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BEFORE THE WASHINGTON STATE UTILITIES
AND TRANSPORTATION COMMISSION

In the Matter of the Application of
JAMMIE’S ENVIRONMENTAL, INC.
For Authority to Operate as a Solid Waste
Collection Company in Washington

BASIN DISPOSAL, INC.

Complainant,

v.
JAMMIE’S ENVIRONMENTAL, INC.

Respondent.

DOCKET TG-220243

Docket TG-220215

BASIN DISPOSAL, INC.’S MOTION TO
COMPEL

Basin Disposal, Inc. (“Basin”) files this Motion to Compel under WAC 480-07-375(c) and 480-07-425(b).

I. INTRODUCTION

As demonstrated in Basin’s Response in Opposition to Jammie’s Environmental, Inc. (“Jammie’s”) Motion to Compel, filed contemporaneously with this Motion, Jammie’s is actively attempting to abuse discovery in a “heads-I-win, tails-you-lose” fashion, insisting that Basin produce reams of irrelevant, broadly defined minutiae, while simultaneously refusing to

1 produce directly relevant information in response to narrowly tailored requests by Basin. In
2 fact, rather than initially respond in good faith, Jammie’s initially violated Commission rules
3 by prematurely objecting that the requests were vague and ambiguous, and then refusing to
4 fully respond or first seek clarification from Basin as the propounder. Despite a conference that
5 Basin was left with no choice but to request, at which counsel for Basin explained that Basin’s
6 request sought records related to responsive language in Jammie’s Answer, Jammie’s has
7 heretofore failed to fully respond. Instead, Jammie’s insists that the information supporting
8 statements Jammie’s made in its pleading, (a critical component of the exemption under which
9 it claims is applicable), is both irrelevant and/or non-existent. Jammie’s appears to have
10 unilaterally redefined the requests following the conference in order to reach a position that
11 contravenes its own pleadings and has asserted unfounded and untimely objections based on a
12 mischaracterization of Basin’s pleading. Consequently, Basin requests that the Commission
13 order Jammie’s to respond to Basin’s reasonable data requests.

14 **II. STATEMENT OF FACTS**

15 These consolidated proceedings involve Basin’s formal complaint against Jammie’s,
16 alleging repeated violations of RCW 81.77.040 by engaging in solid waste collection without a
17 certificate of public convenience and necessity issued by the Commission in Walla Walla
18 County, Washington, and Jammie’s separately filed application seeking permanent authority to
19 provide solid waste collection services from a single facility operated by Packaging
20 Corporation of America (“PCA”). At issue in Basin’s complaint is whether Jammie’s is
21 collecting and transporting solid waste from PCA over the public highways for compensation.
22 Jammie’s unquestionably collects and transports OCC Rejects for municipal solid waste
23 landfill disposal, but apparently denies that OCC Rejects are solid waste and relies on that
24 dispute to avoid responding to data requests. Jammie’s further alleges in its Answer that it
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1 provides a service to manage PCA's OCC Rejects, and that its OCC Reject collection activities
2 are merely incidental to its management services.

3 In Connection with its formal complaint against Jammie's, Basin served multiple data
4 requests seeking information regarding Jammie's solid waste services, and separate data
5 requests seeking information regarding Jammie's solid waste management services. Jammie's
6 objected to and failed to fully answer the latter data requests, Basin's Data Requests No. 10 and
7 11, and only after a discovery conference and extensive back and forth emails did Jammie's
8 reluctantly supplement its responses. Yet its supplemental responses remain evasive and
9 provide none of the information requested. Consequently, Basin requests that the Commission
10 order Jammie's to fully respond to Basin's Data Requests No. 10 and 11.

11 III. EXHIBITS

12 In support of this Motion, the following exhibits are being filed with the Commission:

13 Exhibit 1: Declaration of Blair Fassburg.

14 Exhibit 2: Basin Disposal, Inc.'s Data Requests 10 and 11 and Jammie's
15 Environmental, Inc.'s objections and responses thereto.

