

WUTC v. DTG Enterprises, Inc.

Docket No. TG-240761 - Vol. I (February 6, 2025)



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<p style="text-align: right;">Page 1</p> <p style="text-align: center;">BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION</p> <hr/> <p>WASHINGTON UTILITIES AND) TRANSPORTATION COMMISSION,) Complainant,) vs.) DOCKET NO. TG-240761 DTG ENTERPRISES, INC.,) Respondent.) PAGES 1 - 55)</p> <hr/> <p style="text-align: center;">VIRTUAL PREHEARING CONFERENCE - VOL I BEFORE ADMINISTRATIVE LAW JUDGE HARRY O. FUKANO February 6, 2025</p> <hr/> <p style="text-align: center;">Held via Zoom Washington Utilities and Transportation Commission 621 Woodland Square Loop SE Lacey, Washington 98504</p> <hr/> <p>TRANSCRIBED BY: ELIZABETH PATTERSON HARVEY, WA CCR 2731</p>	<p style="text-align: right;">Page 3</p> <p style="text-align: center;">A P P E A R A N C E S</p> <p>1 2 3 FOR WASHINGTON REFUSE & RECYCLINE ASSOCIATION: Rod Whitaker 4 In-house Counsel Washington Refuse & Recycling Association 5 4160 6th Avenue SE, Suite 205 Lacey, WA 98503 6 7 FOR LAUTS, INC., d/b/a LAUTENBACH INDUSTRIES Mark C. Lamb 8 Carney Badley Spellman 701 Fifth Avenue, Suite 3600 9 Seattle, Washington 98104 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>
<p style="text-align: right;">Page 2</p> <p style="text-align: center;">A P P E A R A N C E S</p> <p>1 2 3 FOR COMMISSION STAFF: Lisa W. Gafken 4 Office of the Attorney General P.O. Box 40128 5 Olympia, Washington 98504 6 7 FOR THE RESPONDENT: David A. Perez Jonathan P. Hawley 8 Stephanie Olson Perkins Coie LLP 9 1201 Third Avenue, Suite 4900 Seattle, Washington 98101 10 David Steele Perkins Coie LLP 11 10885 Northeast Fourth Street, Suite 700 Bellevue, Washington 98004 12 13 FOR PUBLIC COUNSEL: Robert D. Sykes 14 Attorney General of Washington Seattle, Washington 98104 15 16 FOR BAINBRIDGE DISPOSAL, INC., BASIN DISPOSAL, INC., KENT-MERIDIAN DISPOSAL COMPANY, TORRE REFUSE 17 RECYCLING LLC, SANITARY SERVICE COMPANY, INC., and WASTE CONNECTIONS' WASHINGTON REGULATED COMPANIES: 18 Michael S. Howard David W. Wiley 19 Williams Kastner Perkins Coie LLP 601 Union Street, Suite 4100 20 Seattle, Washington 98101 21 22 FOR RUBATINO REFUSE REMOVAL, LLC AND TORRE REFUSE & RECYCLING, d/b/a SUNSHINE DISPOSAL & RECYCLING: 23 Reid G. Johnson Lukins & Annis, P.S. 717 W. Sprague Avenue, Suite 1600 24 Spokane, Washington 99201 25</p>	<p style="text-align: right;">Page 4</p> <p>1 February 6, 2025 2 -o0o- 3 4 JUDGE FUKANO: Good morning. My name is Harry 5 Fukano. I'm an administrative law judge with the 6 Washington Utilities and Transportation Commission. The 7 time is approximately 9:32. 8 We're here today for a prehearing conference 9 in Docket TG-240761, which is captioned Washington 10 Utilities and Transportation Commission versus DTG 11 Enterprises, Incorporated. 12 Let's start by taking brief appearances, 13 starting with the company, DTG. 14 ATTORNEY PEREZ: David Perez, Perkins Coie, 15 representing DTG. And with me on the line are my 16 co-counsel and colleagues, Stephanie Olson, David Steele, 17 and Jonathan Hawley. 18 JUDGE FUKANO: And for commission staff? 19 ATTORNEY GAFKEN: Good morning. This is Lisa 20 Gafken, assistant attorney general, appearing on behalf 21 of commission staff. 22 JUDGE FUKANO: And for Rubatino Refuse 23 Removal and Torre Refuse Recycling? 24 ATTORNEY JOHNSON: Yes, good morning, your 25 Honor, Reid Johnson of Lukins & Annis, here on behalf of</p>

<p style="text-align: right;">Page 5</p> <p>1 Torre Refuse Recycling and Rubatino Refuse and Recycling. 2 Thank you. 3 JUDGE FUKANO: And for WRRRA? 4 ROD WHITAKER: Good morning, Judge Fukano. 5 Yes, this is Rod Whitaker, in-house counsel for WRRRA. 6 JUDGE FUKANO: For Lauts, Incorporated? 7 ATTORNEY LAMB: Good morning, your Honor. 8 Mark Lamb with Carney Badley Spellman for Lauts, 9 Incorporated. 10 JUDGE FUKANO: And for Bainbridge Disposal, 11 Basin Disposal, Rabanco, Kent-Meridian Disposal, Sanitary 12 Service Company, and Waste Connections of Washington, 13 Incorporated? 14 ATTORNEY HOWARD: Good morning, your Honor. 15 Michael Howard with Williams Kastner, representing 16 Bainbridge Disposal, Basin Disposal, Rabanco Limited, and 17 Kent-Meridian Disposal, Sanitary Service Company, and 18 Waste Connections' of Washington regulated companies. 19 And with me is my co-counsel, David Wiley. 20 JUDGE FUKANO: And is there an appearance for 21 public counsel? 22 ATTORNEY SYKES: Yes, Rob Sykes, assistant 23 attorney general, for public counsel. 24 JUDGE FUKANO: Thank you. 25 This brings us to petitions for intervention.</p>	<p style="text-align: right;">Page 7</p> <p>1 ATTORNEY PEREZ: Okay. I mean, that's 2 really the key when it comes to Lauts. We don't know 3 what side they're going to be taking in this 4 intervention. 5 And big picture, which kind of bleeds into 6 and overlaps with the arguments opposing the others, is 7 that Lauts, like many -- several others, doesn't have a 8 presence in Snohomish, doesn't actually have an interest 9 in the specific, very specific, narrow facts alleged in 10 this action, which is an 18-month period within Snohomish 11 County and only Snohomish County. 12 And so to the extent Lauts and others are 13 trying to expand this to kind of a statewide action or 14 statewide issues that go beyond Snohomish County or 15 beyond these 18 months, that's going to be improper and 16 won't further the public interest. On the contrary, it's 17 going to be duplicative and (inaudible) on you and 18 needlessly costly. 19 I'm happy to address the others as well. But 20 when it comes to Lauts, I think it's a pretty easy 21 denial. 22 JUDGE FUKANO: Thank you. 23 Does the representative for Lauts have any 24 response to the argument from the company? 25 ATTORNEY LAMB: We do, your Honor. And</p>
<p style="text-align: right;">Page 6</p> <p>1 Are there any petitions to intervene in this proceeding 2 other than the petitions that have been filed in writing 3 with the commission? 4 Hearing nothing, let's proceed. This 5 commission has received several petitions for 6 intervention in this proceeding. I have reviewed the 7 petitions, as well as DTG's response and objections to 8 the petition for intervention. 9 As an initial matter, I wanted to ask DTG if 10 it has any response to the petition for intervention from 11 Lauts, Incorporated, as I do not recall seeing them 12 included in the company's response. 13 ATTORNEY PEREZ: Yeah, when it comes to 14 Lauts, we were -- we oppose it, in part because -- or in 15 large part because Lauts doesn't clearly state which side 16 it supports, which is a basic threshold requirement for 17 intervention. 18 And I'm happy to go through the intervention 19 standard, but that's sort of a "do not pass go, do not 20 collect \$200" standard there. 21 JUDGE FUKANO: You may proceed with your 22 argument. 23 ATTORNEY PEREZ: On Lauts, or on all of them? 24 JUDGE FUKANO: On Lauts. I've reviewed the 25 written argument.</p>	<p style="text-align: right;">Page 8</p> <p>1 respectfully, we disagree that it's an easy denial. 2 I think there are a number of public policy 3 positions that are raised in this litigation that would 4 be -- have significant implications for our client 5 potentially. 6 Our position is not to come in at this point 7 and weigh in. You know, we articulated our position in 8 our pleadings, which is that we support the existing 9 precedence of the UTC, and that would be our position in 10 this matter. 11 I think obviously, counsel has an interest in 12 narrowing the scope and making sure that it would be 13 viewed both by the UTC and by opposing -- or by 14 intervening parties as being an extremely limited matter. 15 I think given the scope of what is alleged 16 and what the scope is before the commission, it's quite 17 likely that there will be significant public policy 18 issues that will reverberate throughout the industry. 19 And our position is that we are -- as a 20 significant participant in the industry, should have a 21 place at the table during those conversations. And I 22 think it's entirely appropriate and consistent with the 23 Washington Administrative Code to allow intervention in 24 this instance. 25 JUDGE FUKANO: Thank you.</p>

