

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION

Complainant,

v.

DTG ENTERPRISES, INC.,

Respondent.

DOCKET TG-240761

ORDER 01

DENYING MOTION TO
DISMISS

BACKGROUND

- 1 On December 18, 2024, the Washington Utilities and Transportation Commission (Commission), through Commission staff (Staff), issued a Complaint and Notice of Virtual Prehearing Conference. The Complaint alleges that DTG Enterprises, Inc. (DTG or Company) committed 3,389 violations of Revised Code of Washington (RCW) 81.77.040 between January 1, 2023, and June 30, 2023, by knowingly transporting 3,389 loads of residual solid waste from its material recovery facility to Snohomish County solid waste facilities.
- 2 On January 7, 2025, DTG filed its Answer to Complaint and Affirmative Defenses and a Motion to Dismiss the Commission's Complaint (Motion) with the Commission.
- 3 On January 17, 2025, Staff filed its Response to the Company's Motion (Response).

Discussion

- 4 Pursuant to Washington Administrative Code (WAC) 480-07-380(1)(a), "[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. 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 12(c)."
- 5 When the Commission considers a motion to dismiss, it accepts the allegations in a complaint as true, construes them in the light most favorable to the complainant, and must deny the motion if those facts or facts consistent with the complaint would permit the Commission to grant relief. Accordingly, granting a motion to dismiss is appropriate

only if it appears that no facts consistent with the complaint exist that would justify relief.¹

- 6 Additionally, “[w]here 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.”²
- 7 Under RCW 81.77.040, “[a] solid waste collection company shall not operate for the hauling of solid waste for compensation without first having obtained from the commission a certificate declaring that public convenience and necessity require such operation. Operating for the hauling of solid waste for compensation includes advertising, soliciting, offering, or entering into an agreement to provide that service.” RCW 81.77.010 further defines a “solid waste collection company” as “every person or his or her lessees, receivers, or trustees, owning, controlling, operating, or managing vehicles used in the business of transporting solid waste for collection or disposal, or both, for compensation, except septic tank pumpers, over any public highway in this state as a ‘common carrier’ or as a ‘contract carrier.’”
- 8 The Complaint in this case states in part:

On May 4, 2021, Staff received a complaint reporting that DTG collected large amounts of solid waste during the process of commercial recycling.

Over the next three years, Staff received complaints regarding DTG’s operations, including allegations that DTG was transporting and disposing of solid waste. Staff also discovered advertisements offering debris disposal services for residential and commercial recycling customers. Staff questioned DTG about its operations, seeking information about whether

¹ *Murrey’s Disposal Co, Inc., v. Waste Mgmt. of Wash., Inc., et. al.*, Dockets TG-200650 and TG-200561 (consolidated), Order 02, 5 ¶ 15 (Octo. 19, 2020).

² *Sebek v. City of Seattle*, 172 Wn. App. 273, 275 n.2 (2012)(citing *In re Stac Elecs. Sec. Litig.*, 89 F.3d 1399, 1405 n.4 (9th Cir. 1996)(appropriate for a trial court to consider other portions of a document referenced in a complaint in a motion to dismiss, and doing so does not convert the motion into one for summary judgment)). The Commission notes that both Staff and the Company agree that the Commission should consider Staff’s Investigation Report referred to in the Complaint as part of ruling on the Motion. Motion at 2 ¶¶ 5-6; Response at 5 ¶ 11 n. 33.

DTG's operations were within the bounds of its common carrier permit. Staff provided substantial technical assistance.³

- 9 Staff's Investigation Report filed with the Complaint contains the following Company responses to Staff Data Requests:

WUTC Staff Informal Data Request No. 05:

5. How many loads did DTG transport to a disposal facility?

a. What was the approximate total tonnage?

Response:

5. DTG transported 3,389 loads to disposal facilities.

a. The approximate total tonnage was 73,279 tons.

WUTC Staff Informal Data Request No. 06:

6. To which waste disposal facility or facilities did DTG transport residual waste?

Response:

6. Residual materials, after sorting/processing is completed at our facilities was disposed to Snohomish County Solid Waste.

WUTC Staff Informal Data Request No. 07:

7. What is DTG's estimated ration of solid waste to recycling for all collected source materials?

a. How was the number calculated or determined?

³ *WUTC v. DTG Enterprises, Inc.*, Docket TG-240761, Complaint and Notice of Prehearing Conference, 2 ¶ 7-8 (December 18, 2024).

