

BEFORE THE WASHINGTON STATE

UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND)
TRANSPORTATION COMMISSION,)
Complainant,)
v.)
RIDE THE DUCKS OF SEATTLE, L.L.C.,) DOCKET TE-151906
d/b/a SEATTLE DUCK TOURS,)
Respondent.)

STATUS CONFERENCE

Volume II - Pages 30-51

ADMINISTRATIVE LAW JUDGE GREGORY KOPTA

9:30 AM.

NOVEMBER 3, 2015

Washington Utilities and Transportation Commission
1300 South Evergreen Park Drive Southwest
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A P P E A R A N C E S (Continued)

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1 OLYMPIA, WASHINGTON NOVEMBER 3, 2015

2 9:30 A.M.

3
4 JUDGE KOPTA: Good morning. We'll be on the
5 record in Docket TE-151906; Action: Washington Utilities and
6 Transportation Commission vs. Ride the Ducks of Seattle
7 L.L.C. d/b/a Seattle Duck Tours.

8 We are here for a status conference following up
9 on the hearing that we conducted on October 1.

10 I'm Gregory Kopta, the Administrative Law Judge
11 who is assigned to preside over this proceeding. And with
12 me on the bench are Chairman Danner and Commissioners
13 Rendahl and Jones.

14 Let's begin by taking appearances from the
15 parties, beginning with the Company.

16 MS. BUCHANAN: Thank you, your Honor. Pat
17 Buchanan on behalf of Ride the Ducks Seattle.

18 JUDGE KOPTA: And for Commission Staff?

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

21 JUDGE KOPTA: And Public Counsel?

22 MR. FFITCH: Thank you, your Honor. Good
23 morning. Simon ffitch for the Office of Public Counsel.

24 JUDGE KOPTA: All right. Thank you.

25 Our business today is limited. From my

1 perspective, we are here to do two things. One is to
2 determine whether Staff has completed its investigation, and
3 if not, when they anticipate being able to file a report;
4 and two, when we can schedule an evidentiary hearing to
5 determine whether the Commission should lift the suspension
6 of the Company's operating authority.

7 So let's begin with the first issue, and we'll
8 start with Staff. Ms. Brown or Mr. Pratt, do you have
9 something in terms of the status investigation?

10 MS. BROWN: Yes, I do, your Honor.

11 For the record, at the outset I would like to
12 state that both the Company and opposing counsel have been
13 extremely cooperative and accommodating, especially with
14 regard to the scheduling of witness interviews in this case.
15 And we appreciate that a great deal.

16 I can report that the Commission's
17 Transportation Safety Staff has been indeed moving with
18 alacrity and has made substantial progress.

19 And what I would like to do now with your
20 permission is turn it over to Mr. Dave Pratt, who can
21 summarize and describe the progress and steps the Staff has
22 taken to date.

23 JUDGE KOPTA: That would be fine. Thank you.

24 Mr. Pratt?

25 MR. PRATT: Thank you.

1 My name is Dave Pratt. I'm the Assistant
2 Director for Transportation Safety here at the Commission.
3 And I'm here today just to give you a status report, as you
4 mentioned earlier, on Docket TE-151906.

5 I'd just like to start with a couple points,
6 first to say on September 25 of this year, we opened up a
7 compliance investigation into the safety and operating
8 practices of Ride the Ducks of Seattle.

9 And we are following the national and state
10 safety standards. I just want to make that clear, that
11 we've adopted these under our code to follow those
12 standards.

13 I also want to make a reminder that the UTC is
14 only investigating the Company's safety and operating
15 practices.

16 The National Transportation Safety Board, or
17 NTSB, is responsible for conducting the accident
18 investigation that occurred on 9/24. I want to make sure
19 that that's a separate piece.

20 And the primary focus of our investigation is to
21 make ensure that the Company has the appropriate safety
22 management controls in place and that they're in compliance
23 with all the recordkeeping requirements for drivers and
24 vehicles, and also that their vehicles are operating in a
25 safe condition.

1 We're following Title 49 CFR, which is the
2 federal code; also Washington RCW 81.70 and Washington
3 Administrative Code, WAC 480-30.

4 So while I'm not at liberty today to disclose or
5 divulge any of the most preliminary findings at this point,
6 because the investigation is still ongoing, I am happy to
7 share with you what the Commission Staff has been doing
8 since the October 1 hearing.

9 I would say first of all, we've established a
10 working relationship with the NTSB. We've had several
11 communications with them and have kind of coordinated some
12 activities as far as their participating in some vehicle
13 inspections.

14 We've contacted the United States Coast Guard to
15 talk about coordinating activities with them as well. We've
16 learned to date that there is no need to coordinate
17 activities with them thus far. They will do their Coast
18 Guard inspections of these vehicles when we are done. And
19 my understanding is that they are working on scheduling
20 those right now with the Company.