<p style="text-align: right;">Page 9</p> <p>1 ATTORNEY PEREZ: And if I might just, you 2 know, respond briefly under WAC 480.07.355 (c)(iii), the 3 regulation expressly requires putative intervenors to 4 state their, quote, position with respect to the matters 5 in controversy. And simply stating "we support the 6 law," which is effectively what counsel just said, is not 7 a position with respect to the matters in controversy. 8 So that's kind of their, like I said, do not 9 pass go, not collect \$200 moment. They have to kind of 10 tell us how or why they're intervening; not just some 11 general "we're very curious and interested statewide." 12 ATTORNEY LAMB: If I may respond, your Honor? 13 JUDGE FUKANO: You may, briefly. 14 ATTORNEY LAMB: I don't think our position is 15 simply that we support the law. Hopefully, everybody in 16 this hearing supports the law. 17 Our position is that we believe that the 18 existing precedents of the UTC are appropriate and should 19 be supported. And obviously, to the extent that this 20 precedence would change in response to this litigation in 21 a way that frankly, I don't know is foreseeable as we sit 22 here this morning, we would like to be a participant in 23 that conversation. I think that's entirely consistent. 24 We stated our position with respect to the 25 matters in controversy, which is that we support the</p>	<p style="text-align: right;">Page 11</p> <p>1 for intervention in addition to their written responses? 2 ATTORNEY PEREZ: Are you asking me? 3 JUDGE FUKANO: Yes, please. 4 ATTORNEY PEREZ: I'm happy to answer 5 questions or I'm happy to, yeah, make an oral argument. 6 I also -- you know, reading between the 7 lines, I don't want to just repeat what we said in our 8 brief. So if, you know, I -- if you're satisfied with 9 the papers, we're happy to rest on the papers. 10 But sure, I'm happy to distill it and kind of 11 tell you high level why we oppose -- we don't oppose 12 participation of WRRRA, Rubatino, and Rabanco, with 13 conditions, of course. Participation ought to be 14 limited. 15 And there are several parties that we oppose 16 their intervention for a variety of reasons: Sunshine 17 Disposal, Bainbridge, Basin, Kent-Meridian, Sanitary 18 Service, and Waste Connections, including Lauts, of 19 course, which we already discussed. I'm happy to focus 20 on any or all of those, but I also don't want to be too 21 repetitive if you understand the issues. 22 JUDGE FUKANO: Certainly. I suppose I would 23 inquire if there were any additional arguments beyond 24 those advanced already in your filings that you'd like to 25 make for the record.</p>
<p style="text-align: right;">Page 10</p> <p>1 existing precedence, which is broader than the existing 2 law, and we have stated clearly our position with respect 3 to the industry and its respect to the broader issues in 4 controversy. 5 JUDGE FUKANO: Thank you. 6 With respect to the remaining petitions to 7 intervene that were filed with the commission, do any of 8 the noncompany parties wish to object to any of the 9 written petitions to intervene? 10 ATTORNEY GAFKEN: Judge Fukano, Lisa Gafken 11 for commission staff. We do not object to any of the 12 petitions for intervention, and did plan to offer some 13 comments on those petitions, including the petition from 14 Lauts. I'm kind of -- I'm entrusting all of them at the 15 same time. 16 I don't know if you want me to do that now or 17 wait until -- I mean, the company hasn't had an 18 opportunity yet to present their argument on the other 19 petitions for intervention. But I did just want to put a 20 flag out there saying, you know, we want to respond and 21 offer some comments. Now probably isn't the right time. 22 JUDGE FUKANO: Certainly. I appreciate the 23 notice. 24 Would the company like to make a general 25 argument with respect to the remaining written petitions</p>	<p style="text-align: right;">Page 12</p> <p>1 ATTORNEY PEREZ: No. I try not to expand 2 beyond what we put together in the papers. 3 JUDGE FUKANO: All right. Commission staff, 4 you had a response? 5 ATTORNEY GAFKEN: Yes. Thank you. 6 So as we've heard, DTG does object to several 7 of the interventions. 8 DTG does try to claim that this complaint is 9 very narrow in focus and claims that the intervenors 10 would seek to broaden the scope beyond what -- how they 11 view the proceeding. 12 And they also talk about how if the other 13 intervenors are allowed in, that that would burden and 14 undermine DTG's ability to operate in Washington 15 generally. 16 I'll note that Snohomish County activity is 17 focused on in the complaint; however, if the commission 18 finds that its Snohomish County activity is unlawful, 19 similar activity in other counties would likewise be 20 unlawful. The commission could issue a cease and desist 21 order or classification as a solid waste carrier for all 22 similar operations across the state, not just Snohomish 23 County, as a result of this complaint. In other words, 24 DTG could not do in other counties what they would not be 25 allowed to do in one. So to say that there's no impact</p>

