0030

 1 BEFORE THE WASHINGTON STATE

 2 UTILITIES AND TRANSPORTATION COMMISSION

 3 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 4 WASHINGTON UTILITIES AND )

 TRANSPORTATION COMMISSION, )

 5 )

 Complainant, )

 6 )

 v. )

 7 ) DOCKET TE-151906

 RIDE THE DUCKS OF SEATTLE, L.L.C., )

 8 d/b/a SEATTLE DUCK TOURS, )

 )

 9 Respondent. )

 )

10 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

11 STATUS CONFERENCE

12 Volume II - Pages 30-51

13 ADMINISTRATIVE LAW JUDGE GREGORY KOPTA

14 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

15 9:30 AM.

16 NOVEMBER 3, 2015

17 Washington Utilities and Transportation Commission

 1300 South Evergreen Park Drive Southwest

18 Olympia, Washington 98504-7250

19

20 REPORTED BY: ELIZABETH PATTERSON HARVEY, RPR, CCR 2731

21

 Buell Realtime Reporting, LLC

22 1325 Fourth Avenue

 Suite 1840

23 Seattle, Washington 98101

 206.287.9066 | Seattle

24 206.534.9066 | Olympia

 800.846.6989 | National

25 www.buellrealtime.com

26

0031

 1 A P P E A R A N C E S:

 2

 ADMINISTRATIVE LAW JUDGE:

 3

 GREGORY J. KOPTA

 4 Washington Utilities and Transportation

 Commission

 5 1300 South Evergreen Park Drive SW

 PO Box 47250

 6 Olympia, Washington 98504

 360.664.1136

 7

 8 COMMISSIONERS:

 9 CHAIRMAN DAVID W. DANNER

10 COMMISSIONER ANN E. RENDAHL

11 COMMISSIONER PHILIP B. JONES

12 FOR WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

 STAFF:

13

 SALLY BROWN

14 Senior Attorney General

 Chief, UTC Division

15 1400 South Evergreen Park Drive SW

 PO Box 40128

16 Olympia, Washington 98504

 360.664.1193

17 sbrown@utc.wa.gov

18

 FOR THE OFFICE OF PUBLIC COUNSEL:

19

 SIMON J. FFITCH

20 Senior Assistant Attorney General

 Chief, Public Counsel Division

21 800 Fifth Avenue

 Suite 2000, TB-14

22 Seattle, Washington 98104

 206.389.2055

23 simonf@atg.wa.gov

24

25

0032

 1 A P P E A R A N C E S (Continued)

 2

 FOR RESPONDENT:

 3

 PATRICIA K. BUCHANAN

 4 DUNCAN K. FOBES

 Patterson Buchanan Fobes

 5 & Leitch, Inc., P.S.

 2112 Third Avenue

 6 Suite 500

 Seattle, Washington 98121

 7 206.462.6700

 pkb@pattersonbuchanan.com

 8 dkf@pattersonbuchanan.com

 9

10

11

12 \* \* \* \* \* \* \*

13

14

15

16

17

18

19

20

21

22

23

24

25

0033

 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

0034

 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.

0035

 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.

0036

 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

0037

 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

0038

 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?

0039

 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

0040

 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

0041

 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

0042

 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

0043

 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

0044

 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

0045

 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

0046

 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

0047

 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

0048

 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

0049

 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.

0050

 1 We're adjourned.

 2 (Whereupon, the proceedings were

 3 concluded at 9:53 a.m.)

 4

 5

 6

 7

 8

 9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0051

 1

 2 CERTIFICATE OF REPORTER)

 STATE OF WASHINGTON )

 3 ) ss

 COUNTY OF KING )

 4

 5 I, Elizabeth Patterson Harvey, a Certified Court

 6 Reporter and Registered Professional Reporter within and for

 7 the State of Washington, do hereby certify that the

 8 foregoing proceedings were taken by me to the best of my

 9 ability and thereafter reduced to typewriting under my

10 direction; that I am neither counsel for, related to, nor

11 employed by any of the parties to the action, and further

12 that I am not a relative or employee of any attorney or

13 counsel employed by the parties thereto, nor financially or

14 otherwise interested in the outcome of the action.

15

16

17

18 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Certified Court Reporter in

19 The State of Washington

20 My license expires December 21, 2015

21

22

23

24

25

26