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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

DOCKET TG-220243

BASIN DISPOSAL, INC.

Docket TG-220215

Complainant,

BASIN DISPOSAL, INC.’S RESPONSE IN
OPPOSITION TO JAMMIE’S
ENVIRONMENTAL’S MOTION TO
COMPEL

v.

JAMMIE’S ENVIRONMENTAL, INC.

Respondent.

I. INTRODUCTION

The Commission should deny Jammie’s Environmental, Inc.’s (“Jammie’s”) Motion to
Compel. Despite Jammie’s creative argument that Basin Disposal, Inc.’s (“Basin”) counsel’s
failure to object at the Pre-Hearing Conference somehow implicitly authorized Jammie’s to
conduct discovery in its application proceeding, this premise is unsupported by the
Commission’s unambiguous rules providing for when discovery is available and the record to

1 date in these consolidated proceedings. Although the Commission consolidated two separate
2 proceedings over Jammie's objection¹ for the purposes of judicial economy,² it made no
3 findings that consolidating the case for purposes of a single hearing should render the two
4 independent proceedings truly one, nor did it make findings authorizing discovery in the
5 application proceeding, which is expressly required by Commission rule. Thus Jammie's
6 Motion to Compel, which seeks an order compelling Basin to respond to discovery requests
7 that can only be conceivably related to Jammie's application, is without merit because
8 Jammie's has not been authorized to conduct any discovery on issues relating to the application
9 proceeding.

10 The Commission should also deny Jammie's Motion on procedural grounds.
11 Specifically, Jammie's requests the Commission order Basin to produce information without
12 specifying what information it seeks. The Commission cannot rule on the validity of objections
13 nor order the production of records in a vacuum. Instead, as demonstrated by Basin here,
14 Jammie's served Basin with vastly overbroad if not harassing discovery requests that far
15 exceed the scope of relevant information. Thus, the Commission should deny Jammie's Motion
16 on these grounds as well.

17 II. EXHIBITS

18 In support of this Response and Cross-Motion, the following exhibits are being filed
19 with the Commission:

20 Exhibit 1: Declaration of Blair Fassburg.

21 Exhibit 2: Jammie's Data Requests 6, 7, 8, 11, 14, and 17, and Basin Disposal, Inc.'s
22 objections and responses thereto.

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¹ Order 01, ¶ 8.

² *Id.* at ¶ 10.

1 III. ARGUMENT

2 A. The Commission has never authorized discovery on Jammie’s application

3 The outcome of Jammie’s Motion is governed by WAC 480-07-400(2)(b). There, the
4 Commission set forth clear rules addressing the circumstances under which discovery is
5 available:

6 (i) Any proceeding involving a change in the rate levels of a public service
7 company;

8 (ii) Any complaint proceeding involving claims of discriminatory or
9 anticompetitive conduct, unjust or unreasonable rates, or violations of
provisions in Title 80 or 81 RCW; or

10 (iii) Any proceeding in which the commission, in its discretion, determines that
the needs of the case require the methods of discovery specified in this rule.

11 Neither of the two proceedings at issue here involves a change in the rate level of a public
12 service company, but Basin’s formal complaint against Jammie’s expressly alleges violations
13 of Title 81 of the Revised Code of Washington. Thus, discovery in that proceeding is
14 automatically authorized. None of the subparts of WAC 480-07-400(2)(b) automatically
15 authorize discovery in an application proceeding. Instead, if it is available, discovery could
16 only be invoked under subpart (2)(b)(iii). That rule permits discovery in a proceeding after the
17 Commission has exercised its discretion and finds that discovery should be authorized.

18 Jammie’s primary argument here appears to be that Basin’s counsel has somehow
19 tacitly authorized discovery through an aside made during the Pre-Hearing Conference by
20 suggesting that a confidentiality order might be useful in the proceedings. Counsel’s aside
21 regarding discovery is being taken out of context. The comment was really intended to be
22 directed to the need for a protective order generally, and with respect to discovery that Basin
23 anticipated in the complaint proceeding. Indeed, Basin was primarily concerned that Jammie’s
24 would attempt to avoid disclosing information relevant to its invoicing and pricing for either its
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1 ancillary services or hauling solid waste from PCA absent a protective order. Moreover, as
2 much as counsel for Basin might like to be invested with the jurisdiction and discretion granted
3 by the Legislature to the Commission, that is obviously not the case. Only the Commission
4 itself can authorize discovery under WAC 480-07-400(2)(b)(iii).