<p style="text-align: right;">Page 13</p> <p>1 on activities in other counties is simply not accurate.</p> <p>2 DTG's operations have been in question for</p> <p>3 several years, beginning shortly after DTG received its</p> <p>4 common carrier permit in 2017. This complaint and the</p> <p>5 allegations within it are not a surprise.</p> <p>6 Under WAC 480-07-355(1)(a), any person other</p> <p>7 than the original parties, commission staff, and public</p> <p>8 counsel may petition to intervene. The commission will</p> <p>9 grant intervention if the petitioner has a substantial</p> <p>10 interest in the subject matter or if the petitioner's</p> <p>11 participation is in the public interest.</p> <p>12 The entities seeking to intervene can provide</p> <p>13 information that would be helpful to the commission in</p> <p>14 understanding the scope and nature of DTG's operations.</p> <p>15 The entities seeking intervention have both a</p> <p>16 substantial interest in the outcome of the proceeding,</p> <p>17 and their participation would be in the public interest.</p> <p>18 So from staff's perspective, all of the parties seeking</p> <p>19 interventions meet both of the standards under the</p> <p>20 intervention WAC.</p> <p>21 Each of the parties can speak more</p> <p>22 specifically to their particular interests, and I won't</p> <p>23 repeat or duplicate the record with respect to that.</p> <p>24 But I will conclude by saying that staff does</p> <p>25 not oppose any of the requests to intervene, and would</p>	<p style="text-align: right;">Page 15</p> <p>1 So already, we're not just putting the cart in front of</p> <p>2 the horse; we're adding a bunch of horses to this case.</p> <p>3 This is a very limited case to just Snohomish</p> <p>4 County. And there seems to be a lot of just assumptions</p> <p>5 being made that you can go beyond the four corners of</p> <p>6 Snohomish County.</p> <p>7 Now I'm happy to go through the specific</p> <p>8 haulers right now and tell you why they don't have an</p> <p>9 interest.</p> <p>10 But first, the limited participation, because</p> <p>11 we agreed in our -- you know, based on the intervention</p> <p>12 standard, we're not opposing everybody. We're trying to</p> <p>13 be thoughtful about it.</p> <p>14 The intervention standard can't be a</p> <p>15 free-for-all. It can't be anyone in this industry,</p> <p>16 anyone within Washington, gets to intervene in a case.</p> <p>17 So there must be some gatekeeping, Judge, that you apply.</p> <p>18 Now, counsel had no gatekeeping. So long as</p> <p>19 they're operating, we don't even allege anything outside</p> <p>20 of Snohomish County, let them in. That's not a standard,</p> <p>21 and that's not gatekeeping. That's just opening the</p> <p>22 gate.</p> <p>23 So when it comes to gatekeeping, WRRRA,</p> <p>24 Rubatino, and Rabanco probably ought to be allowed in,</p> <p>25 and Rabanco broadly understood. But that should be</p>
<p style="text-align: right;">Page 14</p> <p>1 support having more voices at the table. Thank you.</p> <p>2 ATTORNEY PEREZ: May I respond now or at some</p> <p>3 point?</p> <p>4 JUDGE FUKANO: Certainly. Would you prefer</p> <p>5 to respond now, or following comments from the</p> <p>6 intervenors?</p> <p>7 ATTORNEY PEREZ: Why don't I respond now.</p> <p>8 And if they raise something else, I can</p> <p>9 respond in a matter that's not too repetitive.</p> <p>10 JUDGE FUKANO: Please proceed.</p> <p>11 ATTORNEY PEREZ: So, first, big picture here,</p> <p>12 this is a six-month period in one county.</p> <p>13 Now I heard counsel just say, Well, you know,</p> <p>14 we can issue a broader injunction that goes to other</p> <p>15 counties.</p> <p>16 To be clear -- and you can control F this.</p> <p>17 Feel free. You can pull it up right now. We can all</p> <p>18 pull it up and share screen. There is not a single</p> <p>19 allegation in this complaint that goes beyond Snohomish</p> <p>20 County. There's no similar activity. The quote used is</p> <p>21 similar activities in other counties. I wrote it down</p> <p>22 while counsel was speaking.</p> <p>23 It's their burden to allege that in the first</p> <p>24 instance, and their burden to prove that in the second</p> <p>25 instance. And they haven't even met the first instance.</p>	<p style="text-align: right;">Page 16</p> <p>1 limited to the claims alleged in the complaint. Only if</p> <p>2 -- because intervention can only be granted if the</p> <p>3 intervenors, quote, will not impair the orderly and</p> <p>4 prompt conduct of the proceedings. And you can impose</p> <p>5 conditions under RCW 34.05.443 that they don't impair the</p> <p>6 orderly and prompt conduct, like limiting their</p> <p>7 participation to the actual issues and limiting their use</p> <p>8 of discovery.</p> <p>9 Here, it should be limited, for them, to the</p> <p>10 single claim, the narrow claim alleged in staff's</p> <p>11 complaint. Now if they want to file a different</p> <p>12 complaint or a broader one, that was their burden. And</p> <p>13 they didn't.</p> <p>14 So the residual waste, alleged transportation</p> <p>15 of residual waste to the Snohomish County rail yard</p> <p>16 during the first six months of 2023 -- earlier I misspoke</p> <p>17 and said it was an 18-month period. It's a six-month</p> <p>18 period 18 months ago. That's it.</p> <p>19 Now allowing them to seek discovery and</p> <p>20 litigate issues beyond the limited time, place, and</p> <p>21 events would absolutely -- it's a no brainer --</p> <p>22 absolutely disrupt the orderly and prompt proceedings of</p> <p>23 this particular docket.</p> <p>24 And you can see that because they're saying</p> <p>25 the quiet part out loud in their briefs and comments.</p>

<p style="text-align: right;">Page 17</p> <p>1 They want to expand the scope. For instance, Rubatino 2 says it's interested in, quote, DTG's fitness to operate 3 as a solid waste collection company, which will bear on 4 their statewide application for certificate rights. 5 The statewide application for certificate 6 right is not an issue in this case. They want to 7 litigate something much bigger. And they want to use you 8 and this very narrow complaint as a vehicle to drive a 9 truck through other issues. A solid waste collection 10 company is not the issue in this complaint. 11 Now, there's another set of folks, what we 12 broadly call the solid waste haulers. That's Torre 13 Refuse, Bainbridge, Basin, the Kent-Meridian Group, 14 Sanitary Service, and the Waste Connections' Washington 15 regulated companies -- let's call them just Waste 16 Connections. 17 For that group -- let's call them the solid 18 waste haulers. For that group, it's just copy and paste 19 interventions. And the fact that they're copy and paste 20 -- and you can compare the briefs. I mean, you read them 21 all. We read them all. They're not different other 22 than, you know, headings. 23 It would make the proceedings unnecessarily 24 burdensome and needlessly costly. They would complicate 25 an otherwise kind of limited and narrowly focused</p>	<p style="text-align: right;">Page 19</p> <p>1 Second, none of those solid waste haulers has 2 any connection to DTG. It's not like they have a 3 contract that would be implicated. There's not any 4 connection to our company, which is a recycling company. 5 Strike 2. 6 And here's the more practical knock. None of 7 the solid waste haulers has any direct knowledge of the 8 facts as alleged in that complaint. And I know I sound 9 like a broken record, but the complaint is six months, 18 10 months ago, six-month period, 18 months ago, in Snohomish 11 County. They don't have any direct facts of those -- 12 knowledge of the facts alleged in the complaint. They 13 might have knowledge of facts outside the complaint, but 14 that's not at issue here. 15 And instead, they predicate their interest 16 solely on DTG's statewide -- here it is -- application 17 for a solid waste permit. That's a separate proceeding, 18 separate docket number. And their general interest -- 19 you heard counsel for Lauts earlier -- their general 20 interest in the regulations, which again is not 21 gatekeeping at all. 22 One, DTG's moved to suspend or withdraw that 23 application. So that segue, that hook, doesn't even 24 exist. No one's opposed DTG's motion to suspend that 25 application, even if it were a hook, which it isn't. So</p>
<p style="text-align: right;">Page 18</p> <p>1 proceeding. 2 And again, they don't meet the actual 3 standard, which counsel is not walking through, which is 4 a telltale sign they can't meet it. They're not meeting 5 the actual standard. So let's walk through it: 6 Substantial interest, number one, in the proceeding, not 7 in some theoretical proceeding or some hypothetical 8 proceeding or some different proceeding that's not at 9 issue. This proceeding. 10 Second, intervention would undermine the 11 public interest. 12 Third, there's a zone of interest test to 13 determine whether they have a substantial interest, which 14 I'll get to in a moment. 15 And then substantial interest only exists 16 when there's a nexus between that parties' stated 17 purpose. So what is their purpose actually stated to 18 intervene, and the interest protected by the statute 19 within the commission's jurisdiction? 20 So I'll start with substantial interest. 21 There's none of those folks, the solid waste haulers, 22 broadly understood, has any connection to Snohomish 23 County. They don't even operate in Snohomish County. 24 And they sure didn't operate during those six months at 25 issue. Strike one.</p>	<p style="text-align: right;">Page 20</p> <p>1 the application can't be considered as a basis for their 2 interest. 3 Plus, let's be clear. Let's be clear about 4 this other practical purpose: The WRRRA, who we're not 5 opposing, subsumes the solid waste haulers' general 6 interest in the application of solid waste regulations. 7 In fact, look at their brief. The WRRRA explicitly 8 predicated its interest in intervening on the fact that 9 it represents G-Certificate haulers, which include the 10 solid waste haulers. It's right there on page 1. Quote, 11 matters involving regulation of the solid waste industry 12 are of interest to the members of WRRRA who would not be 13 parties in this action. It's more efficient to have WRRRA 14 intervene in a limited fashion focused on only the 15 complaint than to have every single member of WRRRA also 16 intervene. So it's duplicative and unnecessary. 17 It would also undermine the public interest 18 in a variety of ways. For starters, their intervention 19 would force the commission and the parties to devote time 20 and resources to issues way beyond the scope. And it's 21 explicit, not implicit in their briefs, and by conflating 22 two separate proceedings. 23 And finally, it's going to severely prejudice 24 us, which I hope you take very seriously, and overburden 25 the commission, that their involvement will force DTG,</p>

