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 No. TE-151906 (Volume I, Pages 1 - 29)

HEARING - EMERGENCY ADJUDICATION AND

ORDER SUSPENDING CERTIFICATE

ADMINISTRATIVE LAW JUDGE GREGORY J. KOPTA

9:37 A.M.

OCTOBER 1, 2015

Washington Utilities and Transportation Commission
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OLYMPIA, WASHINGTON; OCTOBER 1, 2015

9:37 A.M.

CHAIRMAN DANNER: Good morning. Today is October 1st, 2015, and this is a hearing before the Utilities and Transportation Commission in Docket TE-151906.

I'm Dave Danner. I'm chair of the Commission, and with me are my colleagues, Commissioner Ann Rendahl and Commissioner Philip Jones. Also with me is our Chief Administrative Law Judge, Gregory Kopta.

The purpose of the hearing today is to allow Seattle -- Ride the Ducks of Seattle, L.L.C. to comment, seek clarification or modification of an order that we issued earlier this week, and also to set a schedule on a complaint that was filed by Staff yesterday.

I'm now going to turn it over to Judge Kopta, who will preside over today's hearing. Thank you.

JUDGE KOPTA: Thank you, Mr. Chairman.

Let's begin by taking appearances. I have written notices of appearances from everyone sitting at counsel table, so I just need your names, the law firm, if any, and the client you're representing. So let's

begin with the Company.

MS. BUCHANAN: Thank you, Your Honor. Pat Buchanan of the law firm Patterson Buchanan Fobes & Leitch.

MALE SPEAKER: Your mic is not on.

MS. BUCHANAN: Pardon me?

JUDGE KOPTA: Yes, please speak into the microphone.

MS. BUCHANAN: Sorry.

CHAIRMAN DANNER: I think the microphone is off.

JUDGE KOPTA: Make sure the little red light is on.

MS. BUCHANAN: The mic was off. My apologies, Your Honor.

Pat Buchanan from the law firm of Patterson Buchanan Fobes & Leitch on behalf of the Company, Ride the Ducks of Seattle.

MR. FOBES: Duncan Fobes, Patterson Buchanan, on behalf of Ride the Ducks of Seattle.

JUDGE KOPTA: And for Commission Staff?

MS. BROWN: Sally Brown, Senior Assistant Attorney General, appearing on behalf of Commission Staff.

JUDGE KOPTA: And for Public Counsel?

MR. FFITCH: Good morning, Your Honor. Simon ffitch, Senior Assistant Attorney General on behalf of the Public Counsel unit of the Attorney General's Office.

JUDGE KOPTA: All right. Thank you.

Does anyone else wish to make an appearance? Hearing none, we will proceed.

As the Chairman indicated, our first order of business, since this is an adjudicative proceeding that follows on to an emergency adjudication under RCW 34.05.479, the Commission took action on Monday on an emergency basis. The Company was not present at that time. This is a hearing that we scheduled in order to allow the Company the opportunity to make any comments, seek any clarification, contest or otherwise address the order and the suspension of the certificate that the Commission issued on Monday. So I will give the Company first an opportunity to make any statement that you would like to make.

MS. BROWN: Excuse me, Your Honor. May I say something in an effort to clarify some of the confusion surrounding today's hearing?

JUDGE KOPTA: You may.

MS. BROWN: Thank you.

There's just been so much confusion, I want

to attempt to clarify what this hearing is and what it's not. This hearing is not a hearing on the merits of the complaint. That will occur later. It's not a hearing to learn new details about Duck 6. That also will occur later. It's not a hearing or a time for Commission Staff to present the complaint to the Commission. The Commission already entered that complaint. It is the Commission's complaint at this point, and I would like to say something about what it is.

This is a hearing that is required by the state and federal constitutions, and that is that whenever the government deprives a person of a protected property interest, that person is entitled to due process, and so the company Ride the Ducks is entitled to notice an opportunity to be heard to address the deprivation.

What's the deprivation here? The deprivation is the summary suspension of the certificate to operate as an excursion provider in Seattle. That's the deprivation. The property interest of course is the certificate or license that the Commission grants it to operate.