21 We're also working with the Federal Motor
22 Carrier Safety Administration, or FMCSA. And we're working
23 with them because they conducted the drug and alcohol review
24 as part of this review for us with their expertise on that.
25 We met with them last week to kind of get the preliminary

1 findings of their review and also to discuss some additional
2 compliance issues that we had questions about.

3 We have gathered all the records that we believe
4 we need for this review.

5 We've conducted interviews of staff of Ride the
6 Ducks of Seattle. And we're well into our review and
7 analysis of that information.

8 We've also completed our actual physical
9 inspections of the ten truck Duck vehicles.

10 And then finally I'd say we have scheduled
11 inspections for the stretch Duck vehicles on November 16th,
12 17th and 18th.

13 So that's where we are to date.

14 I can talk about what's up next for us coming up
15 here in the next few weeks. We're going to complete our
16 records review and analysis of all that data.

17 And I will say that this is a very large amount
18 of information that we're kind of sifting through. It's a
19 lot of detailed information, so it's detailed work to really
20 make sure we can look at of these carefully and correctly.
21 So we'll conduct that review.

22 We'll finish our review and analysis, we'll
23 inspect the truck Ducks, and then we'll start preparing our
24 findings.

25 And our findings will include an evaluation of

1 the Company's safety and operating practices and their
2 compliance with state and national requirements that are
3 within our jurisdiction.

4 We will include a listing of required changes or
5 required fixes that are made for any violations that are
6 discovered.

7 We may include some recommendation for changes
8 to safety practices. I say "may" at this point, because I'm
9 not sure until we get to that point.

10 We will also include a list of the items that
11 the Company has already made corrections on. Some of our
12 early work with the Company identified some minor paperwork
13 things that they immediately started correcting, and so
14 we'll mention that in our report.

15 And then finally, I will also include a
16 recommendation regarding the Company's operating authority
17 as is being discussed here today.

18 I expect to have my final report done and
19 complete and ready to be released to the Commission probably
20 by early December.

21 Thank you.

22 JUDGE KOPTA: And by "early December" do you
23 have an approximate date?

24 Are we talking the 1st, are we talking the
25 5th?

1 MR. PRATT: I'd say I don't have an exact date,
2 but my goal is to get it done probably within the first ten
3 days or so, early December.

4 JUDGE KOPTA: Again for scheduling purposes,
5 just trying to figure out when we would likely be able to
6 have the hearing.

7 Any questions from the Commissioners at this
8 point?

9 CHAIRMAN DANNER: Yes. I do have some, just
10 some clarifying questions.

11 Mr. Pratt, thank you for the updates. I
12 appreciate it.

13 So just to be clear, you are investigating the
14 overall safety of the Company. You're doing the vehicle
15 inspections.

16 But the NTSB is doing the investigation of the
17 accident?

18 MR. PRATT: Yes.

19 CHAIRMAN DANNER: So clearly there's some
20 overlap, because I would assume they would inspect the
21 vehicles as part of the accident investigation too. So is
22 there -- there is coordination so we're able to assist them
23 and they're assisting us?

24 MR. PRATT: We are working with them closely.

25 I would say that Stretch Duck 6, the one that

1 was in the accident, has been impounded and is under the
2 NTSB and Seattle Police Department's control. They are
3 doing the inspection of that. They've actually torn it
4 apart. To my understanding, they have done some analysis on
5 that, and that's their piece. We were not participating in
6 that.

7 The thing we are participating in is we're
8 jointly sharing the records on that vehicle, the maintenance
9 records and the past practices on that vehicle. That's part
10 of our compliance review. But it's part of their review of
11 that vehicle. So we are coordinating on that piece there.
12 And we're looking at the exact same data, same records.

13 CHAIRMAN DANNER: Okay. Thank you.

14 And the next question, you completed your
15 inspections of the ten truck Ducks and you're still working
16 on the stretch Ducks.

17 But is it your intent to have two reports, one
18 involving the truck Ducks and one involving the stretch
19 Ducks, or are you going to basically look at the overall
20 safety of the Company and the operations of the Company and
21 do a single report that addresses all the reviews?

22 MR. PRATT: There will be a single report that
23 will be broken into sections that will cover -- I will have
24 a section on the truck Ducks and a section on the stretch
25 Ducks because they're differently -- manufactured

1 differently and they have different axle systems on them.
2 So that will be separate.

3 But then there will be the overriding umbrella
4 view of the Company's safety operating practices, which will
5 cover all the vehicles and how they operate them, how they
6 maintain them, and what their compliance is.

7 CHAIRMAN DANNER: Thank you.

8 Are we -- is the Company --

9 JUDGE KOPTA: Yes. Anything further from the
10 Commissioners?

11 COMMISSIONER RENDAHL: Just a quick question,
12 Mr. Pratt.

13 You mentioned that the FMCSA did some drug and
14 alcohol -- some review of the Company's drug and alcohol
15 testing and practices. Isn't that something the Commission
16 would normally do as a part of our investigation, or are we
17 sharing that with FMCSA?

