

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND)	
TRANSPORTATION COMMISSION,)	DOCKET TE-151906
)	ORDER 06
Complainant,)	
)	ORDER APPROVING UPGRADE OF
v.)	SAFETY RATING
)	
RIDE THE DUCKS OF SEATTLE,)	
L.L.C. d/b/a SEATTLE DUCK TOURS,)	
)	
Respondent.)	
.....)	

BACKGROUND

- 1 On September 24, 2015, a vehicle owned by Ride the Ducks of Seattle, LLC d/b/a Seattle Duck Tours (Ride the Ducks or Company) collided with another vehicle on the Aurora Bridge in Seattle, resulting in the death of five people and serious injuries to many others. On September 28, 2015, the Washington Utilities and Transportation Commission (Commission) conducted emergency adjudicative proceedings in this docket pursuant to RCW 34.05.479 and entered Order 01, Notice of Emergency Adjudication and Order Suspending Certificate (Order 01). Order 01 suspended Certificate No. ES-00146 to operate and provide excursion services (Certificate) held by Ride the Ducks pending the results of a Commission staff (Staff) investigation and inspection of Ride the Ducks’ entire fleet of vehicles, drivers, and operations.

- 2 On December 15, 2015, Staff filed its Compliance Investigation Report (Report). The Report outlines the results of Staff’s investigation of the Company’s operations, vehicles, and records. Among other findings, Staff discovered many violations of the Code of Federal Regulations (CFR) during its inspection of Ride the Ducks’ records. Staff gave the Company an unsatisfactory safety rating based on one violation of an acute regulation, six violations of a critical regulation, and two recordable accidents in 2015, including the September 24 incident. Staff found 131 violations of five other critical regulations and 304 violations of non-acute/non-critical regulations, none of which factored into the safety rating.

- 3 Staff noted that federal rules require carriers to request and receive a change in their safety rating within 45 days of an unsatisfactory rating. Under these rules, carriers may operate during the 45 days, during which time they must take corrective action and request and receive a change to an unsatisfactory safety rating. If a carrier continues to be in violation of applicable regulations at the end of the 45-day period, the Commission must prohibit that carrier from further operations. Staff recommended that the Commission require Ride the Ducks to request and receive a change to the unsatisfactory safety rating by January 29, 2016.
- 4 On December 18, 2015, Staff filed a Joint Stipulation of Staff and Ride the Ducks (Stipulation). With respect to the rule violations, the parties stipulated as follows:
- By January 29, 2016, Ride the Ducks will request a change to Staff’s unsatisfactory safety rating for the Company. The request will include a safety management plan that provides a detailed description of the actions Ride the Ducks takes to address each specific violation and outlines how the Company will comply with each requirement in the future. Staff will upgrade the Company’s safety rating to “conditional” once Staff determines that the management plan meets the requirements in the Stipulation.
 - Staff will conduct a follow-up compliance review inspection in six months and again in one year. Staff will conduct another review after two years and issue a safety rating for Ride the Ducks based on the outcome of that inspection.
- 5 Following an evidentiary hearing, the Commission entered Order 05 on December 22, 2015. Among other requirements, the Commission ordered Ride the Ducks to “request and receive a change to its unsatisfactory safety rating by January 29, 2016, including but not limited to obtaining Commission approval of a safety management plan.”¹
- 6 On January 22, 2016, Ride the Ducks provided Staff with the Company’s Safety Management Plan and supporting documentation (Plan). The Plan describes how each violation occurred and details actions the Company has taken to correct the deficiencies that resulted in the violations and to ensure future compliance. Ride the Ducks has designated four key members of its management team with primary responsibility for complying with applicable safety regulations. The Company has amended existing practices and policies or adopted new measures to ensure compliance with regulatory

¹ Order 05 ¶ 25.

safety requirements. Ride the Ducks has provided updated training to all of its employees on these policies and procedures and revised its Disciplinary Action policy to clarify that employee conduct and responsibilities include meeting all regulatory requirements subject to disciplinary action for failing to do so. Ride the Ducks has also established verification and review procedures that provide for ongoing compliance monitoring, both by Company personnel and through periodic external audits and reviews.