<p style="text-align: right;">Page 21</p> <p>1 which is a single respondent, potentially facing millions 2 of dollars, to address duplicative briefs, which we 3 already did. 4 I mean, this hearing itself is kind of -- you 5 know, just screenshot this hearing. This is Exhibit A of 6 the unnecessary complications of, you know, anything goes 7 intervention. We're responding to duplicative briefs. 8 We're actually literally responding to copy and paste 9 briefs. 10 We're going to have to examine and respond to 11 witness testimony from others, and engage in extensive 12 and overbroad discovery that's going to be overlapping, 13 duplicative and unnecessary. And you don't need it to 14 adjudicate the limited complaint. 15 And so for that and a variety of other 16 reasons, we think the intervention should be more 17 thoughtful. The folks we said before, they can 18 intervene, limited. 19 These other folks, they should not be able to 20 to intervene. And to the extent they have some marginal 21 interest, WRRRA is covering that interest. 22 JUDGE FUKANO: Thank you for those comments. 23 Do any of the written petitioners for 24 intervention have comments or responses to the arguments 25 that go beyond the material filed in their petitions for</p>	<p style="text-align: right;">Page 23</p> <p>1 I'm going to talk about the facts and then talk about the 2 law. 3 First, DTG keeps emphasizing the four corners 4 of the complaint, four corners of Snohomish County, just 5 the violations at issue here. That is a misunderstanding 6 of what a classification proceeding is in front of the 7 commission. 8 There are these specific allegations of 9 specific facts that provide DTG notice of what it may be 10 subject to penalties for. 11 But there's a broader question of whether 12 these activities should be subject to classification as a 13 regulated solid waste collection company. And that 14 involves more questions than just do I have firsthand 15 knowledge that I saw this specific load of garbage being 16 taken to the dump. 17 In past commission cases, the commission has 18 always looked at things like the business model, the 19 equipment used, the volume, the prevalence of other 20 factors surrounding -- all the circumstances surrounding 21 it to make that classification decision. And that is 22 especially important in a case like this. 23 And that is why the statute that controls 24 classification proceedings before the commission, RCW 25 81.04.510, states that the commission can consider,</p>
<p style="text-align: right;">Page 22</p> <p>1 intervention? 2 ATTORNEY HOWARD: Good morning, your Honor. 3 I would request the opportunity to respond to the written 4 submissions from DTG and the comments today. 5 JUDGE FUKANO: Please proceed. 6 ATTORNEY HOWARD: Thank you, your Honor. 7 I'll try to keep it brief, but I do feel like I have a 8 few important points to hit. I'll try to keep my 9 comments to just a few minutes here. 10 My overall take, your Honor, is that DTG is 11 already operating and providing this hauling service 12 throughout the state of Washington. And that's why staff 13 has directed them, on more than one occasion, to apply 14 for a solid waste certificate so the commission can 15 properly examine this issue and decide whether this 16 company is subject to regulation. This is a large 17 question. It affects much of the state. It is going to 18 be a big case for the solid waste industry. 19 But DTG does not want to defend their 20 statewide operations in this docket or, apparently, in 21 the other docket, 240584, because they're trying to delay 22 or make that docket go away. I'm going to be touching on 23 that in my comments. 24 I want to talk about three basic ways in 25 which DTG's arguments are wrong or misleading. First,</p>	<p style="text-align: right;">Page 24</p> <p>1 quote, any and all, end quote, evidence tending to be 2 relevant to the classification question. 3 And that same statute also notably puts the 4 burden on DTG to establish that it is not subject to 5 regulation. So the burden here is not on staff at this 6 point, or us as putative intervenors. 7 And just jumping to Mr. Perez's comment about 8 the four corners of Snohomish County, I would again point 9 your Honor to the distinction between what are the 10 specific violations of RCW Title 81 at issue that would 11 allow the commission to enter these penalties that are 12 set forth in the complaint and provide that due process 13 notice, compared to any and all other evidence the 14 statute lets the commission consider to decide whether 15 this should be subject to regulation. 16 Moving on from the law, I want to talk about 17 some brief issues on the facts. DTG, in its response in 18 its opposition at page 7, says that no one of the 19 intervenors operates in Snohomish County. I think that 20 we understand their comment to make an exception for 21 Rabanco Limited, because they've separated that out. And 22 they don't oppose Rabanco's participation, but they would 23 try to limit it. 24 I'll get to limits in a minute and why we 25 oppose those.</p>

<p style="text-align: right;">Page 25</p> <p>1 So we would just want to be clear that even 2 according to DTG's positions, your Honor should grant 3 that petition to intervene, in part at least, and let 4 Rabanco Limited, if not Kent-Meridian Disposal, in. 5 And also, on the issue of facts and who 6 operates in this area, I'd like to note that the staff 7 investigation report, which is in this docket and which 8 both parties agreed your Honor could consider in weighing 9 the motion to dismiss, the staff investigation report 10 specifically cites operations in Ferndale, and that that 11 is within Sanitary Service Company's service territory. 12 And Sanitary employees have firsthand knowledge of that. 13 So even if we follow a very strict, narrow 14 view of this proceeding, Rabanco and Sanitary Service, at 15 the very least, should be allowed in. 16 To move on to other factual issues, I want to 17 talk about this broader factual issue of who has a valid 18 interest in this case and what is a valid interest in 19 this case for purposes of participation. 20 I think DTG is completely and squarely wrong 21 to suggest that we only have a hypothetical interest in 22 this case. 23 Our clients seeking to intervene here have an 24 obvious and recognized interest that's recognized in 25 Title 81 as existing carriers in a service area. Under</p>	<p style="text-align: right;">Page 27</p> <p>1 state. And the implication that this proceeding would 2 close, but then the residuals application proceeding 3 would simply go away also suggests that DTG does not want 4 to consider all the implications for the incumbent 5 carriers' rights here. 6 ATTORNEY PEREZ: I don't know if counsel is 7 done. 8 ATTORNEY HOWARD: I'm sorry. I will finish 9 up momentarily. 10 So just to finish up my comments, I would 11 also like to observe here that this question of 12 classification is again -- is effectively the same legal 13 question that's before the commission in the residuals 14 application, Docket 240584. And that's is residuals 15 hauling by DTG subject to regulation by the commission. 16 So when the commission is addressing that 17 issue here, and that's operating throughout the state as 18 shown in the application docket, that complicates all of 19 our interests. 20 And I would like to finally oppose any 21 limitations on our participation, whether that is for 22 Rabanco, which DTG would let in, but limit their 23 participation, or the other intervenors who DTG outright 24 objects to. I think it's unclear what these limitations 25 would be.</p>
<p style="text-align: right;">Page 26</p> <p>1 RCW 81.77.040, they have a right to complain if someone 2 applies to serve that territory, and they have. 3 But that application proceeding in 240584 has 4 been put on hold. And now the commission is addressing 5 the classification question in this docket. So 6 addressing the classification question in this docket 7 necessarily implicates the service territory rights of 8 all of our clients seeking to intervene. 9 And the reason that DTG does not want all 10 these companies to intervene in this proceeding is 11 because they're already operating in these service 12 territories. 13 So we have a protected interest. And the 14 reason why that is a protected interest under the statute 15 is -- one of the reasons here, as it applies here, is 16 that DTG's activities offering this drop box and then the 17 residuals hauling after is cutting into solid waste 18 revenue streams. It's raising costs on the regulated 19 companies who don't have the same advantages as DTG that 20 can avoid certain taxes and other fees that only apply to 21 solid waste companies. So this is highly relevant to 22 their interest. 23 And if the company is classified as a solid 24 waste collection company in this docket, that has very 25 important implications for the industry throughout the</p>	<p style="text-align: right;">Page 28</p> <p>1 DTG presents this as not going beyond the 2 facts and legal issues in the complaint. But again, the 3 factual and legal issues about whether this company 4 should be classified are much broader than just the 5 simple (inaudible) noted in the complaint. 6 And so I think that's not a workable 7 restraint now that should be made. I don't think it's in 8 the public interest for the commission to limit the scope 9 of the record. 10 And if the commission does, however, have any 11 concerns about workability or the size of the proceeding, 12 again, I would note that this is a significant issue for 13 the industry, as you've heard today. It would likely be 14 a little bit larger proceeding compared to some other 15 solid waste cases. 16 But if your Honor does have that as a 17 concern, or duplication as a concern, we would, at the 18 very least, request the right to provide argument on all 19 the issues in the case. 20 And I would rest at this time, your Honor. 21 ATTORNEY PEREZ: Two quick points, Judge, if 22 you don't mind. 30 seconds. 23 JUDGE FUKANO: Certainly. 30 seconds. 24 ATTORNEY PEREZ: I think you probably picked 25 up on this, how many times Mr. Howard said</p>

