on or before January 29. And yet they will go out of

2 business on the 46th day if they are not upgraded to a

3 conditional rating.

4 How much time does it take for your staff to

5 review the plan and determine that they in fact are entitled

6 to a conditional rating?

7 MR. PRATT: Okay. The way the recommendation

8 was written was that they do have to submit that plan and

9 have it approved by January 29, which means they need to

10 give us enough time to review that plan, possibly to go back

11 to them with some feedback for changes or improvements.

12 We expect that the Company should probably

13 submit the plan two to three weeks from now. That gives us

14 enough time to look at it, like I said, provide feedback and

15 maybe have a back and forth on this before we get it

16 finalized.

17 The bottom line is they have 45 days to do

18 this and to be approved. If they don't, then they're out of

19 service. And so it's in their interest to make sure that

20 they get that to us and it's clear enough and it's written

21 well enough that we can understand it and make that

22 evaluation in that 45 days.

23 CHAIRMAN DANNER: All right. Thank you.

24 That does clear it up.

25 And that is enough time, then, for them to

0090

1 prepare a plan, and that would be detailed enough and would

2 give you time to review that plan?

3 MR. PRATT: It should be, yes.

4 I would also like to say that as far as the

5 vehicle inspections we did, when we first did those, we

6 generally give the results to the Company when we finish a

7 vehicle inspection.

8 So there was like one little minor violation

9 of one of the Truck Ducks. It was fixed while we were

10 there.

11 So they have addressed some of these issues.

12 Most of them they didn't learn about until last Tuesday.

13 But I've been assured that they have been

14 working hard on these. They've already started making

15 improvements.

16 And many of these fall into the same

17 category. And they need to insure that they have a review

18 process of the recordkeeping requirements.

19 An example I'd like to give you is the one

20 acute violation was a driver operating without a commercial

21 driver's license. If they had reviewed the driver

22 qualification file like they were supposed to, they probably

23 would have seen that that driver's commercial driver's

24 license had expired. They could have prevented him from

25 driving, potentially have prevented the violation.

0091

1 So that's why I'd like to say that many of

2 the recordkeeping violations, if they come into compliance

3 with them, will prevent others. So it's really about a

4 review process and making sure that they have those things

5 in place and that somebody's responsible for doing that.

6 This company in the past had very good safety

7 ratings. And then what happened in the last few years to

8 drop to an unsatisfactory rating, I'd have to let the

9 Company respond to that specific question, but my belief is

10 that they just got lax on their recordkeeping review and

11 they did not continue to be as diligent in looking at those

12 records as they needed to be.

13 And Mr. Gilbert stated that he thought 90

14 percent of the violations could have been avoided with that.

15 And I'd like to go further and say I think

16 100 percent, every one of these violations could have been

17 prevented had they done their diligence and reviewed the

18 records and then followed up on what they found.

19 CHAIRMAN DANNER: All right. Let me ask you,

20 you said in your opening remarks that a pattern required 25

21 percent of the documents reviewed to have been a

22 violation. Isn't that ten percent?

23 MR. PRATT: I was using one example. A

24 pattern is more than one and more than 10 percent of the

25 sample.

0092

1 CHAIRMAN DANNER: Okay. Thank you for the

2 clarification.

3 So Mr. Myers drove on 11 occasions without a

4 valid CDL. Why is that one violation and not 11

5 violations?

6 MR. PRATT: And thank you. This is a good

7 opportunity for me to explain some of this.

8 When you look at different parts of

9 compliance, you look at different factors. For the one

10 you're talking about, you looked at drivers. So we looked

11 at all the drivers they had. We found one driver that

12 didn't have the proper credentials. So that's why that was

13 one violation. If six drivers had had bad credentials,

14 there would have been six violations.

15 So the sample population there is number of

16 drivers. So there was only one driver out of compliance.

17 But if you look at the next violation, which

18 is Violation Number 2, the critical violation of the drug

19 and alcohol testing, we look at the number of people that

20 were supposed to have submitted for tests. In this case,

21 their sample should have been 20. 20 people should have

22 gone in for tests during the year. Only 14 did.

23 So that was six people that did not get

24 tested. So six is more than one, and more than 10 percent

25 of the sample size we looked at, which then reaches a

0093

1 pattern.

2 CHAIRMAN DANNER: Okay. So Mr. Myers in fact

3 could have driven all year, and it would have been one

4 violation?

5 MR. PRATT: Yes. But I would also like to

6 clarify for you, under the Commission's transport safety

7 enforcement policy, when we recommend administrative

8 penalties for violations such as driving without a

9 commercial driver's license or a medical card, we pursue

10 penalties for each time they drove, even though it's one

11 violation.

12 CHAIRMAN DANNER. All right. Thank you.

13 And I'm just going down the questions that I

14 have for you, Mr. Pratt.

15 There was -- there were a couple of things in

16 the orders. If you look on page 114, Mizrain

17 Rodriguez-Rubio, it appears the dates are incorrect. And I

18 was wondering if you could clarify that. That's in

19 Violation 11. It says that he was hired on 4/20/15 and the

20 abstract was obtained on 1/13/15.

21 MR. PRATT: Correct.

22 CHAIRMAN DANNER: Is that correct?

23 MR. PRATT: Yes. The violation was written

24 errors. They failed to maintain a copy of the motor vehicle

25 records obtained in response to the inquiry in each state

0094

1 within 30 days of the driver's employment.

2 In this case, they did it before the driver's

3 employment.

4 CHAIRMAN DANNER: Okay.

5 MR. PRATT: And it wasn't within the 30-day

6 period.

7 CHAIRMAN DANNER: All right. Thank you for

8 that clarification.

9 Was there anything in your investigation that

10 indicates that the choice of routes was a factor in this

11 accident?

12 MR. PRATT: No. I did not look into any of

13 the factors of the accident.

14 CHAIRMAN DANNER: So you did not look into

15 any of the factors. So the question about choice of routes

16 is not based on the likelihood that the Aurora Bridge or its

17 narrow lanes or high speeds were in any way a factor in

18 this?

19 MR. PRATT: I did not make that evaluation,

20 no.

21 My jurisdiction is pretty limited there.

22 MS. BROWN: If I may speak, since I'm already

23 speaking, this is Sally Brown, the Attorney General's

24 Office.

25 I just want to emphasize once again, the

0095

1 accident investigation, the Commission's safety jurisdiction

2 does not extend to that.

3 So the accident involving Duck 6 is being

4 investigated by the NTSB.

5 CHAIRMAN DANNER: Yes, thank you.

6 The reason I ask the question is because the

7 letter that you referenced, Mr. Tracey, from the City of

8 Seattle, raises concerns about the use of the Fremont

9 Bridge.

10 And yet you are making a stipulation and

11 commitment not to use the Aurora Bridge.

12 And yet it would seem to me, the choice of

13 routes issue -- so I don't see anything in our report that

14 makes that a factor in the Staff's investigation.

15 And the question is about whether we should,

16 in any order or any stipulation, limit the routes to

17 something that would leave alternatives which are less

18 favorably viewed by the City is something that we should

19 approve or put into a final order?

20 MS. BROWN: The Commission's safety

21 jurisdiction does not extend to routes.

22 So there's a reference in the investigative

23 report to Seattle Municipal Code, which does in fact

24 regulate routes for excursion carriers. And so by local

25 ordinance, presumably the City could address the route

0096

1 issue.

2 CHAIRMAN DANNER: So the fact that it's

3 before us today, though, looks like it is asking for us to

4 make a decision on the use of the Aurora Bridge or to

5 approve a commitment by the Company not to do so.

6 And I just want to clarify what was being

7 asked of us today with regard to the Aurora Bridge.

8 MR. PRATT: Sure. I guess I'd like to follow

9 up with that by saying the Company's made a commitment not

10 to use the Aurora Bridge.

11 And I did not look specifically at the route

12 structure. I should say I looked at the route and I drove

13 the route to see what it was.

14 What seemed more important to me was the

15 comments that were made about the route were that the

16 vehicles were too big or that there wasn't room. The Aurora

17 Bridge was narrow.

18 What I did, and it's contained on page 19 of

19 my report, was I did an analysis of the vehicle size and an

20 analysis of state and Seattle law about what's allowed to be

21 on the public streets. And I concluded that the Truck Ducks

22 and the Stretch Ducks fall within the maximum allowable

23 dimensions by state and Seattle law.

24 And so that that was the way I looked at it,

25 by saying, Are these vehicles too big to be on the

0097

1 roads? And my conclusion was no.

2 And I also did an analysis that is contained

3 in Appendix Q, which I did look at some other large vehicles

4 on streets; for example, city transit buses, garbage trucks,

5 FedEx trucks, and I found all those trucks were either the

6 same dimensions or larger than Truck and Stretch Ducks.

7 CHAIRMAN DANNER: The point I'm making is the

8 Company has pledged that they will not use the Aurora

9 Bridge, and we're finding that in our materials. And it

10 looks like it's something that you're asking us to make as

11 part of the stipulation, or to approve as part of the

12 stipulation.

13 When the City of Seattle is saying "Don't use

14 the alternative routes," it's not clear to me whether they

15 would rather have -- if push came to shove that they would

16 rather have them on the Aurora Bridge than on the Fremont

17 Bridge.

18 So I don't want to have any commitment here

19 that is going to foreclose conversations that the Company is

20 going to have with the City with regard to routes, which are

21 in fact under their jurisdiction. So that's why I'm asking

22 this question.

23 So at this point, it's a pledge that the

24 Company is willing to make. But what I don't want to do is

25 have a decision here that makes it more difficult for the

0098

1 Company to have conversations with the City about what the

2 route should be.

3 MR. PRATT: And I can't speak for the City

4 about where they're at.

5 But I do know if you look at the differences

6 on the two bridges, the Aurora Bridge is a lot longer

7 bridge. It's a higher speed.

8 The Fremont bridge is a very short bridge

9 with a much lower speed limit.

10 CHAIRMAN DANNER: And there's a lot of -- as

11 the City says, there's a lot of traffic on that bridge.

12 There are Metro buses; there are pedestrians; there are

13 bicyclists. It's actually more of a pedestrian

14 neighborhood.

15 And so that is a call that seems that the

16 City has jurisdiction over, and they can legislate that in

17 municipal code. And so you know, I don't want to be making

18 decisions about what routes will be used or won't be used if

19 they're not under our jurisdiction and they would foreclose

20 further conversations.

21 So I don't know, Mr. Tracey --

22 MS. BROWN: Well, your Honor, may I interrupt

23 now that I did?

24 Commission Staff would have no opposition to

25 striking paragraph 9 of the stipulation that references the

0099

1 route change to exclude the Aurora Bridge and would like to

2 preserve the exploration of alternative routes for the City.

3 CHAIRMAN DANNER: Thank you. We'll take that

4 up.

5 MS. BUCHANAN: And we would have no objection

6 to excluding that paragraph.

7 CHAIRMAN DANNER: Mr. ffitch, do you have any

8 thoughts on that?

9 MR. FFITCH: Thank you, your Honor. Public

10 counsel would prefer that the commitment by the carrier

11 remain in the stipulation so that it is a matter of public

12 record, understanding that there might need to be a

13 modification at some future time if the City of Seattle

14 makes a decision on the routing as within their

15 jurisdiction.

16 COMMISSIONER RENDAHL: So would you suggest,

17 then, that we retain that paragraph if we were to approve

18 the stipulation today with a modification such that if the

19 City of Seattle and the carrier agree to a different route,

20 that would be part of the stipulation so it's not limited

21 simply to the Fremont Bridge?

22 MR. FFITCH: I think that would be a workable

23 approach, your Honor, and I'm certainly sure that you would

24 want to hear from the Company on this as well. But that

25 would be a workable approach, the flexibility.

0100

1 MS. BUCHANAN: I think Commissioner Rendahl

2 and I were thinking the same thing. I think that the

3 language could be modified in a way that the Company

4 stipulates to implement a route change in cooperation with

5 the City and other bodies of interest.

6 COMMISSIONER JONES: Mr. Chairman, I think

7 we're getting ahead of ourselves a little bit here. I'd

8 like to hear from Mr. Tracey and I'd like to hear from the

9 City of Seattle on this.

10 Is there anybody from the City of Seattle

11 here? Which I find kind of troubling.

12 But is there anybody on the bridge line from

13 the City of Seattle?

14 No. Okay.

15 Well, I think I'd like to hear from

16 Mr. Tracey, not right now, because in your letter to us you

17 said you were unable to obtain a meeting with the mayor's

18 office.

19 MR. TRACEY: Well, actually, we did get a

20 meeting with the mayor's office after that letter. We met

21 with them last week.

22 COMMISSIONER JONES: Maybe a little later on

23 you could describe that meeting to us, not right now.

24 MR. TRACEY: I'd be happy to.

25 MS. BROWN: May I say something in fairness

0101

1 to the City of Seattle. The City of Seattle is under no

2 obligation to be here because the City of Seattle is not a

3 party to this case.

4 COMMISSIONER JONES: I know that.

5 MS. BROWN: They have not intervened in the

6 docket.

7 I am aware that the City of Seattle have

8 filed comments much in the same way several other commenters

9 have filed. In fact, the stack of public comments is

10 extensive.

11 COMMISSIONER JONES: And, Counsel, I've read

12 those.