5 Nonetheless, Jammie's further asserts that discovery was authorized because Basin's
6 attorney failed to object when the Administrative Law Judge inquired as to the parties' position
7 on discovery.³ Yet, as the transcript reflects, Judge Howard raised only Basin's request for
8 discovery on its formal complaint and not the prospect of discovery on Jammie's application:

9 23 So with that, let's turn to the issue of
10 24 discovery in the consolidated dockets. I know that the
11 25 formal complaint requested discovery. Would any of the
1 1 parties object to having the Commission's discovery
2 2 rules available?⁴

12 And as Jammie's motion ironically observes, Jammie's opposed consolidation and failed to
13 affirmatively request discovery on its application proceeding. Thus, if the positions of the
14 parties at the pre-hearing conference were somehow binding on this issue, Jammie's counsel
15 took a position then that cannot support its present argument.

16 Jammie's further contends that because the confidentiality order did not limit itself to
17 the formal complaint proceeding, it somehow establishes that discovery has been implicitly
18 authorized in the application proceeding.⁵ But this argument too lacks logical support. Had the
19 Commission expressly denied discovery in the application proceeding there would be no
20 reason to deviate from the standard terms of its confidentiality protective order, which Order
21 01 expressly ruled would be adopted, in this proceeding.⁶ In that scenario, the protective order
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23 ³ Jammie's Motion to Compel, ¶ 8.

24 ⁴ Jammie's Exh. A.

25 ⁵ *Id.* ¶ 9.

⁶ WAC 480-07-420 also contemplates that the Commission may enter standard form protective orders designed to promote the free exchange of information when the Commission anticipates that discovery or evidentiary findings required designation of information as confidential. This language is noted in the protective order entered in these

1 would have remained silent as to the scope of discovery because the template on which it is
2 based does not address the scope of discovery.

3 Recasting the ruling even further, Jammie’s surprisingly announces that Order 01 did
4 in fact authorize discovery as to the application proceeding, claiming:

5 On June 8, the Commission issued its Prehearing Conference Order which
6 authorized discovery in the consolidated dockets...⁷

7 However, Order 01 made no specific findings regarding the need for discovery in the
8 proceeding on Jammie’s application. Instead, it merely set deadlines for discovery in the
9 procedural schedule, which ostensibly applies to the discovery automatically authorized in
10 Basin’s formal complaint against Jammie’s. Thus, Jammie’s completely fails to demonstrate
11 the Commission authorized discovery here.

12 Contravening its own argument, Jammie’s later cites to orders in *In the Matter of the*
13 *Application of Waste Management of Washington, Inc. d/b/a WM Healthcare Solutions of*
14 *Washington*, Docket TG-120033 in support.⁸ But Order 01 in that proceeding demonstrates that
15 when the Commission authorizes discovery, it makes express findings like it typically would
16 (and is required by rule to make when authorizing discovery). Specifically, the Commission
17 found as follows:

18 **DISCOVERY.** This proceeding does not fall within any of the types of
19 proceedings specified in WAC 480-07-400(2)(b) in which methods of discovery
20 other than subpoenas are automatically available. The Commission, however,
21 exercises its discretion to determine that the needs of the case require the
22 methods of discovery specified in the Commission’s discovery rules, WAC 480-
23 07-400 –425, with the limitations set forth in this order.⁹

23 proceedings and does not, in and of itself, somehow recognize that discovery has been authorized in the
24 application proceeding absent a finding made under WAC 480-07-400(2)(b)(iii).

⁷ *Id.*, ¶ 9, citing to Order 01, ¶ 21.

⁸ *Id.* ¶ 21.

⁹ *In the Matter of the Application of Waste Management of Washington, Inc. d/b/a WM Healthcare Solutions Of Washington*, Docket TG-12033, Order 01, ¶ 7 (Apr. 16, 2012).

1 The Commission made no similar findings in Order 01 in the instant consolidated proceedings,
2 thus neither of the parties has been authorized to conduct discovery on Jammie's application.