<p style="text-align: right;">Page 29</p> <p>1 classification, classification, classification. You 2 probably picked up on that. 3 If this is not a classification hearing, his 4 entire predicate is wrong. This is an enforcement 5 proceeding. 6 If commission staff wanted to bring a 7 classification proceeding under RCW 81.04.510, it could 8 have. But it didn't. 9 Instead, staff brought an enforcement 10 proceeding under RCW 81.04.380. That's how this 11 proceeding is styled, and that's why staff is seeking 12 three million dollars in penalties. 13 Given the burden shifting in classification 14 proceedings, it would be utterly unfair for staff to pull 15 a bait and switch by bringing in an enforcement action, 16 and then let the intervenors convert it to a 17 classification proceeding and put the burden on us. 18 But that's -- half of what Mr. Howard said 19 are facts outside that aren't in the complaint. The 20 application, the application; this isn't the application 21 proceeding. The application proceeding has another 22 docket, has another number, and has been withdrawn. This 23 is an enforcement proceeding. 24 ATTORNEY HOWARD: Your Honor, may I respond 25 to that?</p>	<p style="text-align: right;">Page 31</p> <p>1 First of all, we have this investigative 2 report that's been incorporated by reference and relied 3 upon in a motion to dismiss. And that investigative 4 report outlines years of infractions creating questions 5 about DTG's pattern and practice of operating without 6 certificate authority throughout the state of Washington. 7 And the complaint also outlines the 8 continuing need for technical assistance that they've had 9 to endure and accept throughout the years based on these 10 continuing activities. 11 The complaint also references the reasons to 12 why that application -- and this is not pertinent just to 13 litigate the application, but it's pertinent to show that 14 as a result of these communications with staff, they then 15 filed a statewide application based on ongoing 16 activities, bringing in their entire operation into the 17 factual predicate for this complaint. 18 And then in the motion to consolidate, the 19 staff has refuted the ongoing statements that DTG 20 continues to make that they never contemplated. In fact, 21 staff expressly said that they had continuing 22 communications with DTG about filing for an application 23 for certificate authority. 24 So now that they have filed that application 25 and they do seek statewide authority, it demonstrates</p>
<p style="text-align: right;">Page 30</p> <p>1 JUDGE FUKANO: Just briefly, Mr. Howard. 2 ATTORNEY HOWARD: Your Honor, I would just 3 note that to my knowledge, the statutes here don't use 4 the term "classification proceeding." But that is based 5 on my understanding. 6 The term used to refer to when the statute 7 refers to a special proceeding in the statute I noted 8 earlier, 81.040 -- I'm not recalling the exact number of 9 the statute I cited earlier that says you can consider 10 any and all evidence. It refers to a special proceeding, 11 and that is commonly referred to as a classification 12 proceeding at the commission. 13 JUDGE FUKANO: Thank you. 14 Are there any other responses from the 15 petitioners, the parties who have filed petition for 16 intervention in this matter? 17 ATTORNEY JOHNSON: Yes, your Honor. Reid 18 Johnson on behalf of Rubatino and Torre Refuse. I'm 19 going to be fairly brief because I feel like my client's 20 respective positions have been fairly outlined in the 21 briefing and also have been addressed here today already. 22 But I do want to comment on the allegations 23 from DTG that this complaint is extremely narrow and 24 limited, because I don't think the complaint is as 25 limited as they tend to contest at this point.</p>	<p style="text-align: right;">Page 32</p> <p>1 that their operations are statewide, and those factual 2 predicates are contained in the complaint. 3 And in addition to that, that's -- 4 contentions are that DTG has even advertised as a solid 5 waste company. And this activity has statewide 6 implications, and is not limited just to Snohomish 7 County. 8 And notably, advertising as a solid waste 9 company also constitutes a violation of RCW 81.77.040. 10 Thus, there's already substantial evidence in the record 11 that goes beyond this six-month window and goes beyond 12 Snohomish County. 13 DTG of course wants to limit the scope of 14 this action to six months and to Snohomish County 15 because, obviously, that limits its exposure in this 16 entire action. 17 But discovery is available, just as it would 18 be in any proceeding, to obtain evidence beyond the 19 stated window to establish a pattern and practice of 20 unlawful activity and to discover if the respondent has 21 committed additional infractions. 22 Surely the commission has an interest and an 23 obligation to investigate this further wrongdoing. And 24 this is why RCW 81.04.510 provides that the commission 25 may consider any and all facts that may indicate the true</p>

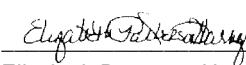

<p style="text-align: right;">Page 33</p> <p>1 nature and extent of the operations or acts, and may 2 subpoena such witnesses and documents as they deem 3 necessary. 4 And I would note that RCW 81.04.510 was cited 5 as the jurisdictional predicate for the commission in the 6 complaint. So the scope of this case and the discovery 7 that will be available stretches to all facts that may 8 indicate the true nature and extent of DTG's operations. 9 And as staff has stated here today, any 10 implications of the allegations, if found to be true, are 11 going to impact DTG's operations statewide. And they 12 have expressly admitted that their operations continue to 13 be statewide. 14 Therefore, all the participants have a right to 15 protect their certificate interests in their respective 16 geographic locations. That is why we have so many 17 intervenors here, because there are multiple parties that 18 are highly concerned about how their continuing regulated 19 activity and their assets, their certificates, their -- 20 one of the most important assets that these companies 21 have. They need to protect them based on these 22 continuing and ongoing activities. 23 And so as a result of this, we would say that 24 each of these companies has a substantial interest in 25 this proceeding, and the purpose of which, of course, is</p>	<p style="text-align: right;">Page 35</p> <p>1 ATTORNEY PEREZ: May I briefly respond? 2 JUDGE FUKANO: Let me see if there are any 3 other comments from the petitions to intervene. And then 4 you can collectively respond to those. 5 ATTORNEY PEREZ: Sure. 6 JUDGE FUKANO: I would like to make sure we 7 have enough time for everyone in these proceedings. 8 Are there any other comments from the 9 petitioners for intervention? 10 ATTORNEY WHITAKER: Yes, Judge Fukano. I'd 11 briefly comment if possible. 12 JUDGE FUKANO: Please do. But let's try to 13 keep them fairly limited and not duplicate the record. 14 ATTORNEY WHITAKER: All right. First off, we 15 appreciate the comments that WRRRA intervention should be 16 granted. 17 However, I think it would be helpful at this 18 point to establish between WRRRA's interest here and the 19 much more specific interests of the regulated companies 20 themselves. 21 Just at the outset, I'll say that, you know, 22 the complaint before us alleges a large amount of waste 23 leaving DTG facilities for disposal. And WRRRA's emphasis 24 on enforcement has always been on the front end initial 25 collection.</p>
<p style="text-align: right;">Page 34</p> <p>1 to protect their certificate rights, protect them from an 2 entity that is attempting to whittle them away and erode 3 the profits that they've worked so hard to obtain and the 4 asset that they've tried to build up. 5 So at this point, we would request that all 6 intervenors be permitted. 7 And I do want to touch on the attempted 8 limitations that are raised by DTG, and that is -- I 9 don't want to sound too much like a broken record here. 10 But first of all, denying or limiting our 11 ability to litigate this case through discovery or 12 testimony or argument just to this six-month window is 13 contrary to the factual allegations that are made in the 14 complaint and would deprive our ability to establish the 15 pattern and practice that have occurred throughout the 16 years. 17 And we've got a complaint initiated in 2021 18 referenced in this complaint that we should be entitled 19 to discover factual predicate that formed the basis for 20 the ultimate complaint here. And denying our ability to 21 do that now would basically just cut us off from any and 22 all ability to legitimately defend our rights in this 23 case. So we would object to any restrictions on the 24 intervention. 25 Thank you, your Honor.</p>	<p style="text-align: right;">Page 36</p> <p>1 But if a very high percentage of waste leaving 2 that facility is waste, then that reaches a strong 3 indication that, you know, that was not entirely 4 recycling material, and DTG is collecting and accepting a 5 lot of waste, and it's doing so across facilities 6 statewide and in other communities, as shown in the 7 complaint. 8 And that's really why we need, you know, 9 discovery and a party with direct knowledge and resources 10 here. There are a lot of interests and concerns from 11 WRRRA members that the association just isn't in a 12 position to represent. 13 We can speak to the broader policy issues, but 14 we just don't have the expertise of our members, and we 15 don't have certificate rights impacted. You know, the 16 interests -- those interests are not hypothetical. 17 Our membership is diverse. Some companies 18 only collect waste and recyclables, while others own 19 their own transfer stations and material recovery 20 facilities and so on, or operate them for others. 21 And generally speaking, commission 22 intervention rules are generally construed liberally. In 23 previous cases, the commission has found it helpful that 24 even parties -- so much that even parties that did not 25 have an interest in the case would be helpful in</p>