16 Exhibit 3: Emails between counsel for Basin and counsel for Jammie's on July 21,
17 2022.

18 Exhibit 4: Emails between counsel for Basin and counsel for Jammie's on July 22,
19 2022.

20 Exhibit 5: Emails between counsel for Basin and counsel for Jammie's on July 29,
21 2022 and August 1, 2022.

22 Exhibit 6: Jammie's supplemental responses to Basin's Data Requests No. 10 and 11
23 served August 2, 2022.

24 IV. ARGUMENT

25 Jammie's has failed to respond to discovery requests served by Basin in good faith and
has violated Commission rules in the process. Specifically, when responding to Data Requests
No. 10 and 11 from Basin, Jammie's asserted objections that the requests were vague and

1 ambiguous and refused to respond, while belatedly offering a post-response meet and confer on
2 the requests in its response. Procedurally, these objections violated the unambiguous
3 requirements of WAC 480-07-405(5), which provide that the responding party *immediately*
4 contact the requesting party for clarification, and that lack of clarity is not a basis for objection
5 without a good faith attempt to obtain a clarification. Jammie's made no such good faith
6 attempt.¹ Instead, the onus was imposed on Basin to request a conference to discuss Jammie's
7 objections. And following that conference, which Basin was forced to request, Jammie's
8 creatively reinterpreted those requests and refused to respond yet again.² Following much
9 additional back and forth, and a threatened motion to compel by Basin, Jammie's finally
10 supplemented its responses to two pertinent data requests on the date the instant pleading was
11 filed. Yet those supplemental responses asserted new untimely and unfounded objections,
12 obscuring whether full responses were provided, and provided no new additional information.³

13 The requests at issue here seek information directly relevant to Jammie's erroneous
14 assertions that its solid waste collection services are merely incidental to the management
15 services it provides to PCA. Specifically, Basin requested that Jammie's describe the solid
16 waste management services it provides:

17 **DATA REQUEST NO. 010:**

18 Describe all Solid Waste management services that Jammie's has provided to
19 PCA during the period of January 1, 2021 to the present.⁴
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22 ¹ *Id.*

23 ² After additional back and forth following the initial preparation of this motion, Jammie's agreed to supplement
24 its response to Data Request No. 10 "if you would like that information." This too violates Commission rules
25 (WAC 480-07-405(8)), which require an immediate supplemental response upon learning a prior response was
incomplete. Jammie's conditional and non-committal offer once again attempts to shift the onus to Basin to cajole
a response from Jammie's. Jammie's should not be permitted to play cat-and-mouse games with Commission
rules; thus, Basin finds it necessary to proceed with its Cross-Motion to Compel.

³ See Exh. 5.

⁴ See Exh. 2.

1 Rather than responding to this request, Jammie’s objected as to any legal conclusions the
2 question posed and asserted that it was vague and ambiguous:

3 **Response:**

4 Jammie’s Environmental, Inc. (“Jammie’s”) objects to BDI Data Request No.
5 010 as vague and ambiguous as to the phrase “Solid Waste management
6 services” and to the extent it assumes the legal conclusion that Jammie’s
7 provides solid waste collection services to PCA. Jammie’s does not provide
solid waste management services to PCA, as it understands that phrase to mean.
Jammie’s is willing to meet and confer with BDI if BDI would like to clarify or
explain its intended meaning of “Solid Waste management services.”⁵

8 Similarly, Basin requested:

9 **DATA REQUEST NO. 011:**

10 For the period of January 1, 2021 to the present, produce a copy of all itemized
11 invoices, bills, or other similar documents establishing or tending to establish
the amounts Jammie’s charged to PCA for Solid Waste management services.⁶

12 And once again, Jammie’s objected and refused to respond in good faith:

13 **Response:**

14 Jammie’s Environmental, Inc. (“Jammie’s”) objects to BDI Data Request No.
15 011 as vague and ambiguous as to the phrase “Solid Waste management
16 services” and to the extent it assumes the legal conclusion that Jammie’s
17 provides solid waste collection services to PCA. Jammie’s does not provide
solid waste management services to PCA, as it understands that phrase to mean.
Jammie’s is willing to meet and confer with BDI if BDI would like to clarify or
explain its intended meaning of “Solid Waste management services.”⁷

