

BEFORE THE  
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Application of  
  
DTG ENTERPRISES, INC., D/B/A  
DTG RECYCLE  
  
for Authority to Operate as a Solid Waste  
Collection Company in Washington.

DOCKET TG-240584

WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION,

Complainant,

v.

DTG ENTERPRISES, INC.,

Respondent.

DOCKET TG-240761

DTG ENTERPRISES, INC.'S  
RESPONSE TO COMMISSION  
STAFF'S MOTION TO  
CONSOLIDATE PROCEEDINGS

**INTRODUCTION**

1 Commission Staff filed a Motion to Consolidate pursuant to WAC 480-07-320, seeking to consolidate Docket TG-240584 (the "Application proceeding") and Docket TG-240761 (the "Complaint proceeding"). Given that these proceedings require different factual and legal inquiries with minimal overlap, consolidation would not promote efficiency or administrative economy, and Staff's motion should be denied. Instead, to accomplish these objectives, the Commission should suspend the Application proceeding (pending resolution of the Complaint proceeding) or permit withdrawal of the Application.

**BACKGROUND**

2 DTG Enterprises, Inc. ("DTG") is the foremost recycler of construction, demolition, industrial, and manufacturing waste in the Pacific Northwest, "collect[ing] construction and demolition wastes for recycling from various material streams throughout [its] service areas in"

Washington.<sup>1</sup> DTG is not a solid-waste collection company and does not offer hauling services to its customers.

3 At times, DTG “us[es] various regional landfills for disposal of residual wastes originating from [its material recovery] facilities after sorting and processing recyclable materials.”<sup>2</sup> Given these activities, as explained in its Answer in the Complaint proceeding, DTG “proactively reached out [to Commission Staff] to confirm its compliance with applicable rules and regulations.”<sup>3</sup> Commission Staff instructed DTG to apply for a solid-waste certificate, and DTG accordingly initiated the Application proceeding on July 31, 2024. DTG seeks a solid-waste certificate *only* because Commission Staff instructed it to do so—“not because DTG believed its recycling operations required a solid-waste certificate or because it sought to expand its activities to include hauling solid waste for compensation.”<sup>4</sup> Indeed, “DTG does not desire or seek to be a solid-waste collection company.”<sup>5</sup>

4 Even though DTG filed the Application as Commission Staff instructed, on December 18, 2024, Commission Staff initiated the Complaint proceeding. Commission Staff 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.”<sup>6</sup>

5 The Complaint proceeding and the Application proceeding have significantly different legal and factual scopes. The key legal question in the Complaint proceeding is whether DTG violated RCW 81.77.040. By contrast, the question in the Application proceeding is whether DTG

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<sup>1</sup> *In the Matter of the Appl. of DTG Enters., Inc.*, Docket TG-240584, Application at 5 (July 31, 2024).

<sup>2</sup> *Id.*

<sup>3</sup> *Wash. Utils. & Transp. Comm’n v. DTG Enters., Inc.*, Docket TG-240761, DTG Enterprises, Inc.’s Answer to Compl. & Affirmative Defenses ¶ 53 (Jan. 7, 2025).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Wash. Utils. & Transp. Comm’n v. DTG Enters., Inc.*, Docket TG-240761, Compl. & Notice of Prehearing Conference ¶ 20 (Dec. 18, 2024).

should be granted a solid-waste certificate under applicable law and Commission regulations. Given these different legal questions, the two proceedings have different factual scopes. For example, in the Application proceeding, DTG seeks a solid-waste certificate for *statewide* disposal of residuals on an ongoing basis. By contrast, the Complaint proceeding addresses *only* DTG's activities in Snohomish County and *only* between January 1 and June 30, 2023.

6           On January 21, 2025, DTG moved to suspend the Application proceeding or, alternatively, withdraw its pending Application for a solid-waste certificate.<sup>7</sup> Given the legal question posed by the Complaint, that proceeding might inform whether DTG needs a solid-waste certificate to dispose of residuals generated at its material recovery facilities. Accordingly, suspending the Application proceeding (or, alternatively, allowing DTG to withdraw the Application) is the most sensible and efficient path forward because it would ensure that the Commission, DTG, and the other parties do not unnecessarily expend resources litigating a certificate that DTG ultimately might not need, want, or decide to pursue. No party to the Application proceeding directly opposes suspension.<sup>8</sup>