13 MS. BROWN: Okay. Thank you.

14 COMMISSIONER JONES: But this is a decision

15 the Commission is making today on whether or not to resume

16 the operation of ten Truck Ducks --

17 MS. BROWN: That's correct.

18 COMMISSIONER JONES: -- ASAP immediately upon

19 the streets of the City of Seattle. I find it would be good

20 to have somebody at least responding to at least my

21 questions.

22 MS. BROWN: I agree.

23 CHAIRMAN DANNER: All right. So I'd like to,

24 Mr. Tracey, if I could, I'd like to ask you some questions

25 about the -- some of the violations here. I'd like to ask

0102

1 some of the why questions.

2 Again, the Company did not know that Mr.

3 Myers did not have a valid CDL. I'm wondering what are the

4 processes that -- how did that happen?

5 How was it that he was out there on the road

6 without a valid CDL?

7 MR. TRACEY: Well, obviously we wish that we

8 had known that. But he, I guess, had been informed that his

9 medical certificate was about to expire and he ignored that

10 fact. Now -- and then because his medical certificate was

11 expired, then they took away his CDL license. We didn't

12 know that. And that's our mistake.

13 In the future going on, we're going to have

14 systems implemented that will make sure that we have an

15 opportunity to check independently of the driver to make

16 sure that he does have the proper credentials to be driving.

17 We missed it.

18 CHAIRMAN DANNER: Is Mr. Myers still driving

19 for the company?

20 MR. TRACEY: No, he no longer is employed

21 with the company. We parted ways.

22 CHAIRMAN DANNER: Okay. Now, this is outside

23 our jurisdiction, but I'm interested in the Coast Guard

24 credentials.

25 MR. TRACEY: Yes.

0103

1 COMMISSIONER DANNER: Would he have had to

2 have Coast Guard credentials that are premised on having a

3 valid CDL?

4 MR. TRACEY: No, not at all.

5 But he does have to have Coast Guard

6 credentials. He has to have a minimum 25-ton Master's

7 License in order to operate the vehicle.

8 CHAIRMAN DANNER: Okay. So the processes

9 that you're putting in place -- so basically, you didn't

10 have safeguards for this particular kind of expiration by

11 DOL. And you're putting those in place now; is that

12 correct?

13 MR. TRACEY: Yes. And in almost 20 years,

14 we've never had it happen. And it did happen to us and it's

15 our fault. And we're going to make sure it never happens

16 again.

17 CHAIRMAN DANNER: I guess the same thing,

18 trying to get to the why part of this with regard to the

19 drug and alcohol testing.

20 Only 14 of the 20 tests were given. Did the

21 Company know that the tests were not being performed as

22 required?

23 MR. TRACEY:. No, we did not, sir.

24 We had -- we have a service that is supposed

25 to monitor that for us. And for some reason, during one

0104

1 quarter, they neglected to inform us that we needed to do a

2 certain number of random drug tests. And we thought we had

3 complied with the law. But we missed four of them.

4 And we have since then -- we're finding a new

5 service to handle that for us, as well as putting in our own

6 checks and balances to make sure that someone in our company

7 is responsible for that, including -- all compliance issues,

8 including drug and alcohol. And that is going to be their

9 job. They're going to be a compliance officer for the

10 company. And they will check on the service that we hire to

11 inform us about when the random drug testing is supposed to

12 take place and how many people.

13 CHAIRMAN DANNER: So is that true with regard

14 to the sample pool and the timing of the tests for the four

15 quarters?

16 MR. TRACEY: Yes.

17 CHAIRMAN DANNER: So at that point, these are

18 all based on mistakes by the company you outsourced to?

19 MR. TRACEY: I don't want to blame them

20 because it's out ultimate responsibility.

21 CHAIRMAN DANNER: I agree. But in fact,

22 that's what happened?

23 MR. TRACEY: That is in fact what happened.

24 CHAIRMAN DANNER: So you are putting in place

25 procedures by which you will take charge, be monitoring

0105

1 everything that is done by the outsourced -- all the

2 outsourced functions by your company?

3 MR. TRACEY: Yes. We are going to appoint a

4 specific individual in our company who is going to be in

5 charge of all the compliance for the company, not only for

6 the DOT, but also the Coast Guard, everything.

7 CHAIRMAN DANNER: Okay. So I appreciate

8 that.

9 I guess the same question, the requirement

10 that drivers submit a list of their traffic violations

11 during the year, that didn't happen. And I'm wondering how

12 did that fall through the cracks?

13 What procedures were not in place?

14 MR. TRACEY: Well, again, it's a records

15 keeping thing. And unfortunately, we missed it.

16 I mean, along with -- another one is the

17 driving records, which we haven't had them keep a logbook,

18 which they will be doing in the future.

19 CHAIRMAN DANNER: Okay. With regard to --

20 your business is seasonal, isn't it?

21 MR. TRACEY: Yes, it is.

22 CHAIRMAN DANNER: It ebbs and flows with the

23 seasons?

24 MR. TRACEY: Yes, sir.

25 CHAIRMAN DANNER: And you're busier, say, in

0106

1 July and August than other times of the year; is that

2 correct?

3 MR. TRACEY: Yes, that's correct.

4 CHAIRMAN DANNER: So there were 93 instances

5 of drivers working beyond their hours of service in which

6 they were exceeding limits on the short haul operations and

7 working longer days than they should. And obviously that's

8 a concern because we don't want drivers to be drowsy or

9 unalert or falling asleep at the wheel.

10 MR. TRACEY: Absolutely

11 CHAIRMAN DANNER: And there were another 35

12 violations of exceeding the limit of 70 hours in eight days.

13 All of these look like they occurred between

14 July 28 and August 5, which I would think would be your high

15 summer season.

16 So the question was: Was this a decision by

17 the Company to use drivers who exceeded their hourly limit

18 because you had more demand for drivers and tours on those

19 dates?

20 MR. TRACEY: No, sir, it was not a decision

21 by the Company.

22 It's kind of a complicated situation because

23 if a driver were to keep a logbook, then we would have known

24 -- the amount of hours worked would not have included his

25 breaks -- and his or her breaks, because we have both men

0107

1 and women drivers.

2 So every hour and a half they get a minimum

3 of a 20-minute to a 30-minute break during the course of the

4 day. But because we didn't require them to keep a logbook,

5 that was counted as a number of hours.

6 And that also goes for if they have a second

7 job. If they have a second job, their hours of duty time,

8 that counts against us as well.

9 So we're going to rectify that by making sure

10 that everybody keeps a logbook.

11 And also there's an application that we're

12 looking into purchasing that actually takes into account

13 every minute that driver is sitting in the seat of the

14 engine that's running. So that's another app that we're

15 going to hope to purchase that will help us determine their

16 hours of duty

17 CHAIRMAN DANNER: All right. And I think

18 this is a very important one, because even though you might

19 think, okay, this driver is capable, you know, we see what's

20 going on in the trucking industry, for example. And hours

21 of service violations are really one of the largest causes

22 of accidents nationwide. Sometimes the drivers try and stay

23 awake by taking pharmaceuticals that will help them do so.

24 MR. TRACEY: Sure.

25 CHAIRMAN DANNER: And those are the kinds of

0108

1 things that we're trying to avoid here. So it's something

2 that we take very seriously.

3 There was a violation in 2012 involving hours

4 of service. And I was wondering what steps the Company took

5 in 2012 to rectify the situation, and why didn't that work

6 going into 2014.

7 MR. TRACEY: Mr. Chairman, I'm sorry. I'm

8 not aware of that violation in 2012.

9 CHAIRMAN DANNER: It says on page 25 of the

10 investigation report that this is a repeat violation from

11 2012 compliance review inspections. And it states "Ride The

12 Ducks knew or should have known how to comply with this

13 requirement."

14 And I think -- I'm looking at page 25 myself,

15 but I believe it has to do with hours of service.

16 It has to do with the failure to require a

17 record of duty status.

18 COMMISSIONER JONES: Just in terminology

19 here, is the record of duty status the same as a logbook,

20 Mr. Pratt?

21 MR. GILBERT: That is correct.

22 COMMISSIONER JONES: So a logbook is a record

23 of duty status?

24 MR. GILBERT: That's what we would use to

25 actually calculate the record of duty status. We would

0109

1 actually take a logbook.

2 In this case, the Company only used time

3 sheets, basically a clock-in/clock-out. So that's all we

4 had to go by. So a logbook would suffice as a record of

5 duty status for us.

6 COMMISSIONER JONES: And that's a written

7 record?

8 It's not an application on a software device;

9 usually it's almost always a written record that that

10 requires?

11 MR. GILBERT: A lot of times it is a written

12 record.

13 However, it can be an application, as

14 Mr. Tracey has confirmed. A lot of new software out there

15 requires -- or has it actually hooked up to the engine, so

16 anytime that engine is running, it will actually start

17 recording.

18 COMMISSIONER JONES: I see. Okay.

19 CHAIRMAN DANNER: All right. Well, anyway,

20 the question I had was: There was a violation in 2012 which

21 bears on this violation, and I'm wondering what steps were

22 taken in 2012 to rectify the situation.

23 MR. TRACEY: I'm not certain. I really can't

24 say that any steps were taken, because obviously it happened

25 again.

0110

1 CHAIRMAN DANNER: All right. Thank you.

2 But you are taking steps now --

3 MR. TRACEY: Yes.

4 CHAIRMAN DANNER: -- to rectify that

5 situation?

6 MR. TRACEY: There's another solution to the

7 problem, and that's to make sure none of the drivers ever

8 work more than 12 hours in one session. And that's

9 something that we can do by hiring more drivers or by making

10 sure that nobody ever works more than 12 hours so that we

11 don't have to worry about that.

12 But still, in saying that, we're still going

13 to require a logbook for every captain -- I'm sorry. I use

14 the word captain -- every driver in the fleet from this

15 point going forward.

16 CHAIRMAN DANNER: All right. I think that it

17 is very important, especially where there's something that

18 appears to be a repeat violation.

19 And again, it keeps -- everything I see is

20 we're getting back to recordkeeping. And recordkeeping

21 really is the way we do this comprehensive safety regime.

22 And so while it may appear to be just paperwork, in fact

23 that's the key to making this work.

24 And I noticed in your letter to the City of

25 Seattle you talked about these weren't safety violations;

0111

1 these were recordkeeping violations.

2 And my own view is I don't see the

3 distinction because I believe the recordkeeping violations

4 are critical to safety.

5 MR. TRACY: Understood.

6 CHAIRMAN DANNER: So Judge, so you want to

7 take a break?

8 JUDGE KOPTA: Yes. I think we will -- if we

9 have a break in the questioning, this would be a good time

10 to take our morning break, as is our custom. So we will

11 have a break and come back at 11:00. We're off the record.

12 (Recess from 10:42 to 10:59 a.m.)

13 JUDGE KOPTA: Let's be back on the record

14 after our morning break.

15 And we will resume questioning from Chairman

16 Danner.

17 CHAIRMAN DANNER: All right. Thank you.

18 Mr. Pratt, could you, just for the record,

19 describe the difference between an acute and a critical

20 violation?

21 MR. PRATT: Okay. Just --

22 CHAIRMAN DANNER: From memory.

23 MR. PRATT. Acute is the worst.

24 Sorry for the delay. I'm looking for the

25 definition. I have it in my appendix. I'm just making sure

0112

1 I have the right one that I can quote to you.

2 Okay. This is per 49 CFR Part 385. And I'll

3 try not to read it here. I'll paraphrase because it's a bit

4 -- but acute regulations are those that are identified where

5 noncompliance is so severe that it requires immediate

6 corrective action by the carrier regardless of the overall

7 safety posture. So even if they had had a satisfactory

8 rating, an acute regulation needs to be corrected

9 immediately.

10 Following down the line, a critical

11 regulation is a regulation where noncompliance relates to

12 management or operational controls. They're indicative of a

13 breakdown in the carrier's management controls. Those must

14 also be corrected right away, but it's not at the same

15 level.

16 CHAIRMAN DANNER: So okay. The acute

17 basically says it needs to be fixed immediately. So that

18 has to be rectified before the suspension can be lifted; is

19 that the way you read that?

20 MR. PRATT: An acute regulation has to be

21 corrected before -- if it's a vehicle, it has to be

22 corrected before they operate the vehicle again.

23 And if it's recordkeeping, it needs to be

24 corrected immediately.

25 CHAIRMAN DANNER: So in this case, the case

0113

1 was the --

2 MR. PRATT: Was the driver's license.

3 CHAIRMAN DANNER: So in your view, that

4 situation has been rectified; is that correct?

5 MR. PRATT: Yes. The driver no longer drives

6 for that company.

7 And as far as we know, as of today, all

8 drivers have proper credentials.

9 CHAIRMAN DANNER: All right. Thank you for

10 that clarification.

11 I had a question --

12 COMMISSIONER RENDAHL: Before we go on,

13 Chairman Danner, ask can I ask a follow-up?

14 CHAIRMAN DANNER: Sure.

15 COMMISSIONER RENDAHL: And this is also for

16 Mr. Tracey.

17 So I assume within the 45-day period required

18 for becoming no longer unsatisfactory, but conditional, that

19 -- would Staff would make sure that every single driver does

20 have a valid CDL?

21 Is that part of the requirement to come back

22 into operation, or would you just check a sample of them at

23 that point?

24 MR. PRATT: The fact that we just completed a

25 compliance review, we can state that every driver that they

0114

1 have on their list of drivers currently has the proper

2 credentials.

3 The driver that received the violation no

4 longer drives.

