

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
MOTION TO DISMISS THE
COMMISSION'S COMPLAINT

DTG'S MOTION TO DISMISS

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INTRODUCTION

1 The Washington Utilities and Transportation Commission (“Commission”)’s Complaint should be dismissed because it fails to plead the most basic requirements of the claim brought against DTG Enterprises, Inc. (“DTG”).

2 In its Complaint, the Commission alleges a single claim against DTG: that DTG violated RCW 81.77.040 by transporting solid waste to Snohomish County disposal facilities (“Snohomish Waste Facilities”) without first obtaining a certificate from the Commission. But by its plain text, RCW 81.77.040 applies *only* if four requirements are met: (1) the company in question is a solid waste collection company (“SWCC”) (2) that operates for the hauling (3) of solid waste (4) for compensation.¹ To state a viable claim under RCW 81.77.040, the Commission must allege that all four requirements are met. But the Complaint omits any allegations that DTG either hauled waste or received any compensation for doing so. This failure alone warrants the Complaint’s dismissal.

3 Even more egregiously, the Investigation Report prepared by Commission Staff (the “Report”)—which ostensibly supports and justifies the Complaint—contains no evidence supporting these facts and reveals that Commission Staff failed to investigate these requirements *at all*, deciding instead to rehash and punish DTG for past grievances that were already resolved. Without pleading or investigating these essential requirements, Commission Staff’s RCW 81.77.040 claim against DTG fails as a matter of law and its Complaint should be dismissed.

¹ See RCW 81.77.040 (“A [1] solid waste collection company shall not [2] operate for the hauling [3] of solid waste [4] for compensation without first having obtained from the commission a certificate declaring that public convenience and necessity require such operation.”).

4 Commission Staff’s failure to allege essential elements of a claim under RCW 81.77.040 warrants the Complaint’s dismissal outright. DTG therefore respectfully requests that the Commission grant its Motion to Dismiss.

INCORPORATION BY REFERENCE

5 The Commission should consider the Report in evaluating this Motion to Dismiss. “Where a plaintiff . . . founds allegations in a complaint on specific documents but does not physically attach those documents to the complaint, said documents may be considered in ruling on a CR 12(b)(6) or CR 12(c) motion for judgment on the pleadings.” *Sebek v. City of Seattle*, 172 Wn. App. 273, 275 n.2, 290 P.3d 159, 160 n.2 (2012) (citing *In re Stac Elecs. Sec. Litig.*, 89 F.3d 1399, 1405 n.4 (9th Cir.1996)); *see also Bergman v. Alaska Airlines, Inc.*, 16 Wn. App. 2d 553, 558, 484 P.3d 480, 483 (2021) (“The Terms and Conditions were at the center of Bergman’s complaint and incorporated by reference throughout. As the Terms and Conditions were incorporated in Bergman’s complaint, the trial court correctly reasoned that it did not need to convert to a motion for summary judgment.”).

6 Here, Commission Staff founded its allegations in the Complaint on the Report. The Complaint contains mostly conclusory factual and legal allegations and notes that probable cause for pursuing the Complaint was based entirely on the Report. *See* WAC 480-07-307 (“An administrative law judge will review the information or evidence supporting any complaint commission staff proposes to have the commission issue and will determine whether probable cause exists to issue the complaint.”); Compl. ¶ 25 (“Based on a review of Commission Staff’s investigation report, and consistent with RCW 80.01.060 and WAC 480-07-307, the Commission finds probable cause exists to issue this complaint.”). As such, Commission Staff incorporated the Report into its Complaint by reference, and the Report should be considered in evaluating this Motion.

BACKGROUND

7 “DTG is a committed recycler and is heavily investing in compliance, automation, [and] digital tools including AI systems to ensure compliance with all Federal, State, and Local regulations.” Report 60. DTG collects and processes recyclables in its Snohomish County material recovery facilities (“MRFs”). *See id.* These materials are sorted and separated using various mechanical and manual sorting systems. *Id.* at 62. DTG accepts a limited type of recyclable materials for reclamation. *Id.* at 64. Specifically, it only accepts the following materials: asphalt and concrete, cardboard, carpet, drywall, mattresses, plastics, roofing, Styrofoam, wood wastes, and other organic materials. *Id.* at 60, 64. For items collected or received that DTG does not accept, DTG charges its customers a penalty. *Id.* at 60–61. After DTG collects, sorts, and processes recyclable materials, it arranges for the transport of the remaining nonaccepted materials—called “residuals”—to disposal facilities, including the Snohomish Waste Facilities. *Id.* at 63.

