

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

OLYMPIA, WASHINGTON; JANUARY 27, 2016 9:34 A.M.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION, Complainant, v. RIDE THE DUCKS OF SEATTLE, L.L.C. d/b/a SEATTLE DUCK TOURS, Respondent. Docket No. TE-151906 (Volume IV, Pages 189 - 198)

JUDGE KOPTA: Thank you. Let's be on the record in Docket TE-151906, caption Washington Utilities and Transportation Commission vs. Ride the Ducks of Seattle, LLC.

PREHEARING CONFERENCE ADMINISTRATIVE LAW JUDGE GREGORY J. KOPTA

We are here on January 27th, 2016, for a prehearing conference with respect to the complaint that the Commission initiated against the Company.

9:30 A.M. JANUARY 27, 2016

My name is Gregory J. Kopta. I'm the Administrative Law Judge who's assigned to preside over this proceeding.

Washington Utilities and Transportation Commission 1300 South Evergreen Park Drive Southwest Olympia, Washington 98504-7250

And we will begin this morning by taking appearances, starting with the Company.

REPORTED BY: LISA BUELL, RPR, CRR, CCR #2204 Realtime Systems Administrator

MR. FOBES: Good morning, Your Honor. Duncan Fobes for Ride the Ducks of Seattle, LLC.

Buell Realtime Reporting, LLC 1325 Fourth Avenue Suite 1840 Seattle, Washington 98101 206.287.9066 Seattle 360.534.9066 Olympia 800.846.6989 National

MR. DERRIG: Good morning, Your Honor. Joe Derrig for Ride the Ducks of Seattle as well.

JUDGE KOPTA: All right. Thank you. Commission Staff?

MR. BEATTIE: Appearing on behalf of Commission Staff, Julian Beattie, Assistant Attorney

APPEARANCES

ADMINISTRATIVE LAW JUDGE: GREGORY J. KOPTA Washington Utilities and Transportation Commission 1300 S. Evergreen Park Drive SW Olympia, Washington 98504

General. JUDGE KOPTA: And for Public Counsel? MR. FFITCH: For Public Counsel, Simon ffitich, Senior Assistant Attorney General.

FOR COMMISSION STAFF: JULIAN H. BEATTIE Assistant Attorney General P.O. Box 40128 Olympia, Washington 98504 360.664.1225 jbeattie@utc.wa.gov

JUDGE KOPTA: All right. Thank you. Is there anyone else who wishes to make an appearance? Hearing none, we will proceed with our procedural issues.

FOR THE OFFICE OF PUBLIC COUNSEL: (Appearing via Bridge Line) SIMON J. FFITCH Senior Assistant Attorney General Chief, Public Counsel Division 800 Fifth Avenue Suite 2000 TB-14 Seattle, Washington 98104 206.389.2055 simonf@atg.wa.gov

First is interventions. No one has petitioned to intervene, and I don't see anyone in the hearing room. No one's asked for an appearance. So is anyone seeking to intervene in this proceeding?

FOR RESPONDENT: DUNCAN K. FOBES JOSEPH P. DERRIG Patterson Buchanan Fobes & Leitch, Inc. P.S. 2112 Third Avenue Suite 500 Seattle, Washington 98121 206.462.6700 dki@pattersonbuchanan.com jpd@pattersonbuchanan.com

Hearing nothing, we will say that the parties are all assembled as they are currently constituted.

Staff has filed a motion for an amended complaint. I wanted to take that up here. Mr. Fobes, have you had a chance to review that amended complaint and have any opinion on it?

MR. FOBES: Yes, Your Honor. We have no objection to the amendment of the complaint. Naturally we reserve the right to dispute the violations and proposed sanctions when we learn of them, but not to the amendment of the pleading itself.

JUDGE KOPTA: All right. Then we will allow

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1 that amendment to the complaint.
 2 Is it your anticipation, Mr. Fobes, that the
 3 Company will be filing an answer?
 4 MR. FOBES: No, we will not.
 5 JUDGE KOPTA: Okay. It's not required under
 6 our rules, but it is an option that I just wanted to
 7 clarify. So we will not expect an answer from you.
 8 Discovery. Do the parties want to have the
 9 Commission's discovery rules available?
 10 MR. BEATTIE: Staff anticipates no further
 11 discovery in this case, so I think from our perspective,
 12 it's not necessary to impose those rules. I suppose if
 13 a need arose, we could come back to the Commission and
 14 ask for the rules to be imposed, but I think at this
 15 time, there's no need for that.
 16 MR. FOBES: Same for the Company, Your
 17 Honor. We don't anticipate any discovery.
 18 JUDGE KOPTA: Okay. There's been a lot of
 19 information provided in this docket, so I'm not
 20 surprised.
 21 MR. FFITCH: Yeah. Your Honor, this is -- I
 22 think we have a similar view; however, it may just be a
 23 bit more efficient to have it be available in case
 24 unforeseen circumstances arise, where there's a need for
 25 somebody to send out a DR so that there's no need for

