

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

DTG ENTERPRISES, INC.,

Respondent.

DOCKET TG-240761

ORDER 07

ORDER GRANTING MOTION TO
STRIKE IN PART AND DENYING IN
PART

BACKGROUND

- 1 On December 18, 2024, the Washington Utilities and Transportation Commission (Commission) issued a complaint against DTG Enterprises, Inc. (DTG or Company) for violations of state law and administrative rule and noticed a prehearing conference for February 6, 2025.
- 2 On February 6, 2025, the Commission convened a virtual prehearing conference before Administrative Law Judge Harry Fukano. Subsequently on March 18, 2025, the Commission issued Order 02, Prehearing Conference Order; Denying Motion to Consolidate (Order 02). Among other matters, Order 02 established a procedural schedule for this proceeding.
- 3 On April 29, 2025, Commission staff (Staff) filed its testimony and supporting exhibits with the Commission.
- 4 On May 16, 2025, the Company filed a Motion to Strike (Motion) portions of Staff's testimony and exhibits. DTG argues that the Commission should strike the portions of Staff witness McPherson's testimony recommending that the Commission institute a classification proceeding for three reasons.¹ First, DTG contends that the testimony and exhibits exceed the limitations imposed by Order 02 in this docket because Order 02 determined that this proceeding did not involve a classification proceeding pursuant to

¹ DTG's Motion to Strike at 6-7 ¶ 17.

Revised Code of Washington (RCW) 81.04.510.² Second, the Company asserts that Staff cannot convert this proceeding into a classification proceeding through testimony.³ Third, DTG maintains that the evidence it seeks to strike is irrelevant, requires the litigation of collateral issues, and distracts from the claims presented in this case.⁴ The Company contends that the Commission should strike the evidence identified in its Motion because the evidence exceeds the scope of the Complaint contrary to the direction provided by the Commission in Order 02.⁵

5 On May 23, 2025, Staff, Washington Refuse and Recycling Association (WRRRA), Rubatino Refuse Removal LLC (Rubatino), and Rabanco Limited (Rabanco) filed responses to DTG’s Motion.⁶

6 Staff argues that all of witness McPherson’s testimony is relevant to this proceeding because it is related to Staff’s investigatory history regarding the violations alleged in the Complaint.⁷ Staff maintains that the Complaint requested a classification proceeding, but suggests that “whether evidence is presented through a classification proceeding or is simply presented in the context of litigating the Complaint, the result is the same.”⁸ Staff also contends that testimony regarding Staff’s opinion that the Company is operating as a solid waste company should not be struck, as such testimony is consistent with the violations alleged in the Complaint.⁹ Additionally, Staff asserts that testimony regarding DTG’s prior violations is relevant to the Commission’s consideration of its Enforcement Policy penalty factors.¹⁰ Finally, Staff argues DTG’s attempt to strike testimony

² DTG’s Motion to Strike at 7-8 ¶¶ 18-21.

³ DTG’s Motion to Strike at 9-11 ¶¶ 22-29.

⁴ DTG’s Motion to Strike at 11-13 ¶¶ 30-33.

⁵ DTG’s Motion to Strike at 11-12 ¶ 30.

⁶ This Order refers to Rubatino Refuse Removal LLC and Rabanco Limited collectively as “Joint Intervenors.”

⁷ Staff’s Response at 3-4 ¶¶ 9-11.

⁸ Staff’s Response at 4-5 ¶ 13 (citing Complaint at 3 ¶ 22 (“DTG has applied for solid waste certificates relating to collection and transportation of residual waste and e-waste. For purposes of this complaint, Staff requests that the Commission determine whether DTG operated as a solid waste collection company in Washington without the necessary certificate during the periods relevant to the violations alleged herein.”)).

⁹ Staff’s Response at 5 ¶ 14.

