

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

DTG ENTERPRISES, INC.,

Respondent.

DOCKET TG-240761

COMMISSION STAFF'S RESPONSE
TO MOTION TO DISMISS THE
COMMISSION'S COMPLAINT

I. INTRODUCTION

1 DTG Enterprises, Inc., (DTG) filed a Motion to Dismiss pursuant to WAC 480-07-380(1) alleging that the Complaint¹ against DTG failed to assert that it transported solid waste or received compensation for such activity.² DTG also alleges that Staff's Investigation Report is insufficient to establish facts necessary to support the Complaint.³ Commission Staff opposes the Motion to Dismiss.

II. RELIEF REQUESTED

2 Staff respectfully requests the Commission deny the Motion to Dismiss because sufficient probable cause existed to issue the Complaint, and DTG has failed to meet the heavy burden of showing that dismissal is appropriate.

III. STATEMENT OF FACTS

3 DTG has received substantial amounts of technical assistance, beginning in 2017, just months after receiving its common carrier permit.⁴ Over years, Staff received several

¹ *Wash. Utils. & Transp. Comm'n v. DTG Enterprises, Inc.*, Docket TG-240761, Complaint and Notice of Prehearing Conference (December 18, 2024).

² *Wash. Utils. & Transp. Comm'n v. DTG Enterprises, Inc.*, Docket TG-240761, DTG's Motion to Dismiss at ¶ 2 (January 7, 2025).

³ *Id.* at ¶ 3.

⁴ *Wash. Utils. & Transp. Comm'n v. DTG Enterprises, Inc.*, Docket TG-240761, Staff Investigation Report at 4-5 and 19-21 (December 20, 2024). DTG received its common carrier permit on January 2, 2017, and DTG experienced its first complaint and technical assistance in May 2017.

complaints about DTG’s operations raising questions about whether DTG was operating as a solid waste carrier.⁵ In response to those complaints, Staff would investigate and provide technical assistance to DTG. In each of those investigations, Staff informed DTG that its operations may be in violation of RCW 81.77.040. Staff specifically informed DTG that it may be at risk of being penalized for operating as a solid waste company without the required Commission certificate.⁶ DTG stated to Staff in 2022 that it would “look at applying for a certificate.”⁷

4 In fall 2023, Staff received information that DTG was transporting large loads of residual waste to Snohomish County transfer facilities.⁸ Staff investigated the following spring by first seeking information from Snohomish County solid waste facilities about DTG’s activities. Snohomish County responded with information about loads, tonnage, and fees.⁹ The information from Snohomish County showed that three companies transported residual reclamation waste, including DTG. DTG transported loads and tonnage that far exceeded the amounts transported by the other two companies.¹⁰ Specifically, Snohomish County stated that DTG transported 3,329 loads, totaling 74,774 tons, and paid \$5.5 million in fees between January 1, 2023, and June 30, 2023.¹¹

5 Staff then contacted DTG to ask about its activities in Snohomish County.¹² Staff requested information about materials received in Snohomish County, what was intended with respect to the materials collected, where loads came from, tonnage, and ratio of solid

⁵ Staff Investigation Report at 5-8.

⁶ *Id.* at 5-8 (summarizing major contact with DTG), 27-30 (Staff compliance letters from 2021), 46-47 (Staff compliance letter from 2022), 52 (summary of 2022 telephone call between Staff and DTG).

⁷ *Id.* at 52.

⁸ *Id.* at 7.

⁹ *Id.* at 7 and 57.

¹⁰ *Id.* at 57.

¹¹ By comparison, the other two companies transported 69 loads (1,718 tons) and 2 loads (43 tons). *Id.* at 57.