So it's my understanding that today's hearing, as Judge Kopta correctly stated, is to afford the company Ride the Ducks and its owners an opportunity

to contest the summary suspension that the Commission entered on Monday. And yesterday -- yesterday, Mr. Fobes and Ms. Buchanan and Commission Staff entered into an agreement, and hence you will see the joint stipulation filed in which the Company agrees to not contest that summary suspension or deprivation.

I just -- I apologize for interrupting the flow, perhaps, but I felt it important to clarify some of the misunderstandings that I have heard and read surrounding today's proceeding.

JUDGE KOPTA: Thank you, Ms. Brown. You are correct in all of your statements. That is the purpose why we are here, and we are not here, as you suggest, to spread that beyond what we are here to discuss. I would add, as the Chairman added, that we will have some other procedural issues that we need to address in addition to giving the company its due process rights, but we will address those in due course.

MS. BROWN: Thank you.

JUDGE KOPTA: All right. Thank you.

And, Ms. Buchanan, if you would like to make your statement.

MS. BUCHANAN: Yes, please. Thank you, Your Honor, and thank you, Attorney General Ms. Brown for summarizing.

It is the case that the Company has reached an agreement, and there is a stipulation governing the agreement to suspend operations. I think it's very important to understand and to know that the Company has a fleet of 20 vehicles, ten stretch Ducks and ten trucks. Half of its fleet does not involve the axle issue that's been much talked about. It's ten of its fleet, half of its fleet, which it will not be operating pursuant to the agreement, but I did want to point out. Half of its fleet is a different manufacturer, a different design and entirely different chassis.

Regardless, very shortly after this very profound and tragic incident, Mr. Tracey, the owner of Ride the Ducks of Seattle, invited an inspection of all vehicles, including the type not at issue in this case. And pursuant to this stipulation, all vehicles will be inspected. There will be a thorough investigation with all of our cooperation to ensure and satisfy this Commission that Ride the Ducks is operating safely and pursuant to all guidelines.

JUDGE KOPTA: Is that your statement, Ms. Buchanan?

MS. BUCHANAN: I guess I did want to also add, Ride the Ducks of Seattle is a family-owned business. It's owned by Mr. Tracey. He takes this

matter very, very seriously. He's cooperated fully. He will continue to cooperate fully, as will the entire staff, all employees. Every level will be cooperating in providing documents and in providing access to the facility and in providing access to the vehicles for inspection.

I did also want to comment as well on the bridge issue. Very shortly after the accident, Mr. Tracey met with the deputy mayor and indicated those -- his trucks will not be using the Aurora Bridge. They will be using a different route, so that is certainly an issue that's off the table by agreement and stipulation.

CHAIRMAN DANNER: And that is both the truck Ducks and the stretch Ducks?

MS. BUCHANAN: Correct, Mr. Chairman. And to be clear, obviously he won't be operating either type of truck during this period of suspension, but yes, absolutely, both types.

JUDGE KOPTA: All right. Thank you.

We will have some questions about the joint stipulation so that we understand what the parties have agreed to, but I will note that Public Counsel have entered a notice of appearance after that stipulation was filed and was not a party to that stipulation.

And so I believe we have a couple of questions, Mr. ffitch, for you in terms of Public Counsel's participation in this.

Mr. Chairman, I believe you had some questions.

CHAIRMAN DANNER: Well, thank you. I just -- I've been here ten years, and this is the first time I'm aware that the Office of Public Counsel has participated in a transportation proceeding or any Title 81 proceeding, and I'm just curious as to your objectives in participating in this. What do you believe you're going to add to the proceeding and what is your expertise on these matters?

MR. FFITCH: Thank you, Your Honor. Good morning, Chairman Danner and Commissioners. Again, Simon ffitch with the Office of Public Counsel.

As the Commissioners are aware, by statute, the Attorney General's Office is authorized to represent the interests of the public in proceedings before the UTC in all of the different industry areas that are regulated by the Commission, including transportation, under Title 81, specifically 81.04.500.