5 What happens when the Company produces their

6 safety management plan is they basically certify that they

7 have come into compliance. So on that particular one,

8 because we've looked at all of the other drivers, I probably

9 would not look at them again.

10 COMMISSIONER RENDAHL: Okay. Thank you.

11 CHAIRMAN DANNER: All right. Thank you.

12 We earlier were looking at -- I can't

13 remember which exhibit it was -- Exhibit R, which was the

14 list of Truck Ducks and a list of all the Ducks.

15 And I'm comparing them to the examination

16 reports. And I see that the dates -- if you look, for

17 example on page 140, it's hard to find 140 because the page

18 number's in the middle of the bar code there. But that's a

19 vehicle examination report for the Kaiser. And it says that

20 the year was 2006. And yet on the list, it says that the

21 year was 1970.

22 Is that the year that it was refurbished,

23 then, the later year, or somehow overhauled?

24 Why is there a discrepancy there?

25 And I'll give you a second to look at that.

0115

1 MR. PRATT: I believe I'm going to ask the

2 Company to respond to that one. I'm not sure.

3 MR. TRACY: I'm still trying to find page 46.

4 CHAIRMAN DANNER: The numbers are kind of --

5 MR. PRATT: On that page --

6 (Multiple speakers.)

7 CHAIRMAN DANNER: So what I'm looking for is

8 page 140. Page 140 is in the middle --

9 MR. PRATT: Duck 9.

10 CHAIRMAN DANNER: -- of a number of pages

11 where the page number is camouflaged by the bar code.

12 COMMISSIONER RENDAHL: Appendix L, I think.

13 CHAIRMAN DANNER: This is Appendix L.

14 Do you have the page in front of you,

15 Mr. Tracey?

16 MR. TRACEY: Yes, I do.

17 CHAIRMAN DANNER: So if you see where it says

18 "vehicle identification" --

19 MR. TRACEY: Yes.

20 CHAIRMAN DANNER: It says the year is 2006.

21 And that year is different than the year that's on the list

22 in Appendix R, which says 1970.

23 MR. PRATT: While he's looking at that, the

24 table on page R is when that vehicle was originally

25 manufactured. The 2006 date that's on there, that's what

0116

1 comes off the registration. And it's when we put a VIN

2 number in the computer system. It pre-fills this

3 information in.

4 So I'm going to take a stab and say that was

5 when that was one was refurbished.

6 But I'll let Mr. Tracey clarify that.

7 CHAIRMAN DANNER: Okay.

8 COMMISSIONER JONES: And Mr. Pratt, while Mr.

9 Tracey is deliberating, is that in the FMCSA?

10 In that a federal registration, or a state

11 registration, or both?

12 MR. PRATT: This would be the state

13 registration. It's a vehicle registration, just like all

14 vehicles by the Department of Licensing.

15 COMMISSIONER JONES: So that's a Department

16 of Licensing database that they maintain?

17 MR. PRATT: Yes.

18 COMMISSIONER JONES: Not us, the UTC.

19 CHAIRMAN DANNER: So Mr. Pratt, on that

20 vehicle, I also noticed that the VIN number that is on the

21 examination report is different from that that's listed on

22 Appendix R. They're close, but there's an extra digit in

23 Appendix R.

24 MR. TRACEY: Okay. I think I can help you

25 with that. It says 2006 because that's -- when we look at

0117

1 the 1945 on Duck No. 6, that is when the chassis was built,

2 the front end. We use the 1945 as we have to have it come

3 up with a date. But because these things have been

4 remodeled, they use new parts and refurbished parts. So we

5 had to come up with a date, and I believe that's the date

6 that was put in originally, but it was refurbished.

7 Now I'm guessing, I'm thinking that 2006 is

8 when it was refurbished, when we got it.

9 CHAIRMAN DANNER: So refurbishment of that

10 nature must be pretty significant. I can't believe that

11 you'd be changing the date each time a repair is done on a

12 vehicle. So that would have been a substantial

13 refurbishment?

14 MR. TRACEY: No, I'm saying the refurbishment

15 was not done by us. It was done by the company we bought it

16 from.

17 CHAIRMAN DANNER: Oh, I see. And when did

18 you purchase it?

19 MR. TRACEY: Do I have that here?

20 CHAIRMAN DANNER: But it was later -- it

21 would have been after 2006?

22 MR. TRACEY: Honestly, I'm sorry. I don't

23 know.

24 CHAIRMAN DANNER: Is it likely it was after

25 2006?

0118

1 MR. TRACEY: I would assume that would be the

2 cause of the discrepancy, but I'm not sure.

3 CHAIRMAN DANNER: And then the issue I raised

4 with the VIN number being wrong, would that --

5 MR. PRATT: I'm going to have to look into

6 that. That's the only --

7 CHAIRMAN DANNER: I can tell you the years

8 are all different because --

9 (Multiple speakers.)

10 MR. PRATT: I can tell you that the table was

11 provided us by the Company. The VIN number that's on the

12 inspection report comes off the registration and out of the

13 database.

14 CHAIRMAN DANNER: Okay. So --

15 MR. PRATT: I'll have to look into why

16 they're different.

17 CHAIRMAN DANNER: So the examination report

18 is the number we'll go with?

19 MR. PRATT: Yes.

20 CHAIRMAN DANNER: All right. So I will try

21 and get us out of the weeds here.

22 I wanted to get a little bit of clarification

23 on the daily inspections. And this is a company policy. I

24 saw this on page 108, I believe I was looking at, that the

25 state requirements don't require daily inspections; is that

0119

1 correct?

2 MR. PRATT: No, that's not.

3 I think what his statement in there is

4 referring to is that they do two inspections. One is

5 required.

6 They have their drivers do the inspections,

7 which is what is required.

8 And they have the mechanics do a daily

9 inspection.

10 CHAIRMAN DANNER: Okay. I knew that they

11 were being done -- or the Company said it was doing daily

12 inspections. So it's not just the company policy; this is a

13 requirement?

14 MR. PRATT: Drivers are required to conduct

15 daily vehicle inspections every time they drive.

16 MR. TRACEY: Mr. Chairman, can I interject

17 here?

18 CHAIRMAN DANNER: Yes.

19 MR. TRACEY: We require the driver to not

20 only do the daily inspection, but before the driver gets

21 there, the mechanics do their own inspection and sign off on

22 that as well.

23 And then that inspection sheet has to go to

24 our ticket booth to make sure a third set of eyes sees that

25 that inspection has been done by two people.

0120

1 CHAIRMAN DANNER: Okay. So this is based on

2 your safety program that says Washington state does not

3 require a mechanic to check the vehicle.

4 MR. TRACEY: Exactly, but we do.

5 CHAIRMAN DANNER: So the state requirement is

6 that the driver look at it, and not the mechanic. But you

7 have a mechanic; that is the policy?

8 MR. TRACEY: Exactly.

9 CHAIRMAN DANNER: Okay. So do you keep

10 records to verify that these daily inspections are being

11 done?

12 MR. TRACEY: Yes, we do. And Mr. Pratt has

13 seen them.

14 CHAIRMAN DANNER: Okay. Are those the same

15 inspection forms that were in Attachment 9?

16 MR. PRATT: Yes. That's the daily Coast

17 Guard --

18 CHAIRMAN DANNER: So that's the one that you

19 were looking at.

20 And where is the captain's operation manual

21 kept?

22 MR. TRACEY: It's provided to each and every

23 one of our captains or drivers.

24 We have it online as well as physically in

25 our offices, which the offices were the -- where the Ducks

0121

1 are kept is where the captains meet in the morning.

2 CHAIRMAN DANNER: Okay. So the -- I'm trying

3 to remember where I saw this. I believe it was in the

4 service bulletin that said, Please keep a copy of the

5 service bulletin in the captain's manual.

6 And I just wanted to see if that was

7 something, then, that was part of this daily inspection.

8 That was the service bulletin with regard to the axles and

9 the vertical canting.

10 MR. TRACEY: Is it kept in the ...?

11 I'm sorry. I'm trying to clarify to

12 understand your question a little better.

13 CHAIRMAN DANNER: Is the service -- the

14 bulletin which is Exhibit T, or Attachment T, says at the

15 bottom of page 181, make available this bulletin to all

16 routes and related technical information personnel using

17 this equipment.

18 And I'm trying to remember -- to figure out

19 where that's being made available to them. How is that

20 being made available to all the personnel using that

21 equipment?

22 MR. PRATT: Chairman Danner, I believe that

23 reference refers to the mechanical staff. This typically

24 would be a mechanical function of looking at axles or

25 canting of wheels.

0122

1 They do have a notation on their daily

2 vehicle inspection report, the document, where they do mark

3 off whether they've done that or not.

4 So the driver does also mark that as well the

5 mechanic.

6 CHAIRMAN DANNER: So both the mechanic and

7 the driver are filling out the form that's in Attachment N,

8 right?

9 MR. PRATT: Yes.

10 CHAIRMAN DANNER: And are they doing it

11 together or separately?

12 Are these separate inspections?

13 MR. TRACEY: Separate.

14 CHAIRMAN DANNER: They're separate

15 inspections?

16 MR. TRACEY: Yes.

17 CHAIRMAN DANNER: So when it says make this

18 bulletin and all related technical information to personnel

19 using this equipment, that's referring just to mechanics?

20 Mr. Pratt?

21 MR. PRATT: Well, the way I would read it,

22 it's kind of a maintenance issue. And the mechanic should

23 at least be the first person that sees it to look into it.

24 CHAIRMAN DANNER: Did the drivers know,

25 though, that they needed to be looking at the wheels and the

0123

1 axle and the possible vertical canting?

2 MR. TRACEY: I think that it was part of the

3 mechanic's inspection.

4 I'm not sure -- I'm sorry. I'm going to take

5 that back. I believe that the drivers were looking for that

6 as well.

7 CHAIRMAN DANNER: Okay. On the inspection

8 form, it does say -- there are different lines. One says to

9 check the steer axle knuckle boots, and another says check

10 the front and rear drive shaft housing and boots.

11 So I'm just trying to get a sense of who is

12 doing the inspection and who is looking for the safety

13 problems that come to mind.

14 MS. BROWN: Your Honor, this is Sally Brown,

15 Attorney General's Office.

16 May I just inquire of Chairman Danner or

17 perhaps remind Chairman Danner that the Stretch Ducks are

18 before the Commission today, and that the service bulletin

19 is part of the National Transportation Safety Board

20 investigation.

21 CHAIRMAN DANNER: Thank you.

22 And I'm inquiring because I want to get a

23 sense of the overall safety culture and safety procedures of

24 the company.

25 So my questions are really going to the

0124

1 overall operations of the company, and not particularly the

2 Stretch Ducks. So I don't think --

3 MS. BROWN: Okay. But the service bulletin

4 that you're inquiring about pertains to the Stretch Ducks.

5 CHAIRMAN DANNER: Yes, I understand that.

6 MS. BROWN: All right. Thank you.

7 CHAIRMAN DANNER: I'm asking about the

8 inspections in general. This is an example of that. Are

9 you okay with that?

10 MS. BROWN: No. But thank you.

11 MR. PRATT. I can clarify, Mr. Danner, that

12 mechanical staffs were the people I talked to when we were

13 in their shop that verified that they did look at the front

14 wheels for that canting when they did their daily

15 inspections.

16 CHAIRMAN DANNER: Okay. So basically,

17 though, we have a mechanic looking at these vehicles every

18 night, and we have drivers before they drive, or every day

19 looking at these vehicles. So there are inspections going

20 on regularly.

21 So I guess there was one issue. I know there

22 was a brake light that was out that the inspection caught,

23 and yet that's on the inspection form too. How is it that

24 that would have been missed?

25 Just went out sometime between inspections?

0125

1 MR. PRATT: Yes. My belief on that one is

2 that's a switch that's a push switch. When you push the

3 brake and everything goes through there, it pushes the

4 switch to make it work.

5 Like a lot of switches, when they sit and

6 don't get used, they stick. I'll use the example of my

7 remote control on my TV. If you don't use your remote for a

8 while, you go to push the button and it doesn't always work.

9 You have to push a few times before it kind of starts. That

10 switch is the same way.

11 Those Ducks had sat there, I believe, almost

12 two months before we had inspected them. So it wasn't

13 surprising.

14 The mechanic at the time literally went over

15 and kind of smacked it and then said, yeah, it's stuck. He

16 went and got a new one off the shelf and put it on in about

17 five minutes. So it's a pretty common thing for those to

18 stick based on lack of use.

19 CHAIRMAN DANNER: And I'm not trying to play

20 gotcha here. I'm just trying to figure out.

21 I mean, you did the inspection; the brake

22 light didn't work. But it is more than likely -- and this

23 is a question -- that an inspector or the driver before it

24 would have tested the brake lights. And so the chance that

25 that vehicle would have been on the road with the broken

0126

1 brake light is -- is it plausible?

2 MR. TRACEY: No, I would say not from me.

3 The mechanic would have checked it and the driver would have

4 checked it before he takes it back out. So if it wasn't

5 operational, if would have become operational before it was

6 put in service.

7 CHAIRMAN DANNER. All right. Thank you for

8 that.

9 I think that's all my questions for now.

10 Oh, I had a question about on page 19 there

11 was a recommendation. Towards the bottom of the page, the

12 very last bullet states, Monitor and track driver fitness,

13 related passenger complaints, and assess safety

14 applications. And this is one of the recommendations that

15 the Commission Staff is making.

