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BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION

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

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PREHEARING CONFERENCE  
ADMINISTRATIVE LAW JUDGE GREGORY J. KOPTA

9:30 A.M.

JANUARY 27, 2016

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

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ADMINISTRATIVE LAW JUDGE:

GREGORY J. KOPTA  
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Transportation Commission  
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1 OLYMPIA, WASHINGTON; JANUARY 27, 2016

2 9:34 A.M.

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

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

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

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

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

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

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

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

1 General.

2 JUDGE KOPTA: And for Public Counsel?

3 MR. FFITCH: For Public Counsel, Simon  
4 ffitich, Senior Assistant Attorney General.

5 JUDGE KOPTA: All right. Thank you.

6 Is there anyone else who wishes to make an  
7 appearance? Hearing none, we will proceed with our  
8 procedural issues.

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

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

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

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

25 JUDGE KOPTA: All right. Then we will allow

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

1 further motions and process to get discovery.

2 JUDGE KOPTA: Yes. That's a good point,  
3 Mr. ffitch. 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. ffitch?

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

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

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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C E R T I F I C A T E

STATE OF WASHINGTON  
COUNTY OF KING

I, Lisa Buell, a Certified Shorthand Reporter and Notary Public in and for the State of Washington, do hereby certify that the foregoing transcript of the prehearing conference on January 27, 2016, is true and accurate to the best of my knowledge, skill and ability.

IN WITNESS WHEREOF, I have hereby set my hand and seal this 10th day of February, 2016.

LISA BUELL, RPR, CRR, CCR

My commission expires:  
DECEMBER 2018