¹² *Id.* at 7.

waste to recycling materials.¹³ Staff's compliance investigation letter specifically stated that Staff was investigating excessive residual waste, that Staff believed that DTG may be engaged in solid waste transportation services, and that DTG might be in violation of RCW 81.77.040 for collecting and transporting solid waste without a permit.¹⁴ Staff also provided a solid waste certificate application.¹⁵

6 DTG responded and confirmed the information Staff received from Snohomish County.¹⁶ In WUTC Staff Informal Data Request No. 5, Staff asked, "How many loads did DTG transport to a disposal facility" and "What was the approximate total tonnage?"¹⁷ DTG responded, "DTG transported 3,389 loads to disposal facilities" and "The approximate total tonnage was 73,279 tons."¹⁸ In WUTC Staff Informal Data Request No. 6, Staff asked, "To which waste facility or facilities did DTG transport residual waste?"¹⁹ DTG responded, "Residual materials, after sorting/processing is completed at our facilities was disposed to Snohomish County Solid Waste."²⁰

7 Staff asked DTG about the intended destination for the materials it received at its Snohomish County facilities. DTG responded that materials received were processed for eventual recycling. DTG also stated, "Materials without a recyclable value of (sic) disposed as residual solid waste."²¹ In WUTC Staff Informal Data Request No. 7, Staff asked about DTG's estimated ratio of solid waste to recycling for all collected source materials.²² DTG

¹³ *Id.* at 58-59.

¹⁴ *Id.* at 58-59.

¹⁵ *Id.* at 59.

¹⁶ *Id.* at 7-8 and 60-64.

¹⁷ *Id.* at 62.

¹⁸ *Id.* at 63. While the number provided by DTG did not exactly match the number provided by Snohomish County, 73,279 is substantially similar to 74,774.

¹⁹ *Id.* at 63.

²⁰ *Id.* at 63.

²¹ *Id.* at 62 (WUTC Staff Informal Data Request No. 4).

²² *Id.* at 63.

stated that it accepts only recyclable materials and that it has a policy to receive 90 percent or greater recyclable materials.²³

8 Between January 1, 2023, and June 30, 2023, DTG received approximately 186,898 tons at its Snohomish County facilities.²⁴ Of that amount, DTG transported approximately 73,279 tons to Snohomish County solid waste facilities in 3,329 loads.²⁵ Even though DTG expresses the percentage of materials transported to solid waste facilities based on the number of total loads,²⁶ when comparing the amount of volume (tonnage), DTG transported nearly 40 percent of the materials collected as solid waste.²⁷

IV. STATEMENT OF ISSUES

9 Does Staff's Investigation Report provide sufficient probable cause to issue the Complaint against DTG, requiring denial of the Motion to Dismiss?

V. ARGUMENT

10 DTG premises its Motion to Dismiss on an assertion that the Complaint and Staff's Investigation Report fail to state a claim upon which the Commission may grant relief.²⁸ The Commission will consider the standards applicable to a motion made under Washington Superior Court Civil Rule (CR) 12(b)(6).²⁹ When considering a motion to dismiss a complaint, the Commission accepts the allegations in a complaint as true and construes the allegations in the light most favorable to the complainant.³⁰ The Commission will deny a motion to dismiss if facts consistent with the complaint would permit the Commission to

²³ *Id.* at 64.

²⁴ *Id.* at 7 and 57.

²⁵ *Id.* at 7, 57, and 63.

²⁶ Motion to Dismiss at ¶ 8.

²⁷ Staff Investigation Report at 7-8.

²⁸ Motion to Dismiss; WAC 480-07-380(1)(a).

²⁹ WAC 480-07-380(1)(a).

³⁰ *Murrey's Disposal Co., Inc., v. Waste Mgmt. of Wash., Inc., et al.*, Dockets TG-200650 and TG-200651 (consolidated), Order 02 Denying Motion to Dismiss, ¶ 15 (October 19, 2020).

grant relief.³¹ “Accordingly, granting such a motion is only appropriate if it appears that no facts consistent with the complaint exist that would justify relief.”³²

11 DTG has not met its burden to show that dismissal is appropriate.³³ Its argument that the Complaint fails to allege essential elements fails upon even a cursory review of the Complaint and Staff’s Investigation Report.

