

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

DTG ENTERPRISES, INC.,

Respondent.

DOCKET TG-240761

ORDER 09

DENYING DTG’S MOTION FOR
LEAVE TO DEPOSE AND DTG’S
MOTION TO COMPEL

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. 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 June 12, 2025, DTG issued data requests to Rabanco Ltd. d/b/a Lynwood Disposal, et. al. (Rabanco).¹ Under the standard ten business day response time for data requests, the responses to these data requests would have been due on June 26, 2025, four days prior to DTG’s originally scheduled deadline to file response testimony.²

¹ DTG’s Motion to Compel, Exhibit A.

² WAC 480-07-405(7)(a)(ii); Order 02, Appendix B (Mar. 18, 2025).

- 5 On June 18, 2025, DTG emailed the presiding officer in this matter, indicating that no party objected to a continuance of the response testimony deadline from June 30, 2025, to July 28, 2025. On June 23, 2025, the presiding officer emailed the parties, indicating in part that the Commission found good cause to extend the response testimony deadline to July 28, 2025.
- 6 On June 25, 2025, Rabanco emailed DTG, stating that it would need additional time to respond to DTG's data requests and requesting an extension of the response time to July 17, 2025.³ On June 26, 2025, the presiding officer confirmed that the Commission would extend the response testimony deadline from June 30, 2025, to July 28, 2025.
- 7 On July 11, 2025, DTG filed a Motion for Leave to Depose Intervenors' Representative Witnesses (Motion to Depose). In its Motion to Depose, DTG argues that it should be allowed to depose representative witnesses from Washington Refuse and Recycling Association (WRRRA), Rubatino Refuse Removal, LLC (Rubatino), and Rabanco (collectively "Intervenors").⁴ The Company asserts that each of the Intervenors has relevant and necessary evidence that DTG needs to defend itself, DTG cannot obtain Intervenors' information from another source, and that Intervenors' evidence has substantial probative value.⁵ In the alternative, the Company contends that the Commission should reevaluate whether Intervenors' continued participation in this proceeding is warranted and prohibit Intervenors from submitting any testimony or evidence.⁶
- 8 On July 14, 2025, DTG emailed the presiding officer, representing that the parties had agreed to further extend the response testimony deadline from July 28, 2025, to August 11, 2025. On July 17, 2025, Rabanco emailed DTG requesting a further extension of the time to respond to data requests to July 31, 2025, due to an ongoing solid waste strike impacting Rabanco and internal personnel changes at Rabanco.⁷
- 9 On July 18, 2025, WRRRA and Rabanco filed their Response to DTG's Motion to Depose (WRRRA and Rabanco's Response). In their Response, WRRRA and Rabanco maintain that DTG has failed to show that representative witnesses should be deposed under WAC

³ DTG's Motion to Compel, Exhibit D.

⁴ DTG's Motion to Depose at 2 ¶ 3.

⁵ DTG's Motion to Depose at 2-4 ¶¶ 4, 7-9.

⁶ DTG's Motion to Depose at 4-5 ¶ 10-11.

⁷ DTG's Motion to Compel, Exhibit E.

480-07-410(1)'s standard for deposing individuals not identified as potential witnesses.⁸ As a threshold issue, WRRRA and Rabanco note that DTG's Motion to Depose does not specify which representatives the Company seeks to depose and argue against interpreting the Motion to Depose as requesting to depose attorney representatives of WRRRA and Rabanco.⁹ WRRRA and Rabanco contend that DTG has not established what information WRRRA and Rabanco representatives would have that is necessary to DTG's case in this proceeding, and that WRRRA and Rabanco may still elect to file no testimony or exhibits in this matter and limit their participation to just briefing and argument.¹⁰ WRRRA and Rabanco further assert that DTG has not explained why the information it seeks to obtain through representative depositions cannot reasonably be obtained from another source.¹¹ Finally, WRRRA and Rabanco contend that it is not possible to assess whether the probative value of the information obtained will outweigh the burden on the person proposed to be deposed because DTG has not identified specific individuals to be deposed.¹²

10 WRRRA and Rabanco argue that the Commission should not entertain a motion for leave to reply from DTG, stating that DTG cannot demonstrate good cause for a reply to more fully develop its request for depositions at the reply phase, and that WRRRA and Rabanco's Response does not raise new issues warranting a reply.¹³ WRRRA and Rabanco further state that the Company's reliance on CR 30(b)(6) is misplaced, as the Commission's rules set forth an independent and more limited standard for depositions.¹⁴ WRRRA and Rabanco also contend that they have neither attempted to improperly expand the scope of the issues in this proceeding nor contributed to any delay, and that the

⁸ The Commission notes that WRRRA and Rabanco's Response refers to two exhibits, Exhibit A and Exhibit B. *See*, WRRRA and Rabanco's Response at 3 ¶ 6. However, WRRRA and Rabanco's filing that contained its Response did not include any separate exhibits and there are no exhibits attached to the Response.

