

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

MOTION OF RESPONDENT TO
EXPEDITE HEARING

I. RELIEF REQUESTED

1 An evidentiary hearing is currently set for January 5, 2015. In accordance with the Commission's rules and the Constitutional guarantees of due process, Ride the Ducks of Seattle ("RTDS") respectfully requests a hearing to partially lift the suspension be set for December 16, 2015 or as soon as possible thereafter. The Commission's counsel and Staff have been working extremely diligently, cooperatively, and in good faith; however, the effects of delaying a hearing for the partial reinstating of RTDS' operating certificate until after December 16, 2015 will be devastating for Ride the Ducks of Seattle, its employees, and their families. Before filing this motion, the Parties' respective counsel have conferred in good faith.

II. STATEMENT OF FACTS

2 Ride the Ducks of Seattle ("RTDS") is a local business that employed approximately 130

employees, many of whom depend on RTDS to support their families. Declaration of Brian Tracey ¶ 3 (November 6, 2015). RTDS is also an integral part of the local tourism industry and economy. Tracey Decl. ¶ 3. Each day that RTDS is unable to operate brings it closer to being unable to continue to employ its employees. Tracey Decl. ¶ 2-7. To date, RTDS has already had to lay off or reduce the hours of 48 employees, and many employees have claimed unemployment. Tracey Decl. ¶ 4.

3 In RTDS’s long history of operations, it has never had a prior safety-related complaint filed against it by the Commission.

4 RTDS has worked cooperatively with the Staff of the Washington Utilities and Transportation Commission (“WUTC Staff”) since the accident on September 24, 2015 on the Aurora Bridge involving one “Stretch Duck” vehicle. It has continued to cooperate with the Commission after the Commission suspended RTDS’s certificate under emergency adjudication proceedings on September 28, 2015.

5 RTDS agreed to keep the temporary suspension of its operating certificate in place while the Parties worked toward their joint goal of returning to operations the newer “Truck Duck” vehicles that passed inspection and qualified drivers by October 30, 2015. This objective would allow the newer “Truck Ducks” to return to operations so that RTDS could continue to support its employees, other local businesses, and its customers, while at the same time allow the WUTC Staff to take all the additional time it needed to investigate the “Stretch Duck” vehicles that spurred the present Complaint.

6 The law requires the agency to implement the least-restrictive reasonable means to protect the public with respect to the *time* and nature of the cessation of services. Joint Stipulation at p. 2; *see also* Order Adopting Joint Stipulation at p. 3.

7 On November 3, 2015, the Commission held a status conference to determine the extent the
Staff had completed or anticipated completing its investigation. The Staff estimated that it
would complete its final report by early December.

8 On November 4, 2015, the Commission gave notice that the Staff must complete its
investigation by December 15, 2015, and that an evidentiary hearing to consider whether to
continue the suspension of RTDS's Certificate (No. ES-00146) would be set for January 5,
2016.

9 The Commission's setting of the hearing for after the holiday season deprives RTDS of one
of its peak operating periods, and will likely result in additional lay-offs for employees who
are counting on RTDS to support their families during this time. Tracey Decl. ¶ 7.

10 If a hearing is set on December 16, 2015, RTDS can at least provide certainty to its
employees as far as their employment status is concerned. See Tracey Decl. ¶ 7.

III. STATEMENT OF ISSUES

11 Should the Commission set a hearing for December 16, 2015, or as soon as possible when,
delaying a hearing harms Ride the Ducks of Seattle, its employees, and their families
through the holiday season?

IV. EVIDENCE RELIED UPON

12 Respondent relies on the Declaration of Brian Tracey, and the papers previously filed or
submitted to the Commission in this matter.

V. ARGUMENT AND LEGAL AUTHORITY

13 Under WAC 480-07-620(6), the Commission must "proceed as quickly as feasible" to
complete the proceedings. Indeed, delay in providing a post-deprivation hearing can violate
the Constitution. See e.g., *Price v. City of Seattle*, 2005 WL 1189585, at *7 (W.D. Wash.

2005) (Pechman J.) (indicating that failing to provide post-impound hearing related to one's personal vehicle "within a reasonable amount of time" could violate due process even if a hearing was eventually provided).

14 Here, Ride the Ducks of Seattle has the same goal as the Commission: to ensure that safe vehicles are on the roads, and that accidents like the one on the Aurora Bridge never happen again. In light of this shared goal, RTDS agreed to temporarily suspend its operating certificate with the goal of getting "Truck Ducks" back in operation by October 30, 2015. The "Truck Ducks" have a different axle and chassis system than the "Stretch Duck" that spurred the present Complaint. RTDS cannot withstand a delay of more than two additional months after October 30, 2015 without substantial risk of more layoffs.

15 RTDS, its employees, and their families will suffer significant hardship if the hearing date is not moved to December 16, 2015. RTDS will not be able to operate during one of its peak periods, and will not have an income stream that is greatly needed to continue to employ its employees. Its remaining employees will also be left with great uncertainty with respect to their employment during the holiday season.

16 In view of the approach Commission took in *WUTC v. Airport Transporter Association, LLC*, Docket No. TE-140035 (the "ATA Case") and the allegations in the Complaint in this case, the Commission should not set the hearing for almost two months from now while continuing the suspension of RTDS's certificate. In the ATA Case, a driver knowingly operated a commercial motor vehicle without a commercial driver's license on five occasions, was declared out of service, and then intentionally decided to drive anyway. Despite the willful and repeated safety violations in the ATA Case, ATA was only assessed a \$1,000 penalty. ATA's certificate was not suspended.


17 Continuing to suspend RTDS's certificate longer than necessary because of an accident involving one "Stretch Duck" vehicle, while "Truck Duck" vehicles and qualified drivers are safe, does not serve the public's interest. The Commission has never previously filed a Complaint against Ride the Ducks of Seattle for any safety violations in its long history; Ride the Ducks of Seattle has cooperated fully with the Commission with the joint goal of ensuring the public safety;¹ and delaying the hearing will cause significant hardship to Ride the Ducks, its employees, and their families during the holiday season.

VI. CONCLUSION

18 RTDS respectfully requests that a hearing to partially reinstate its certificate be set for December 16, 2015 or as soon as possible.

DATED this 6th day of November, 2015.

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¹ Moreover, RTDS has proactively taken steps above and beyond any regulatory requirement to improve safety when its operations resume. For example, RTDS has agreed to add an additional crew member to each tour.