We have that authority to participate on behalf of the public in transportation cases. That is, authorities exercise typically, as you know, through the

Public Counsel unit of the Attorney General. This is an important case for the public. There's substantial public interest in the matter, and that is why we're here. That's why we wanted to give formal notice to the Commission and the parties that we're interested in participating. Obviously we're at the beginning of the process, and any specific recommendations or, you know, actions that we would take will have to await the investigation, completion of the investigation, but we want to be here on behalf of the public that makes use of the regulated services.

CHAIRMAN DANNER: Okay. So in terms of your expertise, you're basically just -- you're monitoring the situation. You don't -- I assume you don't have any certified inspectors or anything on your staff or anything?

MR. FFITCH: We don't have inspectors on our staff, but expertise is available to the parties if, you know, to bring in focus as, you know, some parties do in Commission proceedings, you know, inspectors or safety experts or potential witnesses. We haven't made any decisions about that at this point.

CHAIRMAN DANNER: Okay. And do you have a view of the stipulation before us?

MR. FFITCH: We have no objection to the

stipulation.

CHAIRMAN DANNER: Okay. Thank you.

JUDGE KOPTA: Anything further for Public Counsel on this issue from the other Commissioners?

COMMISSIONER JONES: No.

COMMISSIONER RENDAHL: No.

JUDGE KOPTA: All right. Thank you.

Thank you, Mr. ffitch.

We will turn to the joint stipulation so that we understand exactly what it is that the Company and Staff have agreed to, and again, I will allow the Commissioners to ask questions that they have before any that I might have. Mr. Chairman?

CHAIRMAN DANNER: Thank you.

I want to make sure that I understand the scope of this and what it is we would be committing ourselves to today if we were to approve this stipulation. I do see in a couple places, it says that Staff stipulates that "if feasible" and then later talks about "if appropriate." But I want to make sure that when we're talking about inspection of this vehicle, that we are not just talking about physical inspection of the axle on either the stretch or the truck or whatever kind of vehicles you have. These are unique vehicles in both categories, and so if we have -- if we

have questions, for example, about the line of sight of these vehicles, can, in fact, you see -- can the driver see what's going on around? I know that earlier there was a motorcycle involved in an incident involving one of your vehicles, and it is my understanding the driver did not believe he could see the motorcycle, which was underneath the front of the vehicle. Those are the kinds of things that I would like to make sure that our inspectors will be able to look at. Can they see behind? Can they see the sides? Can they see in front of these vehicles?

I'm concerned about distracted driving. The drivers of your vehicles not only have to drive the vehicles, but they have to entertain the passengers, and is that too much to ask, given the complexity of the vehicles. And that's something else I would like to know that our inspectors have the ability to look at. So before they would allow the vehicles back on the road, we have to be satisfied that these can, in fact, be operated safely.

And knowledge of what the routes would be actually may be material here. Because if you're on the Aurora Bridge and it's nine and a half feet across for a lane of traffic, is that sufficient? Do you have turning radiuses or controls that would allow you to

stay safe?

And so I don't want this just to be a look at the axle underneath or to strictly follow the Federal Motor Carrier Safety Administration regulations. I want us to look at these vehicles and be satisfied not only that the vehicles are safe, but the way in which they're operated is safe so that we can assure that we're not putting the public at risk, and I don't want this stipulation to limit that in any way. I'd like your comments on that.

MS. BUCHANAN: Thank you, Mr. Chairman, for pointing all of those concerns out. We hear that. We understand that. And in its broadest sense, what Ride the Ducks of Seattle and Mr. Tracey are committed to is satisfying this Commission that these vehicles are safe. And so if that includes those items to gain your satisfaction that it is a safe operation, then in the broadest sense, yes, absolutely. We want to ensure that you are satisfied that everything is operating safely.

CHAIRMAN DANNER: Okay. So when the stipulation talks about "if feasible" or "if appropriate," I -- I understand you to say, yes, that would give us the leeway, flexibility and the authority to take a broad look at the safe operation of the vehicles, the safe condition of the vehicles, the

appropriate credentials of the drivers, including drug testing or proper licensure, and that this stipulation does not limit us in any way in that regard.