8 From January 1 to June 30, 2023, DTG sorted a total of 60,781 loads at its Snohomish County MRFs, which amounted to 186,898 tons. Report 60–64. The total amounts of loads and weight came from three sources: 1) DTG’s collection of 16,837 loads, which amount to 63,134 tons; 2) DTG’s receipt of 38,726 loads from non-DTG persons, which amounted to 110,766 tons; and 3) DTG’s transportation of 5,281 loads to its Snohomish County MRFs from other DTG facilities, which amounted to approximately 12,998 tons. *Id.* at 61–62. From the total 60,781 loads that amounted to 186,898 tons at its Snohomish County MRFs, DTG transported 3,389 loads to the Snohomish Waste Facilities, which amounted to 73,279 tons. This means that by volume, ***less than 6% of the loads DTG collected were sent to the Snohomish Waste Facilities.***

9 On December 18, 2024, the Commission served DTG with a Complaint alleging a single claim: that DTG violated RCW 81.77.040. Compl. ¶¶ 19–20. Specifically, the Commission 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.” *Id.* ¶ 20. Notably, Commission Staff never alleges that DTG itself hauled any solid waste. Nor does it allege that DTG received any compensation for doing so.

10 The Commission served the Report two days after issuing the Complaint, on December 20, 2024. The Report primarily focuses on complaints and claims against DTG from 2020 to 2021 that the Commission chose not to pursue. Report 4–7. But the Report also reveals that, on October 2, 2023, Commission Staff received an email from Stephan Banchemo, President of Cedar Grove Composting Inc. (“Cedar Grove”) and co-owner of Rubatino Refuse Removal Inc. (“Rubatino”), complaining about DTG’s activities. Notably, Cedar Grove and Rubatino are members of the Washington Refuse & Recycling Association,² which holds considerable sway in the recycling and solid-waste industries and could stand to profit if DTG’s operations in Snohomish County are disrupted. In his email, Mr. Banchemo claimed that DTG was transporting loads of residual waste to the Snohomish Waste Facilities. Report Attach. Y.

11 In response to Mr. Banchemo’s email, Commission Staff asked for information from Snohomish County Solid Waste Management, which provided a financial statement showing that DTG paid \$5,638,656 for the disposal of residuals from January 1 to June 30, 2023.

² See *Members & Associates*, Wash. Refuse & Recycling Ass’n, <https://wrra.org/wrra-members-washington-state> (last visited Dec. 31, 2024).

Report Attach. Z. Nothing in that financial statement, however, suggested that *DTG itself* hauled this waste—it simply confirmed that DTG paid the associated disposal fees. Commission Staff also asked DTG about this hauling, and DTG confirmed that it transported 3,389 loads to disposal facilities. *Id.* at 63. Again, though, DTG did not state that it *physically* hauled the residuals—only that it facilitated the transport.

12 Based on these preliminary inquiries, Commission Staff concluded that DTG “operated as a solid waste collection company when it . . . [t]ransported residual solid waste from their materials recovery facilities to Snohomish County solid waste facility for disposal on at least 3,389 occasions between January 1, 2023, through June 30, 2023, without first obtaining a solid waste certificate.” Report 8. For each alleged violation, Commission Staff recommends the maximum \$1,000 fine, amounting to a total penalty of \$3,389,000. Compl. ¶ 21. DTG’s Motion to Dismiss follows, filed concurrently with its Answer.

ARGUMENT

A. A motion to dismiss should be granted if Commission Staff fails to allege essential elements of a claim.

13 “A party may move to dismiss another party’s claim or case on the asserted basis that the opposing party’s pleading fails to state a claim on which the commission may grant relief.” WAC 480-07-380(1)(a); *see also Wash. State Att’y Gen.’s Off. v. Pacificorp*, Docket UE-110070, Order 01 ¶ 27 (Apr. 27, 2011). When ruling on such a motion, the Commission will consider the standards applicable to a motion made under Washington Superior Court Civil Rule 12(b)(6) and (c). *Id.* When evaluating motions to dismiss under the Rule 12(b)(6) standard, courts have routinely dismissed complaints for failing to allege essential elements of a claim. *See, e.g., Scott v. Amazon.com, Inc.*, 559 P.3d 528, 537–38 (Wash. Ct. App. 2024)

(“Assuming the truth of these allegations as we must within the framework of CR 12(b)(6), the facts [alleged] . . . are not sufficient to state a claim.”).