16 And I was wondering if passenger complaints

17 had been a factor in your investigation. Were there in fact

18 passenger complaints?

19 MR. PRATT: Mr. Gilbert?

20 MR. GILBERT: We did not actually take any

21 passenger complaints into reason, because we didn't receive

22 any.

23 CHAIRMAN DANNER: So this recommendation,

24 then, is boilerplate?

25 MR. GILBERT: That the Company, that the

0127

1 organization, takes any passenger complaints into

2 consideration.

3 CHAIRMAN DANNER: Okay. This is not here

4 because it was a problem; it's just here because it's a

5 standard good recommendation?

6 MR. PRATT: It's standard language as far as

7 recommendations, yes. And it's a good practice.

8 CHAIRMAN DANNER. Okay. All right. Thank

9 you. That's all I have.

10 JUDGE KOPTA: Thank you, Mr. Chairman.

11 Commissioner Rendahl?

12 COMMISSIONER RENDAHL: Good morning. It's

13 still good morning.

14 So I have a number of questions for the

15 witnesses.

16 But I guess my first question really may be

17 to counsel for the Company. So Mr. Tracey filed a

18 declaration with the Commission on December 11. But that's

19 not being offered in evidence, the exhibit and the

20 declaration?

21 MS. BUCHANAN: If we're talking about the

22 declaration wherein Mr. Tracey attached a safety briefing,

23 then that is offered into the record as an illustrative

24 exhibit.

25 COMMISSIONER RENDAHL: Okay.

0128

1 Mr. Tracey, do you have that today with you,

2 the declaration with the --

3 JUDGE KOPTA: And just to clarify, what we're

4 talking about here is the evidentiary record. So there are

5 documents that are filed with the Commission in this docket

6 that are simply filed. And it would not be an exhibit per

7 se.

8 So what Commissioner Rendahl is asking is if

9 -- is there a reason why would you not want it to be

10 considered as part of the evidentiary record?

11 MS. BUCHANAN: Simply because under my

12 understanding of illustrative records, it fell under the

13 definition of that. But I come from a different perspective

14 than the Commissioners. So I certainly I have no objection

15 to it being included.

16 COMMISSIONER RENDAHL: Well, I think it would

17 be included in the set of documents that Mr. ffitch would be

18 including if that is the illustrative set of exhibits.

19 Is that correct, Ms. Brown or Mr. ffitch?

20 JUDGE KOPTA: No, Mr. ffitch is collecting

21 the public comments. Those are comments coming from

22 nonparties from outside the Commission.

23 Anything that a party files in the docket

24 would simply be like a pleading and would not be part of the

25 evidentiary record.

0129

1 COMMISSIONER RENDAHL: Ms. Brown?

2 MS. BROWN: Commission Staff would object to

3 it being part of the evidentiary record. Commission Staff

4 is in no position to stipulate to the accuracy or inaccuracy

5 of anything in the statement.

6 COMMISSIONER RENDAHL: Okay. I just found it

7 curious why the Company would file this if it's not intended

8 to be a part of the record.

9 MS. BUCHANAN: The intent was to include it

10 as part of the docket or part of information available.

11 But when it came down to what evidence we

12 would present or what exhibits we would present to the

13 Commission for an evidentiary purpose, we did not include it

14 for the very reason Ms. Brown suggests, that we don't have

15 citations to authorities for every proposition therein.

16 COMMISSIONER RENDAHL: Well, I guess I'm

17 concerned because of the effort to almost lobby the

18 Commission with what was in the material, and so it could be

19 part of the illustrative exhibit.

20 But it also raised some concerns for me about

21 the commitment to safety, and I wanted to inquire on that.

22 But I can ask those questions without that document being in

23 evidence. So I'll proceed.

24 So Mr. Tracey, if we talk about the

25 stipulation, in the stipulation, on paragraph 4, paragraph

0130

1 4a.

2 MR. TRACEY: What page is that?

3 COMMISSIONER RENDAHL: It's on page 2 of the

4 stipulation at the top of the page, the stipulation that was

5 filed on Friday.

6 MR. TRACEY: Okay. I'm sorry.

7 COMMISSIONER RENDAHL: On paragraph 4a, which

8 appears at the top of page 2.

9 MR. TRACEY: Yes.

10 COMMISSIONER RENDAHL: Okay. So I think this

11 is really the crux of the agreement between the parties and

12 the crux of Staff's recommendations as well.

13 MR. TRACEY: Right.

14 COMMISSIONER RENDAHL: And you've addressed

15 it a bit in your testimony today.

16 So in my reviewing of the report, and it

17 appeared to be the Staff's concern as well, that there was a

18 lack of oversight and a lack of accountability for meeting

19 the state and federal safety requirements.

20 And so my concern is: Is this going to be

21 one person who's responsible to be the compliance or safety

22 officer, or do you have multiple people?

23 The Staff's recommendation implies more than

24 one. So what is the Company's position here?

25 MR. TRACEY: Well, first of all, we've hired

0131

1 a compliance expert, a nationally known compliance expert

2 who's going to help us with that. They're going to train

3 whatever is responsible.

4 I think it needs to have more than one set of

5 eyes on it, but there will be one person that will be

6 ultimately responsible and who has the authority to make

7 sure that people do what they're supposed to do or be let go

8 from the company. But we will have more than one person

9 actually making sure that this is being done, but one person

10 will have the authority and be in charge of it.

11 COMMISSIONER RENDAHL: So can you explain to

12 me what the organization will look like when you put this

13 into place in terms of accountability from the drivers and

14 the captains up through the various management levels and

15 how the accountability will be maintained?

16 MR. TRACEY: Well, right now we're working on

17 that. We've just hired the expert who is going to help us

18 to put those systems in place.

19 But if I was going to say right now, then I

20 would say that we'll have an operations manager who will be

21 looking at the compliance issues.

22 But we also, we have a compliance and safety

23 officer in the company. Right now he's a safety officer,

24 and it will be a compliance and safety officer who will have

25 the authority to make sure that the systems that are

0132

1 implemented at the suggestion of this safety expert who

2 we're bringing in are implemented and enforced.

3 COMMISSIONER RENDAHL: So that safety officer

4 will be -- will have the obligation and the responsibility

5 for overseeing all of the recordkeeping and making sure that

6 the drivers' files are maintained and checked?

7 MR. TRACEY: Yes. That will be correct.

8 COMMISSIONER RENDAHL: And will that person

9 report directly to you, or who will that person --

10 MR. TRACEY: Either to me or to the general

11 manager.

12 COMMISSIONER RENDAHL: And will you be aware,

13 will you be getting regular reports of the compliance

14 officer or the general manager's review?

15 MR. TRACEY: Yes. I plan to have a monthly

16 review to make sure that things are going the way they're

17 supposed to.

18 COMMISSIONER RENDAHL: So in paragraph 4b it

19 references a description of company expectations for its

20 staff. And you mentioned that people would be let go.

21 Is that the consequences for staff if they're

22 not meeting the safety obligations of the Company?

23 MR. TRACEY: Yes.

24 COMMISSIONER RENDAHL: So in terms of

25 procedures to insure corrective action in paragraph 4c -- I

0133

1 guess 4d, so a statement verifying the review and update of

2 the company's policies and procedures to insure a corrective

3 action plan, so I'm -- does that mean you would have a

4 process much like we do in state service where you would

5 document a violation, provide training, and then if that

6 person doesn't comply, let them go, or you're still working

7 on that plan?

8 MR. TRACEY: We're still working on it, but I

9 would assume that's the way it would work.

10 COMMISSIONER RENDAHL: So for Mr. Pratt and

11 Mr. Gilbert, you just heard my questions to the Company.

12 Are those the sort of provisions from the

13 stipulation that you were envisioning occur?

14 MR. PRATT: Yes. In fact, those were in my

15 recommendations, which these are almost identical to what

16 the recommendations in the report were. So that's exactly

17 what we were hoping.

18 I do believe it takes more than one person,

19 as you asked, to do this. Somebody needs to be ultimately

20 responsible. So I guess I support his approach to say one

21 person will have that responsibility, but multiple people

22 will perform those functions.

23 COMMISSIONER RENDAHL: So in terms of the

24 compliance review investigations, the follow-up

25 investigations that are included in your recommendations and

0134

1 also in the stipulation, I think you mentioned earlier that

2 the follow-up investigations are not the full compliance

3 review?

4 MR. PRATT: The 6-month and the 12-month, the

5 two shorter ones, they're not rated reviews.

6 But we will go in and we will treat them like

7 in any other compliance review, we'll probably take a sample

8 like we normally do. But we'll follow the same procedures

9 that we would use for any other compliance review.

10 COMMISSIONER RENDAHL: And that sampling, is

11 that required by the FMCSA regulations? You have to follow

12 those requirements?

13 MR. PRATT: Yes. You can go outside the

14 sampling if there's unique circumstances or if something

15 calls for it, which we've got in this case.

16 But it is standard procedure under FMCSA and

17 49 CFR to use samples.

18 It's not part of my report, but we have a

19 table -- there's tables that provide sample sizes based on

20 number of drivers, number of vehicles, number of files,

21 different things like that.

22 COMMISSIONER RENDAHL: So do the sample sizes

23 vary depending on the particular federal rule?

24 MR. PRATT: Yes.

25 COMMISSIONER RENDAHL: So for drug and

0135

1 alcohol, it might require a different sampling size than

2 others?

3 MR. PRATT. Correct.

4 COMMISSIONER RENDAHL: Okay. I think

5 Chairman Danner asked you some questions about this

6 particular issue. So why would the sampling procedure that

7 has been used in the past result in a satisfactory rating,

8 but when you reviewed all of the records in this particular

9 investigation it came up with so many violations?

10 Is that just as you mentioned, there may have

11 been a lapse in the company's recordkeeping, or is it

12 something -- is this a problem with the sampling

13 methodology?

14 MR. PRATT: I think you could look at it from

15 a couple of different ways.

16 If you really understand and believe in

17 random sampling -- I don't want to get off into too much

18 talking about statistics and things like that. But if you

19 really follow random sampling, you should be able to find

20 problems that are occurring in the company by just choosing

21 a random sample.

22 But on the flip side of that, because it's

23 random, you also have the chance that you would miss

24 something.

25 And I'll use the driver for an example. Over

0136

1 the past year, they had 51 drivers that drove for them at

2 one time or another. If we had taken a sample, we might

3 have looked at 20 drivers. It's possible that one driver

4 wouldn't have been in that sample. It's also possible they

5 would have been there. They all have a random chance of

6 being in that sample.

7 So it's possible one would be missed in a

8 sample that's not a full look at the company, which is why

9 we felt at this time, with this investigation, with the

10 direction I received from the Commission about thoroughness,

11 that it would be in everybody's best interest to look at

12 everything and to kind of discard the sampling and make sure

13 we didn't miss anything.

14 So that's why this thing took so much longer

15 than normal. We looked at so many more records than we

16 normally look at.

17 I will say sometimes that also applies to

18 what becomes a critical violation, 10 percent of the sample.

19 Sometimes you can take a smaller sample and it takes fewer

20 violations to become critical.

21 So there's pros and cons of sampling or

22 nonsampling on either side.

23 But we felt it was important to look at

24 everything so we didn't miss anything. And I couldn't say

25 -- I didn't want to sit here and say there's no other

0137

1 violations that might have been missed in a random sample.

2 I can say with confidence that we found every violation that

3 was there.

4 COMMISSIONER RENDAHL: I appreciate that.

5 So in terms of the subsequent follow-up, so

6 you'll have the 6-month and the 12-month, and those are not

7 for a safety rating, but what would be the consequences if

8 you did find violations in those subsequent

9 investigations?

10 MR. PRATT: There's kind of a caveat on that

11 one. I guess I would say it would depend on what we found.

12 If I found more violations, repeat of some of these,

13 especially the acute to critical, or the critical type that

14 didn't rise to critical, depending on what it was, I would

15 probably recommend some additional action, either

16 administrative penalties or further actions.

17 COMMISSIONER RENDAHL: And if it was an acute

18 violation involving a vehicle, you would put those vehicles

19 out of service immediately until the defect is corrected; is

20 that right?

21 MR. PRATT. Yes.

22 COMMISSIONER RENDAHL: So I'm going to move

23 on to some of the technical violations.

24 And then I do have some questions for you,

25 Mr. Tracey.

0138

1 So on page 20 of Appendix L, which is the

2 formal -- it looks like the formal documentation that comes

3 out of the FMCSA database of all of the -- this is the

4 actual report of the compliance investigation; is that

5 correct?

6 MR. PRATT: Yes. You said 20? 120?

7 COMMISSIONER RENDAHL: 20. I'm sorry. I'm

8 back at the report. I'm sorry. Your report, page 20. Sorry

9 for that.

10 The ten violations, operating a commercial

11 motor vehicle without proof of the periodic inspection, I'm

12 assuming that those inspections were actually done, but the

13 documents weren't on the vehicle?

14 MR. PRATT: That's exactly what occurred.

15 One of the rules, 396.17(c) requires that a copy of that

16 periodic inspection is carried on the vehicle.

17 And in this case, none of the Truck Duck

18 vehicles had those documents on hand. But we did observe

19 that they went and made copies of those and put them on the

20 vehicles during our investigation.

21 So the inspections were done. They just

22 hadn't put a copy of them on the vehicles.

23 COMMISSIONER RENDAHL: And do you know what

24 the purpose of that is, the requirement to have them on the

25 vehicle?