¹⁰ Staff’s Response at 5-6 ¶ 15 (citing *In re Matter of the Enforcement Policy of the WUTC*, Docket A-120061, Enforcement Policy (Jan. 7, 2013)).

requesting that the Commission find that DTG's actions as alleged in the Complaint are representative of DTG's business practices across the state and issue a state-wide cease and desist is an unreasonable attempt to limit the Commission's authority to regulate solid waste companies.¹¹

- 7 WRRRA argues that the Complaint in this matter properly initiated a classification proceeding based on the reference to RCW 81.04.510 in the Complaint's statement of jurisdiction, as well as the Complaint's request that the Commission determine that DTG operated as a solid waste collection company without the necessary authority from the Commission.¹² WRRRA further contends that, for the purpose of an unregulated company, the Commission must engage in a classification proceeding in order to impose penalties pursuant RCW 81.04.380.¹³ Finally, WRRRA suggests that even though the Complaint does not contain a reference to "classification proceeding," the Commission may nonetheless liberally construe the Complaint as a classification proceeding pursuant to WAC 480-07-395(4).¹⁴
- 8 Joint Intervenor's argue that DTG's Motion improperly attempts to limit the Commission's inquiry into whether DTG's operations at issue in the Complaint require operating authority from the Commission under RCW 81.04.510, suggesting that the Commission may make this determination in either a classification proceeding or a complaint for penalties.¹⁵ Joint Intervenor's contend that DTG's emphasis on a classification proceeding fails to acknowledge that the Commission must make a determination as to whether DTG's conduct is subject to regulation.¹⁶ Joint Intervenor's further maintain DTG's Motion attempts to strike evidence from Staff's testimony and exhibits that are relevant to the Commission's consideration of whether DTG's operations are subject to Commission regulation under Washington Administrative Code (WAC) 480-70-016.¹⁷ Finally, Joint Intervenor's assert that the evidence DTG seeks to

¹¹ Staff's Response at 6-7 ¶¶ 16-18.

¹² WRRRA's Response at 1-2 ¶ 2.

¹³ WRRRA's Response at 2 ¶¶ 3-4.

¹⁴ WRRRA's Response at 3 ¶ 5.

¹⁵ Joint Intervenor's Response at 1 ¶ 2.

¹⁶ Joint Intervenor's Response at 2 ¶ 3.

¹⁷ Joint Intervenor's Response at 2-3 ¶¶ 4-6.

strike is relevant to the Commission's consideration of its Enforcement Policy penalty factors.¹⁸

- 9 On May 30, 2025, the Company filed a Motion for Permission to Reply to Responses to Motion to Strike Testimony (Reply).¹⁹ In its Reply, DTG argues that the Complaint in this case did not initiate a classification proceeding and that there are pertinent distinctions between a classification proceeding and complaint for penalties.²⁰ First, DTG asserts that under a classification proceeding pursuant to RCW 80.04.510, the burden of proof to demonstrate that a company is not operating as a solid waste collection company is on DTG, rather than Staff.²¹ The Company further maintains that Order 02's denial of consolidation of DTG's suspended application docket with the Complaint, the fact that Staff's testimony was due first under the procedural schedule, and email communication from Staff's counsel all indicate that Staff bears the burden of proof, and, consequently, that this is not a classification proceeding.²² The Company further notes that McPherson recommends that the Commission initiate a classification proceeding as part of her testimony, suggesting that this testimony indicates that a classification proceeding has yet to be initiated.²³ Second, DTG contends that a complaint for penalties and a classification proceeding involve different considerations and have different outcomes with respect to this case, because a complaint for penalties is primarily concerned with whether discrete conduct requires Commission authority while classification is concerned with whether DTG's current state-wide operations require Commission regulation.²⁴
- 10 DTG further argues that a complaint for penalties under RCW 81.04.380 does not implicitly initiate a classification proceeding under RCW 81.04.510. The Company disagrees with WRRRA, Rabanco, and Rubatino's argument that a classification proceeding under RCW 81.04.510 is necessary in this case, because DTG is already a public service company by virtue of its status as a common carrier.²⁵ DTG also asserts that it would be improper to liberally construe the Complaint as having initiated a

¹⁸ Joint Intervenors' Response at 4 ¶ 7.

¹⁹ The Commission subsequently granted DTG's Motion for Leave to Reply in Order 04 of this docket.

²⁰ DTG's Reply at 2-3 ¶¶ 6-7.

²¹ DTG's Reply at 3-4 ¶ 9.

²² DTG's Reply at 3-4 ¶ 9.

²³ DTG's Reply at 3-4 ¶ 9.

²⁴ DTG's Reply at 4-5 ¶ 10.