18 Following the service of Jammie’s incomplete responses and improper objections,
19 counsel for Basin advised Jammie’s by email that Commission rules require that the
20 responding party immediately seek clarification rather than objecting that a request is unclear,
21 and requested a supplemental response to cure the deficiency. Rather than revising its
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25 ⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

1 responses, Jammie’s simply stood on its objections and once again suggested that Basin could
2 request a discovery conference.⁸

3 The following day, July 22, 2022, the parties conferred on multiple requests, including
4 Jammie’s responses to Basin’s Data Requests No. 10 and 11. During the parties’ discovery
5 conference, counsel for Basin clarified that these requests sought information regarding the
6 solid waste management services that Jammie’s alleged it provides in its Answer and cited to
7 specific paragraphs in that pleading. Basin’s attorney further clarified that if there is any
8 dispute about whether OCC Rejects are solid waste, it should not prevent a full response
9 because Basin defined “solid waste” in its requests broadly, and its definition included OCC
10 Rejects hauled for disposal.⁹

11 Indeed, throughout Jammie’s Answer, and in support of its premise that its solid waste
12 collection activities are merely incidental to an otherwise established business, it contended
13 that it “manages” PCA’s OCC Rejects. Specifically, Jammie’s contends that OCC Rejects must
14 be managed separately from the recyclable material generated by the processing of OCC:

15 In March 2021, PCA started manufacturing paper products from OCC. During
16 the OCC manufacturing process, material that cannot be recycled and
17 contaminates the manufacturing process—such as plastic, steel, tape and other
18 non-fibrous, non-recyclable material—is rejected and must be **managed**
separately. The OCC Rejects are an industrial waste and, when stockpiled in
large quantities, are a fire and safety hazard.¹⁰

19 Jammie further alleges that it manages OCC Rejects for PCA:

20 While **Jammie’s manages the OCC Rejects**, BDI continues to provide garbage
collection services for the PCA facility.¹¹

21 Finally, Jammie’s claims that it has reason to haul OCC Rejects for disposal, because Basin did
22 not implement an adequate management solution:

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⁸ See Exh. 3.

⁹ Jammie’s does not dispute that it transports OCC Rejects to a landfill at which they are disposed.

¹⁰ Jammie’s Answer, ¶ 18 (emphasis added).

¹¹ *Id.*, ¶ 27 (emphasis added).

1 Jammie’s had a just cause to process the OCC Rejects due to the exigent need to
2 dispose of the stockpile of OCC Rejects caused by BDI’s failure to promptly
3 haul the OCC Rejects, and to provide and implement a solution to adequately
4 manage the OCC Rejects when requested by PCA, and Jammie’s good faith
5 belief that it was a “private carrier” as described in paragraph 28.¹²

6 Although these grounds were relayed to Jammie’s during the discovery conference,
7 rather than answering the featured data requests, when it followed up on the discovery
8 conference, Jammie’s announced that there are no documents responsive to the requests and
9 confirmed it intends to stand on its objections:

10 **BDI Data Request Nos. 010/ 011:**

11 Based on my notes, you asked about documents or information relating to “solid
12 waste management services” which you explained to mean any solid waste
13 management or disposal done by Jammie’s for PCA. I stated that Jammie’s
14 objects to BDI seeking discovery on work or services by Jammie’s for PCA
15 beyond the OCC Reject work as not relevant and beyond the scope of this case.
16 Jammie’s maintains its objections. Without waiving and subject to those
17 objections, aside from the dispute surrounding OCC Rejects, Jammie’s does not
18 perform “solid waste management services” for PCA as we understand that
19 phrase to mean.¹³

20 Following the initial preparation of this Motion, after counsel for Basin yet again
21 clarified that Basin sought included information related to Jammie’s management of OCC
22 Rejects generated by PCA, Jammie’s offered that it could finally answer Data Request No. 10
23 “if that’s what you would like.”¹⁴ Yet, when Jammie’s supplemented its response to Data
24 Request No. 10 on August 2, 2022, it merely referred Basin to Jammie’s Answer for a
25 description of the solid waste management services it provides.¹⁵ As quoted above, Jammie’s
26 notice pleading does not describe the services it provides, it merely alleges that it provides
27 them.

