

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

RIDE THE DUCKS OF SEATTLE, L.L.C.,
d/b/a SEATTLE DUCK TOURS,

Respondent.

DOCKET TE-151906

MOTION TO AMEND COMPLAINT
AND PROPOSED FIRST AMENDED
COMPLAINT

I. RELIEF REQUESTED

1 Staff of the Washington Utilities and Transportation Commission respectfully
requests that the Commission amend its Complaint dated September 29, 2015. Staff brings
this motion under WAC 480-07-395(5), which allows the Commission to amend pleadings
“on such terms as promote fair and just results.”

2 To promote fair and just results here, the Commission should amend its complaint to
include: (1) updated causes of action alleging the violations set forth in Staff’s investigation
report filed on December 15, 2015, and (2) a request for monetary penalties. Staff’s
proposed First Amended Complaint is enclosed with this filing.

II. STATEMENT OF FACTS

3 On September 24, 2015, a vehicle owned and operated by Ride the Ducks of Seattle,
LLC d/b/a Seattle Duck Tours (Ride the Ducks of Seattle or Company) was involved in a
collision in Seattle, Washington. The collision resulted in five deaths.

4 On September 28, 2015, the Commission entered Order 01 suspending the
Company’s operating authority on an emergency basis pending Staff’s investigation of the
Company’s fleet, drivers, and operations.

5 On September 29, 2015, the Commission filed a complaint alleging that the
Company violated safety regulations contained in Title 49 CFR and operated at least one
vehicle in an unsafe manner. The adjudication initiated by the September 29 complaint is
related to, but separate from, the emergency adjudication initiated on September 28.

6 On December 15, 2015, Staff filed its investigation report. Staff found that Ride the
Ducks committed 442 violations of motor carrier safety rules or laws and one violation of
RCW 81.04.530 for conducting commercial motor vehicle operations without a compliant
controlled substance and alcohol testing program. Staff also recommended that the
Commission impose monetary penalties.

7 On December 21, 2015, the Commission held an evidentiary hearing as part of the
emergency adjudication initiated on September 28, 2015.

8 On December 22, 2015, the Commission entered Order 05, which authorized the
Company to resume operation of its "Truck Duck" vehicles but maintained in force the
Commission's suspension of the Company's "Stretch Duck" operations.

9 On January 6, 2016, the Commission scheduled a prehearing conference related to
the complaint filed on September 29, 2015. The conference is set for January 27, 2016.

III. STATEMENT OF ISSUES

10 The issue presented by this motion is whether the Commission should amend its
complaint by replacing it with the proposed amended complaint enclosed herein.

IV. EVIDENCE RELIED UPON

11 Staff relies on the record in this docket and the attached proposed First Amended
Complaint.

V. ARGUMENT

12 WAC 480-07-395(5) allows the Commission to amend pleadings “on such terms as
promote fair and just results.” Here, the Commission will promote fair and just results by
amending its complaint to include: (1) updated causes of action alleging the violations set
forth by Staff in its investigation report and (2) a request for monetary penalties.

13 The Commission issued its complaint on September 29, 2015, just days after the
deadly crash that gave rise to this docket. The Commission’s focus at that time was the
emergency adjudicative proceeding initiated on September 28.

14 The Commission contemplated that the enforcement phase of this docket would
commence at a later time, after Staff had a reasonable opportunity to investigate the
Company’s vehicles, drivers, and operations. The Commission’s complaint issued on
September 29 incorporates Staff’s request that “following the investigation, the Commission
[will] take appropriate action based on Staff’s findings.” Complaint ¶ 17.

15 Staff’s investigation is now complete. As set forth in the Investigation Report, Staff
found that the Company committed 442 violations of motor carrier safety rules or laws
contained in Title 49 CFR. Seven of these violations established that the Company
conducted commercial motor vehicle operations with a noncompliant drug and alcohol
testing program contrary to RCW 81.04.530 (bringing the total number of violations to 443).
Staff recommended that the Commission impose monetary penalties.

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Based on Staff's findings and penalty recommendation, Staff contends that the Commission will "promote fair and just results" by issuing the proposed amended complaint enclosed herein.

DATED this 19th day of January 2016.

Respectfully submitted,

ROBERT W. FERGUSON
Attorney General

 WSBA # 45586
SALLY BROWN
JULIAN BEATTIE
Assistant Attorneys General
Counsel for Washington Utilities and
Transportation Commission Staff