

BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

In the matter of the Complaint:

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

DTG ENTERPRISES, INC.,

Respondent

Docket TG-240761

**PETITION TO INTERVENE OF
RUBATINO REFUSE REMOVAL LLC**

1 COMES NOW, RUBATINO REFUSE REMOVAL LLC, holder of Certificate No. G-58
(hereinafter “Rubatino”), by and through its representatives, Lukins & Annis, P.S., respectfully
files this petition to intervene in the above matter pursuant to WAC 480-07-355.

I. INTRODUCTION

2 Rubatino seeks to intervene in the above captioned action as it maintains a substantial
interest in the outcome of the proceedings, and its involvement furthers the public interest. As the
owner of the certificate of public convenience and necessity in the precise geographic area in
which the Complaint is based, DTG’s actions have directly harmed Rubatino by unlawfully
diverting business that was required to be performed by Rubatino. If such actions go unchecked,
and if DTG is permitted to continue operating in such a fashion, Rubatino and others’ certificate
rights will continue to be eroded, causing further damage to its valuable asset. Further, various
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issues in this Complaint, such as DTG's fitness to operate as a solid waste collection company, will bear on DTG's statewide application for certificate rights. Barring Rubatino from participation will preclude it from advancing its position on an overlapping issue that may have preclusive effect in DTG's application proceeding. Ultimately, intervention is warranted because Rubatino has a substantial interest in the outcome, and the public interest is further advanced by its participation in this action.

II. ARGUMENT

A. RUBATINO MAINTAINS A SUBSTANTIAL INTEREST IN THE SUBJECT MATTER OF THIS ACTION

3 Pursuant to WAC 480-07-355(1)(a), any person may file a petition to intervene. Commission rules provide the presiding officer with discretion to grant intervention "[i]f the petition discloses a substantial interest in the subject matter of the hearing or if the petitioner's participation is in the public interest."¹ The Commission applies a "zone of interest test" to determine whether a party seeking intervention has a substantial interest.² Such an interest occurs where there is a nexus between the petitioner's stated purpose in seeking to intervene and an interest protected by a Washington statute within the Commission's jurisdiction.

4 Rubatino maintains a substantial interest in this matter as DTG's actions that form the basis for the Complaint have caused direct harm to Rubatino and will continue cause harm if left unchecked. Rubatino is the holder of UTC Certificate No. G-58 and holds authority to operate solid waste collection services in Snohomish County under the Commission's jurisdiction. Pursuant to this authority, Rubatino provides full and complete solid waste collection service within its permitted territory. Rubatino is in all respects adequately equipped and otherwise qualified, fit, willing and able to provide waste collection and transportation services within the company's certificate territory, and has provided such services to the satisfaction of the

¹ WAC 480-07-355(3).

² *Washington Util. & Transp. Comm'n*, No. U-170970, Order No. 04, at para. 30 (Jan. 25, 2018).

Commission. As a holder of authority to collect and transport waste in Snohomish County, Rubatino has a direct interest in this proceeding as a substantial portion of DTG's actions took place in Rubatino's certificate area and are directly interfering with its certificate rights. Thus, its interests are squarely in the zone of interests because there a nexus between the Rubatino's desire to protect its certificate rights against actions that infringe on the exercise of such rights, which is plainly protected by RCW 81.77.040, and within the Commission's jurisdiction.

5 Rubatino also maintains direct knowledge of the market for solid waste collection and disposal in its certificate area. Allowing Rubatino to intervene will provide essential evidence that would show DTG's systematic wrongdoing occurring in Rubatino's service area. Most importantly, the information provided by Rubatino may have a determinative effect on the outcome of the proceedings against DTG. In turn, not allowing Rubatino to intervene would have a preclusive effect on the findings and limit not only the strength of Commission Staff's ability to present the full scope of the issues involved, but also the Commission's ability to fully evaluate all the available information in order to make its determination.