## ARGUMENT

### A.     **Under the legal standards applied to suspension, withdrawal, and consolidation, the Commission should suspend the Application proceeding or allow DTG to withdraw its Application.**

7           Suspension of Commission proceedings is required unless it is inconsistent with the public interest or administrative needs: “The commission *will* grant [] a request [for suspension] *unless* it is inconsistent with the public interest or the commission’s administrative needs.”<sup>9</sup> Withdrawal of an application is similarly appropriate when in the public interest: “The commission *will* grant [] a motion [to withdraw] when the requested withdrawal is in the public interest.”<sup>10</sup> By contrast, a

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<sup>7</sup> *In the Matter of the Appl. of DTG Enters., Inc.*, Docket TG-240584, DTG Enterprises, Inc.’s Motion to Suspend or, Alternatively, Withdraw Application (Jan. 21, 2025). This Motion is attached as Exhibit I.

<sup>8</sup> *See id.* ¶ 10.

<sup>9</sup> WAC 480-07-385(2)(b) (emphases added).

<sup>10</sup> WAC 480-07-380(3)(b) (emphasis added).

permissive standard applies to consolidation: “The commission, *in its discretion, may* consolidate two or more proceedings in which the facts or principles of law are related.”<sup>11</sup>

8 As explained in DTG’s pending Motion, no party to the Application proceeding has disputed that suspension is in the public interest and would promote administrative efficiency.<sup>12</sup> Accordingly, suspension of the Application proceeding or withdrawal of the Application is appropriate.

**B. Consolidation is not appropriate and would be prejudicial to DTG.**

9 Though “[t]he commission, in its discretion, may consolidate two or more proceedings in which the facts or principles of law are related,”<sup>13</sup> “[t]he existence of a clear relationship between dockets does not necessarily mean that those matters should be consolidated.”<sup>14</sup> Such is the case here: Consolidation would not be appropriate and, in fact, would be prejudicial to DTG.

10 As discussed above, whether DTG violated RCW 81.77.040 in the Complaint proceeding might inform resolution of the pending Application, which supports delaying the Application proceeding in the event that the Complaint proceeding resolves the issue in a way that obviates DTG’s need for the Application.<sup>15</sup> But that is the extent of the interplay between the two proceedings, which otherwise involve fundamentally divergent inquiries. While the Complaint addresses whether DTG violated RCW 81.77.040, whether the Application should be granted implicates a host of other, unrelated issues.<sup>16</sup> The disconnect between the two proceedings is even

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<sup>11</sup> WAC 480-07-320 (emphasis added).

<sup>12</sup> See *In the Matter of the Appl. of DTG Enters., Inc.*, Docket TG-240584, DTG Enterprises, Inc.’s Motion to Suspend or, Alternatively, Withdraw Application ¶¶ 13–16 (Jan. 21, 2025).

<sup>13</sup> WAC 480-07-320.

<sup>14</sup> *Wash. Utils. & Transp. Comm’n v. PacifiCorp*, Docket UE-220376, Order 03 ¶ 16 (Aug. 25, 2022).

<sup>15</sup> See *In the Matter of the Appl. of DTG Enters., Inc.*, Docket TG-240584, DTG Enterprises, Inc.’s Motion to Suspend or, Alternatively, Withdraw Application ¶ 14 (Jan. 21, 2025).

<sup>16</sup> RCW 81.77.040 provides, in part:

Issuance of the certificate of necessity must be determined on, but not limited to, the following factors: The present service and the cost thereof for the contemplated area to be served; an estimate of the cost of the facilities to be utilized in the plant for solid waste collection and disposal, set out in an affidavit or declaration; a

more pronounced as a factual matter: The Complaint addresses DTG’s past activities in a single county over a period of only six months, whereas the Application seeks a certificate for solid-waste hauling statewide on an ongoing basis. Thus, the factual scope of the Application proceeding will necessarily be far more expansive—a consideration that has previously led the Commission to deny consolidation.<sup>17</sup>

11           The Commission has recognized that “attempting to consolidate dockets that contain [] a diverse set of issues would present many procedural complications that can be avoided by keeping the dockets separate.”<sup>18</sup> Again, such is the case here: The two proceedings have fundamentally different scopes that will in turn lead to different evidentiary requirements, different discovery needs, different motions practices, and different demands on DTG’s and the Commission’s resources. Accordingly, consolidation will not yield efficiencies in discovery, adjudication, or anything else—the two proceedings are just too different.<sup>19</sup>

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statement of the assets on hand of the person, firm, association, or corporation that will be expended on the purported plant for solid waste collection and disposal, set out in an affidavit or declaration; a statement of prior experience, if any, in such field by the petitioner, set out in an affidavit or declaration; and sentiment in the community contemplated to be served as to the necessity for such a service.