²⁵ DTG's Reply at 6-8 ¶ 13, 16.

classification proceeding, reiterating its previous arguments that the Complaint did not initiate a classification proceeding and arguing that such construction would implicate the Company's Due Process rights.²⁶

- 11 DTG also contends that the evidence and testimony that it seeks to strike are irrelevant to the Commission's analysis in this case. DTG maintains that the other evidence it seeks to exclude does not have any bearing on the violations alleged in the Complaint and that the evidence should not be considered in relation to the Commission's Enforcement Policy penalty factors.²⁷ DTG states that evidence of prior events and enforcement actions are not relevant to the Commission's consideration of the intentionality, likelihood of recurrence, history of non-compliance, and number of customers affected penalty factors.²⁸ Finally, DTG argues that Staff may not seek reconsideration of Order 02 via its pre-filed testimony.²⁹

DISCUSSION

- 12 With respect to motions to strike testimony filed prior to the evidentiary hearing, the Commission has previously explained:

As a technical matter, motions to strike prefiled testimony are actually premature in the sense that prefiled testimony, by its nature, has not yet been offered into the record subject to objections by other parties. However, the Commission, following its practice of liberally construing pleadings, routinely considers and rules on such motions as a practical means of resolving disputes over the admissibility of evidence before a hearing commences. This is done in the interest of gaining efficiency in the hearing process by not forcing parties to prepare discovery and cross-examination with respect to testimony that is irrelevant or otherwise inadmissible on its face. In addition, early rulings excluding such evidence avoid the need to expend valuable hearing time considering and resolving disputes over such evidence.³⁰

- 13 WAC 480-07-495(1) further provides:

²⁶ DTG's Reply at 6-7 ¶¶ 14-15.

²⁷ DTG's Reply at 8-10 ¶¶ 17-23.

²⁸ DTG's Reply at 9-10 ¶¶ 19-22.

²⁹ DTG's Reply at 10-11 ¶¶ 24-25.

³⁰ *WUTC v. Puget Sound Energy*, Dockets UT-170033 & UG-170034 (consolidated), Order 07 at 2 ¶ 5 (August 25, 2017).

All relevant evidence is admissible if the presiding officer believes it is the best evidence reasonably obtainable, considering its necessity, availability, and trustworthiness. The presiding officer will consider, but is not required to follow, the rules of evidence governing general civil proceedings in nonjury trials before Washington superior courts when ruling on the admissibility of evidence.

The presiding officer may exclude evidence that is irrelevant, repetitive, or inadmissible, whether or not a party objects to the evidence. Parties objecting to the introduction of evidence must state the grounds for the objection at the time the evidence is offered. If the presiding officer excludes the evidence from the record, the presiding officer may provide the party offering that evidence with the opportunity to make an oral or written offer of proof briefly describing the nature and purpose of the evidence for subsequent review of the presiding officer's ruling.

- 14 The Commission thus has broad discretion to consider any evidence it deems relevant, and equally, to reject any evidence it deems irrelevant. At this junction, the Commission “need only determine whether any portion of [the challenged] testimony is so demonstrably irrelevant to the disputed issues that the Commission would not admit it into evidence if it were offered.”³¹

A. Order 02 did not Determine that this Case did not Involve a Classification Proceeding under RCW 81.04.510.

- 15 As an initial matter, the Commission disagrees with DTG’s assertion that Order 02 determined that the Complaint did not initiate a classification proceeding. First, the portions of Order 02 cited by DTG in its Motion and Reply refer to portions discussing the Motion to Consolidate and various Petitions for Intervention. While Order 02 denied consolidation and allowed some, but not all, of the petitioners for intervention to join the case as full parties, these sections cannot be reasonably construed to limit the scope of the entire Complaint. Read in context, those paragraphs are relevant only with respect to the issues of consolidation and intervention. Had the Commission intended to foreclose a classification proceeding as part of Order 02, it would have done so expressly.
- 16 Second, the email communications attached to DTG’s Motion reflect continued disagreement between the parties regarding whether the Complaint in this matter initiated

³¹ *WUTC v. Puget Sound Pilots*, Docket TP-190976, Order 06 at 2-3 ¶ 9 (July 21, 2020).

a classification proceeding prior to the issuance of Order 02.³² In Order 02, the Commission expressly declined to consider the substantive arguments contained in the emails in the absence of a formal motion, indicating that the Commission was not resolving the issue of whether the Complaint constituted a classification proceeding.³³ Prior to DTG's Motion, none of the parties sought to challenge Order 02 or otherwise request further clarification of the scope of the Complaint. To the extent that DTG's argument is predicated on Order 02 having limited the scope of the Complaint to exclude a classification proceeding, such argument fails.