3 Because the Commission has not previously authorized discovery on Jammie's
4 application, Jammie's should have sought permission to conduct discovery or requested that
5 Order 01 be clarified or amended rather than prematurely filing a motion to compel. Indeed, a
6 similar issue recently arose because Order 01 omitted a deadline for initial testimony by Basin
7 in its formal complaint against Jammie's. Rather than treat the order as if it contained language
8 it did not, Jammie's pursued clarification through an appropriate channel by emailing the
9 Administrative Law Judge copying all parties requesting the order be amended or clarified.
10 Counsel for Basin recommended to Jammie's that it do so similarly here.¹⁰ Because Jammie's
11 instead decided to aggressively pursue a Motion to Compel (and even requested that it be
12 awarded attorney's fees for its time), the Commission should not now reward Jammie's
13 erroneous procedural posture by addressing the question of whether Jammie's should be
14 authorized to conduct discovery in an application case without a proper request to do so.

15 As an additional matter, protested applications are frequently resolved without
16 discovery. For example, the Commission has codified this standard in auto-transportation
17 applications, which are adjudicated under the same statutory standards.¹¹ In those proceedings,
18 the Commission typically resolves applications through a Brief Adjudicative Proceeding, in
19 which discovery is not authorized.¹² Moreover, because the sole customer at issue here is a
20 party to the proceeding, any information pertinent to alleged service failures will undoubtedly
21 be supplied in testimony.

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¹⁰ See Declaration of Blair Fassburg.

24 ¹¹ RCW 81.68.040 permits the Commission to grant overlapping auto-trans applications only upon a showing that
the incumbent provider failed to serve to the satisfaction of the Commission.

25 ¹² See WAC 480-30-136 (providing that protested application hearings are treated as BAPs); WAC 480-07-610
(establishing standards for BAPs, which exclude discovery).

1 B. Jammie's Motion to Compel should also be denied because it failed to specify the
2 records it seeks

3 As noted above, Jammie's Motion to Compel should be denied because it seeks to
4 compel the production of records without specifying what records it seeks after conferring in
5 what looks to have been bad faith. Jammie's contends its motion is necessary because Basin
6 objected and refused to produce certain records relying on the argument that the fitness of the
7 protestant is not an issue to be adjudicated in the application proceeding. But this is not fully
8 accurate. Basin relies on a number of valid objections to refuse to respond to Jammie's vast
9 and burdensome requests. Moreover, Jammie's position regarding operational fitness reflects a
10 misunderstanding of what information the Commission typically considers in determining
11 whether a company has been serving to the Commission's satisfaction. Specifically, Jammie's
12 points to the statutory standard governing its application, set forth in RCW 81.77.040 to
13 support the premise that all information regarding Basin's operations are relevant. Jammie's
14 premise is incorrect; indeed the Commission has repeatedly ruled that the operational fitness of
15 the protestant is not an issue for adjudication in an application proceeding.¹³ Moreover, the
16 Commission typically applies a test interval to determine satisfactory service, and further limits
17 its consideration applied-for territory. Thus, there remain limits to what information would be
18 relevant to the application proceeding. Rather than demonstrate to the Commission that its
19 requests were specific and narrowly tailored to seek information regarding whether Basin was
20 serving to the Commission's satisfaction in the applied-for territory, Jammie's now asks the
21 Commission broadly overrule all objections regarding fitness and thereby presumably require
22 responses without consideration of their individual merit or scope.

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25 ¹³ See, e.g., *In Re: Application E-18894 of Carl Oscar Lundell, d/b/a Lundell Trucking, for Extension of Auth. Under Common Carrier Permit, No. 36044.*, Order M.V. No. 129479 (Apr. 6, 1984); *In Re Application P-67157 of John F. Mitchell for Permit to Operate As A Common Carrier.*, Order M. V. No. 129068, (Jan. 16, 1984).

