

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

RIDE THE DUCKS OF SEATTLE, L.L.C.,
d/b/a SEATTLE DUCK TOURS,

Respondent.

DOCKET TE-151906

PETITION OF RIDE THE DUCKS OF
SEATTLE, LLC d/b/a SEATTLE
DUCK TOURS FOR
REINSTATEMENT OF
STRETCH DUCK VEHICLES

1. Respondent petitions the Washington Utilities and Transportation Commission (“the Commission”) for reinstatement of the Stretch Ducks it operates that have been modified with the Remedy prescribed by the National Highway Traffic Safety Administration (“NHTSA”) and the systematic inspection plan scheme outlined previously by the Commission. This petition includes information and documentation pertaining to completion of the Commission staff’s recommendations referenced in Order 09.

BACKGROUND

Regulatory Action Since the September 24, 2015 Accident

2. Upon concluding their investigation into the accident that occurred on September 24, 2015, the National Transportation Safety Board (“NTSB”) issued the following recommendation (H-16-17) to the National Highway Traffic Safety Administration (“NHTSA”).

Require that Ride the Ducks International, as a manufacturer, issue a recall for the stretch amphibious passenger vehicle front axle safety defect to provide owners a remedy as required under the Safety Recall Campaign.

NHTSA is an agency within the Department of Transportation, and is charged with writing and enforcing Federal Motor Vehicle Safety Standards.

See Exh. 1, excerpt of NTSB/HAR – 16/02 PB2017-100408 at p. 55.

3. At the same time the NTSB issued recommendations H-16-20, H-16-21, and H-16-22 to Ride the Ducks International (“RTDI”), the manufacturer of Stretch Ducks. Those recommendations read:

Develop a thoroughly verified and tested repair or alternative axle housing for the front axles of your stretch amphibious passenger vehicle (APV), and repair or replace the axle housings on your own stretch APV’s as necessary.

Communicate the repair or replacement information concerning the front axle housings of your stretch amphibious passenger vehicles, developed in response to Safety Recommendation H-16-20, to your franchisees and licensees.

Instruct your franchisees and licensees to immediately halt operation of their stretch amphibious passenger vehicles and not resume operations until they complete the axle housing repair or replacement process developed in response to Safety Recommendation H-16-20.

See Exh. 1, excerpt of NTSB/HAR – 16/02 PB2017-100408 at p. 55 & 56.

4. On November 15, 2016, RTDI signed a Consent Order with NHTSA. The Consent Order described violations of the National Traffic and Motor Vehicle Safety Act (“Safety Act”) by RTDI with regard to its failure to issue a recall for the defective front axle of the Stretch Duck. The Consent Order specifically documented that:

RTDI did not comply with the legal obligations imposed on vehicle manufacturers by the Safety Act

and

RTDI also did not notify NHTSA of the safety defect in its 57 Stretch Ducks in accordance with 49 C.F.R Part 573, did not provide a remedy for axle defect without charge as directed by 49 U.S.C. 30120 and admits that its communication to owners regarding a safety related defect in the 57 Stretch Duck axles did not fully comply with 49 C.F.R 577.5.

See Exh. 2, Section II A. (p. 8 & 9).

5. Additionally, the Consent Order, Section C, provided guidance and timelines of requirements for RTDI to remedy past violations of the Safety Act, specifically related to the October 1, 2013 Service Bulletin (SB-00-14-13).

See Exh. 2, p. 11-18.

6. Per the NHTSA recall process, vehicle manufacturers are required to notify registered owners within 60 days of notifying NHTSA of recall decisions and manufacturers should offer a proper remedy to the owner. NHTSA monitors each safety recall to make sure owners receive safe, free, and effective remedies from manufacturers according to the Safety Act and Federal Regulations. Owners, once notified by the manufacturer, are to follow any safety guidance provided by the manufacturer.