12 DTG first argues that the Complaint and Staff’s Investigation Report fail to allege that DTG physically transported loads to the disposal facility, yet it admits that it “confirmed that it transported 3,389 loads to disposal facilities.”³⁴ The term “transport” is not ambiguous. A common understanding of the word “transport” is to take goods or people from one place to another.³⁵ Staff informed DTG that it was investigating whether it was engaged in the transportation of solid waste by transporting excessive residual waste “more than the allowable residual solid waste.”³⁶ Staff’s letter to DTG stated, “The complaint alleges that DTG is collecting loads with high volumes of solid waste in recyclable containers, then disposing excessive residual waste at a solid waste transfer station or landfill on a more than occasional basis.”³⁷ Staff’s request for information asked multiple times about loads transported by DTG to a disposal facility.³⁸ DTG’s response stated that it transported materials that had no recyclable value to Snohomish County Solid Waste.³⁹ Beyond the normal meaning of “transport,” DTG has had years of contact with Staff about its operations and the idea of transporting solid waste materials.

³¹ *Id.*

³² *Id.*

³³ DTG argues that the Commission should consider Staff’s Investigation Report. Motion to Dismiss at ¶¶ 5-6. Staff agrees. Pursuant to WAC 480-07-307, Staff submitted its Investigation Report to the Commission’s Administrative Law Division as a probable cause document when it requested issuance of the Complaint.

³⁴ Motion to Dismiss at ¶ 11.

³⁵ Cambridge Dictionary, available at <https://dictionary.cambridge.org/dictionary/english/>.

³⁶ Staff Investigation Report at 58-59.

³⁷ *Id.*

³⁸ *Id.* (See, WUTC Staff Informal Data Request Nos. 5 and 6).

³⁹ *Id.* at 62-63.

13 DTG now claims that did not state that it physically transported the materials to the disposal facility and that it used a third-party to conduct the transportation; however, it did not provide any indication that an authorized third-party transported the materials on DTG's behalf in response to Staff's inquiries.⁴⁰ In DTG's Answer to Complaint and Affirmative Defenses, the Company identifies Golden Eagle Freight as transporting the residual reclamation waste.⁴¹ First, DTG did not include this information in its responses to Staff's investigation. Second, Golden Eagle Freight is not a certificated solid waste company. Even if Golden Eagle Freight conducted the transportation on behalf of DTG, DTG would remain liable for Golden Eagle Freight's actions as DTG's agent.⁴²

14 With respect to compensation, all the materials DTG collected and received was done so for compensation.⁴³ DTG is compensated to transport or receive materials that result in nearly 40 percent being transported to solid waste facilities.

15 DTG has not shown that "no facts consistent with the complaint exist that would justify relief."⁴⁴ Staff's Investigation Report provided sufficient probable cause for the Commission to issue the Complaint against DTG.⁴⁵ The facts alleged in the Complaint and in Staff's Investigation Report, if proven, would permit the Commission to grant relief in the form of penalties, classification as a solid waste collection company, cease and desist order, and other such relief as the Commission finds appropriate. As a result, Staff requests that the Commission deny DTG's Motion to Dismiss.

⁴⁰ Motion to Dismiss at ¶¶ 11 and 17; Staff Investigation Report at 60-64.

⁴¹ *Wash. Utils. & Transp. Comm'n v. DTG Enterprises, Inc.*, Docket TG-240761, DTG Enterprises, Inc.'s Answer to Complaint and Affirmative Defenses, ¶ 48 (January 7, 2025).

⁴² RCW 80.04.380; See, e.g., WAC 480-30-022.

⁴³ Staff Investigation Report at 60-64.

⁴⁴ *Murrey's Disposal*, Order 02 Denying Motion to Dismiss, ¶ 15.

⁴⁵ Complaint, ¶ 25.

VI. CONCLUSION

16 DTG has not met its burden to show that the Complaint against it should be dismissed. The Commission should deny the Motion.

DATED this 17th day of January 2025.

Respectfully submitted,

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