⁹ WRRRA and Rabanco's Response at 4 ¶ 10.

¹⁰ WRRRA and Rabanco's Response at 4-5 ¶¶ 11-12.

¹¹ WRRRA and Rabanco's Response at 5 ¶ 13. WRRRA and Rabanco additionally maintain that DTG has not attempted to avail itself of alternative, less burdensome forms of discovery, such as "contention interrogatories," which should be considered in evaluating the relative burden of the deposition. WRRRA and Rabanco's Response at 8-9 ¶¶ 21-23.

¹² WRRRA and Rabanco's Response at 6 ¶ 14.

¹³ WRRRA and Rabanco's Response at 5-7 ¶¶ 15-16.

¹⁴ WRRRA and Rabanco's Response at 7-8 ¶¶ 17-20 (citing *In re Application of Speedishuttle Washington LLC*, Dockets TC-143691 & TC-160516 (*Consolidated*), Order 10/3 at 3 ¶ 10 (Dec. 15, 2016)).

Commission should deny DTG's request to limit WRRRA and Rabanco's participation as intervenors.¹⁵

- 11 Rubatino did not file a response to DTG's Motion to Depose.
- 12 On July 21, 2025, the Commission issued Order 08 in this matter, which among other things, extended the deadline for response testimony to August 11, 2025.¹⁶
- 13 Also on July 21, 2025, DTG filed a Motion to Compel Responses to Data Requests from Rabanco Ltd. on an Expedited Basis (Motion to Compel). In its Motion to Compel, DTG argues that Rabanco has failed to comply with the Commission's discovery rules by giving less than two days' notice of an extension to its data request response time.¹⁷ The Company asserts that Rabanco's extensions of time to respond to data requests appear to be intended to prejudice DTG by either precluding or limiting the Company's ability to incorporate Rabanco's responses into the Company's testimony.¹⁸ DTG further contends that it has been prejudiced by the timing of Rabanco's extension because DTG has requested all communications between Rabanco and Staff regarding DTG, and the Company will not be able to use Rabanco's responses in the deposition of McPherson on July 29, 2025.¹⁹ DTG asserts that the Commission should reevaluate Rabanco's participation as an intervenor in this matter because Rabanco has unreasonably delayed the proceeding by delaying discovery responses and by suggesting that it would only file cross-answering testimony.²⁰ DTG requests that the Commission require Rabanco to respond to its data requests as soon as possible and no later than July 31, 2025.²¹
- 14 On July 28, 2025, Rabanco filed a Response to DTG's Motion to Compel (Response to Motion to Compel). In its Response to Motion to Compel, Rabanco states that it provided responses to DTG's data requests that are the subject of its Motion to Compel on July 25, 2025, and asks that the Commission determine that DTG's Motion to Compel is now

¹⁵ WRRRA and Rabanco's Response at 9-10 ¶¶ 24-25.

¹⁶ Order 08, Appendix A (July 21, 2025).

¹⁷ DTG's Motion to Compel at 2 ¶ 4.

¹⁸ DTG's Motion to Compel at 2-3 ¶ 5.

¹⁹ DTG's Motion to Compel at 3 ¶ 6.

²⁰ DTG's Motion to Compel at 3-4 ¶¶ 7-8.

²¹ DTG's Motion to Compel at 4 ¶ 9. *See also*, DTG's Motion to Compel at 1 ¶ 1 (citing WAC 480-07-375(4)).

moot.²² Rabanco further contends that its delay in responding was the result of a work stoppage that affected its operations and the departure of in-house counsel for Rabanco.²³

DISCUSSION

A. Depositions

15 WAC 480-07-410(1) provides:

A party may depose any person identified by another party as a potential witness. A party may depose a person who has not been identified as a potential witness only if the presiding officer approves the deposition. The presiding officer may approve the deposition of a person who has not been identified as a potential witness on a finding that the person appears to possess information that is necessary to the party's case, the information cannot reasonably be obtained from another source, and the probative value of the information.