0139

1 MR. PRATT: It would fall into play during a

2 roadside inspection. If they were to be pulled over by an

3 officer, the officer would want to see the credentials.

4 Since this is a requirement, that they're supposed to be

5 carried on the vehicle, the officer could ask to look at it

6 and make sure that it was there.

7 COMMISSIONER RENDAHL: So if you look at the

8 -- if you look at page 25 of the report, this is your

9 listing of all the various no pattern critical violations.

10 So I think you explained that the pattern has

11 to do with more than a certain number, more than a certain

12 percent of the records?

13 MR. PRATT: A pattern is more than one and

14 more than 10 percent of the number of records you looked at.

15 COMMISSIONER RENDAHL: And is that just for

16 the drug and alcohol, or is that percentage for all of

17 them?

18 MR. PRATT: That's for all of them.

19 COMMISSIONER RENDAHL: Okay. So when you

20 have several issues involving the drug and alcohol program,

21 though, that doesn't include -- that doesn't make it a

22 pattern if there's more than one of separate violations of

23 separate regulations involving drug and alcohol or driver

24 qualifications?

25 MR. PRATT: As long as it doesn't reach the

0140

1 10 percent threshold, yes.

2 So some of these were more. If you want to

3 use an example, I'd say Violation Number 6, which is on page

4 25, there were 35 violations of that. That is more than

5 one.

6 But the rule says more than one and 10

7 percent. And so we looked at 1,230 records on there. So

8 they would have had to have 123 for that to have risen to

9 critical.

10 COMMISSIONER RENDAHL: Okay. So can we talk

11 about the FMCSA requirement? And I'm assuming it's an FMCSA

12 requirement.

13 The report says that the Staff -- that it's

14 -- I guess it's common or it's acceptable practice for after

15 an unsatisfactory rating, to allow the company 45 days to

16 make sure and demonstrate and get approval. Is that a

17 federal requirement; it's not a Commission standard?

18 MR. PRATT: That is federal law under 49 CFR

19 Part 385, yes.

20 COMMISSIONER RENDAHL: Okay. So it's not

21 just something that Staff is deciding, Well, we'll give them

22 45 days. It isn't sort of Staff practice; this is the

23 federal law?

24 MR. PRATT: It's out of here. (Indicating.)

25 COMMISSIONER RENDAHL: Okay. Just checking.

0141

1 CHAIRMAN DANNER: I want to ask a follow-up

2 to that. Basically the federal rules is what our program

3 follows. And we adopt by reference these appropriate CFR

4 sections into our own Washington Administrative Code every

5 year and adopt them by reference; is that correct?

6 MR. PRATT: We adopt them by reference for

7 intrastate operations.

8 CHAIRMAN DANNER: For intrastate operations.

9 So in other words, a violation of a CFR is a violation of

10 the Washington Administrative Code?

11 MS. BROWN: Yes. And the Commission's

12 adoption by reference regulation is WAC 480-30-999 and

13 incorporates 49 CFR Part 385.13(a)(1), which specifies right

14 here in this great big book, the 45 days.

15 CHAIRMAN DANNER: So the point is, though,

16 there may be some confusion about why we are referencing

17 federal regulation and sometimes referencing state

18 regulation, when in fact we have adopted the federal in our

19 own Washington Administrative Code?

20 MR. PRATT: Yes. And we do that so we are

21 comparable and we provide the same level of regulation that

22 you get across the country. Specifically if you have an

23 interstate carrier that comes into our state, they have to

24 follow the same rules that they follow across the country.

25 CHAIRMAN DANNER: All right. Thank you very

0142

1 much.

2 Commissioner Rendahl, I'm sorry.

3 COMMISSIONER RENDAHL: No problem. Thank you

4 for clarifying that.

5 So if you would look at page 26 of the

6 report, and the recordkeeping violation listed as Number 13.

7 So can you explain what this form is, Form

8 MCS-150, and why it's important?

9 MR. PRATT: The MCS-150 form is a document

10 that contains company information that they're required to

11 file every 24 months. It includes ownership information,

12 revenue information, vehicles, miles traveled. And so the

13 federal government requires that that's updated every 24

14 months so that the files are current.

15 So anybody can look. And if you wanted to

16 look at the federal database, for example, online, you can

17 look up and you can see the data that's in that form. And

18 you can see what it says about the company.

19 So it's important information that needs to

20 be updated in case of changes within the company.

21 COMMISSIONER RENDAHL: Okay. I think that's

22 all I have for you right now, Mr. Pratt.

23 So Mr. Tracey, I have a few questions for

24 you. On that one form, the federal form, this was

25 apparently noted in the last compliance review as not having

0143

1 been updated, and that it was last updated in 2009.

2 MR. TRACEY: Which form are you referring

3 to?

4 COMMISSIONER RENDAHL: This is the MCS-150

5 form. And I have to find the reference to it on --

6 MR. TRACEY: Yes, Number 13.

7 COMMISSIONER RENDAHL: Number 13.

8 And so in Appendix L -- and I can't point you

9 to a page number right now, but I recall when I was

10 reviewing this that this was a violation that was noted in

11 the last investigation, and that the form needed to be

12 updated, and yet it still hadn't been updated. Is this

13 something that the compliance officer would also be in

14 charge of making sure it's updated?

15 MR. TRACEY: Yes. The compliance officer is

16 going to go through each and every one of these violations

17 and make sure that we have systems in place so that this

18 will never happen again. So the compliance officer will be

19 in charge of that.

20 COMMISSIONER RENDAHL: So who would have been

21 in charge of this document currently?

22 MR. TRACEY: Perhaps it was -- I would guess

23 that it would be the operations manager. I'm not certain.

24 Obviously, you know, we failed. So somebody

25 wasn't in charge of it. So we're going to fix that.

0144

1 COMMISSIONER RENDAHL: Okay. So if you look

2 at Appendix K -- and that is what the Company submitted to

3 Staff -- this is the safety overview in Appendix K to the

4 report. Do you have a copy of that?

5 MR. TRACEY: I do not have a copy of that, I

6 don't think.

7 COMMISSIONER RENDAHL: It's Appendix K to the

8 report.

9 MR. TRACEY: I've got it.

10 COMMISSIONER RENDAHL: Great. So when was

11 this safety overview prepared?

12 Was this in response to the accident, or was

13 this an existing document?

14 MR. TRACEY: We put this together. All of

15 this is contained in documents that we have, but we put it

16 together for you.

17 COMMISSIONER RENDAHL: As a summary of the

18 policies?

19 MR. TRACEY: Yes.

20 COMMISSIONER RENDAHL: Okay. If you look at

21 the next to last page -- I have it as page 108. And I

22 appreciate that Staff paginated all of these so we can track

23 them.

24 It indicates that the captains have specific

25 requirements. Maybe that was on a different page.

0145

1 At any rate, are the captains required to

2 understand both the Coast Guard and the FMCSA requirements

3 as both a driver and captain, do you know?

4 Are they supposed to know and understand both

5 the federal requirements for the driving as well -- of the

6 motor vehicle as well as the Coast Guard requirements?

7 MR. TRACEY: I believe they are, but I'm not

8 certain.

9 COMMISSIONER RENDAHL: And would that be part

10 of your training program going forward?

11 MR. TRACEY: Yes.

12 COMMISSIONER RENDAHL: Okay. So in your

13 meeting with the mayor's office, have you discussed both the

14 routes and the line of sight issues, or are those still

15 subject to discussion with the City?

16 MR. TRACEY: We did not discuss anything

17 about the line of sight.

18 We just had a brief meeting and we expressed

19 our interest in helping to satisfy all of their concerns.

20 It was a good meeting. But it wasn't a long meeting. It

21 was ten minutes.

22 And we ended up leaving saying that we hoped

23 to get back together again as soon as possible. And they

24 did ask for confidentiality about the meeting.

25 COMMISSIONER RENDAHL: I understand that.

0146

1 Are there plans for additional meetings to

2 discuss the routing issue further?

3 MR. TRACEY: Yes. They've expressed an

4 interest in us meeting with SDOT and talking to them about

5 that.

6 COMMISSIONER RENDAHL: So would it be the

7 Seattle Department of Transportation that would give the

8 routing approval?

9 MR. TRACEY: I'm not certain about that at

10 this moment, because we met with the deputy mayor and the

11 mayor was not there. So I'm not sure who was going to make

12 that decision. They didn't make that clear.

13 COMMISSIONER RENDAHL: Thank you. That's all

14 I have.

15 JUDGE KOPTA: Before you ask, Commissioner

16 Jones, I just want to ask one follow-up on that question.

17 The stipulation would have the Company

18 allowed to operate beginning today, essentially. Would you

19 be able to do that since you are not using the Aurora

20 Bridge, which is what you were previously authorized to do

21 by the City of Seattle?

22 MR. TRACEY: Well, unless the City tells us

23 we can't for some reason, or passes an ordinance or

24 something, we would -- there's only three ways to get to

25 Lake Union. One is the Aurora Bridge, the other's the

0147

1 Fremont Bridge and the other's the Ballard Bridge. So

2 there's only three ways to get there.

3 And to answer your question, we don't

4 anticipate getting up and running tomorrow. We have to get

5 these Ducks back in service. We have to retrain our drivers

6 and our now deckhand, what we're calling him, and make sure

7 that everything that we're doing is perfectly buttoned down

8 before we get up and running again. These Ducks have been

9 out of service for three months.

10 JUDGE KOPTA: Do you have an estimate of when

11 that would be?

12 MR. TRACEY: I do not right now.

13 I also anticipate working with the City of

14 Seattle in trying to accommodate their wishes to get other

15 issues resolved, if and when we can, before we get up and

16 running.

17 JUDGE KOPTA: So you would ask that the

18 Commission provide the authority today so that you can start

19 that process?

20 MR. TRACEY: Absolutely.

21 JUDGE KOPTA: Thank you.

22 Commissioner Jones?

23 COMMISSIONER JONES: And Judge, in terms of

24 timing, I probably have 20 or 30 minutes of questions for

25 both Mr. Pratt and Mr. Tracey. So I think we should

0148

1 probably go through the 12:00. It may go a little past

2 12:00.

3 JUDGE KOPTA: That makes sense. Thank you

4 for letting us know.

5 COMMISSIONER JONES: And then we break maybe

6 after that.

7 JUDGE KOPTA: Okay.

8 COMMISSIONER JONES: Mr. Pratt and

9 Mr. Gilbert, still a little confused about the sampling

10 techniques.

11 And I know, Mr. Pratt, you're referencing 49

12 CFR, and sampling is okay.

13 But I'm a little concerned about the process

14 going forward. We have a 6-month, a 12-month, and a

15 24-month review, correct?

16 MR. PRATT: Correct. That's the

17 recommendation, yes.

18 COMMISSIONER JONES: You stated on the record

19 before that you are not going to do, quote, a rated study at

20 either 6, 12, or 24, which concerns me a bit. So --

21 MR. PRATT: It wouldn't be a rated on the 6

22 and the 12.

23 Again, under federal guidelines, we generally

24 do not do rated compliance reviews any more often than every

25 two years.

0149

1 COMMISSIONER JONES: So I think in several of

2 the documents, I come up with a number of 25 percent or 35

3 percent of -- for your random sampling techniques.

4 But let's bring it down to specifics. There

5 may be ten Truck Ducks on the road pretty soon here in the

6 City of Seattle. So for your six-month review in June, how

7 many would be included in the random sample? Three, four,

8 five?

9 MR. GILBERT: I think it's five.

10 MR. PRATT. Five.

11 MR. GILBERT: I believe it's five, sir.

12 MR. PRATT. I have a table here. I just have

13 to get to it. But I believe Mr. Gilbert is correct.

14 Yes, it would be five if we took a sample.

15 COMMISSIONER JONES: Okay.

16 MR. PRATT: Unless the Commission asked me to

17 look at all of them.

18 COMMISSIONER JONES: To do otherwise, which

19 we could do --

20 MR. PRATT: Sure.

21 COMMISSIONER JONES: -- if we were concerned

22 about both the driver, the vehicle's safety, and other

23 things.

24 Authorities: In several points in your

25 report, I'm concerned just for emphasis about regulatory

0150

1 gaps, if you will, between state and federal agencies, among

2 state agencies, City of Seattle. So I'm trying to get at

3 who has authority, who doesn't have authority.

4 On mirrors and cameras in your report, you

5 said you looked at mirrors and cameras because we asked you

6 to do that.

7 But then I think on page whatever -- you said

8 at the end of the report on page --

9 MR. PRATT: You're talking about page?

10 COMMISSIONER JONES: -- 17, you said the

11 Commission Staff noted no violation of Parts 393.60 or

12 393.80, but then you go on to say the Commission's safety

13 jurisdiction does not-- emphasize "not" -- extend beyond

14 these requirements.

15 So my question to you is who? Who has

16 authority here? Is it State Patrol? Is it FMCSA, is it

17 City of Seattle?

18 MR. PRATT: These are the FMCSA's

19 requirements.

20 COMMISSIONER JONES: Right.

21 MR. PRATT: And these are the only

22 requirements that are in place.

23 So the requirements are on sight distance,

24 that there can't be blocks to the vision of the mirrors and

25 that you have to have so many mirrors placed in appropriate

0151

1 spots.

2 COMMISSIONER JONES: Right.

3 MR. PRATT: And so that's what we looked at

4 for compliance.

5 I think during my review, I also tried to

6 take it a little bit farther. I counted the number of

7 mirrors. I looked at them all to make sure that they were

8 -- that they had good sight distance.