See Exh. 3 & 4 for Owner Recall Notification Letters

7. On November 22, 2016, RTDI submitted Part 573 Safety Recall Report 16V-859, later to be resubmitted as Part 573 Safety Recall 17V-501. The Description of Remedy and Recall Schedule of Part 573 Safety Recall 17V-501 read as follows:

RTDI will replace each of the front axles with one that has a coupler welded to the axle. Prior to the installation of the coupler, the axles will undergo magna particle testing. The axles will also be inspected on an annual basis.

RTDI previously notified owners under recall 16V-859. RTDI will reissue owner notification letters once NHTSA issues a new recall number and approves the draft letter.

See Exh. 5, 6, & 7 for Part 573 Safety Recall Report 16V-859 & 17V-501

8. On July 10, 2017, anticipating its ability to meet its burden for reinstatement, Ride the Ducks of Seattle petitioned the Commission for reinstatement of Stretch Ducks that it would modify consistent with the May 4, 2017 Part 573 Safety Recall Report and that it would inspect the vehicles consistent with regulators' direction and industry standards.
9. On July 25, 2017, the Commission denied Ride the Ducks of Seattle's petition without prejudice and mandated that it complete the following steps prior to submitting another petition for reinstatement:

Provide verification through a qualified third party, to the satisfaction of the Commission, that the new axle installation in each Stretch Duck vehicle meets or exceeds the applicable federal motor vehicle safety standards.

Perform an annual inspection in accordance with 49 CFR 396.17 and correct any defects discovered during the inspections.

In addition, the Staff Response also "proposes to conduct a jurisdictionally mandated Level VII commercial vehicle inspection on each Stretch Duck vehicle that the Company proposes to operate." As described below and documented in the Exh.s, Stretch Ducks for which the tasks above have been completed, have

been remedied based on the manufacturer's remedy of the axle housing defect and have undergone rigorous regulator and industry mandated inspections.

See Exh. 8, paragraph 4.

Ride the Ducks of Seattle has fully implemented RTDI axle installations and inspections on Duck #4.

10. On July 13, 2017 Ride the Ducks of Seattle received nine new axle housings from RTDI that are compliant with the NHTSA Part 573 Safety Recall 17V-501. Those axle housings were received with accompanying Magna-Particle Testing results verifying that the axle housings had no indications prior to when the coupler fix was installed on each axle housing and after the coupler fix was installed on each axle housing. The nine axle housings were assigned permanent ID numbers by the manufacturer, RTDI. The axle housings Ride the Ducks of Seattle received were assigned the following ID numbers: SDS16, SDS17, SDS18, SDS19, SDS20, SDS21, SDS22, SDS23, and SDS24.

See Exh. 9 & 10.

11. Ride the Ducks of Seattle has installed one new axle with ID number SDS16 onto Stretch Duck #4, WA License # DUCK 4. The process of replacing and/or installing a new axle housing is standard and routine maintenance for the Maintenance Technicians in Ride the Ducks of Seattle's Maintenance Department and was overseen by the Maintenance Manager and Shop Foreman.
12. At the recommendation of Commission's Order 09, Ride the Ducks of Seattle contracted with a third party vendor to verify that the installation of the new axle housing meets and exceeds any applicable Federal Motor Vehicle Safety Standards. Recreation Engineering Inc., is an engineering firm with decades of experience of inspecting commercial vehicles, and amphibious motor vehicles, including Duck vehicles. On August 3, 2017 Jeff Abendshien, Vice-President of Recreation Engineering Inc., performed an onsite inspection of Stretch Duck #4 to the standards described in 49 CFR 570 Subpart B (In Use Inspection Standards of a Vehicle More Than 10,000 LBS). Mr. Abendshien's credentials and a letter verifying his inspection, training of personnel, and conclusion that the installation of the new axle on Stretch Duck #4 meets applicable Federal Motor Vehicle Safety Standards are attached as Exh. 11.
13. On August 6, 2017, at the recommendation of the Commission's, Order 09, the Maintenance Department for Ride the Ducks of Seattle completed the Periodic Inspection of Stretch Duck #4 in accordance with 49 CFR 396.17. No defects were noted. Documentation of inspection is attached as Exh. 12.