Response:

7. DTG accepts only recyclable materials and our policy is to receive only 90% or greater recyclable materials. We have a rigorous processes [sic] to ensure compliance with this policy. DTG has punitive fees for “black bag” or any MSW found mixed with recyclable material. The new ownership along with a new leadership team has invested heavily in staff to physically analyze all material received at our facilities, using photographic evidence to support fees and education of our customers, and we will soon be deploying additional educational videos through our new digital ordering platform.

a. The recycling ratios are generally calculated by dividing the tonnage of total exported materials for recycling by the total amount of material imported on a monthly basis.⁴

- 10 The Company asserts that the Complaint should be dismissed because it fails to allege 1) that the Company operates for the hauling of solid waste and 2) that the Company does so for compensation.⁵
- 11 In its Motion, DTG argues that the Complaint’s allegation that the Company “disposed of” solid waste between January 1, 2023, and June 30, 2023, is insufficient to establish that DTG hauled solid waste because there is a distinction between physically hauling solid waste and arranging for third-party hauling and paying the associated disposal fees.⁶ The Company further contends that the fact that Staff received allegations that “DTG was transporting and disposing of solid waste” does “not constitute factual substantiation.”⁷
- 12 Regarding the first point, the Company cites to no authority that there is a meaningful distinction between performance of a regulated service directly and arranging for a third party to perform a regulated service on behalf of the Company. In fact, the Commission has previously rejected similar attempts to distinguish between arranging for a third party to perform a regulated service on behalf of another entity and directly performing a

⁴ *WUTC v. DTG Enterprises, Inc.*, Docket TG-24076, Staff Investigation Report at 62-64.

⁵ Motion at 1 ¶ 2.

⁶ Motion at 7 ¶ 17.

⁷ *WUTC v. DTG Enterprises, Inc.*, Docket TG-240761, Complaint and Notice of Prehearing Conference, 2 ¶ 8 (December 18, 2024); Motion at 7 ¶ 17.

regulated service in other contexts.⁸ Turning to the second point, although the Company contests whether the allegations referred to in the Complaint were factually substantiated, in the context of a motion to dismiss, the Commission accepts the allegations in a complaint as true and construes them in the light most favorable to the complainant.⁹ Furthermore, in response to Staff's Informal Data Requests, the Company stated that it "transported 3,398 loads to disposal facilities."¹⁰ The dictionary definition of "haul" includes "to transport in a vehicle" and "to furnish transportation."¹¹ Consequently, DTG's argument that the Complaint fails to contain sufficient allegations that the Company hauled solid waste fails.

13 DTG further contends that the Complaint does not allege that the Company hauled solid waste for compensation.¹² However, the Complaint does refer to DTG's "residential and commercial recycling customers," and the Company's responses to Staff's Informal Data Requests similarly refer to the Company's "customers."¹³ The dictionary definition of "customer" includes "one that purchases a commodity or service."¹⁴ Accepting the allegations in the Complaint as true and taking all inferences in favor of Staff, the Complaint and Investigation Report provide a sufficient basis to determine that the conduct that is the subject of the Complaint was performed at the behest of customers, and was therefore for compensation. Consequently, the Company's argument that the Complaint fails to contain sufficient allegations that DTG hauled solid waste for compensation fails.

⁸ *In the Matter of Determining the Proper Carrier Classification of, and Complaint for Penalties Against Dolly, Inc.*, Docket TV-171212, Order 04, 5 ¶ 19 (May 18, 2018) ("The Commission has addressed whether companies who engage third parties to perform regulated activities are subject to Commission jurisdiction several times in the context of both household goods and passenger transportation, and has consistently reached the same conclusion: such companies are subject to the Commission's jurisdiction.").

⁹ *Murrey's Disposal Co, Inc., v. Waste Mgmt. of Wash., Inc., et. al.*, Dockets TG-200650 and TG-200561 (consolidated), Order 02, 5 ¶ 15 (Octo. 19, 2020).

¹⁰ *WUTC v. DTG Enterprises, Inc.*, Docket TG-24076, Staff Investigation Report at 62-63.

¹¹ Merriam-Webster Online Dictionary, <https://www.merriam-webster.com/dictionary/haul> (last accessed Jan. 23, 2025).

¹² Motion at 7 ¶ 17.

¹³ *WUTC v. DTG Enterprises, Inc.*, Docket TG-240761, Complaint and Notice of Prehearing Conference, 2 ¶ 8 (December 18, 2024); *WUTC v. DTG Enterprises, Inc.*, Docket TG-24076, Staff Investigation Report at 64.

¹⁴ Merriam-Webster Online Dictionary, <https://www.merriam-webster.com/dictionary/customer> (last accessed Jan. 23, 2025).

14 The Complaint, while perhaps oblique in some respects, contains sufficient allegations
and information to warrant the denial of the Company's Motion.

15 **THE COMMISSION ORDERS that Respondent's Motion to Dismiss is DENIED.**

DATED at Lacey, Washington, and effective January 27, 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.**