

BEFORE THE WASHINGTON STATE

UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND)
TRANSPORTATION COMMISSION,)
Complainant,)
v.)
RIDE THE DUCKS OF SEATTLE, L.L.C.,) DOCKET TE-151906
d/b/a SEATTLE DUCK TOURS,)
Respondent.)

EVIDENTIARY HEARING

Volume III - Pages 52-188

ADMINISTRATIVE LAW JUDGE GREGORY KOPTA

9:30 AM.

DECEMBER 21, 2015

Washington Utilities and Transportation Commission
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A P P E A R A N C E S (Continued)

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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

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.

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 ffitich, 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

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

TESTIMONY OF DAVID PRATT

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.

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?

TESTIMONY OF DAVID PRATT

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,

TESTIMONY OF DAVID PRATT

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

TESTIMONY OF DAVID PRATT

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

TESTIMONY OF DAVID PRATT

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.

TESTIMONY OF DAVID PRATT

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

TESTIMONY OF DAVID PRATT

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.

TESTIMONY OF DAVID PRATT

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

TESTIMONY OF DAVID PRATT

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

TESTIMONY OF DAVID PRATT

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

TESTIMONY OF DAVID PRATT

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

TESTIMONY OF DAVID PRATT

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

TESTIMONY OF DAVID PRATT

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

TESTIMONY OF WAYNE GILBERT

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

TESTIMONY OF WAYNE GILBERT

12
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?**

TESTIMONY OF WAYNE GILBERT

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

TESTIMONY OF WAYNE GILBERT

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

TESTIMONY OF WAYNE GILBERT

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,

TESTIMONY OF ROGER SMEDSRUD

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?**

TESTIMONY OF ROGER SMEDSRUD

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

TESTIMONY OF ROGER SMEDSRUD

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

TESTIMONY OF ROGER SMEDSRUD

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.

TESTIMONY OF ROGER SMEDSRUD

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?

TESTIMONY OF BRIAN TRACEY

1 MR. GILBERT: Correct, as long as the
2 maintenance is upkeep 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.

TESTIMONY OF BRIAN TRACEY

11
12
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

TESTIMONY OF BRIAN TRACEY

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.

TESTIMONY OF BRIAN TRACEY

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

TESTIMONY OF BRIAN TRACEY

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

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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

TESTIMONY OF BRIAN TRACEY

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.

QUESTIONS BY THE COMMISSIONERS

22 CHAIRMAN DANNER: Good morning, everyone.

23 So let me start with just a few mechanical
24 questions for Mr. Pratt. So the Company will submit a plan
25

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

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.

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.

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

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

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

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

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

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

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

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.

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

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

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.

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

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

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

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

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

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

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.

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;

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

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

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

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.

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

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

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?

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

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.

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

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.

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

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

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?

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

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, it 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

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.

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.

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

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

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

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

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

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

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

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

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.

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?

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

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.

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

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

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.

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.

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.

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

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

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.

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

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

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?

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.

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,

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

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.

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.

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

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

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

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 to safety.

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

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

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?

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

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

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?

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

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

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

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?

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

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

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,

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

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

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.

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

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

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

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

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

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.

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'

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

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

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

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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