MS. BUCHANAN: Absolutely. The only caveat I would have in this -- and I don't even want to make it a caveat -- I'm not prepared to speak to whatever due process issues there may or may not be with respect to drug testing. But what I can assure you is absolute, full cooperation by Mr. Tracey. And his goal is, again, to assure every member of this Commission of his safe operation.

CHAIRMAN DANNER: And what that means is it is possible -- I mean, even though our Staff will work as expeditiously as possible -- that in 30 days, these vehicles may not be back on the road.

MS. BUCHANAN: Thank you. I think maybe I mistook your earlier question. Certainly that is the goal in working together. But you're correct, I mean, the goal is 30 days, and hopefully it can be accomplished, but we understand that goal might not be met.

CHAIRMAN DANNER: Thank you. I do appreciate that this is a business that employs people. We don't like to have people out of work, and certainly if these vehicles, if we can find that the operations on

the vehicles are safe, then of course we will allow them back on the roads. But our priority is public safety, and so I am not prepared to do anything today or in the future that would allow these vehicles on the road if I am not satisfied that they can operate safely.

MS. BUCHANAN: Absolutely. Completely -- not only understand, but agreed. What our goal -- in addition to the 30 days being a goal, and again, it's a goal, is to focus on those first ten trucks that are a different make, different model, different chassis, different axle, focus on those trucks and of the make and model that were not involved in the September 24th incident, with the hope and idea that perhaps clearance could be had for that half of the fleet, and then focus in again on the other half after that. That's what our goal would be.

CHAIRMAN DANNER: All right. Thank you.

COMMISSIONER RENDAHL: Ms. Buchanan, on that point, it's your understanding -- and I guess this is a question also for Staff counsel -- that, under the joint stipulation, that if Staff, in its investigation, determines that the Duck -- the truck Ducks, as they're referenced in the joint stipulation and any of the driver qualification papers, everything is fine related to those vehicles, any action to put those back in

service would be subject to a hearing such as this where we can ask questions and be sure that we're comfortable. So it's not -- Staff is not agreeing to just put -- say, go back in service without the Commission having a decision on that matter, correct?

MS. BUCHANAN: That's absolutely correct. This I think proceeding today is kind of a stay until all of these decisions can be made. And absolutely our understanding, there would be additional proceedings for the Commission to review the results of the investigation and provide --

COMMISSIONER RENDAHL: And some nature of an evidentiary or presentation of the conditional stipulation based on evidence from whatever investigation is conducted?

MS. BUCHANAN: That's what we contemplate.

MS. BROWN: Yes. Yes, Your Honor, that's absolutely correct.

The 30 days is simply aspirational at this point. No one is able to predict with accuracy or certainty when the investigation will be completed. We have agreed that the investigation will be comprehensive and thorough, and in terms of the end date, I can't speak to that. And surely your regulatory staff deserves credit insofar as it would not presume to

release vehicles on the road without Commission approval, nor would it agree in a stipulation to a release or somehow diminished inspection.

COMMISSIONER RENDAHL: Thank you.

COMMISSIONER JONES: I've just got a couple of questions. First is for Staff. The joint stipulation states "a comprehensive Staff investigation and report" in paragraph 2, so this is for you, Mr. Pratt. What does that mean from a Staff investigator's standpoint?

MR. PRATT: Dave Pratt, Commission Staff. Thank you, Commissioner Jones, for the question. I guess what that means is when we finish our review, we will have a report that outlines the findings, and the findings will be focused on compliance with state and federal law regarding safety standards with the Company, and this will be broader, as we mentioned, than just vehicles. It will be the entire Company's operations.

COMMISSIONER JONES: Okay.

MR. PRATT: Maintenance practices, training, policies and procedures, it will cover all those things, as well as vehicle inspections. And so when we conclude, we expect to be able to have a report that outlines what we found, talks about compliance and then makes recommendations, from my perspective.

COMMISSIONER JONES: That sounds pretty comprehensive to me.

MR. PRATT: Yes.

COMMISSIONER JONES: And it includes both state and federal law?

MR. PRATT: Yes, sir.

