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Via Electronic and United States Mail

January 4, 2018

Steven V. King, Executive Director and Secretary
Washington Utilities and Transportation Commission
1300 S. Evergreen Park Dr. S.W.
P.O. Box 47250
Olympia, Washington 98504-7250

RE: *WUTC v. Ride the Ducks of Seattle, L.L.C. d/b/a Seattle Duck Tours*
Docket TE-151906, Certificate No. ES-00146
Response to RTDS's Amended Petition to Reinstate "Stretch Duck" Vehicles

Dear Mr. King:

On July 14, 2017, the Commission issued a Notice inviting a response to Ride the Ducks of Seattle's (RTDS) petition for reinstatement of its authority to operate its Stretch Duck vehicles. In Order 05, the Commission stated that it would not lift the suspension it imposed on the Stretch Duck vehicles "unless and until the Company demonstrates to the Commission's satisfaction that those vehicles do not pose an immediate danger to public safety." Order at ¶ 24.

In its July 12, 2017 filing, RTDS included various documents it believes demonstrate that its Stretch Duck vehicles no longer pose an immediate danger to public safety. However, Commission Staff was not satisfied that the RTDS met its burden. The letter from Mr. Ryan Johnson, RTDS's Director of Operations and Compliance, which accompanies the Company's filing states:

Ride the Ducks of Seattle has been notified by the Stretch Duck Manufacturer (RTDI) that we *will receive* new axles compliant with the NHTSA Part 573 Safety Recall 16V-859 on or around July 12, 2017 to remedy Part 573 Safety Recall 16V-859. We *intend to install and maintain* the axles to the requirements set by NHTSA Safety Recall Report 16V-859. (Emphasis added.)

Mr. Ryan was referring to a recommendation issued by the National Highway Transportation Safety Board (NTSB) to the National Highway Traffic Safety Administration (NHTSA) to require RTDI to issue a safety recall for the Stretch Ducks' front axles and to



provide a remedy. After the NTSB issued this recommendation, RTDI submitted to RTDS safety recall 17V-501. The safety recall indicated that, over time, the axle housing in some Stretch Ducks can fracture at the connection point between the knuckle ball and the housing due to excessive fatigue, possibly causing a driver to lose control of the vehicle. RTDI stated that it would replace each of the front axles with one that has a coupler welded to the axle. Prior to the installation, the axles would undergo magna particle testing.

On July 13, 2017, RTDS received nine new axle housings from RTDI with accompanying magna particle testing results.

As noted above, on July 21, 2017, Staff provided a recommendation to the Commission that RTDS's Petition failed to demonstrate that its Stretch Duck vehicles do not pose an immediate danger to public safety. Staff stated that it would support such a request if the Company were to:

- 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.

Further, Staff proposed to conduct a jurisdictionally mandated Level VII commercial vehicle inspection on each Stretch Duck vehicle the Company proposes to operate.

On July 25, 2017, the Commission issued Order 09 denying RTDS's petition to lift the suspension on the use of its Stretch Ducks. The Order did not prohibit RTDS from submitting subsequent petitions. Order 09 adopted Staff's recommendations and instructed RTDS to file all future petitions to Docket TE-151906.

On August 3, 2017, RTDS contracted with a third party vendor to verify that the installation of the new axle housing on Stretch Duck 4 meets and exceeds applicable Federal Motor Vehicle Safety Standards.

On August 6, 2017, RTDS completed a periodic inspection of Stretch Duck 4.

On August 7, 2017, Motor Carrier Safety Staff inspected Stretch Duck 4 and documented two violations:

1. Stretch Duck 4 was not properly marked in accordance with 49 CFR 390.21(a).
2. Stretch Duck 4 was missing required emergency equipment (reflective triangles) in accordance with 49 CFR 393.95(f).

Both violations are now corrected.

On December 20, 2017, RTDS submitted an amended petition for reinstatement of its nine Stretch Duck vehicles. RTDS asserted that Stretch Duck 4 was currently safe and that the remaining eight Stretch Ducks would “soon” be safe:

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, RTDS 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. [Petition at p. 8, ¶ 26]

RTDS requested that the Commission reinstate Stretch Duck 4, which has been fitted with the replacement axle, *and* reinstate the remaining eight Stretch Ducks based on the assumption that each Stretch Duck will receive the same installation of the manufacturer’s remedied axle and will be inspected in the same detail as Stretch Duck 4 prior to being operated. RTDS suggests that providing for advance reinstatement of the remaining Stretch Ducks vehicles will “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.” Petition at p. 7, ¶ 24.

Recommendation: Staff is satisfied that RTDS has met the conditions of Order 09 with respect to Stretch Duck 4. Staff accordingly recommends that the Commission allow RTDS to resume operation of Stretch Duck 4.

Staff disagrees, however, with RTDS’s suggestion that the Commission pre-approve reinstatement of the remaining eight Stretch Duck vehicles. The Commission should reinstate additional Stretch Duck vehicles only after receiving acceptable proof, through an additional petition (or petitions) in this docket, that each remaining vehicle has been remedied and inspected as required by Order 09. Specifically, for each vehicle, RTDS should be required to (1) 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; (2) perform an annual inspection in accordance with 49 CFR 396.17 and correct any defects discovered during the inspection; and (3) allow Staff to perform a Level VII commercial vehicle inspection. Each remaining Stretch Duck vehicle should be considered on a case-by-case basis.

Steven V. King
January 4, 2018
Page 4

If you have questions about this recommendation, please contact Motor Carrier Safety Manager Mat Perkinson at 360-664-1236 or at mathew.perkinson@utc.wa.gov.

Sincerely,



JULIAN BEATTIE
Assistant Attorney General
Counsel for Commission Staff

JB/emd

cc: Parties