9 The Company provided me with the document

10 that's in Appendix M, which is a diagram of where those

11 mirrors show.

12 I looked at the cameras that are on the front

13 and rear of the vehicles. I made sure they were working.

14 So I sat in the driver's seat as if I was a

15 driver and tried to understand were there any obstructions

16 to sight from the driver.

17 COMMISSIONER JONES: And I appreciate the

18 thoroughness of your review. And I reviewed that appendix

19 as well.

20 My question is more on the authority. And

21 maybe counsel has an answer on this. So who has the

22 authority beyond these?

23 Let's say if the Commission were to -- does

24 the Commission have the authority to go beyond these

25 requirements, or does State Patrol? Who?

0152

1 MS. BROWN: I don't know the answer to your

2 question.

3 I know that many of the references in Staff's

4 investigation report that refer to the limitations go to the

5 Commission's regulatory jurisdiction. I own them, because

6 I'm sensitive to Commission Staff's position that they

7 wanted to do a thorough, comprehensive investigation in

8 response to the Commission's inquiry, and Commission Staff

9 is thorough and comprehensive and wanted to examine site

10 distance and routes and other things.

11 But I think as a legal matter it's important

12 to know the boundaries of the regulatory jurisdiction.

13 Certainly if any of the standards are set forth in 49 CFR

14 Part 385 or elsewhere, those are federal standards that

15 certainly could be enforced at the federal level.

16 Beyond that, in terms of the regulatory authority

17 of the Washington State Patrol or the City of Seattle, I am

18 not qualified or prepared today to speak to that.

19 COMMISSIONER JONES: And that includes

20 Department of Licensing on the CDL's, right, the Commercial

21 Driver's Licenses?

22 MS. BROWN: Yes, thank you.

23 COMMISSIONER JONES: And I was going to ask a

24 question about -- and I appreciate you going beyond and

25 doing what we asked you to do.

0153

1 But the same questions apply to driver

2 distractions, because in the report again, you say -- you

3 talk about prohibition against texting, using a handheld

4 mobile telephone. And at the end of that you say the

5 Commission's authority does not extend beyond this, right?

6 MR. PRATT: That's correct, yes.

7 COMMISSIONER JONES: So you did what we asked

8 you to do, but nothing more.

9 MR. PRATT: I would also say on your last

10 question, Commissioner Jones, the State Patrol has adopted

11 49 CFR as well. So they do follow those same guidelines.

12 COMMISSIONER JONES: Okay. Let me ask you

13 this as a practical matter: Did you coordinate, in your

14 Staff investigation, with Licensing, State Patrol, about

15 some of these issues, or were you too busy just -- I know

16 this was a quite a substantial task for Mr. Gilbert to

17 actually go up and investigate all these things. But was

18 there some coordination or some discussion with those two

19 state agencies?

20 MR. PRATT: Absolutely. On the Department of

21 Licensing, we talked to them around registration of vehicles

22 and licensing to make sure that was all lined up

23 appropriately.

24 I had conversations with the State Patrol

25 about many issues, compliance reviews in general, ratings,

0154

1 findings.

2 I also had a meeting with the FMCSA about the

3 middle of this case, when we started to understand and what

4 we were finding, to get their perspective on some of the

5 violations we found.

6 Plus I mentioned in my report that the FMCSA

7 actually did the drug and alcohol review for us, which is

8 the Part 382. So we met with them, Mr. Gilbert, and they

9 turned over the results of their drug and alcohol

10 investigation to us.

11 COMMISSIONER JONES: Okay. Thank you.

12 Enough on that.

13 And Counsel, you've made your point clear on

14 jurisdiction and scope.

15 A little bit on visual inspection vs. other

16 methods of inspection. So on page 20 in your report, you

17 describe that you looked at all ten Truck Duck vehicles.

18 They passed a CVSA inspection, right?

19 But there was one vehicle that had, quote, a

20 cracked tie rod and grease boot.

21 Mr. Gilbert, could you describe what that is

22 and how serious that is? Is that serious or not?

23 MR. GILBERT: We did not deem it as a serious

24 violation.

25 Basically the cracked tie rod boot was found

0155

1 on the steering joints. So it just basically allows a free

2 movement of the steering without, I guess, any grinding. So

3 the cracked tie rod boot had been greased. There was

4 evidence of grease in that area. However, the tie rod boot,

5 just over time and in out of the water and everything like

6 that, had started to dry up a little bit, and basically

7 started to crack.

8 COMMISSIONER JONES: And the Company fixed

9 that immediately, right?

10 MR. GILBERT: That is correct.

11 COMMISSIONER JONES: And that was on Duck

12 Number 10. Okay. And you're recommending that Duck 10 be

13 placed back in service?

14 MR. GILBERT: Correct. It was never taken

15 out of service. It wasn't something that would have been an

16 out-of-service criteria.

17 COMMISSIONER JONES: Mr. Gilbert, I have a

18 general question here. And I know we get into a Stretch

19 Duck analysis a bit here, but these are visual inspections

20 only of the ten Truck Ducks, right?

21 MR. GILBERT: Mainly visual, yes.

22 We do get underneath. We do check the

23 steering as the driver is rocking the steering back and

24 forth. We make sure, basically, everything is moving the

25 way it should be.

0156

1 So we do actually physical -- we do like

2 grabbing certain sections of the vehicle and making sure

3 there are just no loose parts.

4 COMMISSIONER JONES: No loose parts.

5 But in terms of metallurgical analysis on the

6 materials, corrosion, things like this, you did not carry

7 out an inspection of that, right?

8 MR. GILBERT: No. The only part we would

9 look for corrosion would be the exhaust system to make sure

10 it's nowhere near the passenger compartment. And that would

11 be the only part of the corrosion that we would really look

12 at or pay attention to.

13 COMMISSIONER JONES: And you don't think it's

14 necessary, for example, with the NTSB staff that is listed

15 on page 20, there's an Adrienne Lamb, who's a materials

16 engineer. And materials, I think, is important to other

17 post-accident analysis, whether it's aircraft, trucks or

18 rail. But you did not have a materials engineer or a

19 materials specialist as part of this, right?

20 MR. GILBERT: Not on the Truck Ducks, no.

21 COMMISSIONER JONES: Okay. But overall,

22 you're satisfied that they meet the safety fitness

23 conditions and they're satisfactory to put back on the

24 road?

25 MR. GILBERT: That is correct.

0157

1 COMMISSIONER JONES: Okay.

2 Just a question about the service bulletins,

3 Mr. Pratt. So the service bulletin on the axle rod was sent

4 out in October of '13, correct?

5 MR. PRATT: Correct.

6 COMMISSIONER JONES: Why don't we, Staff, or

7 the federal staff receive service bulletins as a matter of

8 course?

9 Would that be too much work?

10 It's sent out by the manufacturer, right?

11 MR. PRATT: This is kind of a complex answer.

12 So I'll do the best I can.

13 There are no regulations that require those

14 service bulletins to be provided to us. This service

15 bulletin was provided by the manufacturer to the Company and

16 other companies that bought those vehicles.

17 Federal regulations only cover original

18 manufacturers. So they cover things like recalls. So if

19 there was a formal recall done, we would have learned about

20 that. The Company would have had the formal recall. They

21 would have been obligated to follow what they were told to

22 do in that recall.

23 But as far as service bulletins, there is no

24 legal standing that they have to do anything with that

25 service bulletin because there's no regulatory authority

0158

1 over service bulletins.

2 These vehicles have been remanufactured, so

3 they're not governed by the original manufacturer's process.

4 COMMISSIONER JONES: Right. And as referred

5 to earlier in my questions, there was a variety of

6 manufacturers: Kaiser; I think Mr. Smedsrud responded there

7 were like four or five different manufacturers.

8 And then Ride The Ducks International, RTDI

9 out of Branson, Missouri, sends out the service bulletin,

10 right?

11 MR. PRATT: Yes.

12 COMMISSIONER JONES: Is it your understanding

13 that any federal agency, like NTSB or FMCSA, receives these

14 bulletins?

15 MR. PRATT: I'm not aware that they did.

16 They're not required to send those bulletins to them.

17 And so I do not -- the NTSB would probably

18 not have this at all in their role. They do investigations

19 after the fact.

20 The FMCSA through their work, I can't speak

21 to that, but they may have. They may have a line into

22 looking at service bulletins. But if you think of the

23 millions of commercial vehicles that are out there across

24 the country, the odds would be pretty small that they would

25 have this particular bulletin in front of them and would

0159

1 have looked at it or done something with it.

2 COMMISSIONER JONES: And Mr. Gilbert, I'm

3 looking at that bulletin right now up here. And as you said

4 in answer to my previous question on visual inspection, the

5 primary purpose of this was to alert operators to a

6 potential axle fracture due to the lack of adequate

7 mechanical connection between the knuckle housing ball

8 connecting to the knuckle housing, right?

9 MR. GILBERT: Correct.

10 COMMISSIONER JONES: And the primary visual

11 here is this vertical canting issue; that's what they

12 encourage all operators to do, is look at the vertical

13 canting?

14 MR. GILBERT: Correct. That is on the

15 Stretch Duck only.

16 COMMISSIONER JONES: Just on the Stretch

17 Duck?

18 MR. GILBERT: That particular service

19 bulleting applied to the Stretch Duck; however, it is on

20 their inspection checklist to actually look at all the

21 vehicles and the wheel alignment, basically.

22 COMMISSIONER JONES: Let me be clear on this.

23 You looked at the vertical canting issue for all of the ten

24 Truck Ducks, right?

25 MR. GILBERT: We looked at the wheels and if

0160

1 they were canted or not, correct.

2 COMMISSIONER JONES: Mr. Tracey.

3 MR. TRACEY: Yes.

4 COMMISSIONER JONES: It's good afternoon now,

5 no longer good morning.

6 How would you describe the company culture of

7 Ride The Ducks on safety?

8 For example, do you have a mission statement

9 from your company?

10 Many mission statements talk about serving

11 the tourism industry of Seattle, maximizing revenue, making

12 your employees happy. And you talked about your 130

13 employees.

14 But has safety been in your mission statement

15 in your culture from 1999?

16 MR. TRACEY: Yes. It has been. And it has

17 been since day one. Safety has been the number one priority

18 in this company.

19 Our mission statement is to provide safe, fun

20 -- safe family fun to all passengers. Safe is the number

21 one word.

22 You have to understand, someone in my

23 business, that the worst thing that can happen is have a

24 safety problem. So I've never spared any expense on

25 anything at all when it came it safety.

0161

1 COMMISSIONER JONES. In answer to -- I'm

2 going to ask a couple questions about your organization and

3 the compliance organization. And I realize you have hired a

4 nationally recognized consultant.

5 MR. TRACEY: Yes.

6 COMMISSIONER JONES: And who is that

7 person?

8 MR. TRACEY: Matt Daecher. It's the Daecher

9 Consulting Group. He is on the board of Bus Industry Safety

10 Council. He's a well-known expert.

11 We found him from the American Bus

12 Association. We asked for as many names as they could give

13 us. We came up with three. And this is the gentleman that

14 was recommended by everybody.

15 COMMISSIONER JONES: I think that's a good

16 step forward.

17 But in answer to Commissioner Rendahl's

18 questions about single point of contact, I, speaking as one

19 Commissioner who has worked in business, think it's very

20 important to have a single point of contact.

21 And you seem to indicate -- reporting to you.

22 You seem to indicate that there would be a compliance and

23 safety officer reporting to a chief operations officer and

24 then up to you. Is that what you said?

25 MR. TRACEY: To be honest with you, I don't

0162

1 remember what I said.

2 But I do think that -- I think this is a big

3 job. And I think that it has to be taken on by -- it has to

4 be overseen by many people.

5 But there will be one person responsible for

6 making sure that it's being done the correct way.

7 COMMISSIONER JONES: Do you have a board of

8 directors?

9 MR. TRACEY: I do.

10 COMMISSIONER JONES: Do you ever brief your

11 board of directors on safety issues?

12 MR. TRACEY: We talk about the company

13 culture of safety, but on a -- at a board meeting we

14 normally wouldn't bring that up, because they're confident

15 that that is our -- my number one concern in the company.

16 COMMISSIONER JONES: Insurance issues. I

17 think somewhere it indicated in the record that your

18 insurance coverage will lapse in April of 2016. An

19 insurance certificate, as you know, is necessary for the

20 continuation of your operating license.

21 MR. TRACEY: Absolutely.

22 COMMISSIONER JONES: And I don't want to get

23 into confidential or other matters, but this Commission is

24 very well aware of other insurance issues with other

25 carriers, household goods, commercial carriers. A.M. Best

0163

1 is the national rating agency that rates all the insurance

2 carriers by quality.

3 So can you give us a little briefing on where

4 you are in looking for a new insurance carrier, and are you

5 going to have to go for a very costly policy that's lower

6 rated because of all these issues?

7 MR. TRACEY: I can't answer that question.

8 But I can tell you this, that if anybody who

9 has an insurance policy on your car and you have an

10 accident, there's two things that happen. Your rates are

11 going to go up or you're going to be canceled.

12 We have insurance all the way until April --

13 I believe it's April 15. We have an insurance agent who is

14 working on getting us a replacement for that.

15 It's not unusual in the industry. We've had

16 four or five, maybe, I think two or three -- don't hold me

17 to that number, but we've had several insurance companies

18 that have represented the Ride The Ducks of Seattle.