14. In addition to performing a thorough inspection, Mr. Abendshien conducted continuing education training with the Ride the Ducks of Seattle Maintenance Technicians on Vehicle In Use Inspection Standards located in 49 CFR Part 570 Subpart B. This training was performed to ensure all future axle installations meets or exceeds any applicable Federal Motor Vehicle Safety Standards. Documentation of training is attached as Exh. 13.
15. Consistent with Staff Counsel's recommendation, in Order 09, Ride the Ducks of Seattle submitted Stretch Duck #4 to a jurisdictionally mandated Level VII commercial vehicle inspection. Ride the Ducks of Seattle coordinated with Commission Staff to facilitate such an inspection. Investigators Mathew Perkinson and Sandi Yeomans with the Washington State Utilities and Transportation Commission performed a Level VII commercial vehicle inspection on August 7, 2017. Their inspection identified two violations.

See Exh. 14 for Driver/Vehicle Examination Report

16. The first violation was issued for not having the USDOT number affixed to both sides of Stretch Duck #4. At the time of the inspection, Stretch Duck #4 had been recently painted. With no timetable for reinstatement, Ride the Ducks of Seattle had delayed instructing its signage and markings contractor from installing the proper markings. Those markings, along with other signage were to be affixed prior to operation. Attached as Exh. 15 are photos to show that Duck #4 has been marked in accordance with 49 CFR 390.21(a).
17. The second violation was issued for not having three warning triangles on board prior to inspection. Three warning triangles were placed onboard at the time of inspection to comply with 49 CFR 393.95(f).

Future inspections and enhanced safety procedures ensuring safety and compliance

18. In the near future, and prior to any passenger carrying service, Stretch Duck #4 will also undergo an annual inspection by the United States Coast Guard ("USCG"). This inspection will be performed by USCG personnel to comply with 46 CFR 176. The annual inspection of each Duck requires a sea trial to verify proper mechanical operations. The USCG inspection requires the Stretch Duck to travel to a boat ramp in which the sea trial is to be initiated. As all Stretch Ducks are currently suspended by the Commission, the inspection cannot be scheduled until the suspension of our Stretch Ducks is lifted. Were it possible for the inspection to have occurred prior to this petition, it would have.
19. NHTSA Part 573 Safety Recall Report 17V-501 requires that each new axle housing undergo annual Magna-Particle testing. Ride the Ducks of Seattle has the capability to comply with this requirement and has a two-year relationship with a certified third

party to perform these non-destructive tests to its fleet of Truck and Stretch Ducks. Ride the Ducks of Seattle's inspection plan includes twice yearly Magna-Particle testing. Standard operating procedures for Magna-Particle testing are attached as Exh. 16.

Additional steps taken

20. Ride the Ducks of Seattle has implemented other measures to ensure safety as well as compliance with applicable regulations. Since September 2015, Ride the Ducks of Seattle has:

- Voluntarily discontinued all operations over the Aurora Bridge;
- Doubled the operating staff on all tour vehicles providing for one driver and one tour guide on all tours;
- Installed 360° video monitoring equipment on every Duck to aid in driver visibility and monitor driver performance, see Exh. 17 for specifications;
- Installed forward and rear facing Radar Obstacle Detection systems with audio and visual warning alert systems, see Exh. 18 for specifications;
- Installed GPS systems on each Duck to monitor drivers speed, location, and manage daily logistics, see Exh. 19 for specifications; and
- Performed Semi-Annual Magna-Particle Testing on axles and axle components on all vehicles in operation
- Successfully implemented the Safety Management Plan accepted, in Order 06, by the commission on January 27, 2016. Results from its most recent non-rated compliance review, performed by the Washington Utilities Transportation Commission, noted no violations of the FMCSR's. The report from that review is attached as Exh. 20.