When an applicant requests a certificate to operate in a territory already served by a certificate holder under this chapter, the commission may, after notice and an opportunity for a hearing, issue the certificate only if the existing solid waste collection company or companies serving the territory will not provide service to the satisfaction of the commission or if the existing solid waste collection company does not object.

<sup>17</sup> See *Wash. Utils. & Transp. Comm’n v. PacifiCorp*, Docket UE-220376, Order 03 ¶ 16 (Aug. 25, 2022) (denying consolidation motion where related complaint proceeding “raise[d] questions regarding only a subset of” respondent’s activities); *Wash. Utils. & Transp. Comm’n v. Puget Sound Energy, Inc.*, Docket UG-110723, Order 04 ¶ 9 (Sept. 7, 2011) (denying consolidation motion where “[t]he overlap of factual and legal issues in these cases [wa]s minimal” and proceedings presented fundamentally different criteria for resolution).

<sup>18</sup> *Wash. Utils. & Transp. Comm’n v. Pac. Power & Light Co.*, Docket UE-190458, Order 02 ¶ 19 (Oct. 24, 2019).

<sup>19</sup> See *Wash. Utils. & Transp. Comm’n v. Puget Sound Energy*, Docket UG-230968, Order 04 ¶¶ 15–16 (June 11, 2024) (denying consolidation motion where “the two proceedings [we]re fundamentally different in scope and scale” and thus “[a]ny limited benefit from consolidating and deciding the [overlapping issue] in one proceeding [we]re outweighed by the practical implications of consolidating these two complex proceedings”); *Wash. Utils. & Transp. Comm’n v. Puget Sound Energy*, Dockets UE-220066, UG-220067 (consolidated), Order 15 ¶ 21 (May 23, 2022) (similar).

12           Additionally, consolidation would prejudice DTG by requiring it to defend itself in the Complaint proceeding against more than a half-dozen third parties that have intervened in the Application proceeding. The automatic intervention of these parties in the Complaint proceeding would be inappropriate: Intervention may be granted only “if the petitioner has a substantial interest in the subject matter of the hearing or if the petitioner’s participation is in the public interest.”<sup>20</sup> Accordingly, at the very least, any party interested in intervening in the Complaint proceeding should be required to petition for intervention in accordance with WAC 480-07-355(1) so that the propriety of intervention can be assessed by the Commission, Commission Staff, and DTG. Consolidation, however, would essentially give a free pass to these third parties to intervene in the Complaint proceeding—a prejudicial result, given that DTG would be required to litigate against not only Commission Staff, but also the intervenors in a proceeding where a penalty of more than \$3.3 million is sought.<sup>21</sup> Concerns about allowing intervenors to participate in consolidated proceedings has previously motivated the Commission to deny consolidation, and it should reach the same result here.<sup>22</sup>

13           Unlike consolidation, suspension of the Application proceeding or withdrawal of the Application would yield administrative efficiencies by preventing the unnecessary expenditure of resources litigating a certificate that might prove unnecessary. Indeed, the Commission has previously declined to consolidate in favor of staying proceedings under analogous circumstances.<sup>23</sup>

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<sup>20</sup> WAC 480-07-355(3).

<sup>21</sup> *Wash. Utils. & Transp. Comm’n v. DTG Enters., Inc.*, Docket TG-240761, Compl. & Notice of Prehearing Conference ¶ 21 (Dec. 18, 2024).

<sup>22</sup> *See Wash. Utils. & Transp. Comm’n v. Puget Sound Energy*, Docket UG-230968, Order 04 ¶¶ 9, 13–14 (June 11, 2024).

<sup>23</sup> *See Qwest Corp. v. Level 3 Commc’ns, LLC*, Docket UT-063038, Order 09, ¶¶ 23–24 (Feb. 15, 2008) (declining to consolidate proceedings and instead staying related proceedings until conclusion of complaint proceeding given “the commonality of issues in the proceedings” and that “principles of precedent and *res judicata* may apply to narrow the issues in dispute in the [stayed] proceedings”).