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1 further motions and process to get discovery.
 2 JUDGE KOPTA: Yes. That's a good point,
 3 Mr. ffitc. I think I will go ahead and make the
 4 discovery rules available, and if needed, that they're
 5 there, and if not, then no harm, no foul.
 6 Consent to electronic service, the
 7 Commission is in the process of converting from paper to
 8 electronic service. We're not there yet, but in case we
 9 are able to do that in this proceeding, I would like to
 10 get the consent of all parties to receive notices and
 11 orders solely electronically from the Commission. Do I
 12 have that consent from the parties?
 13 MR. FOBES: The Company consents to the
 14 electronic service.
 15 MR. BEATTIE: Staff consents.
 16 JUDGE KOPTA: Mr. ffitc?
 17 MR. FFITCH: Public counsel consents. We do
 18 request the continued request that, amongst themselves,
 19 the parties do also provide a paper service copy in
 20 addition to electronic service.
 21 JUDGE KOPTA: I will allow the parties to
 22 work that out among themselves.
 23 So we will move on to the next thing, which
 24 is the schedule. Mr. Beattie was kind enough to provide
 25 me with a proposed schedule. I note on here that

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1 there's nothing with respect to prefiled testimony. Is
 2 it your anticipation that we would be having all
 3 testimony presented live at the hearing, Mr. Beattie?
 4 MR. BEATTIE: That's the assumption in this
 5 schedule. I think we are -- we're going to try our best
 6 to come to a negotiated resolution, and then I think the
 7 plan is to at that time judge whether that settlement,
 8 if there is one, is best presented through joint
 9 testimony, live testimony. I guess what I'm saying is
 10 we're hoping to reserve that issue until we see how
 11 negotiations go.
 12 JUDGE KOPTA: Okay. And is that the
 13 Company's expectation as well?
 14 MR. FOBES: Your Honor, I think I would
 15 propose that maybe if we just have -- we have the
 16 deadline for filing of exhibits and the witness list and
 17 we just include prefiled testimony at that time, so if
 18 prefiled testimony is used, then it would be due then.
 19 JUDGE KOPTA: Well, my assumption is that if
 20 you would be filing exhibits, then that would be
 21 included in any kind of filing like that, so I suppose
 22 that is one possibility.
 23 My preference obviously with prehearing --
 24 prefiled testimony is that if we're going to have it,
 25 that we have a schedule that contemplates additional

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1 rounds. It's a little late in the game I think to try
 2 and have prefiled testimony a week before the hearing,
 3 but I appreciate the parties' desire to see if this can
 4 be worked out amicably before we have to go to an
 5 adjudication. So at this point, I'm fine with leaving
 6 the schedule as you have proposed. I confirmed that the
 7 Commissioners and I are all available on the 18th of
 8 May, and so I will go ahead and adopt the schedule for
 9 now and may note in the prehearing conference order that
 10 it is subject to later revision should the parties find
 11 it necessary as a result of their further discussions.
 12 MR. BEATTIE: Thanks. I think the
 13 assumption here is that if we get to March 25th and it's
 14 clear that a settlement is not possible, that leaves
 15 plenty of time to come up with a schedule for prefiled
 16 testimony in the month of April leading up to a hearing,
 17 if that's the way it looks like we should go.
 18 JUDGE KOPTA: Yes.
 19 MR. BEATTIE: That's why the ADR deadline
 20 was set so far in advance of the hearing, to allow us to
 21 come up with an alternate schedule should we reach that
 22 point.
 23 JUDGE KOPTA: Right. Well, I know that
 24 the -- believe it or not, even this early -- the
 25 Commission's calendar, hearing calendar for the summer

1 is starting to fill up, so if the May 18th date doesn't
 2 work, then we may have some difficulties at that point
 3 finding another date where everyone is available. But
 4 that's just kind of down the road, and we will all think
 5 positively and anticipate that at least by the 25th,
 6 you'll have a better sense of how we want to proceed.

7 All right. Is there anything else that we
 8 need to discuss at this point? Hearing nothing, that's
 9 all I have on my list.

10 MR. FOBES: Oh, Your Honor, I just wanted to
 11 confirm there's not going to be an evidentiary hearing
 12 on the Safety Management Plan on the proposed upgrade
 13 tomorrow morning?

14 JUDGE KOPTA: That is correct, yes, we will
 15 not be having a hearing on that.

16 MR. FOBES: Thank you.

17 JUDGE KOPTA: All right. If that's it, then
 18 we're done and adjourned. Thank you very much.

19 MR. FFITCH: Thank you, Your Honor.
 20 (Hearing concluded at 9:43 a.m.)
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CERTIFICATE

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 3 STATE OF WASHINGTON
 4 COUNTY OF KING
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6 I, Lisa Buell, a Certified Shorthand Reporter and
 7 Notary Public in and for the State of Washington, do
 8 hereby certify that the foregoing transcript of the
 9 prehearing conference on January 27, 2016, is true and
 10 accurate to the best of my knowledge, skill and ability.

11 IN WITNESS WHEREOF, I have hereby set my hand and
 12 seal this 10th day of February, 2016.
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16 LISA BUELL, RPR, CRR, CCR
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18 My commission expires:
 19 DECEMBER 2018
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