<p style="text-align: right;">Page 37</p> <p>1 developing a thorough record.</p> <p>2 I think it's clear that the members have a</p> <p>3 distinct interest here.</p> <p>4 And overall, WRRRA can speak, you know, to the</p> <p>5 whole system and make policy recommendations there, but</p> <p>6 the membership voices will be critical in developing the</p> <p>7 record for a clear understanding of this and their</p> <p>8 individual interests, which are distinct from the level</p> <p>9 that WRRRA will be able to engage in.</p> <p>10 JUDGE FUKANO: Thank you. Are your comments</p> <p>11 concluded?</p> <p>12 ATTORNEY WHITAKER: Thank you.</p> <p>13 JUDGE FUKANO: Are there any other comments</p> <p>14 from the petitioners who wish to intervene?</p> <p>15 Hearing nothing, Mr. Perez, you may respond;</p> <p>16 although, again, let's try to keep it relatively short</p> <p>17 and not duplicate the record.</p> <p>18 ATTORNEY PEREZ: Absolutely. I'll just say</p> <p>19 Mr. Johnson's comments were great. They made my point</p> <p>20 for me. His entire response was that basically this is a</p> <p>21 classification proceeding, and the any and all facts</p> <p>22 standard is for a classification proceeding.</p> <p>23 It's not. It's an enforcement proceeding, you</p> <p>24 heard him say explicitly, rather dramatically.</p> <p>25 They want to use this case as a vehicle to</p>	<p style="text-align: right;">Page 39</p> <p>1 have a connection to DTG. And their connections are</p> <p>2 expressly framed as outside the confines of the</p> <p>3 complaint.</p> <p>4 So the fact that WRRRA's interests are</p> <p>5 different is our point; that those interests, narrowly</p> <p>6 defined, are what makes it an appropriate intervenor in</p> <p>7 the limited facts of the case. It can't be a</p> <p>8 free-for-all. That's it.</p> <p>9 JUDGE FUKANO: Thank you.</p> <p>10 Mr. Lamb, I see you have a comment?</p> <p>11 ATTORNEY LAMB: Yes, your Honor. Just a</p> <p>12 brief factual correction for the record.</p> <p>13 Lauts, Inc. does operate in Snohomish. So I</p> <p>14 wanted to have that before the Court before you make your</p> <p>15 decision.</p> <p>16 JUDGE FUKANO: Thank you.</p> <p>17 Ms. Gafken, did you have a comment?</p> <p>18 ATTORNEY GAFKEN: I did. And I'm kind of</p> <p>19 floundering with my Zoom buttons and I couldn't find my</p> <p>20 raise the hand. So thank you, Judge Fukano.</p> <p>21 I did just want to note there's been a lot of</p> <p>22 discussion about the scope of the proceeding. We</p> <p>23 essentially have a complaint based on DTG's business</p> <p>24 model. And it does focus on the activities in Snohomish</p> <p>25 County as an example that tees up the issue for the</p>
<p style="text-align: right;">Page 38</p> <p>1 prosecute years' worth of allegations not in the</p> <p>2 complaint in every other county, not just Snohomish</p> <p>3 County. And that's the exact point we're making about</p> <p>4 blowing this up into far more than six months.</p> <p>5 And you heard Mr. Johnson say, well, DTG wants</p> <p>6 to limit this to six months. That would be very</p> <p>7 convenient for DTG.</p> <p>8 Well, that's what the staff limited it to. And</p> <p>9 there's a lot of facts or allegations in the</p> <p>10 investigation that staff did not ultimately rely on for</p> <p>11 their complaint. Staff gets to make their complaint.</p> <p>12 They made a decision to make it narrow. We didn't make</p> <p>13 that decision.</p> <p>14 So having made the decision to narrow the</p> <p>15 case, Mr. Johnson can't question and say we wanted it to</p> <p>16 be all counties, all years, all things, all applications,</p> <p>17 even those you've withdrawn.</p> <p>18 The WRRRA's limited interest, the distinction</p> <p>19 between their interest and the specific interest of</p> <p>20 others is all the more reason to only allow them to</p> <p>21 intervene in the case for the limited interest that</p> <p>22 actually applies to this case.</p> <p>23 The fact that their interests are not</p> <p>24 completely overlapping over all the others is our point.</p> <p>25 The others don't operate in Snohomish County. They don't</p>	<p style="text-align: right;">Page 40</p> <p>1 commission to consider.</p> <p>2 I think to narrow it to just the six months'</p> <p>3 activity that we pled in the complaint doesn't</p> <p>4 acknowledge that we're really talking about the business</p> <p>5 model.</p> <p>6 And if the commission does find that the</p> <p>7 activities in Snohomish County, which again are an</p> <p>8 example of that business model activity, if the</p> <p>9 commission finds that that activity is unlawful, then DTG</p> <p>10 can't then continue similar activities in other counties.</p> <p>11 DTG notes in their response pleadings that</p> <p>12 this complaint has some serious potential consequences.</p> <p>13 And I think that's correct, not just with the three</p> <p>14 million dollar potential penalty, but also to its overall</p> <p>15 operations.</p> <p>16 So I did just want to clarify that. Thank</p> <p>17 you.</p> <p>18 JUDGE FUKANO: Thank you.</p> <p>19 I do not see any other hands or individuals</p> <p>20 coming up with mics, so I will move on to the next issue</p> <p>21 related to intervention that has been somewhat discussed</p> <p>22 already, but there has been some proposal to limit</p> <p>23 participation to specific issues in this docket.</p> <p>24 I have reviewed the suggested limitations</p> <p>25 from the company, DTG.</p>

