



STATE OF WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION
1300 S. Evergreen Park Dr. S.W., P.O. Box 47250 • Olympia, Washington 98504-7250
(360) 664-1160 • TTY (360) 586-8203

April 27, 2018

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

RE: *Washington Utilities and Transportation Commission v. Ride the Ducks of Seattle*
Commission Staff's Response and Recommendation to Order 06
Docket TE-151906

Dear Mr. King:

On May 3, 2016, the commission conditionally approved and adopted a settlement agreement in Docket TE-151906 Order 08 between Ride the Ducks of Seattle, LLC (Ride the Ducks) and staff. In the agreement the commission suspended \$152,000 of a total penalty (\$308,000) on the condition that Ride the Ducks commits no new violations of the following laws or regulations for a period of 24 months from the date of the Order.

- (a) 49 CFR Part 383.37; Drivers must possess valid commercial driver licenses;
- (b) 49 CFR Part 391.45; Drivers must be medically examined and certified;
- (c) 49 CFR Part 391.51(b)(7); Company must maintain medical examiner's certificates in each driver qualification file;
- (d) 49 CFR Part 395.5; Company must enforce maximum driving time rules;
- (e) 49 CFR Part 395.8; Drivers must record their duty status for each 24-hours; and
- (f) RCW 81.04.530.; Company must establish and maintain a controlled substance and alcohol program.

On August 4, 2016, in accordance with Docket TE-151906, Order 06, Motor Carrier Safety staff completed a non-rated comprehensive safety investigation of the company's operations from January 27, 2016, through July 11, 2016. Staff discovered violations during the investigation, none of which are defined as acute or critical in severity. The violations discovered were:

- (a) 49 CFR Part 391.21(a); Using a driver who has not completed and furnished an employment application. A sample of the eight driver files checked found one driver's application failed to specify whether the employees previous employment was or was not subject to Federal Motor Carrier Safety Regulations.
- (b) 49 CFR Part 395.8(h)(5); Failing to record the name of the city, town or village, with State abbreviation where each change of duty status occurs. Of the 210 records checked in the sample, three records of logbooks did not list the location where each change of duty status occurred.

On February 27, 2017, in accordance with Docket TE-151906, Order 06, staff completed a second non-rated comprehensive safety investigation. The investigation covered the period from the closing date of the previous investigation July 12, 2016, through January 18, 2017. No violations were discovered.

On February 21, 2018, in accordance with Docket TE-151906, Order 06, staff completed a third rated comprehensive safety investigation of Ride the Ducks. The investigation resulted in a Satisfactory safety rating. Staff discovered violations during the investigation, none of which are defined as acute or critical in severity. The violations discovered were:

- (a) 49 CFR Part 382.305(i)(2); Failing to ensure that each driver subject to random alcohol and controlled substances testing has an equal chance of being selected each time selections are made. A sample of 26 records were checked with one violation discovering that Ride the Ducks failed to remove a driver from the random testing pool after that driver had been relieved from employment. This violation created a situation where each driver who was in the pool did not have an "equal chance" of being selected for a random controlled substance or alcohol test.
- (b) 49 CFR Part 391.21(a); Using a driver who has not completed and furnished an employment application. Of the five driver qualification files inspected, two driver applications were found to be incomplete. The carrier did not ensure that the applications listed the applicant's previous three years of residency.
- (c) 49 CFR Part 396.11(b); Failing to ensure driver vehicle inspection report is complete and accurate. Of the 120 driver vehicle inspection reports checked in the sample, one report resulted in a violation for not having a second driver signature listed as required.

On March 6, 2018, Commission Financial Services staff filed a statement of account in this docket noting that the \$156,000 unsuspending portion of the penalty was paid in full.

Staff completed the required follow-up safety investigations over the past two years and discovered no acute, critical, or repeat violations. The Company made timely payments as required and paid a penalty of \$156,000 over the past 24 months. Consistent with the Order, Staff recommends that the Commission waive the remaining \$152,000 suspended portion of the penalty.

Steven King
April 27, 2018
Page 3

If you have any questions please contact Mathew Perkinson at Mathew.perkinson@utc.wa.gov
or at (360) 664-1236.

Sincerely,



Mathew Perkinson
Motor Carrier Safety Manager, Transportation Safety