28 ¹² *Id.*, ¶ 29.

29 ¹³ *See* Exh. 5.

30 ¹⁴ *Id.*

31 ¹⁵ *See* Exh. 6.

1 Moreover, Jammie’s evasive response was limited to OCC Rejects, while Basin is
2 entitled to a response regarding any solid waste Jammie’s “manages” and which answer is not
3 obscured by unfounded objections. On this point, Jammie’s attempts to limit its responses by
4 both objecting to characterization of waste materials as “solid waste” and by making new
5 untimely objections that Basin’s pleading is limited to OCC Rejects, but this is flat-out wrong.
6 First, Basin’s requests defined solid waste to include the same broad meaning as is included in
7 RCW 81.77.010. Second, Basin’s Complaint alleges in paragraph 5 that Jammie’s “repeatedly
8 engaged in the collection and transportation of solid waste over the public highways of the
9 state by motor vehicle...”¹⁶ And finally, Basin further alleged in paragraph 9 of its Complaint
10 that Jammie’s “held itself out as a solid waste collection company and/or contracted with PCA
11 to provide solid waste collection service in Walla Walla County, Washington...”
12 Consequently, there is zero basis to support Jammie’s limitations on its responses, and the
13 Commission should order Jammie’s to fully respond to Data Request No. 10 to provide actual
14 descriptions of the services it provides to “manage” all forms of solid waste, including without
15 limitation, OCC Rejects.

16 With respect to Data Request No. 11, Jammie’s also provided a supplement on August
17 2, but this response was similarly evasive.¹⁷ Rather than producing the requested categories of
18 information relating to the management services it professed to provide in its pleading,
19 Jammie’s merely referred Basin to documents regarding its “collection and transportation of
20 OCC Rejects” it previously produced. Indeed, those records, which include purchase orders
21 and invoices for collection, transportation and disposal services, and landfill disposal tickets,
22 relate solely to the he collection, transportation and disposal of OCC Rejects. These are not
23 responsive to Data Request No. 11, which seeks similar information but with respect to the
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¹⁶ See Basin’s Complaint, ¶ 5.

¹⁷ *Id.*

1 “management” services Jammie’s alleges it provides. Basin (and the Commission) are entitled
2 to know if Jammie’s charges separately for the management services it professes to provide
3 and its solid waste collection activities, because these facts are relevant to Jammie’s insistence
4 that its solid waste collection is merely incidental to its other services. And if Jammie’s now
5 claims it has no records to produce related to its solid waste management services, Jammie’s
6 has either again engaged in creative reinterpretation of a data request in bad faith, or Jammie’s
7 original pleadings were unfounded and filed in violation of CR 11. Regardless of which may
8 be the case, Basin (and the Commission) are entitled to responsive information regarding these
9 management services or, alternatively, a clear answer that no responsive records exist.
10 Consequently, Basin requests that Jammie’s immediately be ordered to respond to Data
11 Requests No. 10 and 11, and both describe the services it provides and produce any responsive
12 records it is withholding relating to its management of solid waste, including but not limited to
13 OCC Rejects, generated at PCA’s facility near Wallula, Washington.

14 **V. CONCLUSION**

15 As addressed above, Jammie’s abject failure to follow the discovery rules in good faith
16 and produce information referred to in its own pleadings demonstrates it intends to abuse the
17 discovery process. Thus, the Commission should order Jammie’s to fully answer outstanding
18 data requests to describe all of the management services referenced in its pleading, and produce
19 all relevant documents sought by Basin here, and if continues to refuse to do so, the
20 Commission should consider what sanctions would be appropriate.

21 DATED this 2nd day of August, 2022.

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