19 COMMISSIONER JONES: Okay.

20 MR. TRACEY: And yes, I'm assuming that our

21 price is going to go up.

22 COMMISSIONER JONES: Yes. I assume it will

23 be. No, I won't say anything further on that point. I know

24 people are listening.

25 So that is a work in progress, basically?

0164

1 MR. TRACEY: Yes.

2 COMMISSIONER JONES: So you're asking us

3 right now to kind of be assured that you're working it hard

4 and that you will get something resolved on this before

5 April, because what the stipulation says is that we allow

6 you to operate again immediately or very soon. And I think

7 it's just important that we have some level of comfort on

8 this.

9 MR. TRACEY: Yes. Obviously we can't operate

10 without insurance.

11 COMMISSIONER JONES: Okay.

12 The City of Seattle routing issues, I think

13 we've asked a lot of questions on that.

14 I'm surprised that the meeting with the

15 mayor's staff was only ten minutes and it's confidential.

16 But I would hope, just speaking for me

17 personally, that something is worked out rather quickly

18 here.

19 Our staff has been working very hard. As you

20 noted in your opening statement, Mr. Pratt and his staff

21 have been working very, very hard over the past three months

22 on this. And I think -- I live in Seattle.

23 I drive across the Fremont Bridge, less across the Aurora

24 Bridge. I know them well. But I'm not offering any

25 personal opinions, but it seems to me this is something that

0165

1 could be worked out.

2 MR. TRACEY: We certainly hope so. Our

3 intent and wish is that we can get on this right away and

4 get it worked out.

5 COMMISSIONER JONES: In the Staff

6 recommendations that you've agreed to, there's a lot of

7 statements about this and that, safety.

8 And there's also, on page 31, in the

9 recommendations section, I want you to talk a little bit

10 about the training programs and the description of any

11 updates.

12 So let's do short term and long term here.

13 So before you operate these ten Truck Ducks, if we make that

14 decision today, what sort of refresher training for the

15 captains and the -- not just the captains, but for the

16 maintenance personnel, are you going to do?

17 MR. TRACEY: Well, we've been putting

18 together a rather extensive book talking about our not only

19 compliance, but also a manual that explains how we're going

20 to in the future -- how we do now, but also in the future

21 how we're going to be training the mechanics and also the

22 drivers -- I refer to them as captains.

23 But we have -- right now we have a required

24 continuing education program for our captains. They're

25 required every quarter to go through three two-and-a-half

0166

1 hour -- I believe it's two-and-a-half hour safety continuing

2 education classes. We're going to continue on with that.

3 Every day, our safety officer talks to each

4 and every captain before they go out and reminds him about

5 safety and the things that you have to watch out for while

6 you're out there on the road. We're going to continue on

7 with that policy.

8 And we're going to reexamine what we can do

9 better.

10 But this is not something new for this

11 company. Since we've been in business, every year we've

12 always tried to get better at everything that we do, and

13 especially safety. That's why we've added more mirrors than

14 are necessary, why we've added cameras on the Ducks, why we

15 require so much time in training as compared to a metro bus

16 company.

17 But my mantra in the company is that we can

18 always do better. There's nothing more important than

19 safety. And anything that we can do to make us better,

20 that's what we do.

21 COMMISSIONER JONES: You didn't answer my

22 question precisely on the short term. So what are you going

23 to do short term, let's say in a week or two weeks, to get

24 the captains and the maintenance personnel trained and

25 refreshed?

0167

1 Because this is the immediate -- your trucks

2 have been out of service for three months.

3 MR. TRACEY: Right.

4 COMMISSIONER JONES: As Mr. Pratt says, there

5 was an ignition switch that during --

6 MR. TRACEY: Right.

7 COMMISSIONER JONES: -- didn't work. They

8 had to replace it. I imagine other things are going to

9 happen like that.

10 MR. TRACEY: Absolutely. Yes.

11 I'm sorry. I didn't mean to interrupt you.

12 COMMISSIONER JONES: No, that's fine. That's

13 my question, short term.

14 MR. TRACEY: First of all, the Ducks are

15 going to have to be run for several hours, probably, you

16 know, eight or ten hours -- and I'm guessing; my maintenance

17 staff is going to dictate what that is -- to make sure that

18 everything on the Duck is working properly before we put any

19 passengers on it. So that's going to happen. And as long

20 as this takes, that's how long it's going to be.

21 As far as the captains or drivers are

22 concerned, we're having a refresher course with them about

23 -- it's like the continuing education course, but we're

24 going to call it a refresher course. And the captains will

25 be -- whoever's going to be driving is going to have a

0168

1 refresher course. They're going to be required to drive the

2 Ducks out on the road for several hours, maybe a day, in

3 order to make sure that they feel comfortable again, because

4 they haven't been driving.

5 At the investigator's request, we haven't

6 even taken the Ducks out of the garage. So they're going to

7 be a refresher course for them as well as a continuing

8 education course.

9 And then we have to also get them accustomed

10 to, now that we have a second person on board, to focusing

11 just on driving, because they're used to doing not only the

12 driving, but the narration as well.

13 And we have to train the captain -- by the

14 way, the narrator right now is going to be another captain.

15 So we will have two captains/drivers on board. And the

16 narrator has to get used to sitting there and looking at the

17 audience rather than looking at them behind.

18 COMMISSIONER JONES: And how many captains do

19 you have in employment right now total?

20 MR. TRACEY: I believe we've got nine right

21 now. But those are the people that we've managed to keep on

22 board and keep paying.

23 There are several of them. I don't have an

24 exact number, but all of them that work for us want to come

25 back to work for us. Obviously because of financial

0169

1 considerations, I couldn't keep everybody on the payroll.

2 COMMISSIONER JONES: So you had to lay off a

3 certain number of captains?

4 MR. TRACEY: We had to lay off a number of

5 people, a lot of people.

6 COMMISSIONER JONES: A lot of people. Okay.

7 So that's short term. What about the medium

8 and longer term on continuing education?

9 I understand -- I think Commissioner Rendahl

10 asked you about captains. But I'm a little bit concerned

11 about continuing education for maintenance and inspection

12 personnel as well.

13 In this Exhibit K, you talk about RTDS offers

14 a continuing education incentive where maintenance

15 technicians can utilize work time and receive reimbursements

16 to obtain ASC -- that's the society of engineers, right,

17 ASC?

18 Mr. Gilbert, do you know?

19 MR. GILBERT: I'm not sure what the exact

20 acronym stands for. It's basically mechanics --

21 COMMISSIONER JONES: -- some sort of mechanic

22 process --

23 MR. GILBERT: It's a mechanic certification,

24 yes.

25 COMMISSIONER JONES: It's a mechanic and

0170

1 varying.

2 So what does this mean, and are you going to

3 do that, given the concerns we have about safety and the

4 axles and maybe the chassis issues?

5 Don't you think this is important,

6 Mr. Tracey?

7 MR. TRACEY: I do.

8 And we encourage all of our mechanics to go

9 to get more education to become more qualified.

10 And we actually assist in paying for that as

11 well. We're going to continue with that policy.

12 I think that because of this accident,

13 there's a heightened awareness in our company about the

14 importance of education and also of two sets of eyes on

15 everything. I'm going to just say that there's -- we're

16 going to do as much and more than we do now in any way we

17 possibly can.

18 COMMISSIONER JONES: And then this is my last

19 question, Mr. Pratt, because this is in the safety

20 management plan, or this, quote, corrective action plan that

21 is going to be submitted.

22 You're going to be looking at these training

23 and education programs as well, right?

24 Is there anything that you would like to say

25 at this time about what you would like to see in there?

0171

1 MR. PRATT: I guess what I would like to see

2 is a plan that does address specifically safety in general,

3 but also specifically addresses the violations that were

4 found, that shows that they were trained on how to prevent

5 those from occurring again in the future, that kind of

6 detail.

7 COMMISSIONER JONES: And then, Mr. Pratt,

8 finally, and then I'm done, how are you going to bring this

9 to the Commission, this corrective action plan at the end of

10 January?

11 Would this be an open meeting item?

12 Would this be a continuation of this

13 docket?

14 How are you -- you've made a point of saying

15 it's not just writing it up; it has to be accepted and

16 received and approved. So obviously you have to do it as

17 Staff first?

18 MR. PRATT: Correct.

19 And I'm probably going to want to defer to my

20 attorney on this. But my guess is we have a 45-day clock

21 that is running. We have to be able to make a decision at

22 the end of that 45 days whether or not we upgrade the rating

23 or not. And I think that's something that's important that

24 would be presented in front of this Commission.

25 Whether it's an open meeting or another

0172

1 hearing, I'll ask Ms. Brown if she could weigh in on that.

2 But I assume it would be some kind of

3 hearing. It could be taken up during the penalty phase of

4 the hearing.

5 MS. BROWN: We anticipate it will be part of

6 this docket, continue as part of this docket.

7 COMMISSIONER JONES: Continue as part of this

8 docket and another hearing on that?

9 MS. BROWN: Correct.

10 COMMISSIONER JONES: Thank you.

11 Those are all my questions.

12 JUDGE KOPTA: Does anyone have any more

13 follow-up at this point, or take a break?

14 CHAIRMAN DANNER: I have two questions, and

15 they should be quick.

16 One is for Mr. Pratt with regard to the

17 insurance. Under no circumstances would this company be

18 operating on the road if they had no insurance; is that

19 correct?

20 MR. PRATT: That's absolutely correct.

21 CHAIRMAN DANNER: We have safeguards in place

22 to make sure we know?

23 MR. PRATT: We do active monitoring of

24 insurance, yes.

25 And by law, insurance companies are required

0173

1 to provide the notice to us that they give. And we, per our

2 policies and our laws, actually, our rules, we notify the

3 company when we get one of those notices, and we ensure that

4 we have proof in the building before the other one cancels,

5 or we do cancel the authority.

6 CHAIRMAN DANNER: All right. Thank you very

7 much.

8 And Mr. Tracey, I just want to make sure that

9 the deckhands, can you tell me, do they have any mechanical

10 or operational responsibilities, or are they just there to

11 talk to the audience?

12 MR. TRACEY: They're going to be trained in

13 CPR and first aid. They already are, but they will be if

14 they have future deckhands.

15 And their other job is going to be to be an

16 additional set of eyes on board to see if there's anything

17 coming up beside the Duck or anything like that that could

18 be a problem when turning right.

19 CHAIRMAN DANNER: But you're not envisioning

20 them being co-pilots, or --

21 MR. TRACEY: No, not at all. There's one

22 person responsible for the driving of that vehicle, and

23 that's going to the driver, the captain.

24 JUDGE KOPTA: All right. Thank you.

25 It's now 12:15. And we will be back at 1:30,

0174

1 and at that time counsel will have an opportunity to ask any

2 clarifying questions on redirect and finish up.

3 Off the record.

4 CHAIRMAN DANNER: May I ask before we go off

5 the record, how much time are we going to take for

6 clarifying questions and so forth?

7 MS. BROWN: I have none.

8 MS. BUCHANAN: We have none as well.

9 CHAIRMAN DANNER: Okay. So if that's the

10 case, should we close this up and then go deliberate?

11 JUDGE KOPTA: We might as well.

12 I did have one question that I wanted to ask

13 the Company.

14 CHAIRMAN DANNER: Do you want to do that

15 now?

16 JUDGE KOPTA: I'll just do that now.

17 If you turn to the joint stipulation,

18 paragraph 7, which is on page 3, it currently reads, "For

19 the Stretch Ducks vehicles, Commission Staff recommends that

20 the Company be required to submit the results of a

21 specialist's evaluation of the front axle housing to Staff

22 for review."

23 Is that something that the Company intends to

24 do?

25 MR. TRACEY: Absolutely. My statement to

0175

1 Mr. Pratt was that we don't want to run a Stretch Duck until

2 we find out exactly -- we want to have a metal specialist

3 and a mechanical engineer look at the Stretch Ducks and the

4 axle housing and give recommendations as to what they feel

5 that we should do, and then we're going to submit the

6 recommendations to the UTC.

7 They're going to look at them. And if they

8 agree with them, then we'll have them implemented.

9 And then my wish is that the UTC inspectors

10 will come out and inspect the fix before we run a Stretch

11 Duck.

12 JUDGE KOPTA: Okay. So then we would be

13 correct in interpreting this provision as saying that the

14 Company will submit the results of these tests to Staff?

15 MR. TRACEY: Absolutely.

16 JUDGE KOPTA: All right. Thank you.

17 Yes, Mr. ffitch?

18 MR. FFITCH: I did have one clarifying

19 question, if I may?

20 JUDGE KOPTA: Sure.

21 MR. FFITCH: I was going to confer with

22 counsel over the lunch hour about this, but I think it's

23 brief. I just wanted to take this opportunity since it

24 appears we're wrapping this up prior to deliberation.

25 With respect to the Aurora Bridge pledge that

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1 the Company has made, there's been discussion here about

2 having that potentially be withdrawn from the stipulation.

3 And I think the Company made that statement. So I have a

4 question for -- or a question or clarification for the

5 Company about that.

6 My understanding would be that while they're

7 talking about being open to withdrawing that from the

8 stipulation, that the pledge by the Company to not use the

9 Aurora Bridge route would remain in force or in effect. And

10 that's my question for the Company.

11 JUDGE KOPTA: The Company certainly may

12 answer that. Whether or not it's in the stipulation, does

13 the Company pledge not to use the Aurora Bridge; I believe

14 is that what you're asking, Mr. ffitch?

