

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND)	DOCKET TE-151906
TRANSPORTATION COMMISSION,)	
)	ORDER 07
Complainant,)	
)	PREHEARING CONFERENCE
v.)	ORDER; NOTICE OF HEARING
)	(Set for May 18, 2016)
RIDE THE DUCKS OF SEATTLE, LLC)	
D/B/A SEATTLE DUCK TOURS,)	
)	
Respondent.)	
)	
.....)	

- 1 **NATURE OF PROCEEDING.** On September 28, 2015, the Washington Utilities and Transportation Commission (Commission) 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 held by Ride the Ducks of Seattle, LLC d/b/a Seattle Duck Tours (Ride the Ducks or Company) pending the results of a Commission staff (Staff) investigation and inspection of Ride the Ducks’ entire fleet of vehicles, drivers, and operations. The Commission subsequently entered Order 05, Order Approving Joint Stipulation, Lifting Suspension on Provision of Excursion Service Using “Truck Ducks,” and Continuing Suspension on Use of “Stretch Ducks.”
- 2 On September 29, 2015, Staff filed a complaint alleging that Ride the Ducks has operated at least one of its vehicles in an unsafe manner and has violated state and federal safety regulations. The adjudication the Commission initiated with the complaint is related to, but separate from, the emergency adjudication. On January 19, 2016, Staff filed a Motion to Amend Complaint and Proposed First Amended Complaint.
- 3 **CONFERENCE.** The Commission convened a prehearing conference in this docket at Olympia, Washington on January 27, 2016, before Administrative Law Judge Gregory J. Kopta.
- 4 **APPEARANCES.** Duncan K. Fobes, Patricia K. Buchanan, and Joseph P. Derrig, Patterson Buchanan Fobes & Leitch, Inc., P.S., Seattle, Washington, represent Ride the Ducks. Julian Beattie, Assistant Attorney General, Olympia, Washington, represents

Staff.¹ Simon J. ffitich, Senior Assistant Attorney General, Seattle, Washington, represents the Public Counsel Unit of the Washington Office of the Attorney General (Public Counsel). Contact information provided at the conference for the parties' representatives is attached as Appendix A to this order.

5 **PETITIONS FOR INTERVENTION.** No party appeared at the conference seeking to intervene.

6 **STAFF MOTION.** No party objected to Staff's motion to amend the complaint. The Commission finds that the motion provides sufficient grounds to conclude that amending the complaint as Staff proposes would promote fair and just results. Accordingly, the Commission grants the motion and accepts the proposed First Amended Complaint for Violations of Vehicle Safety Rules as the complaint in this proceeding.

7 **CONSENT TO ELECTRONIC SERVICE.** All parties have agreed to service electronically. The Commission, therefore, may serve only electronic copies of notices and orders in this docket to the party and representative email addresses on file with the Commission.

8 **DISCOVERY.** The parties may conduct discovery, if necessary, pursuant to the Commission's discovery rules, WAC 480-07-400 – 425. The Commission urges the parties to work cooperatively together to avoid having to bring discovery matters forward for formal resolution.

9 **PROCEDURAL SCHEDULE.** The parties agreed on a procedural schedule during the conference. The Commission adopts this procedural schedule, which is attached to this Order as Appendix B.

10 **DOCUMENT FILING REQUIREMENTS.** Parties must file all pleadings, motions, briefs, and other prefiled materials in compliance with all of the following requirements:

- (a) Parties must submit electronic copies in native Microsoft format (Word, Excel, etc.) and searchable Adobe Acrobat (.pdf) of all documents by 5:00 p.m. on the filing deadline established in the procedural schedule (or other deadline as applicable) unless the Commission orders otherwise. Parties may submit

¹ In formal proceedings, such as this, the Commission's regulatory staff participates like any other party, while the Commissioners make the decision. To assure fairness, the Commissioners, the presiding administrative law judge, and the Commissioners' policy and accounting advisors do not discuss the merits of this proceeding with the regulatory staff, or any other party, without giving notice and opportunity for all parties to participate. *See*, RCW 34.05.455.

documents electronically through the Commission's Web Portal (www.utc.wa.gov/efiling) or by e-mail to records@utc.wa.gov.

