

BEFORE THE  
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION,

Complainant,

v.

DTG ENTERPRISES, INC.,

Respondent.

DOCKET TG-240761

DTG ENTERPRISES, INC.'S  
CONSOLIDATED RESPONSE TO  
PETITIONS TO INTERVENE OF  
WASHINGTON REFUSE AND  
RECYCLING ASSOCIATION;  
RUBATINO REFUSE REMOVAL  
LLC; AND RABANCO LTD.

**INTRODUCTION**

1           The Complaint in this proceeding alleges 3,389 violations of RCW 81.77.040 and seeks a penalty of \$3,389,000. These are serious allegations, and due process mandates that DTG Enterprises, Inc. (“DTG”) be given a fair and nonprejudiced opportunity to defend itself. Despite this, *ten* parties have petitioned for intervention in this matter—many of which are themselves composed of various entities and subsidiaries. Few claim any firsthand knowledge of the actual allegations in the Complaint and most assert interests that appear duplicative and unnecessarily cumulative—yet *all* appear to seek full party participation, including presenting testimony and briefing. Not only would this overburden the proceeding without meaningfully contributing to the Commission’s resolution of the Complaint, but it would grossly prejudice DTG by requiring it to respond not only to Commission Staff, but also to dozens of additional discovery requests, witnesses, and briefs.

2           To avoid undue prejudice and expense in this proceeding, it is imperative that the Commission limit intervention to only those parties that demonstrate a substantial interest in this proceeding and that will actually contribute to resolution of the Complaint beyond general concerns with hypothetical policy questions that *might* arise. And even those intervenors should

be allowed to participate only to the extent of their interests and knowledge, consistent with the limitations described in RCW 34.05.443.

Given this context, pursuant to RCW 34.05.443 and WAC 480-07-355(2), DTG respectfully responds to the intervention petitions submitted by the following entities:

- Washington Refuse and Recycling Association (“WRRRA”);
- Rubatino Refuse Removal LLC (“Rubatino”); and
- Rabanco Ltd. (d/b/a Emerald City Disposal, Tri-County Disposal, Lynwood Disposal, Eastside Disposal, Rabanco Companies, Sea-Tac Disposal, Rabanco Connections, Republic Services, and Rabanco Recycling) (“Rabanco”).

DTG does not oppose intervention of the above parties but is concerned that these parties might seek to broaden this proceeding beyond the allegations of the Complaint. Accordingly, to ensure judicial economy and avoid prejudice, if the Commission determines that these petitions should be granted, DTG requests that intervention be conditioned to limit participation only to addressing the factual and legal issues raised in the Complaint as described below.

### BACKGROUND

DTG is the foremost recycler of construction, demolition, industrial, and manufacturing waste in the Pacific Northwest, “collect[ing] construction and demolition wastes for recycling from various material streams throughout [its] service areas in” Washington.<sup>1</sup> DTG is not a solid-waste collection company and does not offer solid waste hauling services to its customers.

Last year, DTG “proactively reached out [to Commission Staff] to confirm its compliance with applicable rules and regulations,” particularly with regards to its hauling of residuals from its material recovery facilities to county facilities.<sup>2</sup> Commission Staff instructed DTG to apply for a solid-waste certificate, and DTG accordingly filed an application on July 31, 2024. DTG filed the application *only* because Commission Staff instructed it do so—“not because DTG believed its recycling operations required a solid-waste certificate or because it sought to expand its activities

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<sup>1</sup> *In the Matter of the Appl. of DTG Enters., Inc.*, Docket TG-240584, Application at 5 (July 31, 2024).

<sup>2</sup> DTG Enterprises, Inc.’s Answer to Compl. & Affirmative Defenses ¶ 53.

to include hauling solid waste for compensation.”<sup>3</sup> Indeed, “DTG does not desire or seek to be a solid-waste collection company.”<sup>4</sup>

Given that DTG’s application covers statewide operations on an ongoing basis, various incumbent solid-waste haulers filed protests—including Rubatino and Rabanco.<sup>5</sup> WRRRA was also granted intervention to participate in the proceeding, allowing it to advance the interests of its constituent solid-waste companies.<sup>6</sup>

Even though DTG filed the application as instructed, on December 18, 2024, Commission Staff initiated the Complaint proceeding. Commission Staff alleges that, “[b]etween January 1, 2023, and June 30, 2023, DTG committed 3,389 violations of RCW 81.77.040 when it, without the required certificate, knowingly transported 3,389 loads of residual solid waste from its material recovery facility to Snohomish County solid waste facilities.”<sup>7</sup> Commission Staff seeks the maximum penalty of \$1,000 for each violation, resulting in a total request penalty of \$3,389,000.<sup>8</sup>

Significantly, the Complaint is limited both geographically and chronologically: The allegations address *only* DTG’s activities in Snohomish County and *only* between January 1 and June 30, 2023.

On January 29, 2025, WRRRA filed a petition to intervene; Rubatino and Rabanco followed on February 3. The petitions demonstrate the limited interests these three putative intervenors have in this proceeding:

- Rubatino is “the owner of the certificate of public convenience and necessity” in Snohomish County and claims that DTG “unlawfully divert[ed] business that was required to be performed by” it.<sup>9</sup> Although it suggests that it “will provide essential evidence that would show DTG’s systematic wrongdoing occurring in [its] service area,” the facts it identifies are limited to the allegations it already provided to Commission Staff at the outset of this proceeding and information that DTG itself provided in its Answer.<sup>10</sup> Much of Rubatino’s petition focuses on DTG’s *future*

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<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *See In re the Appl. of DTG Enters., Inc.*, Docket TG-240584, Order 01 ¶ 1 (Dec. 5, 2024).