6 After all, the Staff's Investigation into DTG's actions was predicated on evidence supplied in part by Rubatino, which Staff found to be credible and led to the discovery of further wrongdoing.³ Based on this evidence, Staff made further inquiries into DTG's business activities and determined that DTG disposed of 3,329 loads of waste, totaling approximately 74,774 tons between January 1, 2023 and June 30, 2023 alone.⁴ DTG's own data largely backed up these accusations by admitting it disposed of 73,270 tons of solid waste at Snohomish County solid waste facilities.⁵ As a comparison, Rubatino—the regulated solid waste collection company for the designated area—hauls roughly 75,000 tons per year of actual garbage without sorting, as compared to DTG's disposal of 73,270 tons of “residuals” at an alleged 90% recovery rate in

³ Complaint, para. 9.

⁴ *Id.*, para. 10.

⁵ *Id.*, para. 11.

just **six months**.⁶ Also not so incidental is the fact that Commission Staff found “advertisements offering debris disposal services for residential and commercial recycling customers.”⁷

7 DTG, in turn, admits it performed these actions through the use of a third-party contractor, not the regulated entity entitled to perform such services (i.e. Rubatino). In its Answer, DTG admits it “contracted with Golden Eagle Freight . . . to transport the residuals from its two Snohomish County MRFs for ultimate disposal.”⁸ The Commission then squarely rejected DTG’s argument that this distinction (i.e. hiring a third-party to perform a regulated service) somehow allows DTG to escape liability:

[T]he 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 regulated service in other contexts.⁹

Thus, Staff has stated valid claims against DTG, relying in part on evidence from Rubatino, despite DTG’s attempt to somehow claim to be the victim in this affair. The disruption caused by DTG affects the integrity of the system and creates an unfair disadvantage, thereby justifying Rubatino’s involvement in this matter.

8 DTG appears to contend that this action is simply the result of Rubatino’s attempt to gain a competitive advantage, but its allegations could not be further from the truth.¹⁰ In fact, just the opposite is true. Rubatino simply took action to protect its ownership rights in Certificate No. G-58. Rubatino, as the regulated service provider, suffers damage each time DTG violates RCW 81.77.040 within its certificate area. If DTG is then permitted to continue such operations, as it

⁶ Investigation Report, p. 54.

⁷ *Id.*, para. 8; *see also*, RCW 81.77.040 (“Operating for the hauling of solid waste for compensation includes advertising . . .”).

⁸ *DTG Enterprises, Inc.’s Answer to Complaint and Affirmative Defenses*, para. 48.

⁹ *Order 01 Denying Motion to Dismiss*, p. 4, para. 12.

¹⁰ DTG alleges that Rubatino “stand[s] to profit if DTG’s operations in Snohomish County are disrupted,” *DTG Enterprises, Inc.’s Motion to Dismiss the Commission’s Complaint* at p. 4, para. 10.

seeks to do in its application for statewide certificate authority, Rubatino will continue be damaged. Therefore, the result of this action has a major effect on Rubatino's rights as it will incur further damages if DTG is allowed to continue to service the Snohomish area.

9 In an attempt to mask the unfair impact on Rubatino's business operations (and others), DTG also alleges it sought a G-Certificate solely because it was instructed to do so by the Commission Staff.¹¹ However, this allegation has been squarely refuted by Staff. In fact, Staff only provided information regarding the application along with is letter of non-compliance; there was no such recommendation.¹² Further, Staff confirms that "DTG had been contemplating whether to apply for a solid waste certificate for years."¹³ Thus, DTG is continuing to advance false narratives to this tribunal, further drawing its fitness to operate as a solid waste collection company into question.

10 Accordingly, the allegations against DTG, and DTG's actions since the filing of the Complaint, raise serious questions regarding DTG's fitness to hold a certificate and operate as a solid waste collection company. That is, to be granted a solid waste certificate of public convenience and necessity, DTG has to be able to satisfy the fitness inquiry, which would be heavily impacted by the final disposition of the Complaint against it. Rubatino is already a party to the application proceeding and is the certificate holder in the relevant geographic area in both the application and complaint proceedings. A final determination of DTG's actions in this complaint proceeding will bear on its fitness to operate and may have preclusive effect in the application proceeding. Considering the magnitude and the context of the allegations, Rubatino's input and involvement are essential to the determination as to whether DTG is fit to hold a solid waste certificate.