14 The Commission has also dismissed complaints for failing to allege essential elements of a claim. In *Pacificorp*, for example, the Commission held that the complainants failed to state a claim under RCW 80.04.230 for failure to allege that the defendant charged rates in excess of the lawful rate. Docket UE-110070, Order 01 ¶¶ 28–30. As the Commission acknowledged, “[s]uch an allegation is essential in any action seeking refunds under RCW 80.04.230.” *Id.* The Commission therefore determined that “the Complaint is deficient as a matter of law and fails to present a claim under RCW 80.04.230 as to which the Commission can grant relief.” *Id.* As such, the Commission dismissed the complaint. *Id.*

15 Consistent with the standards applicable under Rule 12(b)(6) and the Commission’s ruling in *Pacificorp*, the Commission should similarly dismiss the Complaint here for failing to allege essential elements of a claim under RCW 81.77.040.

B. The Complaint fails to allege that DTG hauled waste or received compensation.

16 The Complaint fails to state a claim under RCW 81.77.040 because it fails to allege that DTG hauled waste or received compensation for such hauling. As noted above, under RCW 81.77.040, companies are required to obtain a certificate from the Commission only if certain threshold conditions are satisfied, including that they “operate for the *hauling* of solid waste *for compensation*.” (Emphases added). “Operating for the hauling of solid waste for compensation includes advertising, soliciting, offering, or entering into an agreement to provide that service.” RCW 81.77.040. Because hauling and compensation are plain elements of RCW 81.77.040, alleging that a company hauled waste to receive compensation is “essential in any action seeking refunds under RCW [81.77.040].” *Pacificorp*, Docket UE-110070, Order 01 ¶ 30.

17 Here, Commission Staff fails to allege that DTG hauled solid waste for compensation. Indeed, the Complaint fails to even reference RCW 81.77.040’s hauling and compensation requirements at all, and certainly fails to allege facts sufficient to satisfy them. At best, the Complaint alleges that “DTG *disposed of*” residuals at the Snohomish Waste Facilities. Compl. ¶ 11 (emphasis added); *see also id.* ¶ 10. But facilitating the disposal of residuals by arranging for third-party hauling and paying the associated disposal fees—which is exactly what DTG did, *see supra* pp. 4–5—is *not* the same as physically hauling the residuals for compensation, which is the only conduct covered by RCW 81.77.040. The Complaint also suggests that “Staff received . . . *allegations* that DTG was transporting and disposing of solid waste.” *Id.* ¶ 8 (emphasis added). By the mere receipt of complaints and allegations from third parties does not constitute factual substantiation—and nothing in the Complaint alleges, persuasively or otherwise, that DTG *actually* hauled residuals, let alone for compensation.

18 The gaping oversights in the Complaint are underscored by other gross deficiencies in the Report. These shortcomings reveal that Commission Staff wholly failed to consider DTG’s compensation structure and never confirmed that DTG itself physically hauled residuals to the Snohomish Waste Facilities (which it did not). Instead, apparently spurred into action by an e-mail from a DTG *competitor* and powerful actor in the waste-management industry, Commission Staff embarked on an “investigation” that consisted of one letter to Snohomish County, one letter to DTG, a financial statement from Snohomish County in response to its letter, and a preliminary response from DTG. From these four documents—none of which asked or addressed whether DTG itself physically hauled residuals for compensation—Commission Staff somehow deduced that DTG had violated state law to the tune of over \$3,000,000. In doing so, Commission Staff glossed over *half* of the essential elements of a viable claim under RCW 81.77.040, both in its Report and its Complaint. “It follows that the

Complaint is deficient as a matter of law and fails to present a claim under [RCW 81.77.040] as to which the Commission can grant relief. The Complaint accordingly should be dismissed insofar as this form of relief is concerned.” *Pacificorp*, Docket UE-110070, Order 01 ¶ 30.

CONCLUSION

19 The Complaint fails to state a claim under RCW 81.77.040 because it does not allege that DTG hauled solid waste or was compensated for doing so. DTG therefore respectfully requests that the Complaint be dismissed.

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