B. The Complaint did not Initiate a Classification Proceeding Pursuant to RCW 81.04.510.

- 17 The Company maintains that Staff cannot convert a complaint for penalties into a classification proceeding in the absence of a motion to amend the Complaint.³⁴ As part of this argument, DTG asserts that the Complaint is solely a complaint for penalties, to the exclusion of a special proceeding for classification pursuant to RCW 81.04.510.³⁵ In support, DTG identifies several prior Commission classification special proceedings combined with complaints for penalties, noting that the Complaint in this docket does not contain any language describing a special proceeding pursuant to RCW 81.04.510 or language regarding the burden of proof.³⁶
- 18 After carefully reviewing the Complaint in this case, the Commission determines that the Complaint did not initiate a classification proceeding pursuant to RCW 81.04.510. While the Complaint does reference RCW 81.04.510 as part of the statement of jurisdiction, the Complaint does not contain any of the other components that are typical of a complaint initiating a special proceeding pursuant to RCW 81.04.510. Specifically, the Complaint in this case does not contain a caption indicating that this docket is initiating a special

³² See DTG's Motion to Strike, Exhibit C.

³³ See Order 02 at ¶ 39 ("The Commission reminds all parties that substantive arguments about this proceeding should not be communicated to the presiding officer as part of procedural communications. The Commission expects that any substantive disagreements or arguments pertaining to this proceeding will be filed with the Commission consistent with the Commission's procedural rules. Given the sophistication of the parties, the presiding officer will not construe arguments contained in procedural emails as motions.").

³⁴ DTG's Motion to Strike at 9 ¶ 22.

³⁵ DTG's Motion to Strike at 9-10 ¶¶ 23-27.

³⁶ DTG's Motion to Strike at 10 ¶ 26 (citing *In the Matter of Determining the Proper Carrier Classification of & Complaint for Penalties Against Daniel Stein d/b/a Seabeck Waste and Recycle*, Docket TG-180181, Order 01 (Sept. 21, 2018)).

proceeding, an accompanying subpoena, any reference to a special proceeding in the Complaint, or a clear assignment of the burden of proof to DTG.³⁷ Although the Commission will liberally construe pleadings based primarily on the relief requested under WAC 480-07-395(4), examination of the Complaint as a whole does not support construing the Complaint as initiating a special proceeding for classification. Additionally, classification under RCW 81.04.510 is not required to impose penalties under RCW 81.04.380, because DTG is already a public service company by virtue of its status as a common carrier.³⁸ Finally, as noted by Staff and the Joint Intervenors, the Commission may determine that DTG is operating as a solid waste collection company subject to Commission regulation in the context of either a classification proceeding or a complaint for penalties, such that classification is not a prerequisite to a complaint for penalties.³⁹

C. Motion to Strike

- 19 Turning to the relief requested in DTG’s Motion, after reviewing the challenged testimony and exhibits, the Commission determines that much of the material that DTG seeks to strike is sufficiently relevant to warrant inclusion in the record, other than the references to RCW 81.04.510 classification proceedings and state-wide determinations. The Commission finds that much of the challenged evidence is relevant to 1) Staff’s investigative process and the background to Staff’s investigation and 2) to the Commission’s evaluation of the Enforcement Policy penalty factors.
- 20 As mentioned above, DTG’s references to Order 02 in its Motion and Reply concern paragraphs regarding consolidation and intervention. Although the Commission focused on the location of the alleged violations for purposes of evaluating intervention and consolidation, the Commission did not explicitly limit the matters that the parties could explore as part of their respective cases. The Commission declined to impose any of the limitations requested by DTG on the intervenors in this case and stated its expectation that intervenors would not “unduly” expand the scope of this case “by searching for other

³⁷ *In the Matter of Determining the Proper Carrier Classification of & Complaint for Penalties Against Daniel Stein d/b/a Seabeck Waste and Recycle*, Docket TG-180181, Order 01 at 1, 4-5 ¶¶ 1, 29, 31 (Sept. 21, 2018); see also *In the Matter of Determining the Proper Carrier Classification of & Complaint for Penalties Against Daniel Stein d/b/a Seabeck Waste and Recycle*, Docket TG-180181, Subpoena and Subpoena Duces Tecum (Sept. 21 2018).