7 On January 25, 2016, Staff filed a letter with the results of its review of the Plan. Staff has concluded that the almost 700-page Plan is thorough and comprehensive and meets the requirements of Order 05 and 49 C.F.R. Part 385:

- The Plan was submitted on time and contains all required information.
- The Plan addresses each of the conditions listed in recommendation 2 of Order 05.
- The Plan contains a detailed description of the corrective actions taken to address each specific violation and outlines how the company will stay in compliance with each requirement in the future.
- The Plan provides names and titles of company personnel who have responsibility to ensure compliance with safety rules and regulations. It also clarifies that these personnel are authorized and required to hold staff accountable for following safety requirements.
- The Plan spells out the expectations of company staff related to safety requirements. Updated safety policies and procedures are included.
- The Plan contains a statement indicating that the Company reviewed and updated its training programs and provides a description of the updated training that focuses on the areas where violations were discovered. Annual safety training requirements have been established for all personnel. Updated training plans are included.
- The Plan contains a statement verifying the review and update of the Company's policies and procedures to ensure a corrective action plan for staff that do not comply with safety requirements. Updated policies and procedures are included.
- The Plan includes a description of an internal auditing program that will help ensure ongoing compliance with United States Department of Transportation (USDOT) requirements.

Accordingly, Staff recommends that the Commission upgrade the Company's safety rating to conditional.

- 8 On January 26, 2016, Public Counsel provided notification that it does not object to Staff's recommendation. All parties agree that there are no disputed facts and that the Commission need not conduct an evidentiary hearing on this issue.

DISCUSSION AND DECISION

- 9 We concur with and adopt Staff's recommendation.² We agree that the Plan provides the information and changes to Ride the Ducks' policies and procedures required in Order 05 and in Commission and federal safety rules. The Company's one acute and six critical violations, as well as the two reportable accidents, are serious safety infractions. We are satisfied, however, that the Company regards them as such and has taken appropriate actions to correct those violations and to adopt measures to ensure that Ride the Ducks will comply with all applicable safety requirements.

- 10 The Commission will closely monitor Ride the Ducks' compliance with its Plan and with the safety regulations we are charged with enforcing, and we will retain oversight of the Company's safety practices to protect the traveling public. Ride the Ducks and Staff previously stipulated and we approved a process by which Staff will conduct a follow-up compliance review inspection within six months and again within one year, during which time the Company will continue to have a conditional safety rating. Staff will conduct another inspection after two years to determine whether to upgrade the conditional rating to satisfactory.³ We also note that the Commission will conduct additional enforcement action, including but not necessarily limited to assessing penalties, for Ride the Ducks' past safety violations in the context of adjudicating the formal complaint the Commission initiated against the Company.

- 11 In light of all of these circumstances, the Commission approves the upgrade of Ride the Ducks' safety rating from unsatisfactory to conditional.

² Staff also recommends that the Commission issue Staff's proposed letter to the Company informing Ride the Ducks of the upgraded safety rating. This order obviates the need for such a letter, and thus we do not adopt that recommendation.

³ Order 05 ¶¶ 8 & 22.

ORDER

THE COMMISSION ORDERS:

- 12* (1) The safety rating for Ride the Ducks of Seattle, LLC d/b/a Seattle Duck Tours is upgraded from unsatisfactory to conditional.
- 13* (2) Commission staff will conduct a follow-up compliance review inspection within six months of the date of this Order and again within one year. Staff will conduct another safety inspection after two years and issue a safety rating for Ride the Ducks of Seattle, LLC d/b/a Seattle Duck Tours based on the outcome of that inspection.
- 14* (3) The Commission will address penalties and any other enforcement action for the past safety violations in future proceedings in this docket.

DATED at Olympia, Washington and effective January 27, 2016.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DAVID W. DANNER, Chairman

PHILIP B. JONES, Commissioner

ANN E. RENDAHL, Commissioner