

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

RIDE THE DUCKS OF SEATTLE, LLC,

Respondent.

DOCKET TE-151906

NARRATIVE SUPPORTING
SETTLEMENT AGREEMENT

I. INTRODUCTION

1 Staff of the Washington Utilities and Transportation Commission (Staff) and Ride
the Ducks of Seattle, LLC (Company) (collectively, the parties) have settled all issues in
Docket TE-151906. This Narrative explains the parties' settlement agreement (Agreement)
and is intended to provide the evidentiary basis necessary for full Commission approval of
the Agreement. Nothing in this Narrative modifies any of the Agreement's terms.

2 The Public Counsel Unit of the Washington State Attorney General's Office
participated in the parties' settlement negotiations but did not sign the Agreement. Public
Counsel represented to the parties that it does not oppose the Agreement.

II. AGREED STATEMENT OF THE CASE

3 The Company operates excursion services pursuant to Commission-issued
Certificate ES00146.

4 On September 24, 2015, a vehicle owned and operated by the Company was
involved in a collision in Seattle, Washington.

to seek monetary penalties for the violations alleged in Staff's investigation report. Staff submitted a proposed First Amended Complaint for Violations of Vehicle Safety Rules.

11 On January 22, 2016, the Company submitted its safety management plan. After reviewing the plan, Staff recommended that the Commission upgrade the Company's safety rating from "unsatisfactory" to "conditional." On January 27, 2016, the Commission issued Order 06 approving the upgraded safety rating.

12 On January 27, 2016, the Commission held a prehearing conference related to the complaint filed on September 29, 2015. The Commission entered Order 07 establishing a procedural schedule and adopting Staff's proposed First Amended Complaint for Violations of Vehicle Safety Rules as the operative complaint in the enforcement phase of this docket.

13 As contemplated by Order 07, the parties engaged in settlement negotiations. The parties' negotiations resulted in the Agreement that is the subject of this Narrative.

III. JOINT STATEMENT SUPPORTING SETTLEMENT AGREEMENT

The Agreement contains two primary elements: admissions of liability and a monetary penalty with a 24-month payment plan. The parties discuss these elements below and explain how they resolve the allegations in the Commission's complaint.

A. Admissions of Liability

14 The Agreement states, "For settlement purposes, the Company admits the violations alleged in the Commission's First Amended Complaint." Agreement, 1, ¶ 4. This admission covers the following 463 violations:

Category	Number of Violations and Statute/Regulation
Violations of Acute Regulations	11 violations of 49 CFR Part 383.37(b)
Violations of Critical Regulations with Pattern of Noncompliance	6 violations of RCW 81.04.530
Violations of Critical Regulations with No Pattern of Noncompliance	1 violation of RCW 81.04.530 11 violations of 49 CFR Part 391.45(b)(1)

testing violations, and lesser weight to the recordkeeping violations. This structure is principled because it emphasizes compliance with the most important regulations.

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The following chart details the agreed penalty structure:

	Description of Violation (Statute/Rule)	Type: (Staff Policy)	Cause of Action	Number of Violations	Penalty Maximum
I	Employee drove on 11 occasions with an inactivated CDL (49 CFR Part 383.37(b))	Acute (serious offense; mandatory penalty for each violation)	I	11 violations	\$9,900 <i>\$11,000</i>
2	Company completed only 14 of 20 random drug tests required in 2014 (RCW 81.04.530)	Critical (serious offense; mandatory penalty for each violation)	II	6 violations	\$3,000 <i>\$3,000</i>
3	Company completed only 3 of 4 random alcohol tests required in 2014 (RCW 81.04.530)	Critical type: no pattern (serious offense; mandatory penalty for each violation)	II	1 violation	\$500 <i>\$500</i>
4	Noncompliant drug & alcohol program (RCW 81.04.530)	N/A (serious offense; mandatory penalty for each violation)	III	1 violation	\$1,500 <i>\$1,500</i>
5	Employee drove on 11 occasions with an expired medical certificate (49 CFR Part 391.45(b)(1))	Critical type: no pattern (serious offense; mandatory penalty for each violation)	I	11 violations	\$9,900 <i>\$11,000</i>
6	Company failed to maintain employee's medical certificate in Company's driver qualification file (49 CFR Part 391.51(b)(7))	Critical type: no pattern (first-time violation)	I	1 violation	\$900 <i>\$1,000</i>
7	Company allowed drivers to violate 70-hour duty rule a total of 35 times (49 CFR Part 395.5(b)(2))	Critical type: no pattern (first-time violation)	I	35 violations	\$1,000 <i>\$35,000</i>
8	Company failed to require drivers to make a record of duty status when exceeding limitations for short-haul operations a total of 93 times (repeat violation) (49 CFR Part 395.8(a))	Critical type: no pattern (repeat violation; mandatory penalty for each violation)	I	93 violations	\$83,700 <i>\$93,000</i>
			Subtotal	159 violations	\$110,400 <i>\$156,000</i>
9	Recordkeeping violations	Non-acute/ non-critical	I	304 violations	\$111,600 <i>\$304,000</i>
			Total Penalty	463 violations	\$222,000 <i>\$460,000</i>