<p style="text-align: right;">Page 41</p> <p>1 I'd like to ask if any other party has 2 limitations or suggestions regarding that proposal. 3 ATTORNEY HOWARD: Your Honor, Michael Howard. 4 I would just note my similar concern that if 5 DTG's certain requests to limit participation to the 6 facts and legal issues raised by the complaint in the way 7 that's presented in the briefing is a little unclear to 8 me. 9 I would tend to agree much more with staff's 10 interpretation of the different issues in this proceeding 11 and what's relevant in this proceeding. 12 But if your Honor did wish to list -- limit 13 participation, I think that it would be more appropriate 14 to at least for -- I'm speaking for our clients seeking 15 to intervene -- to allow us argument at the very least on 16 all issues in the case. 17 ATTORNEY JOHNSON: Your Honor, I addressed 18 the limitations a little bit in my last argument. 19 The one thing I would say and potentially 20 could recommend is first of all, I think just denying us 21 outright discovery and argument and testimony in 22 wholesale at the initiation of this dispute would have a 23 chilling effect on really where the case goes. 24 It would limit, you know, really all parties' 25 ability to step in and ascertain any conflicting evidence</p>	<p style="text-align: right;">Page 43</p> <p>1 of intervention in full from our perspective. 2 Now the second limitation is strictly applied 3 to WRRRA, so I don't have any comment, necessarily, on 4 that. 5 The third, you know, the issue I do see with 6 requiring WRRRA, Rubatino, and Rabanco to join in their 7 briefing is kind of tricky because first of all, you're 8 getting into issues of privilege that -- and there's no 9 joint defense agreement in place right now. So would 10 that render all of our communications -- 11 (Technical Interruption) 12 JUDGE FUKANO: Mr. Johnson -- 13 ATTORNEY JOHNSON: -- privilege. 14 JUDGE FUKANO: Your connection was lost there 15 for a moment. 16 ATTORNEY JOHNSON: Sorry. I don't know where 17 you lost me, but my concern is that we've got three 18 parties here with differing rights, different clients, 19 different interests. And requiring them to combine all 20 of those interests in writing into one briefing schedule 21 would be detrimental to our clients' positions, and, as I 22 mentioned, potentially expose attorney-client and 23 attorney work product. So I don't foresee that being a 24 workable solution. 25 One thing that I'd be willing to do is submit</p>
<p style="text-align: right;">Page 42</p> <p>1 from DTG. It would prevent us from having argument on 2 discovery that's revealed that's not necessarily 3 contained in the factual allegations in this complaint. 4 If discovery reveals any issues of law or 5 fact that goes beyond the four corners of this complaint, 6 the way their limitation is read, we can't comment on 7 that or do anything about that. 8 So as far as I'm concerned, their first 9 proposed restrict -- limitation is far too restrictive. 10 And really, it essentially means we can't participate at 11 all. So it would be -- it really would be a denial of 12 intervention masked as a limitation. 13 So I don't think it's appropriate at this 14 point, especially with their narrow interpretation, their 15 claim that it's only six months, their position that it's 16 only in this county. 17 And so that's going to bring all kind of 18 fight down the road if we initiate that limitation, 19 because we're going to be back here arguing about what is 20 the scope of that limitation? Can we even talk about or 21 argue about anything that's not contained in the 20 22 paragraphs contained in the complaint? 23 And I don't think any effective argument or 24 any effective litigation strategy can be conjured up with 25 those limitations. So it would effectively be a denial</p>	<p style="text-align: right;">Page 44</p> <p>1 single brief on all issues for both of my respective 2 clients. And that would be a workable solution from my 3 end. 4 But the proposed restrictions as written are 5 not workable from our perspective at all. 6 And that's all I have. Thank you, your 7 Honor. 8 ATTORNEY PEREZ: Let me know if you want me 9 to respond now or later. I just have, again, maybe 15 10 seconds. 11 JUDGE FUKANO: Let's respond following any 12 other comments by the intervenors. 13 Do any of the other intervenors have comments 14 or responses to -- sorry; any comments regarding 15 potential limitations in this matter? 16 ATTORNEY WHITAKER: Yes, Judge Fukano. This 17 is Rod Whitaker, WRRRA. 18 I would just -- not to duplicate, your Honor, 19 I would echo the concerns expressed by Mr. Howard and 20 Mr. Johnson and just note that in RCW 81.04.510, which is 21 cited in the commission's complaint as part of their 22 authority for the complaint, that the commission may 23 consider all facts -- any and all facts that may indicate 24 the true nature and extent of the operations or acts 25 involved in the complaint.</p>

<p style="text-align: right;">Page 45</p> <p>1 So support the position of the other 2 intervenors here. Thank you. 3 JUDGE FUKANO: Thank you. 4 ATTORNEY HOWARD: Your Honor, might just 5 briefly note we would agree with Mr. Johnson's concerns 6 about a limitation that would require parties represented 7 by different counsel to work together. 8 But if your Honor -- again, if your Honor was 9 looking for ways to manage the proceeding, it would -- we 10 would likely be able to present one unified brief for our 11 clients, but we might need to make arguments depending on 12 their different service territories. But we could try to 13 combine our presentation to certainly ameliorate any 14 concerns about duplicative filings or something like 15 that. 16 JUDGE FUKANO: Thank you. 17 Are there any other comments from the 18 intervenors? 19 Hearing nothing, Mr. Perez, you had a 20 response? 21 ATTORNEY PEREZ: Right. What you're hearing 22 here is -- I mean, what you're not hearing here is any 23 limiting principles. 24 And usually when I argue in front of a judge, 25 whether it's a constitutional issue, a legislative issue,</p>	<p style="text-align: right;">Page 47</p> <p>1 the parties, but do the parties have any further 2 proposals regarding coordinated or joint intervenor 3 status? 4 I know I've heard from Mr. Howard and 5 Mr. Johnson about potentially combining some of the 6 companies that they represent. 7 Are there any further suggestions or comments 8 about that possible status? 9 ATTORNEY GAFKEN: Judge Fukano, this is Lisa 10 Gafken for commission staff. Although there are several 11 entities asking for intervention in this matter, there 12 are really only a handful of attorneys, right? 13 So a lot of those clients are being 14 represented by single attorneys. And it was my 15 assumption -- maybe this was wrong, but it was my 16 assumption that clients with a single attorney would 17 present their advocacy through that single attorney 18 through, you know, single documents and whatnot, so 19 consolidated briefs among those folks. 20 So while there's a lot of parties, there 21 aren't a lot of attorneys on this matter, or potentially 22 on this matter. 23 So, you know, I think -- I don't have any 24 particular thoughts on how intervention should be or 25 would be limited. I'm not advocating for any</p>
<p style="text-align: right;">Page 46</p> <p>1 or a contract issue, usually the party without a limiting 2 principle is the party with the losing argument. 3 Mr. Johnson's arguments and comments again 4 made the point for us. Denial of intervention, according 5 to him, according to them, according to WRRRA, denial of 6 intervention is akin to limiting -- or rather limiting 7 their participation is akin to denial of intervention. 8 Because if you limit their participation to the actual 9 allegations in the complaint, there's no point to 10 intervening. 11 And that's why they shouldn't intervene. If 12 they don't have a hook to the actual allegations in the 13 complaint, and if they can't countenance a limitation to 14 the actual allegations in the complaint, then there's no 15 hook for their intervention. There's no point to their 16 intervening, according to them, unless they can explode 17 the case into something it's not. 18 Now to the extent they are going to intervene 19 -- and we think there's only a few parties that ought to 20 and they should be limited -- they ought to, of course, 21 work together. They should not be submitting duplicative 22 briefs. They should be combined. And that's very common 23 in these proceedings. 24 JUDGE FUKANO: Thank you. 25 This has been discussed already somewhat by</p>	<p style="text-align: right;">Page 48</p> <p>1 limitations. But it does seem like it may be a little 2 bit of a molehill that's being made into a mountain. 3 JUDGE FUKANO: Thank you. 4 Okay. Seeing no further responses or 5 comments, let's move on. 6 Would the parties like to have discovery 7 rules made available in this proceeding? 8 ATTORNEY GAFKEN: Staff would like discovery 9 to be invoked in this proceeding. 10 And anticipating requests to limit discovery, 11 staff doesn't believe that any additional limitations are 12 needed beyond what the discovery rules require. 13 I believe that the parties can conduct 14 themselves in a reasonable manner, and if there are any 15 discovery disputes, that we can, you know, consult 16 amongst ourselves before bringing any issues before the 17 commission. 18 But staff would like discovery. 19 JUDGE FUKANO: Mr. Perez? 20 ATTORNEY PEREZ: Right. Obviously we'd like 21 discovery, but the devil is in the details. 22 We'll be likely filing discovery motions to 23 limit the issues to the actual allegations in the 24 complaint. And so to the extent that parties are going 25 to try and expand discovery dramatically, that's probably</p>