18 MR. PRATT: Yes. The drug and alcohol review is
19 called a Part 382 under the Code 49. We are sharing -- it's
20 the same data.

21 They actually conducted that part of the review
22 for us. And with their findings, they will turn those over
23 to us and we will incorporate that into my report.

24 They would do the same thing we do. It's the
25 same review. It's a complete review of the drug and alcohol

1 program and compliance with the requirements of the program.

2 COMMISSIONER JONES: Just one clarifying
3 question. Coast Guard: So I think in your last
4 presentation to us, you said the Coast Guard inspects
5 annually, the vehicles; that is correct?

6 MR. PRATT: Yes, sir.

7 COMMISSIONER JONES: But the Coast Guard is
8 not doing any investigation now of either stretch Ducks or
9 truck Ducks; it's going to do it after NTSB and UTC complete
10 their investigation. Is that what I heard you say?

11 MR. PRATT: I can't speak for the wait for
12 the NTSB, because the NTSB is only investigating the
13 accident.

14 These vehicles have what you call waterproof
15 boots over some of the parts to protect them while they're
16 in the water. The Coast Guard, any time the seals on those
17 boots are broken, the Coast Guard has to reinspect them to
18 make sure they meet compliance and are satisfactory.

19 So we've broken the boots on the truck Ducks
20 as we inspected them.

21 We will break the boots on the stretch Ducks
22 when we inspect them.

23 So besides the annual inspections that the
24 Coast Guard has to do, they're going to have to come back
25 again to certify them again that they're safe to operate in

1 the water.

2 COMMISSIONER JONES: So they'll have to do it
3 twice.

4 MR. PRATT: And I'm not familiar with their
5 timing, whether it could be an annual inspection at the same
6 time they're doing this one. I haven't had that discussion
7 with them. It's possible that could happen.

8 COMMISSIONER JONES: Thanks.

9 JUDGE KOPTA: Okay. Anything further?

10 MS. BROWN: This is Sally Brown.

11 I just would like Mr. Pratt to clarify what
12 he means by "breaking the boots."

13 MR. PRATT: Opening.

14 JUDGE KOPTA: Okay.

15 Company, do you have anything that you'd like
16 to add at this point about the investigation?

17 MS. BUCHANAN: Yes, your Honor. Thank you
18 for the opportunity.

19 The Staff has been remarkable, very
20 professional, and I know they're working very, very hard.
21 So we thank them for that and continue to cooperate with
22 them.

23 I suppose one of the messaging points I would
24 like to convey today in addition to that cooperation is that
25 urgency is certainly a paramount concern, getting the 130

1 employees back to work is a paramount concern, and getting
2 the ten truck Ducks that have already been inspected back on
3 the road is certainly a paramount concern, obviously after
4 conclusions have been made as to the safety of those trucks
5 as well as the protocols.

6 JUDGE KOPTA: And do you have any concerns
7 with the early December date the Staff has given for being
8 able to provide their final report?

9 MS. BUCHANAN: Well, we of course would want
10 everything yesterday.

11 What I can say is the Staff has worked
12 remarkably hard. And we have no complaints about the effort
13 on the timeliness that they have been putting in.

14 JUDGE KOPTA: Okay. Thank you.

15 Questions for from the Commission?

16 CHAIRMAN DANNER: Yes, I do.

17 Thank you for your comments. And I do
18 believe that our Staff is working expeditiously.

19 Obviously, this is an important
20 investigation. We have a number of federal agencies
21 involved as well, and we want to do a thorough job.

22 The question I have for you, I have seen
23 media reports about commitments the Company has made not to
24 use the Aurora Bridge going forward. I was wondering if you
25 can clarify what that commitment was, what alternative

1 routes you were thinking of, if you've made those
2 determinations, and tell me about the coordination with the
3 City of Seattle.

4 MS. BUCHANAN: The decision has been made to
5 not include the Aurora Bridge in the routes. The new routes
6 are being developed. I don't have the data on the new
7 routes to share with you today, but coordinating efforts are
8 being made and will certainly be approved by the City.

9 Mr. Pratt may or may not have more
10 information on that. I'm not sure.

11 So with respect to the bridge, that decision
12 has been made.

13 The other decision that has been made, and
14 perhaps is one of your follow-up questions, is they have now
15 gone to two-manned Ducks. In other words, there will be a
16 driver and a tour guide, so two folks operating one Duck.