- (b) Parties must file **three** paper copies (and an original if signatures are required) of the documents with the Commission by 5:00 p.m. on the first business day following the filing deadline as provided in WAC 480-07-145(6). The documents must conform to the format and publication guidelines in WAC 480-07-395 and WAC 480-07-460. All hard copy filings must be mailed or delivered to the Executive Director and Secretary, Washington Utilities and Transportation Commission, P.O. Box 47250, 1300 S. Evergreen Park Drive, S.W. Olympia, Washington 98504-7250.
- (c) Parties must electronically serve the other parties and provide courtesy electronic copies of filings to the presiding administrative law judge (gkopta@utc.wa.gov) by 5:00 p.m. on the filing deadline unless the Commission orders otherwise. If parties are unable to email copies, they may furnish the electronic copies by delivering them on a flash drive, DVD, or CD.

11 **EXHIBITS FOR CROSS-EXAMINATION.** Parties are required to file with the Commission and serve all proposed cross-examination exhibits by **5:00 p.m. on May 11, 2016**. The Commission requires electronic copies (in native format, if available, and searchable Adobe Acrobat (.pdf)) and **three** paper copies of the exhibits. The exhibits must be grouped according to the witness the party intends to cross examine with the exhibits. The paper copies of the exhibits also must be organized into sets that are tabbed and labeled.

12 **EXHIBIT LISTS.** Each party must file a list of all exhibits the party intends to introduce into the evidentiary record, including all prefiled testimony and exhibits, as well as cross-examination exhibits. The parties must file and serve their exhibit lists by **5:00 p.m., May 11, 2016**.

13 **CROSS-EXAMINATION TIME ESTIMATES.** Each party must provide a list of witnesses the party intends to cross-examine at the evidentiary hearing and an estimate of the time that party anticipates the cross-examination of that witness will take. Parties should not file witness lists or cross-examination time estimates but must provide them to the administrative law judge and the other parties by **5:00 p.m., May 11, 2016**.

14 **NOTICE OF HEARING.** The Commission will hold an evidentiary hearing in this matter on **Wednesday, May 18, 2016, at 9:30 a.m., in the Commission's Hearing Room, Second Floor, Richard Hemstad Building, 1300 S. Evergreen Park Drive S.W., Olympia, Washington.**

- 15 **ALTERNATE DISPUTE RESOLUTION.** The Commission supports the informal settlement of matters before it. Parties are encouraged to consider means of resolving disputes informally. The Commission does have limited ability to provide dispute resolution services; if you wish to explore those services, please contact Gregory J. Kopta, Director, Administrative Law Division (gkopta@utc.wa.gov or 360-664-1355).
- 16 **NOTICE TO PARTIES: A party who objects to any portion of this Order must file a written objection within ten (10) calendar days after the service date of this Order, pursuant to WAC 480-07-430 and WAC 480-07-810. The service date appears on the first page of the order in the upper right-hand corner. Absent such objection, this Order will control further proceedings in this matter, subject to Commission review.**

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

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

GREGORY J. KOPTA
Administrative Law Judge

APPENDIX A

**PARTIES' REPRESENTATIVES
DOCKET TE-151906**

PARTY	REPRESENTATIVE	PHONE	E-MAIL
Ride the Ducks of Seattle, L.L.C.	Brian Tracey 516 Broad Street, Suite 210 Seattle, WA 98109		btracey@seattleducktours.net
	Duncan K. Fobes Patterson Buchanan Fobes & Leitch, Inc., P.S. 2112 Third Avenue, #500 Seattle, WA 98121	206-462-6700	dkf@pattersonbuchanan.com
	Patricia K. Buchanan		pkb@pattersonbuchanan.com
	Joseph P. Derrig		jpd@pattersonbuchanan.com
Commission Staff	Julian Beattie Assistant Attorney General Utilities and Transportation Division 1400 S. Evergreen Park Drive S.W. Olympia, WA 98504-0128	360-664-1225	jbeattie@utc.wa.gov
	Sally Brown	360-664-1193	sbrown@utc.wa.gov
Public Counsel	Simon J. ffitc Senior Assistant Attorney General Office of the Attorney General 800 5 th Avenue, Suite 2000 Seattle, WA 98104-3188	206-389-2055	simonf@atg.wa.gov

APPENDIX B
PROCEDURAL SCHEDULE
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EVENT	DATE
Alternative Dispute Resolution Deadline – Last Day to File Settlement Agreement	March 25, 2016
Discovery Cutoff – Last Day to Issue Discovery Requests	April 20, 2016
Filing of Exhibits, Witness Lists, and Time Estimates	May 11, 2016
Evidentiary Hearing	May 18, 2016