³⁸ RCW 81.04.510(16) (defining public service company to include every common carrier).

³⁹ Staff’s Response at 4-5 ¶ 13; Joint Intervenors’ Response at 1 ¶ 2.

unpled violations **unrelated** to the cause of action in this complaint.”⁴⁰ The Commission also invited all parties not granted full intervention to file comments to the docket.⁴¹ The Commission does not interpret this language as entirely precluding any evidence of other DTG activity in other areas and at different times, provided that the evidence has some relation to the allegations in the Complaint. Such distinctions properly go to the weight afforded to, but not the relevance and admissibility of, the evidence.

- 21 In its Motion, DTG also cites to portions of Order 02 that refer to a desire to not broaden the issues in this proceeding beyond the scope of the Complaint.⁴² However, in context, this language was in response to petitions to intervene that referred to DTG’s now suspended application for state-wide solid waste authority and fitness for service, asking that the Commission “broadly consider DTG’s potential violations of RCW Title 81 throughout the state in the context of its overall operations and evidence of how it holds out to perform its services[.]”⁴³ While the Commission adheres to its earlier determination that this docket should not be used to explore any and all potential violations of Title 81 RCW by DTG, in context, this direction should not be construed as wholly excluding evidence of other conduct that has some bearing on or relationship to the violations alleged in the Complaint.
- 22 While the scope of the asserted violation is narrow, involving alleged conduct occurring between January and June of 2023 in Snohomish County, this does not support a conclusion that information from beyond that geographic and temporal period is irrelevant to the proceeding at hand or beyond the scope of this proceeding. Insofar as the allegations in the Complaint relate to an overall course of conduct and pattern of activity, then certainly information that is related to that conduct and pattern is relevant to the Commission’s analysis. Similarly, evidence of prior DTG activity is relevant to Staff’s investigation into DTG’s activities alleged in the Complaint and Staff’s determination that DTG’s activities constitute solid waste collection services. The Commission disagrees with the Company’s assertion that Staff’s investigatory background is strictly limited to the information contained in the investigation report and sees no reason why

⁴⁰ Order 02 at 12 ¶ 34 (March 18, 2025)(emphasis added).

⁴¹ Order 02 at 11-12 ¶ 32.

⁴² DTG’s Motion to Strike at 11-12 ¶ 30 fn. 55 (citing Order 02 at 9 ¶ 25 regarding Basin Disposal, Inc.’s petition for intervention).

⁴³ Petition to Intervene of Basin Disposal, Inc. at 3 ¶ 6.

Staff may not expand on and further explain its investigative process and reasoning in testimony.⁴⁴

- 23 Furthermore, much of the material challenged by DTG is relevant to the Commission's evaluation of the Enforcement Policy penalty factors, should a violation ultimately be found. As an initial matter, the Enforcement Policy penalty factors are a non-exhaustive list of considerations, such that the Commission may consider matters beyond those contained in the policy.⁴⁵ The Company argues that the evidence it seeks to strike is irrelevant to the intentionality factor but only provides argument on two of the four considerations under that factor and does not address the fact that the enumerated factors for intentionality are non-exhaustive.⁴⁶ The Commission is not persuaded that past violations from other regulatory authorities have no bearing on the Commission's evaluation of the Company's operations in this proceeding, and DTG cites to no authority indicating that such consideration is impermissible. Although some of Staff's pre-filed material pertains to issues other than the hauling of residual materials from material recovery facilities to disposal facilities, the evidence is still potentially probative as to the nature of DTG's operations and the question of whether DTG is providing solid waste collection services.⁴⁷
- 24 The Company further asserts that the evidence it seeks to strike is not relevant to the likelihood of recurrence factor because the activities reflected in the testimony and exhibits it seeks to strike "have no bearing on this inquiry."⁴⁸ The Company also contends that this evidence is not relevant to the past performance factor, because the evidence does not concern past violations of Commission requirements.⁴⁹ As with the intentionality factor, the Commission is not convinced that prior enforcement action from other regulatory entities lack any probative value in evaluating these factors, and nothing in the Enforcement Policy limits the Commission's consideration to only prior Commission action. Additionally, the Commission does not agree that the evidence DTG

⁴⁴ DTG's Reply at 8 ¶ 17.