17 CHAIRMAN DANNER: Okay. And that would be
18 for all the vehicles, whether it's a stretch Duck or a truck
19 Duck?

20 MS. BUCHANAN: Correct.

21 CHAIRMAN DANNER: Okay. Yes, that was my
22 follow-up question. So thank you.

23 JUDGE KOPTA: Any other questions?

24 All right. So we will anticipate a report
25 from Staff in early December. I, being a deadline-oriented

1 person, would like to put a date on that.

2 Can we say the 15th of December? Would that
3 give you enough time?

4 MS. BROWN: You can say whatever you want.

5 JUDGE KOPTA: Can we order the 15th of
6 December?

7 MS. BROWN: Yes, you may order the 15th of
8 December. And it may be Commission Staff will file a motion
9 to extend that.

10 JUDGE KOPTA: That's fair.

11 Is that acceptable to the Company?

12 MS. BUCHANAN: Yes, your Honor. Thank you.

13 JUDGE KOPTA: All right. Well, then, if we
14 assume the 15th of December -- and this is really more
15 directed to the Company -- do you have an anticipation of
16 how long you would need to prepare for a hearing to -- from
17 your position, worst case scenario, if the Staff recommends
18 continuation of the suspension of the operating authority?

19 MS. BUCHANAN: Our goal, of course, is to
20 have the hearing as soon as possible; i.e., within days of
21 the issuance of the report.

22 However, that said, in part it depends on
23 what the investigation indicates. And what the findings are
24 will necessarily dictate what preparation we'll need.

25 So certainly within days at the earliest and

1 within two weeks at the outset is what we envisioned.

2 JUDGE KOPTA: And of course we have holidays,
3 and that makes it a little more complicated. I obviously
4 would need to consult with the Commissioners' schedule to
5 make sure that they're available on whatever date. So we
6 may not be able to set a date today.

7 But I take your point. I would anticipate,
8 just to let you know, that it would be likely in early
9 January, given where we are in terms of the holidays. So it
10 may be a little longer than you anticipate.

11 But again, as Ms. Brown indicated, there is
12 always the opportunity for either the Company or Staff to
13 file a motion to change the dates that we end up ordering.

14 MS. BUCHANAN: Thank you, your Honor.

15 JUDGE KOPTA: Do you have any concerns from
16 Staff's perspective about a first week of January or early
17 January hearing date?

18 MR. PRATT: No.

19 MS. BROWN: What about your lawyer?

20 I think that it's optimistic to think that
21 after having received and reviewed the investigation report
22 that we would be ready to go to hearing within two weeks.
23 However, I would agree to that.

24 I also want to point out that the Company has
25 not yet filed its answer to the Commission's complaint. So

1 We're awaiting that.

2 And while we think that the Commission would
3 have the authority certainly to place conditions on the
4 certificate, Commission Staff also is contemplating moving
5 to amend the complaint to seek the imposition of penalties
6 depending upon what the investigation report reveals.

7 JUDGE KOPTA: All right. Under our
8 procedural rules, if it's a Commission-initiated complaint,
9 there's no obligation for the Company to file an answer.

10 But at this point, is the Company
11 anticipating that you will file an answer to the
12 complaint?

13 MS. BUCHANAN: Yes, your Honor.

14 JUDGE KOPTA: And would you prefer to do that
15 now, or would you want to wait until after Staff perhaps
16 amends the complaint, or would you like to do both?

17 MS. BUCHANAN: I think perhaps after, if it's
18 amended and/or if there's confirmation whether it's going to
19 be amended. If that's agreeable?

20 MS. BROWN: That's possible.

21 JUDGE KOPTA: I will leave that to the
22 parties to determine.

23 As I said, it's not anything that is required
24 under our rules, but certainly we would want to have an
25 answer in advance of whatever hearing that we have. I'll

1 just put that parameter on your discussion in terms of
2 coming up with an agreement.

3 MS. BUCHANAN: Thank you.

4 JUDGE KOPTA: All right. So at this point,
5 we have a December 15 date for Staff's report and an early
6 January date for having an evidentiary hearing based upon
7 that report.

8 Hence, the hearing will be limited strictly
9 to the issue of whether the suspension -- whether the
10 Commission should lift the suspension of the Company's
11 operating authority.

12 We anticipate that after that hearing,
13 whatever happens, we will proceed with the complaint on its
14 regular track.

15 At this point, we're still dealing with the
16 emergency provisions under the APA. And once those have
17 been resolved, then we will go to processing the complaint
18 as we do any other complaint under our rules and statutes.

19 All right. Is there anything else that we
20 need to discuss while we're here today?

21 MS. BUCHANAN: No, your Honor.

22 JUDGE KOPTA: Anything from the
23 Commissioners?

24 CHAIRMAN DANNER: No.

25 JUDGE KOPTA. All right, then. Thank you.

1 We're adjourned.

2 (Whereupon, the proceedings were
3 concluded at 9:53 a.m.)

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STATE OF WASHINGTON)
) ss
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The State of Washington

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