16 Based on WAC 480-07-410(1), in order to depose a non-witness, the requesting party must demonstrate: 1) the person to be deposed appears to possess information that is necessary to the party's case; 2) the information cannot reasonably be obtained from another source; and 3) the probative value of the information outweighs the burden on the person to be deposed. Furthermore, "[a]lthough WAC 480-07-410(3) references CR 30 of the Washington superior court civil rules, 'as a guide when conducting depositions,' it neither expressly nor implicitly incorporates that rule[.]"²⁴ With respect to depositions, the Commission "is neither bound by superior court civil rules nor case law related to their application in the context of superior court proceedings."²⁵

17 The Commission finds that DTG has not met the above standard with respect to its request to depose representative witnesses from the Intervenors. DTG has not articulated

²² Response to Motion to Compel at 1-2 ¶¶ 3-4.

²³ Response to Motion to Compel at 1-2 ¶¶ 1, 5. *See also*, Decl. of Howard at 1-2 ¶¶ 4-5.

²⁴ *In re Application of Speedishuttle Washington LLC*, Dockets TC-143691 & TC-160516 (*Consolidated*), Order 10/3 at 3 ¶ 10 (Dec. 15, 2016). Although WAC 480-07-410 has been amended since the issuance of Order 10/03, the reference to use of CR 30 as guidance is substantially the same. *Compare* WAC 480-07-410(3) ("Parties should use Washington superior court civil rule 30 as a guide when conducting depositions.") *with* former WAC 480-07-410(3)(2003) ("Parties should use CR 30 of the Washington superior court rules as a guide when conducting depositions.").

²⁵ *In re Application of Speedishuttle Washington LLC*, Dockets TC-143691 & TC-160516 (*Consolidated*), Order 10/3 at 3 ¶ 10 (Dec. 15, 2016).

what information it seeks to obtain from any of the Intervenor's or how it intends to use such information as part of its defense. DTG's statement that it "should be allowed to explore Intervenor's purportedly unique and essential insights" suggests that the purpose of DTG's depositions is exploratory.²⁶ Insofar as the purpose of DTG's depositions are essentially exploratory, it is unclear how such information is necessary for DTG to defend itself.

- 18 Furthermore, on this record, given that DTG has not identified what information it seeks from the Intervenor's, or particularized its request with respect to WRRRA, Rubatino, or Rabanco, the Commission cannot conclude that the information is unavailable from other sources. The Commission also finds that DTG has not established that it "cannot obtain Intervenor's evidence in accordance with the case schedule or regulation-mandated response deadlines," as DTG can request information through data requests and will have access to Intervenor's testimony, should they elect to file testimony in this proceeding, in accordance with the procedural schedule.²⁷
- 19 DTG further suggests that the Commission should discount any asserted prejudice as a result of DTG's requested depositions because the Intervenor's "fought to inject themselves into this proceeding and opposed DTG's efforts to limit their roles, thus assuming the obligations (discovery and otherwise) that come with full participation."²⁸ The Commission notes that DTG previously stated that it "does not oppose the intervention of [WRRRA, Rubatino, and Rabanco] but is concerned that these parties might seek to broaden this proceeding beyond the allegations of the Complaint."²⁹ Additionally, the Commission does not agree with the premise presented that the Intervenor's opposition to limited discovery *from the Intervenor's*, implies that the Intervenor's would suffer no prejudice from DTG's requested discovery.³⁰
- 20 Although DTG relies on statements from the Intervenor's petitions to intervene in support of its Motion to Depose, the statements from the petitions to intervene must be viewed in context of the proceedings as they existed at that time. At the time petitions to intervene were filed, the Commission was still considering a motion to consolidate this proceeding

²⁶ DTG's Motion to Depose at 3 ¶ 7.

²⁷ DTG's Motion to Depose at 4 ¶ 8.

²⁸ DTG's Motion to Depose at 4 ¶ 9.

²⁹ DTG's Response to Petitions to Intervene at 2 ¶ 4.