COMMISSIONER JONES: The corollary question to that is what is your level of coordination with the Coast Guard and the NTSB, because they're looking at these issues as well. The Coast Guard from the amphibious, seaworthy perspective, and then the NTSB from a land worthy inspection.

MR. PRATT: I have been in contact with the NTSB and their lead staff here that are in Seattle. We have preliminary -- started working on an agreement to share data and to work together. They're going to be focusing on the actual accident investigation.

My staff will be looking at the Company's practices. So you can see how that will have to come together. So we will be working together. We're still working out the details because -- you know, with the federal and state agency about how we can work together on that. But we've made commitments to each other just to keep in contact, to work together as well as we can.

As far as the Coast Guard, I've not had any

personal contact with the Coast Guard, but we have reached out to them, because as you say, these vehicles undergo annual inspections by the Coast Guard because of the water part of this. There's a lot of seals and things that have to be dealt with. We're going to have to break some of those water seals to inspect the vehicles, so we may need the Coast Guard there when we do that. We're still trying to work that out and understand that before we hopefully get to that next week.

COMMISSIONER JONES: So, Mr. Pratt, that's still a work in progress --

MR. PRATT: Yes.

COMMISSIONER JONES: -- with the Coast Guard?

MR. PRATT: Yes.

COMMISSIONER JONES: Final question -- this is for the Company -- and we'll get into some of these details once we see the report and get into it, but I'm not an engineer by training, but I tend to ask a few detailed questions.

So in paragraph -- in the stipulation, it says there's a fundamental difference between the truck Duck vehicle and the stretch Duck vehicle. So who's the manufacturer of the stretch Duck vehicle; do you know?

Where is it manufactured, and when were they manufactured; do you know that?

MS. BUCHANAN: The stretch Duck, RDTI, I believe, is the manufacturer.

COMMISSIONER JONES: RDTI, and that's from where, Detroit, these vehicles? Do you know where those are?

MS. BUCHANAN: I am not sure, Commissioner Jones.

COMMISSIONER JONES: And then on the stretch Duck vehicles -- and I see this a lot in the media too -- it says, "World War II era chassis," so what does that mean? Because there were a lot of World War II era vehicles manufactured by all sorts of people. What does that mean?

MS. BUCHANAN: Well, first, Commissioner, I will share -- I will empathize with you, I am not an engineer by training either. Here's my understanding: My understanding is that there are refurbished stretch Duck vehicles, and that my understanding -- and I'll have to confirm this -- is that they continue to manufacture this vehicle around the design of that original chassis and axle design, I believe.

COMMISSIONER JONES: So the design, design and original manufacture of the chassis is World War II,

but there's been extensive refurbishment of that design over the years; is that a proper understanding from a nonengineer like you?

MS. BUCHANAN: Yes.

COMMISSIONER JONES: Okay.

MS. BUCHANAN: Indeed.

COMMISSIONER JONES: Okay. Thank you.

JUDGE KOPTA: Anything further?

CHAIRMAN DANNER: Let me follow up with Mr. Pratt.

So in the stipulation, you talk about an objective to complete this work in 30 days in terms of the inspection and the report and bring it back before us so that we can make a decision whether to approve the return of the vehicles to the roads. That seems like a pretty aggressive schedule. If we don't meet that schedule -- or if you don't meet that schedule, is it your understanding that this stipulation does not require us to make a decision within 30 days, but that we would have the time to do all the steps that are necessary?

MR. PRATT: Yes, that's exactly my understanding. We will work as fast as appropriate. This does take a lot of time. There are a lot of records to review besides just vehicles. And so I would

like to try and expedite this, but I can't really commit to how long it will take at this point, but we're going to do the best we can. We have a team working on it already, and we'll keep working away.

CHAIRMAN DANNER: All right. But it also involves coordination, as you say, with other agencies, Coast Guard and others. There may be leads that have to be followed. There may be information we need to gather. I just want to be clear that, if 30 days passes and you're not ready, that you're not going to cut corners on the report. You will take as much time as is necessary to give us a complete and thorough report.

MR. PRATT: Yes, I will, and thank you.