⁴⁵ Enforcement Policy at 7-9 ¶ 15 ("The Commission will consider factors that include but are not limited to . . . [.]").

⁴⁶ Enforcement Policy at 7-9 ¶ 15 ("In determining whether a company willingly and intentionally committed a violation, the Commission will consider factors that include, but are not limited to . . . [.]").

⁴⁷ See, e.g., McPherson, Exh. KM-7 (containing DTG application for credit account for solid waste refuse disposal services).

⁴⁸ DTG's Reply at 9 ¶ 20.

⁴⁹ DTG's Reply at 9-10 ¶ 21.

seeks to exclude is irrelevant to the Commission's consideration of the number of customers affected, insofar as evidence of widespread activity, if found credible, supports an inference that a greater proportion of DTG's Snohomish County customer base has been affected by the Company's conduct.

- 25 Furthermore, there are two other considerations that weigh against granting much of DTG's Motion. First, as noted in Order 02, this case has the potential to "further develop policy regarding whether service constitutes solid waste service subject to Commission regulation."⁵⁰ Given that this case may present issues of first impression with respect to Commission regulation of solid waste collection, the Commission prefers to "err on the side of including, rather than excluding, testimony and evidence that will aid in its evaluation of the issues in this case" and will "accord weight to testimony and evidence in lieu of excluding it entirely."⁵¹ The Company will still have the opportunity to challenge this evidence through discovery, its testimony, at hearing, and in briefing, if it elects to do so. Second, DTG has not yet filed its testimony in this case, so it is not clear whether any of the material that DTG seeks to strike from Staff's testimony and exhibits would be responsive or related to any aspect of DTG's case. As the scope of DTG's position is uncertain, striking Staff's testimony and exhibits would be premature.
- 26 Based on the determination that the Complaint in this proceeding did not initiate a classification proceeding under RCW 81.04.510 and the fact that the Complaint only alleges violations in Snohomish County, the Commission finds that testimony requesting a classification proceeding under RCW 81.04.510 and for a determination of the state-wide character of DTG's operations is beyond the scope of this proceeding and should be struck. Although Staff's testimony also refers to "classification" in a generic sense, the Commission determines that this verbiage is sufficiently similar to a determination that the Company is operating as a solid waste collection company, which is within the scope of the Complaint and does not warrant striking. As such, the following portions of testimony should be stricken from the record:

Page 3, Lines 2-3: "institute a classification proceeding under RCW 81.05.510 to"

Page 3, Lines 5-6: "This determination should be made in this docket simultaneously with resolving the Complaint."

⁵⁰ Order 02 at 5-6 ¶ 17.

⁵¹ *WUTC v. Puget Sound Pilots*, Docket TP-190976, Order 06 at 4-5 ¶ 17.

Page 3, Lines 13-14: “that the Commission find that DTG’s actions in Snohomish County are representative of its business practices across the state, and”

Page 18, Lines 8-9: “institute a classification proceeding under RCW 81.05.510 to”

Page 18, Lines 11-12: “This determination should be made in this docket simultaneously with resolving the Complaint.”

Page 18, Line 19 to Page 19, Line 1: “that the Commission find that DTG’s actions in Snohomish County are representative of its business practices across the state, and”

27 In all other respects, DTG’s Motion is denied.

ORDER

28 For the reasons stated above, the Commission grants DTG’s Motion in part and denies it in part as described in paragraphs 26 and 27 above.

DATED at Lacey, Washington July 15, 2025.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

/s/ Harry Fukano
HARRY FUKANO
Administrative Law Judge

NOTICE TO PARTIES: This is an Interlocutory Order of the Commission. Administrative review may be available through a petition for review, filed within 10 days of the service of this Order pursuant to WAC 480-07-810.