³⁰ DTG's Response to Petitions to Intervene at 5 ¶ 13 (proposing to limit intervenor's participation to specific issues, limit the intervenor's use of discovery, and require intervenor's to combine their participation in this proceeding).

with the now suspended docket regarding DTG’s application for statewide solid waste collection authority, which involves separate considerations and analysis. Therefore, while some of the Intervenor’s petitions to intervene indicate that they possess relevant information, it is unclear whether that information pertains to the analysis related to DTG’s now suspended application for solid waste service or the complaint for penalties, based solely on the petitions to intervene.

21 The Commission finds that Order 05 of consolidated dockets UE-121697, UG-121705, UE-130137, and UG-130138, which DTG cites in support of its Motion, is distinguishable for the same reasons stated in Order 08 of this docket.³¹ Even if the Commission were to consider Order 05, DTG has requested to “explore Intervenor’s purportedly unique and essential insights,” which cannot be reasonably characterized as “a limited and narrow inquiry.”³²

22 For the reasons stated above, the Commission denies DTG’s Motion to Depose and finds that the Intervenor’s refusal to proceed with non-witness representative depositions does not warrant reevaluation of Intervenor’s participation at this time.

B. Motion to Compel

23 WAC 480-07-405(7)(a)(ii) states in part:

A party to whom a data request is directed must provide a full response within ten business days after the request is served. If the responding party cannot provide a full response within ten business days, the responding party must give written notice to the requesting party no later than two business days before the response is due. The notice must state why the responding party cannot comply with the ten-day deadline[.]

24 An issue is moot if a court can no longer provide effective relief.³³ Insofar as DTG’s Motion to Compel requests that the Commission order Rabanco to provide responses to data requests as soon as possible, and by no later than July 31, 2025, the Commission cannot provide any further relief, as Rabanco has already provided responses.³⁴

³¹ Order 08 at 7-8 ¶ 21 (July 21, 2025); DTG’s Motion at 3 ¶ 6 fn. 12.

³² DTG’s Motion to Depose at 3 ¶¶ 6-7. *See also*, DTG’s Motion to Depose at 3 ¶ 6 fn. 12 (quoting *In the Matter of the Petition of Puget Sound Energy, Inc. and Northwest Energy Coalition*, Dockets UE-121697, UG-121705, UE-130137, & UG-130138 (consolidated), Order 05 at 7-9 ¶¶ 16-20 (April 16, 2013)).

³³ *AURC III, LLC v. Point Ruston Phase II, LLC*, 3 Wn.3d 80, 86 (2024).

³⁴ Response to Motion to Compel at 1 ¶ 3 (*citing* Decl. of Howard at 1 ¶ 3).

Therefore, the Commission denies, as moot, DTG's request to require Rabanco to respond.

- 25 The Commission agrees that Rabanco did not comply with WAC 480-07-405(7)(a)(ii); it failed to provide at least two business days' notice to DTG that it would need additional time to respond to the Company's data requests with respect to the responses due on July 17, 2025. However, the Commission also acknowledges that there were exigent circumstances that appear to have impacted Rabanco's ability to respond by its July 17, 2025, deadline. Regardless, Rabanco should have been able to identify and communicate the need for additional time at least two business days prior to the deadline for responses.
- 26 That said, Rabanco has provided answers to the data requests several days ahead of the extended July 31, 2025, response deadline that it requested on July 17, 2025, in time for DTG to use produced materials in the deposition of Staff witness McPherson. Additionally, while Rabanco did request two extensions of its response time, the record indicates that it did so each time after agreeing to not oppose DTG's two continuances of the response testimony deadline, such that DTG would be able to incorporate the responses into its response testimony if the continuances were granted. Although DTG states that Rabanco's extensions give the Company little time to incorporate the responses into its response testimony, the Commission observes that, based on the original procedural schedule and data request response timeline, DTG would have had only four days to review and incorporate Rabanco's responses into its response testimony. Presently, DTG will have more than two weeks to incorporate any material from Rabanco's data request responses. Therefore, while the Rabanco, and all other parties, should provide timely notice of the need for additional time going forward, the Commission determines that no sanctions, including reevaluation of Rabanco's intervenor status, are warranted at this time.

ORDER

- 27 The Commission denies DTG's Motion to Depose.
- 28 The Commission denies DTG's Motion to Compel with respect to requiring a response from Rabanco as moot.
- 29 The Commission denies DTG's Motion to Compel with respect to DTG's request to reevaluate Rabanco's intervenor status.

DATED at Lacey, Washington, and effective July 30, 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.**