<sup>6</sup> *See id.* ¶ 4.

<sup>7</sup> Compl. & Notice of Prehearing Conference ¶ 20.

<sup>8</sup> *Id.* ¶ 21.

<sup>9</sup> Pet. to Intervene of Rubatino Refuse Removal LLC ¶ 2.

<sup>10</sup> *See id.* ¶¶ 5–7.

operations and other issues related to an application for a solid-waste certificate—not a limited enforcement proceeding.<sup>11</sup>

- Rabanco and its various affiliates operate throughout Washington, including Snohomish County.<sup>12</sup> Its only asserted interest in this proceeding is “voicing its perspective as a regulated company and participant in this regulated industry”; it does not claim any direct knowledge of the allegations in the Complaint.<sup>13</sup>
- WRRRA, “a trade association representing the vast majority of regulated solid waste collection companies in Washington state,” identifies only a general interest in “[a]ny adjudication with the potential to set policy for the [solid-waste] industry”; it claims no firsthand knowledge of the specific facts alleged in the Complaint.<sup>14</sup>

## ARGUMENT

11           Given that Rubatino and Rabanco both operate in Snohomish County and WRRRA’s role representing the general interests of solid-waste collection companies in Washington, DTG does not oppose the intervention of these parties, subject to the conditions outlined below. Concerningly, each has expressed an interest in addressing issues broader than the factual timeframe and allegations in the Complaint. Such issues are irrelevant to the scope of this limited proceeding, would prejudice DTG, and would force the Commission and parties to expend unnecessary resources and give rise to needless complexity and confusion. The only issue before the Commission in this proceeding is whether DTG violated RCW 81.77.040 as alleged in the Complaint; no intervenor should be permitted to stray beyond that limited scope.

12           Accordingly, if the Commission grants intervention to these putative intervenors, then, consistent with WAC 480-07-355(3), their intervention should be conditioned and limited to avoid broadening the scope of the proceeding beyond the allegations in the Complaint. This proceeding must not be used as a fishing expedition to expand the factual issues beyond the Complaint or delve into policy questions outside the limited legal issues raised by Commission Staff.

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<sup>11</sup> See *id.* ¶¶ 8–10.

<sup>12</sup> Pet. to Intervene of Rabanco Ltd. & Kent-Meridian Disposal Co. ¶ 3.

<sup>13</sup> *Id.* ¶ 4.

<sup>14</sup> Pet. to Intervene of Washing Refuse & Recycling Association ¶ 2.

13 Even where intervention is permitted, “the Commission can impose conditions upon any intervenor’s participation in the proceedings.”<sup>15</sup> These conditions may include—but are not limited to—the following:

- (a) Limiting the intervenor’s participation to designated issues in which the intervenor has a particular interest demonstrated by the petition; and
- (b) Limiting the intervenor’s use of discovery, cross-examination, and other procedures so as to promote the orderly and prompt conduct of the proceedings; and
- (c) Requiring two or more intervenors to combine their presentations of evidence and argument, cross-examination, discovery, and other participation in the proceedings.<sup>16</sup>

14 Given the seriousness of the allegations against DTG and the massive penalty sought by Commission Staff, it is imperative that the issues in this proceeding be narrowed to the allegations in the Complaint and that DTG not be prejudiced by any efforts to broaden the factual or legal scope. If the Commission is inclined to allow these putative intervenors to participate, then DTG respectfully requests that their intervention be conditioned on the following limitations.

15 *First*, given that the Complaint addresses *only* DTG’s activities in Snohomish County and *only* between January 1 and June 30, 2023,<sup>17</sup> any argument, discovery, testimony, and other participation by these putative intervenors should be limited only to this geographic area and this specific timeframe.

16 *Second*, because WRRRA has no firsthand knowledge of the factual underpinnings of the Complaint and claims only a general interest in “[a]ny adjudication with the potential to set policy for the [solid-waste] industry,”<sup>18</sup> it should not be allowed to participate in any factual components of this proceeding such as engaging in discovery or filing testimony. Instead, consistent with RCW 34.05.443(2)(a), its participation should be limited only to policy-related argument.

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<sup>15</sup> *In the Matter of the Pet. of Puget Sound Energy*, Docket UE-130583, Order 04 ¶ 7 (July 25, 2014).

<sup>16</sup> RCW 34.05.443(2).

<sup>17</sup> Compl. & Notice of Prehearing Conference ¶ 20.

<sup>18</sup> Pet. to Intervene of Washing Refuse & Recycling Association ¶ 2.

17            *Third*, given that WRRRA, Rubatino, and Rabanco apparently share similar views on the proper interpretation of RCW 81.77.040, for the sake of efficiency, these three intervenors should be required to combine their briefing and other legal arguments before the Commission. This condition is frequently required in proceedings where intervening parties share common interests so as to avoid overburdening the Commission (and, here, DTG) with redundant briefing.<sup>19</sup>

### CONCLUSION

18            For the foregoing reasons, DTG respectfully requests that, if the Washington Refuse and Recycling Association, Rubatino Refuse Removal LLC, and Rabanco Ltd. are permitted to intervene, then intervention be conditioned as described above.

Dated: February 4, 2025

#### PERKINS COIE LLP

*s/ David A. Perez*

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<sup>19</sup> See, e.g., *BNSF Ry. Co. v. City of Mount Vernon*, Docket TR-070696, Order 01 ¶ 16 (July 20, 2007) (requiring putative intervenors to combine presentations with existing respondent).