<p style="text-align: right;">Page 49</p> <p>1 going to be an issue we're going to litigate. 2 JUDGE FUKANO: Thank you. 3 Any other comments regarding discovery in 4 this matter? 5 Hearing nothing, during the proceedings at 6 the commission, parties often issue a first data request 7 asking that any subsequent data requests and responses 8 are shared with every other party. It would make it 9 easier on the parties if I included this requirement in 10 the prehearing conference order. Is there any objection 11 to my including that requirement? 12 ATTORNEY GAFKEN: None from staff, and we 13 support that requirement. 14 ATTORNEY PEREZ: No. 15 JUDGE FUKANO: Okay. Discovery will be 16 conducted according to the commission's procedural rules. 17 And I will include that requirement as part of the 18 prehearing conference order. 19 Would the parties like a protective order in 20 this proceeding? 21 ATTORNEY PEREZ: Yes. 22 JUDGE FUKANO: Is there any objection from 23 any party regarding a protective order? 24 ATTORNEY WHITAKER: Sorry. To clarify, we'll 25 be filing a motion for an amended protective order with</p>	<p style="text-align: right;">Page 51</p> <p>1 I would ask that the parties discuss potential scheduling 2 and e-mail me a proposed schedule no later than one week 3 from today. 4 If the parties are unable to fully agree on a 5 schedule, please send me separate schedules indicating 6 which portions are agreed and which portions are 7 disputed. My e-mail is HarryOFukano@utc.wa.gov. 8 I'd like to remind the parties that the 9 documents in this proceeding should be filed online 10 through the electronic filing link on the commission's 11 web page. 12 If the parties intend to submit exhibits, 13 there will be requirements for filing exhibits and an 14 exhibit list in advance of the hearing, which will be 15 done only electronically. I will enter a prehearing 16 order with details on this topic. 17 Also, the commission's rules provide for 18 electronic service of documents. The commission will 19 serve the parties electronically and the parties will 20 serve each other electronically. 21 If you have any corrections or updates to our 22 service list in this docket, please file a written notice 23 of appearance or e-mail me at HarryOFukano@utc.wa.gov. 24 If any person has not yet designated a lead 25 representative for service, please do so via an email to</p>
<p style="text-align: right;">Page 50</p> <p>1 highly confidential provisions pursuant to 2 WAC 480-07-420. 3 The reason for that is obviously, there might 4 be highly sensitive commercial information. And 5 depending on who intervenes, there are other participants 6 in the recycling industry that are competitors. 7 JUDGE FUKANO: Is there any objection at this 8 time to a highly confidential protective order? 9 ATTORNEY GAFKEN: No objection. 10 JUDGE FUKANO: Thank you. 11 Regarding the procedural schedule, have the 12 parties had any opportunity to discuss a procedural 13 schedule amongst themselves? 14 ATTORNEY GAFKEN: Staff did circulate a 15 proposed procedural schedule, but we have not discussed 16 amongst ourselves. 17 ATTORNEY PEREZ: Yeah, we received it about a 18 day ago, day and a half ago. And we appreciate 19 Ms. Gafken has taken the pin on that. 20 We are editing on our side to make sure of 21 witness availability, and a lot of it depends on who's in 22 the case. But we'll probably be sending counsel red 23 lines after the hearing. 24 JUDGE FUKANO: Very good. 25 Since there is no agreed procedural schedule,</p>	<p style="text-align: right;">Page 52</p> <p>1 me as soon as possible. 2 Also, if anyone would like to add names and 3 e-mail addresses of other representatives or support 4 staff who should receive electronic courtesy copies of 5 all documents filed in this proceeding, please e-mail 6 that to the commission as well. 7 Under WAC 480-07-461, the deadline for filing 8 errata sheets to exhibits may be established in a 9 prehearing conference order. 10 Does anyone have an objection to setting a 11 deadline a week prior to the evidentiary hearing? 12 ATTORNEY GAFKEN: No objection. 13 JUDGE FUKANO: Hearing none, I will 14 incorporate that date into the prehearing conference 15 order. 16 Are there any other matters that the 17 commission needs to address this morning? 18 ATTORNEY GAFKEN: Judge Fukano, staff does 19 have a motion to consolidate this docket with Docket 20 TGT-240854. Would you like to hear that this morning? 21 JUDGE FUKANO: Is there argument that goes 22 beyond the argument previously filed? 23 ATTORNEY GAFKEN: I think we've probably 24 stated everything, including arguments made earlier with 25 respect to the intervention. So I don't believe that</p>

<p style="text-align: right;">Page 53</p> <p>1 there is a whole lot more to add.</p> <p>2 JUDGE FUKANO: Okay. I have reviewed that</p> <p>3 filing, and it is still under consideration.</p> <p>4 ATTORNEY GAFKEN: Okay, thank you.</p> <p>5 I'm sorry. There actually is one more thing</p> <p>6 to add to that, just to make sure that it's clear. I</p> <p>7 think it is, but I just want to make sure.</p> <p>8 So DTG did file two applications for</p> <p>9 certificates, one in Docket TG-240584 and TG-240583.</p> <p>10 DTG has requested to withdraw TG-240583, and</p> <p>11 I believe that your Honor has been substituted in that</p> <p>12 docket.</p> <p>13 Staff's request to consolidate is for</p> <p>14 TG-240584, which is the application addressing statewide</p> <p>15 transportation of residual waste. I believe we still</p> <p>16 have two ALJ's assigned between this docket and that</p> <p>17 docket.</p> <p>18 So I just wanted to make sure that was clear.</p> <p>19 I think it probably is, but I wanted to make sure.</p> <p>20 JUDGE FUKANO: Thank you.</p> <p>21 And to clarify, the commission does intend to</p> <p>22 substitute me as the presiding officer in that docket as</p> <p>23 well.</p> <p>24 Mr. Howard?</p> <p>25 ATTORNEY HOWARD: Thank you, your Honor.</p>	<p style="text-align: right;">Page 55</p> <p style="text-align: center;">C E R T I F I C A T E</p> <p>1</p> <p>2</p> <p>3 STATE OF WASHINGTON)</p> <p>4) ss</p> <p>5 COUNTY OF KING)</p> <p>6</p> <p>7 I, Elizabeth Patterson Harvey, a Certified</p> <p>8 Court Reporter and Registered Professional Reporter</p> <p>9 within and for the State of Washington, do hereby</p> <p>10 certify under penalty of perjury that the foregoing legal</p> <p>11 recordings were transcribed under my direction; that I</p> <p>12 received the electronic recording in the proprietary</p> <p>13 format; that I am not a relative or employee of any</p> <p>14 attorney or counsel employed by the parties hereto, nor</p> <p>15 financially interested in its outcome.</p> <p>16 IN WITNESS WHEREOF, I have hereunto set my</p> <p>17 hand this 10th day of February, 2025.</p> <p>18</p> <p>19</p> <p>20</p> <p>21  </p> <p>22 Elizabeth Patterson Harvey, CCR 2731</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 54</p> <p>1 Perhaps an unnecessary question, but as i</p> <p>2 understand, your Honor's reserving the ruling on the</p> <p>3 petitions to intervene.</p> <p>4 Would you anticipate, though, that the</p> <p>5 putative intervenors would still participate in the</p> <p>6 discussion on schedule with the staff and the company?</p> <p>7 JUDGE FUKANO: At this time, I believe that</p> <p>8 would be prudent.</p> <p>9 ATTORNEY HOWARD: Thank you, your Honor.</p> <p>10 JUDGE FUKANO: Are there any other issues or</p> <p>11 comments to address before this morning?</p> <p>12 Hearing nothing, I will take the arguments</p> <p>13 I've heard this morning under consideration, and I will</p> <p>14 issue an order shortly containing the procedural schedule</p> <p>15 after I receive and review it and confirm that it is</p> <p>16 workable for the commission and other guidelines for the</p> <p>17 disposition of this case.</p> <p>18 We are adjourned. Thank you very much.</p> <p>19 (Proceedings adjourned at 10:34 a.m.)</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	

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