¹¹ *Wash. Utils. & Transp. Comm'n v. DTG Enterprise, Inc.*, Docket TG-240761, DTG Enterprises, Inc.'s Answer to Compl. & Affirmative Defenses ¶ 53 (Jan. 7, 2025).

¹² *Wash. Utils. & Transp. Comm'n v. DTG Enterprise, Inc.*, Docket TG-240761, Staff Investigation Report at 7 (December 20, 2024).

¹³ Staff Investigation Report at 52; *Commission Staff's Motion to Consolidate Proceedings*, Docket TG-240761, p. 2, para. 3.

11 Accordingly, Rubatino maintains a substantial interest in the subject matter of this proceeding as it seeks to protect its certificate rights, which are of course governed by the Commission.

B. RUBATINO’S INVOLVEMENT ADVANCES THE PUBLIC INTEREST

12 The Commission has broad latitude to grant intervention under the public interest prong “when such action would enhance [its] understanding and analysis of the matter at hand.”¹⁴

13 Rubatino’s involvement in this action also implicates the public interest and will enhance the Commission’s ability to analyze the matter at hand. If determined to be accurate, DTG’s violations have an effect on other similarly situated certificate holders who operate throughout the state as DTG’s actions are seemingly spread statewide. Namely, the alleged violations would be directly linked to diminished revenues and profits experienced by multiple certificate holders such as Rubatino, and impact the value of their respective certificates. This is of particular importance in light of DTG’s request for statewide rights based on “ongoing” activities, as evidenced by its application for certificate authority.¹⁵ Moreover, DTG’s conduct poses a threat to the integrity of the system, ultimately undermining the Commission’s authority over solid waste operations and diminishing the rights owned by certificate holders. Thus, allowing Rubatino to intervene is the only effective means of ensuring that its interests and the interests of the system as whole are properly represented and adjudicated.

14 Moreover, the distinctions between regulated solid waste collection services and non-regulated solid waste collection services may involve complicated issues of fact and law. The findings with respect to one company may have broader ramifications for the solid waste

¹⁴ *In Re Joint Application of Verizon Communications, Inc. and Frontier Communications Corporation for an Order Declining to Assert Jurisdiction Over, or, in the Alternative, Approving the Indirect Transfer of Control of Verizon Northwest, Inc.*, Docket UT-090842, Order 05, para. 14 (September 10, 2009).

¹⁵ *DTG’s Response to Motion to Consolidate*, p. 3, para. 5.
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collection industry in the state. Further, legal determinations such as, for example, whether DTG can bypass commission regulations by simply hiring a third-party collection company or whether residual waste is considered a regulated haul, may have industry-wide ramifications. Rubatino's participation may result in a record that more fully informs the Commission on this matter. Thus, it is in the public interest, and the interest of all solid waste collection companies, for Rubatino to be allowed to participate in this proceeding.

C. RUBATINO'S SUPPORTS STAFF'S POSITION

15 Rubatino's position with respect to the matters in this action mirrors those of Staff. Namely, Rubatino believes that DTG is unable to comply with RCW 81.77 and the Commission's rules and regulations as outlined in the Complaint, and that DTG should not be permitted to continue such activities in the geographic area encompassing Certificate No. G-58. Further, Rubatino maintains that DTG should not be granted a G- Certificate as doing so would interfere with Rubatino's interest as an established certificate holder.

D. SCOPE OF THE ISSUES

16 Rubatino has no intention of unreasonably broadening the issues, burdening the record, or delaying the proceeding through their intervention. However, Rubatino reserves the right to seek discovery that may or may not reveal new issues or expand the issues already at play. At this time, it is anticipated that Rubatino will call one witness at hearing.

E. CONTACT INFORMATION

17 Rubatino's address is 2812 Hoyt Ave., Everett, WA 98201. Counsel for Rubatino is Reid G. Johnson of Lukins and Annis, P.S., and service can be completed at the following address:

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III. CONCLUSION

18 For the reasons stated above, Rubatino Refuse Removal LLC respectfully requests that it be allowed to participate as an intervenor in this matter.

Dated this 3rd day of February, 2025,

Respectfully submitted,

LUKINS & ANNIS, P.S.

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