15 MR. TRACEY: Well, the chairman brought up a

16 really good point, which I didn't even think of. And that

17 is if we stipulate that we're not going to use the Aurora

18 Bridge and then the City of Seattle says that we can't use

19 the Fremont Bridge, then it's getting to a point where we

20 may not be able to run our company.

21 So I think that Mr. Chairman's point was very

22 valid. And I think we should take that into consideration,

23 because we haven't negotiated with the City of Seattle yet.

24 JUDGE KOPTA: Mr. ffitch, anything further?

25 MR. FFITCH: No, thank you.

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1 MR. TRACEY: Excuse me. Could I clarify one

2 statement that I made for the record a little bit earlier?

3 I talked about the logbook issue, and I said

4 that we would have everybody, all of the drivers, fill out a

5 logbook.

6 Actually, the logbooks would be for people

7 that were working over 12 hours. And our job would be to

8 either keep them under 12 hours, but if they're over, then

9 there would be a logbook in place.

10 And then obviously we're going to find an app

11 that will keep us in compliance.

12 So I just wanted to clarify that statement,

13 because I said all drivers would be required to have a

14 logbook, but that probably won't be the case.

15 CHAIRMAN DANNER: So may I ask, why wouldn't

16 you want to have all drivers filling out logbooks?

17 MR. TRACEY: Because it's not necessary if

18 you don't go over 12 hours.

19 CHAIRMAN DANNER: Okay. But --

20 MR. TRACEY: And what they were -- I don't --

21 that's what I was --

22 CHAIRMAN DANNER: So how do we know that they

23 haven't worked over 12 hours except that we trust them to

24 fill out the logbook?

25 MR. TRACEY: I'm sorry. I'm confused by

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1 that.

2 CHAIRMAN DANNER: How do we make sure, if

3 they're working a normal day and they don't fill out the

4 logbook, if they work longer --

5 MR. TRACEY: It would be from their time

6 cards.

7 CHAIRMAN DANNER: It would be from their time

8 cards, which is how we did it in this investigation.

9 MR. TRACEY: Exactly.

10 CHAIRMAN DANNER: All right.

11 MR. FFITCH: Your Honor, I did have an

12 afterthought. If I may, just one more question on the

13 Aurora matter for the Company.

14 Am I correct in understanding that the pledge

15 would remain in place, however, unless and until you get

16 something worked out with the City of Seattle with regard to

17 the route authority?

18 JUDGE KOPTA: Mr. Tracey?

19 MR. FFITCH: It's a question for the witness.

20 JUDGE KOPTA: Mr. Tracey?

21 MR. TRACEY I don't know how to answer that

22 question because we haven't worked out something with the

23 City yet. It would be crazy for me to say we're not going

24 to go over the Aurora Bridge if they say you can't go over

25 any other bridge in the city. Our wish is to not go over

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1 the Aurora Bridge.

2 CHAIRMAN DANNER: So my understanding was

3 after the accident there was concern about the Aurora

4 Bridge. And the Company pledged that they wouldn't use the

5 Aurora Bridge.

6 Subsequent to that, the City of Seattle made

7 it known that they have concerns about the alternative,

8 which is the Fremont Bridge.

9 MR. TRACEY: Exactly.

10 CHAIRMAN DANNER: That's why I raised the

11 point this morning about whether we should have language in

12 here with regard to the Aurora Bridge pledge, since we don't

13 know, given the choice of routes, what the City's druthers

14 are; and shouldn't we get that information before we

15 preclude one route or have the Company pledge not to use one

16 route.

17 And so I'm just trying to figure out how we

18 should address that in our deliberations today. And it may

19 be that we should let folks stew on that over the lunch hour

20 and come back and have some further discussion on that

21 before we deliberate. Is that okay with the

22 Commissioners?

23 COMMISSIONER JONES: Sure.

24 CHAIRMAN DANNER: All right.

25 JUDGE KOPTA: All right. We'll be back at

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1 1:30.

2 We'll be off the record.

3 (Luncheon Recess from 12:24 to 1:30 p.m)

4 JUDGE KOPTA: Let's be back on the record

5 after our lunch break.

6 When we broke, we were having a discussion

7 about the Company's representation that it would not use the

8 Aurora Bridge. And we suggested that the parties discuss

9 that issue as to whether they would want to amend the

10 stipulation. So I will ask now if the parties have had that

11 discussion?

12 MS. BUCHANAN: Yes, your Honor. We've had an

13 opportunity to confer over the lunch hour. And along with

14 Attorney General Brown, we would propose and stipulate to

15 striking paragraph 9 from the stipulation altogether and

16 leaving that issue outside of the stipulation; and for

17 Mr. Tracey, who has no intention, no desire whatsoever to

18 use the Aurora Bridge, to continue using the Fremont Bridge

19 and working with the City on routing from there.

20 JUDGE KOPTA: And Mr. ffitch, is that

21 acceptable to public counsel?

22 MR. FFITCH: Your Honor, I believe so.

23 I guess we were hoping for a statement from

24 Mr. Tracey to that effect that while that would be stricken

25 from the stipulation itself, that the existing commitment to

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1 not use the bridge would continue. That was the

2 clarification we were seeking.

3 That's obviously been a major issue of public

4 concern, so that's why I'm pursuing this point, your Honor.

5 So if Mr. Tracey could just acknowledge that

6 on the record, we'd be satisfied.

7 MR. TRACEY: Certainly. We have absolutely

8 no intention of ever using the Aurora Bridge again.

9 We've talked about our willingness to work

10 with the City to address concerns about the Fremont Bridge.

11 Incidentally, we've been using the Fremont Bridge for nearly

12 20 years now with no incidents.

13 So we do not want to use the Aurora Bridge.

14 So we're going to work with the City to make sure that the

15 Fremont Bridge is another option.

16 CHAIRMAN DANNER: So just to be clear, what

17 you're saying is you want to work with the City, but you

18 have no intention of using the Aurora Bridge. If the City

19 says we don't want you to use the Fremont Bridge; we'd

20 rather you use the Aurora Bridge, it seems to me you're at a

21 standstill.

22 So are you saying that in no way would you

23 use the Aurora Bridge?

24 MR. TRACEY: I'm saying that I believe that

25 the City and Ride The Ducks of Seattle can work this out so

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1 that I won't have to go over the Aurora Bridge ever again.

2 CHAIRMAN DANNER: And if they come to a

3 different conclusion, then --

4 MR. TRACEY: Then we're going to have to look

5 at other options down the road.

6 CHAIRMAN DANNER. I hope that you will go in

7 and have discussions with the City of Seattle with an open

8 mind and that they will have an open mind, and that you can

9 have a good, thorough discussion.

10 MR. TRACEY: I actually believe that we will

11 be able to get this done.

12 JUDGE KOPTA: And Mr. Pratt or Ms. Brown,

13 there is a recommendation in Staff's report with respect to

14 the Aurora Bridge. Are you withdrawing that from your

15 recommendations, or simply putting it in abeyance, or?

16 MS. BROWN: Do you have a specific reference,

17 your Honor?

18 COMMISSIONER JONES: It's on page 17.

19 MS. BROWN: Thank you.

20 MR. PRATT: Okay. I would just like to

21 comment on that, that that is not a statement; that's it's a

22 recommendation. That's just a paragraph where I wrote that

23 Mr. Tracey had announced he would not use the bridge.

24 So I think it would just follow along with

25 the decision that was made here today.

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1 JUDGE KOPTA: Okay. I just wanted to clarify

2 that we didn't have a discrepancy between the stipulation

3 and Staff's report. All right. That ties up that loose

4 end.

5 I believe the Commissioners want to take

6 maybe five minutes to discuss.

7 CHAIRMAN DANNER. Thank you. We have been

8 having discussions over the lunch hour. And I would like

9 just a little more time with the Commissioners, and then we

10 will come back and give you our thoughts. So if we could

11 recess for five to ten minutes.

12 JUDGE KOPTA: We will take a brief recess and

13 be back within ten minutes. Thank you.

14 We're off the record.

15 (Recess from 1:39 to 1:45 p.m.)

16 JUDGE KOPTA: Let's go back on the record

17 after our brief recess. And I defer to the Chairman.

18 CHAIRMAN DANNER. All right. Thank you.

19 Good afternoon. The Commission has proceeded

20 in this docket to date pursuant to RCW 34.05.479, Emergency

21 Adjudicative Proceedings. The statute authorizes the agency

22 to take only such action as is necessary to prevent or avoid

23 the immediate danger to the public health, safety or welfare

24 that justifies the use of an emergency adjudication.

25 The Commission suspended Ride The Ducks'

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1 certificate to prevent or avoid the immediate danger to

2 public safety posed by the Company's operation of vehicles

3 that are the same as or comparable to the vehicle involved

4 in the fatal collision in Seattle.

5 Our sole inquiry at this point is to

6 determine whether the immediate -- whether an immediate

7 danger to public safety still exists that the Commission

8 must prevent or avoid by continuing to suspend the

9 certificate of Ride The Ducks in whole or in part.

10 We conclude that no immediate danger to

11 public safety exists that requires continued suspension of

12 the entirety of Ride The Ducks' certificate.

13 We therefore accept the parties' joint

14 stipulation with certain amendments, which we'll discuss in

15 a moment, and allow the Company to resume operations of its

16 Truck Duck vehicles.

17 Each excursion must include a second Staff

18 member to lead the tour so that the driver is responsible

19 only for operating the vehicle.

20 We prohibit Ride The Ducks from providing

21 service using Stretch Duck vehicles, however, until the

22 Company has demonstrated that those vehicles pose no

23 immediate threat to public safety.

24 We do not reach these conclusions lightly.

25 The Commission is committed to maximizing the safety of

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1 transportation companies and services we regulate. But we

2 must act within the confines of our statutory authority and

3 based on the evidence before us. Only if we find an

4 immediate danger to public safety can we continue to suspend

5 the Ride The Ducks certificate without further process.

6 Pursuant to the stipulation, the Company will

7 submit, and the UTC will review and must approve, the

8 Company's safety management plan. The details of that plan

9 are included in Appendix L at pages 119 to 122 and in the

10 investigation report prepared by the UTC Staff.

11 We commend the Staff for its thorough and

12 comprehensive investigation of Ride The Ducks' operations,

13 vehicles, and records. The results of this examination

14 provide a solid evidentiary foundation for our

15 determinations.

16 The evidence demonstrates that Ride The

17 Ducks' operations are consistent with the Commission's

18 regulations and the statutory requirements that the

19 Commission enforces.

20 The Truck Ducks have passed Staff's rigorous

21 inspection. And under these circumstances, suspension of

22 Ride The Ducks' certificate as to the Truck Ducks is no

23 longer necessary to prevent or avoid an immediate danger to

24 the public.

25 Staff has also found several hundred

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1 violations of applicable safety regulations and has proposed

2 an unsatisfactory safety rating for the Company based on one

3 acute and six critical violations. These are serious

4 violations that present cause for concern, but none of them

5 rises to the level of presenting an immediate danger to the

6 public.

7 Under federal rules governing motor vehicle

8 safety -- and those are rules which the UTC enforces --

9 companies that receive an unsatisfactory rating are allowed

10 a period of 45 days to remedy the underlying violations

11 comparable to those at issue here and to request a revised

12 safety rating. If the Company fails to earn a new rating,

13 the Commission may suspend or revoke the operating

14 authority.

15 We find no basis in the evidence before us to

16 treat Ride The Ducks any differently in this regard.

17 The remaining recommendations in the report

18 do not address the issue in this emergency adjudication, but

19 will be dealt with later. And that includes the complaint

20 and possible monetary penalties.

21 With regard to the stipulation, the

22 amendments that we propose are as previously agreed to by

23 the parties to remove paragraph 9, so that we will not put

24 in the stipulation or require that the Company will exclude

25 the use of the Aurora Bridge in its routes. We will leave

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1 that to the Company, and we urge them to work with the City

2 of Seattle on selecting routes and putting proper conditions

3 on that.

4 In addition, we want to change the language

5 of paragraph 7 so that it reads as follows: For the Stretch

6 Duck vehicles, the Company will submit the results of a

7 specialist's evaluation of the front axle housings to Staff

8 for review. Commission Staff will then make a

9 recommendation to the Commission about whether to return the

10 Stretch Ducks to service.

11 That is our ruling. We will issue an order

12 in the next day or two that will put this in writing. But

13 for now, the Company has the authority to resume operations

14 and the emergency suspension is lifted.

15 Is there anything further to come before the

16 Commission today?

17 JUDGE KOPTA: Hearing nothing, we are

18 adjourned. Thank you.

19 (Whereupon, the proceedings were

20 concluded at 1:51 p.m.)

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4 CERTIFICATE OF REPORTER)

5 STATE OF WASHINGTON ) ss

6 COUNTY OF KING )

7 I, Elizabeth Patterson Harvey, a Certified Court

8 Reporter and Registered Professional Reporter within and for

9 the State of Washington, do hereby certify that the

10 foregoing proceedings were taken by me to the best of my

11 ability and thereafter reduced to typewriting under my

12 direction; that I am neither counsel for, related to, nor

13 employed by any of the parties to the action, and further

14 that I am not a relative or employee of any attorney or

15 counsel employed by the parties thereto, nor financially or

16 otherwise interested in the outcome of the action.

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Certified Court Reporter in

20 The State of Washington

21 My license expires December 21, 2016

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