14 Commission Staff, for its part, has proposed that the proceedings should be consolidated  
and then the Application proceeding be suspended.<sup>24</sup> It is unclear why Commission Staff favors  
this approach or what value it would add. The purpose of consolidation is to “increas[e] efficiency  
or judicial economy,”<sup>25</sup> and it is hard to see what efficiencies would be gained by consolidating  
the Complaint proceeding with a suspended proceeding.<sup>26</sup> And, at any rate, consolidation is  
entirely unnecessary until it is determined whether the Application will proceed. The proceedings  
could be consolidated later if and when the Application proceeding is *unsuspended*, and so  
Commission Staff’s proposal for simultaneous consolidation and suspension should thus be  
rejected out of hand.

**C. Commission Staff’s arguments in favor of consolidation are unpersuasive.**

15 Commission Staff’s brief Motion raises three primary bases for consolidation, none of  
which is availing.

16 *First*, Commission Staff analogizes these proceedings to the Commission’s proceedings  
two years ago involving Jammie’s Environmental, Inc. (“Jammie’s”).<sup>27</sup> In that case, all parties  
agreed that consolidation was appropriate because the two proceedings had the same nexus of facts  
and legal questions, including prospective relief and ongoing operations—and thus it would have  
been highly inefficient for the two proceedings to proceed separately.<sup>28</sup> As explained above, that  
is not the case here; in contrast to *Jammie’s*, the Complaint proceeding and the Application  
proceeding have little factual and legal overlap, and consolidation would not serve the interest of  
judicial economy.

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<sup>24</sup> See *In the Matter of the Appl. of DTG Enters., Inc.*, Docket TG-240584, DTG Enterprises, Inc.’s Motion to Suspend or, Alternatively, Withdraw Application ¶ 10 (Jan. 21, 2025).

<sup>25</sup> *Qwest Corp. v. Level 3 Comm’cns, LLC*, Docket UT-063038, Order 09 ¶ 22 (Feb. 15, 2008).

<sup>26</sup> Indeed, DTG would immediately move to withdraw the Application if this option were pursued, for all the reasons raised in DTG’s pending Motion.

<sup>27</sup> Commission Staff’s Mot. to Consolidate Proceedings (“Mot.”) ¶¶ 8–9.

<sup>28</sup> *In the Matter of the Appl. of Jammie’s Env’t, Inc.*, Docket TG-220243, Order 01 ¶ 10 (June 8, 2022).

17           *Second*, contrary to Commission Staff’s assertions,<sup>29</sup> the dockets in the two proceedings are not closely related and do not involve associated facts. As discussed above, the Application proceeding involves DTG’s *current* operations *statewide*, whereas the Complaint proceeding concerns *only* DTG’s operations in the first half of 2023 and *only* in Snohomish County. As such, any factual overlap is minimal. Commission Staff uses the present tense when characterizing the Complaint in an attempt to make it relevant to the Application—“the Commission will consider whether DTG *is* acting as a solid waste company when it *transports* . . . materials”<sup>30</sup>—but this post hoc revision is belied by the allegations in the Complaint, which address only DTG’s activities from January to June 2023 and no conduct after that limited timeframe.<sup>31</sup> The legal overlap is equally tenuous; DTG’s “fitness to operate as a solid waste company,”<sup>32</sup> for example, has little to do with any legal obligations that existed in 2023.

18           *Third*, Commission Staff observes that different Administrative Law Judges are assigned to the two proceedings. But the “reallocat[ion of] resources”<sup>33</sup> that it seeks would also be achieved through suspension or withdrawal, and without the inefficiencies and prejudice DTG describes above.

## CONCLUSION

19           For the foregoing reasons, the Complaint proceeding and the Application proceeding should not be consolidated. Instead, as DTG proposes in its Motion, the Application proceeding should be suspended pending resolution of the Complaint proceeding or DTG should be allowed to withdraw the Application—either of which is appropriate under the applicable legal standards.

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<sup>29</sup> Mot. ¶ 10.

<sup>30</sup> *Id.* (emphases added).

<sup>31</sup> Commission Staff makes a perfunctory reference to a cease-and-desist order in the Complaint proceeding, *see Wash. Utils. & Transp. Comm’n v. DTG Enters., Inc.*, Docket TG-240761, Compl. & Notice of Prehearing Conference ¶ 23 (Dec. 18, 2024), but the Complaint does not otherwise allege ongoing violations of RCW 81.44.070.

<sup>32</sup> Mot. ¶ 10.

<sup>33</sup> *Id.* ¶ 11.



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