1 Without presenting the specific data requests it seeks to compel, there is no way for the
2 Commission to resolve whether specific requests are appropriately tailored to seek information
3 regarding satisfactory service or instead relate solely to operational fitness questions outside
4 the scope of the application proceeding. Moreover, the Commission expects parties to confer
5 on requests in a good faith attempt to resolve discovery disputes. In this case, the parties
6 conferred on multiple data requests on July 22, 2022.¹⁴ During that “meet and confer”
7 conference, Basin asked Jammie’s to reconsider the scope of its requests, pointing out that they
8 extended far beyond the applied-for territory or pertinent test interval. Jammie’s either refused,
9 or failed to follow-up to provide qualifications, and instead filed its motion to compel just two
10 business days after the parties’ discovery conference. And rather than demonstrating that it had
11 sought reasonable, relevant and narrowly tailored discovery requests, Jammie’s now requests
12 the Commission order the production of records without any consideration of what specific
13 information was requested. Such an effort reeks of bad faith and inefficiency.

14 C. Jammie’s discovery requests are vastly overbroad and abusive

15 To demonstrate the vastly overreaching nature of Jammie’s requests, Basin attaches
16 hereto as Exhibit 2, a copy of pertinent data requests that Jammie’s served on Basin. There,
17 Jammie’s requested that Basin provide information such as “[A]ll documents relating to BDI’s
18 customer service quality or performance for the last five (5) years.”¹⁵ Not only would this
19 exceed any pertinent test year evaluation interval (a theme common to most of Jammie’s
20 requests), Basin’s service in Commission-regulated areas outside of the scope of Jammie’s
21 application and i.e., under municipal franchises have no bearing on the issues in a protested
22 application proceeding in a specified territory. Moreover, this request does not even seek
23 information that would demonstrate service failures. Instead, it seeks all information regarding
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25 ¹⁴ *Id.*

¹⁵ Exh. 2, Data Request No. 006.

1 service quality or performance, whether negative or positive. Necessarily, this request envelops
2 information regarding every detail of Basin’s operations, inclusive of every internal operational
3 report, all customer service records and invoices, every email discussing its performance with
4 municipal solid waste officials, etc. Thus, the only apparent purpose of this request is to force
5 Basin to expend endless time and incur massive expense in prosecuting its claims and simply
6 defending its certificate rights.

7 Similarly abusive was Jammie’s Data Request No. 11, requesting “...BDI’s daily
8 staffing headcount by total count and itemized by position from January 1, 2021 to the
9 present.”¹⁶ When conferring on this particular request, Jammie’s counsel insisted the
10 information is relevant and should be answered because it could reveal whether Basin is
11 understaffed under some unspecified qualitative standard.¹⁷ But Jammie’s opinions as to
12 whether Basin’s headcount is sufficient to serve its entire service territory are incapable of
13 establishing that Basin failed to serve in the applied-for territory to the Commission’s
14 satisfaction. Moreover, by seeking information tallied on a daily basis for a period of over 18
15 months, Jammie’s request appears to be designed to create maximum burdens in addition to its
16 complete lack of evidentiary competence. Because Jammie’s has demonstrated that it is more
17 interested in forcing Basin to incur unnecessary expense rather than obtaining information
18 relevant to whether Basin has provided satisfactory service within the applied-for territory, the
19 Commission should whole-heartedly reject Jammie’s Motion to Compel and consider carefully
20 Jammie’s purposes in pursuing discovery from Basin when Jammie’s eventually does request a
21 finding authorizing discovery.

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25 ¹⁶ Exh. 2.

¹⁷ See Exh. 1, Declaration of Blair Fassburg.

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IV. CONCLUSION

As addressed above, Jammie’s filed a motion to compel discovery related solely to its application proceeding, despite the fact that discovery on its application has never been authorized by the Commission. Thus, its motion to compel should be denied as premature. Moreover, the Commission should carefully consider the types of requests that Jammie’s has already served and its abject failure to follow the discovery rules in good faith and produce information referred to in its own pleadings and conclude that it therefore intends to abuse the discovery process. Consequently, the Commission should both deny Jammie’s motion and caution Jammie’s to carefully consider the bounds of appropriate discovery moving forward.

DATED this 2nd day of August, 2022.

/s/ Blair I. Fassburg
Blair I. Fassburg, WSBA #41207
Attorneys for Protestant
WILLIAMS, KASTNER & GIBBS PLLC
601 Union Street, Suite 4100
Seattle, WA 98101-2380
Telephone: (206) 628-6600
Fax: (206) 628-6611
Email: bfassburg@williamskastner.com