MS. BROWN: This is Sally Brown with the Attorney General's Office. I just would like to clarify, Chairman Danner, that the 30-day aspirational objective period here pertains only to the truck Ducks.

CHAIRMAN DANNER: I understand.

MS. BROWN: Okay. I just want to make sure the record is clear.

JUDGE KOPTA: Ms. Buchanan?

MS. BUCHANAN: I was going to make the identical point that the Attorney General just made, so thank you.

CHAIRMAN DANNER: Thank you.

COMMISSIONER RENDAHL: I have just one more follow-up question. This is for Mr. Pratt.

Are you also coordinating with the Federal Motor Carrier Safety Administration?

MR. PRATT: Yes, I am, and I'm sorry I didn't mention them earlier. We do have one of their investigators on site with us up at the facilities in Seattle that are assisting with our review.

COMMISSIONER RENDAHL: Thank you. And I'm sure at some point in this process, we'll have to talk about the jurisdiction of all the various federal and state agencies involved in this.

MR. PRATT: Yes.

COMMISSIONER RENDAHL: Okay.

JUDGE KOPTA: Anything further from the Commissioners?

COMMISSIONER JONES: No.

JUDGE KOPTA: All right. Just to outline the procedures, this did start with an emergency adjudication. The Commission acted pursuant to its authority under that statute to suspend the certificate of the Company, and the Company has now agreed to the extension of that suspension ended through the Staff's investigation, which the target is 30 days, but it may take longer; it may take less.

MS. BROWN: On the truck Ducks.

JUDGE KOPTA: On the truck Ducks.

I guess the question that I have is we anticipate that there would be another hearing at that point to do two things: One would be to determine whether or not to lift the suspension, and the second would be to establish a procedural schedule for this adjudication as if there had been no emergency, as required under the statute. At this point, is it premature to try and schedule a hearing date for that purpose?

MS. BROWN: Your Honor, I would suggest scheduling a status conference.

JUDGE KOPTA: Okay. We have reserved some time on November 3rd since that's as close as we could get to 30 days, and if you would prefer that be a status conference as opposed to a hearing, then we can schedule it that way, in which case it probably would not involve the Commissioners, it would just be me.

MS. BROWN: That's what I think would be the best outcome.

MS. BUCHANAN: We agree with that recommendation.

JUDGE KOPTA: All right. Well, we are sensitive to making sure that we don't keep the Company

out of business any longer than is necessary, so we want to make sure that both sides are comfortable -- and Public Counsel to the extent you are going to participate -- are comfortable with our schedule. I mean, if it takes longer, then it takes longer, but we want to act as expeditiously as we can to make sure that we provide due process to the Company and to ensure that the public safety is maintained.

MS. BUCHANAN: Thank you, and we appreciate that.

JUDGE KOPTA: Okay.

CHAIRMAN DANNER: So perhaps, Ms. Brown, if you could clarify for me the process. If Staff -- we're in an adjudication right now -- if the Staff is putting together an investigatory report, how is that report brought forward to the Commissioners, and is it -- would it be within the context of this adjudication?

MS. BROWN: Chairman Danner, we anticipate filing the Staff investigative report with the agency in a formal way.

CHAIRMAN DANNER: Okay. So this would be posted in the docket --

MS. BROWN: Yes.

CHAIRMAN DANNER: -- and would be available publicly?

MS. BROWN: Yes.

JUDGE KOPTA: All right.

The Commission will enter an order as a result of this on the stipulation, and as well as I'm assuming establishing a status conference on November 3rd to see where we are and what additional steps we need to take.

And so at this point, unless there's anything further, then I think that concludes our business for the day.

Anything further from the parties?

MS. BROWN: No, Your Honor.

MS. BUCHANAN: No, Your Honor. Thank you very much.

MS. BROWN: Thank you.

JUDGE KOPTA: Thank you.

(Hearing concluded at 10:08 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 October 1st, 2015, hearing is true and accurate to the best of my knowledge, skill and ability.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 2nd day of October, 2015.

LISA BUELL, RPR, CRR, CCR

My commission expires:
DECEMBER 2018