substance and alcohol testing (lines 2-4), medical certification (lines 5-6), and hours of service (lines 7-8). Maximum compliance with these regulations is essential for safe motor carrier operations. The parties believe that the agreed penalty structure will promote the requisite level of compliance, thereby ensuring the highest achievable level of public safety.

2. Payment Plan

23 Staff supports the Company's request for a 24-month payment plan. The Company lost substantial revenue and incurred extraordinary expenses when the Commission halted operations (with the Company's acquiescence) during the emergency phase of this docket. The Company estimates that it lost \$1.5 million in gross revenue during the shutdown.

24 The Company is currently operating with only half its fleet while it awaits permission to operate its Stretch Ducks. Looking forward, the Company projects significant uncertainty in terms of operating profit, insurance costs, tort liability, and legal fees. A payment plan will reduce the Company's risk without any significant public detriment.

C. Commission's Enforcement Policy

25 The Commission's Enforcement Policy, promulgated in Docket A-120061, sets forth 11 factors the Commission may consider to determine the appropriate scope of enforcement and/or severity of punishment. As explained below, the parties agree that analysis of the Enforcement Policy supports full Commission approval of the Agreement.

1. How Serious or Harmful the Violations are to the Public

26 The Commission has already recognized in this docket that "[t]he Company's one acute and six critical violations . . . are serious safety infractions." Docket TE-151906, Order 06, 4, ¶ 9 (Jan. 27, 2016). Consistent with this recognition, the Agreement imposes maximum or near-maximum penalties for the Company's acute, critical, and critical type

Commission's controlled substance and alcohol testing statute. The number of violations was in part a function of the broad scope of Staff's investigation.

7. The Number of Customers Affected

32 The Company placed all of its customers at risk by allowing its safety record to deteriorate since the Commission's most recent compliance review in 2012. There is no evidence, however, that any violation directly harmed any particular customer.

8. The Likelihood of Recurrence

33 The Company is currently operating under a detailed safety management plan approved by the Commission on January 27, 2016. Assuming the Company follows this plan, the likelihood of recurring violations is low. The Company further understands that any new violation of any acute, critical, or critical type regulation called to the Company's attention by Staff's investigation, or of any controlled substance or alcohol testing requirement in RCW 81.04.530, will result in the imposition of a sizable suspended penalty.

9. The Company's Past Performance Regarding Compliance, Violations, and Penalties

34 The Company has an excellent historical safety record. Past compliance reviews have all resulted in satisfactory safety ratings. The violations discovered in the present docket are out of character, suggesting that the Company's attention to detail has eased in recent years. The penalties imposed under the Agreement will encourage the Company to resume its historically high level of compliance.

10. The Company's Existing Compliance Program

35 The Company is currently operating under a detailed, Commission-approved safety management plan. See Docket TE-151906, Order 06, Approving Upgrade of Safety Rating

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION

ROBERT W. FERGUSON
Attorney General



JULIAN H. BEATTIE, WSBA #45586
Assistant Attorney General
Attorney for Commission Staff
Phone: (360) 664-1225
Email: jbeattie@utc.wa.gov

RIDE THE DUCKS OF SEATTLE, LLC



PATRICIA K. BUCHANAN, WSBA #19892
DUNCAN K. FOBES, WSBA #14964
JOSEPH P. DERRIG, WSBA #44394
PATTERSON BUCHANAN FOBES
& LEITCH, INC., P.S.
Attorneys for Ride the Ducks of Seattle, LLC
Phone: (206) 462-6700
Email: pkb@pattersonbuchanan.com
dkf@pattersonbuchanan.com
jpd@pattersonbuchanan.com