21. Ride the Ducks of Seattle has continued to educate employees in safety related areas and perform inspections above and beyond what is required by the FMCSR's. Ride the Ducks of Seattle continues to:

- Require the Driver and a Maintenance Technician to perform a full vehicle safety inspection before and after daily operations
- Maintain requirements for mandatory continuing education for drivers and maintenance technicians
- Require annual inspections by the United States Coast Guard on all Ducks in service

PETITION

22. Ride the Ducks of Seattle has met the benchmarks set by the Commission to petition for reinstatement. It has complied with the requirements of the parties in this regulatory action, federal regulators, and manufacturer recalls. Ride the Ducks of Seattle has installed the axle on Stretch Duck #4 provided by the vehicle manufacturer, RTDI, which in turn has been inspected by a qualified third party pursuant to Order 09.
23. We do not ask for an unconditional reinstatement of all Stretch Duck vehicles. Consistent with Public Counsel's concerns and observations that the July 10, 2017 petition for reinstatement was premature, we respectfully request that the Commission reinstate immediately Stretch Duck #4, WA License # DUCK 4. That vehicle has been fully modified, remedied, and inspected pursuant to Order 09 and all applicable state and federal regulations.
24. Ride the Ducks of Seattle acknowledges that its other Stretch Ducks have not yet completed the modification, remedy, and inspection process that have been put in place and that have been completed on Stretch Duck #4. Completing those tasks on the other eight Stretch Ducks between July 25, 2017 and the date of the filing during the summer operating season was not possible. Ride the Ducks of Seattle respectfully requests reinstatement of our remaining Stretch Ducks under the following conditions:
- Ride the Ducks of Seattle will install the axle housings received from RTDI on July 12, 2017 that comply with the NHTSA Part 573 Safety Recall Report 17V-501.
 - Ride the Ducks of Seattle will complete and document a Periodic Inspection in accordance with 49 CFR 396.17. Any defects found will be repaired prior to any operations.
 - Ride the Ducks of Seattle will complete and document an In Use Inspection for Vehicles over 10,000LBS. This inspection will be in accordance with 49 CFR Part 570, Subpart B, Sections 570.59 (Service Brake System), 570.60 (Steering System), 570.61 (Suspension System), 570.62 (Tires), and 570.63 (Wheels) prior to any operations to ensure the new axle installation meets or exceeds applicable federal motor vehicle safety standards.
 - Ride the Ducks of Seattle will schedule with the Washington State Utilities and Transportation Commission to have a Level VII inspection performed. Any defects noted in the Vehicle/Driver Examination Report will be repaired prior to any operations.

Providing for their reinstatement as a part of this Petition would prevent the Commission from hearing a wholly duplicative Petition seeking reinstatement for vehicles that will be in the same remedied and inspected state as Stretch Duck #4.

25. Alternatively, Ride the Ducks of Seattle seeks leave of the Commission to petition for full reinstatement of all other Stretch Ducks once they are brought to the same condition as Stretch Duck #4.

CONCLUSION

26. Ride the Ducks of Seattle has demonstrated that its current practices and procedures ensure that its fleet of Duck vehicles, including the Stretch Ducks, are maintained and operated in a safe manner. Similarly, Ride the Ducks of Seattle has demonstrated that Stretch Duck #4, and soon its entire Stretch Duck fleet, has been fully modified with the installation of the Stretch Duck Manufacturer's remedied axle, and inspected pursuant to Order 09 and all applicable state and federal regulations. Having met its burden, the Commission should reinstate Stretch Duck #4.
27. Additionally, having demonstrated its ability and intention to install the Manufacturer's remedied axle and inspect each Stretch Duck in its fleet, the Commission should reinstate each Stretch Duck with the knowledge and Ride the Ducks of Seattle's assurances that each Stretch Duck will receive the same installation of the Manufacturer's remedied axle, and inspected in the same detail as Stretch Duck #4 has prior to any operation on public roads. In the alternative, the Commission should allow Ride the Ducks of Seattle to bring another Petition for Reinstatement for those remaining Stretch Ducks once they have been fully modified with the installation of the Stretch Duck Manufacturer's remedied axle, and inspected pursuant to Order 09 and all applicable state and federal regulations.

DATED this 19th day of December, 2017.

By: Ryan Johnson

Ryan Johnson, Director of Operations
Ride the Ducks of Seattle