

**BEFORE THE WASHINGTON
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 <i>(Consolidated)</i> ORDER 03
BASIN DISPOSAL, INC., Complainant, v. JAMMIE’S ENVIRONMENTAL, INC., Respondent.	DOCKET TG-220215 <i>(Consolidated)</i> ORDER 03 GRANTING MOTION TO COMPEL IN PART; DENYING IN PART

BACKGROUND

- 1 On April 1, 2022, Jammie’s Environmental, Inc., (Jammie’s or Applicant) filed with the Washington Utilities and Transportation Commission (Commission) an application for authority to operate as a solid waste collection company in Washington (Application), and on April 6, 2022, the Commission issued a notice of pending application, allowing affected parties 30 days to protest the Application.
- 2 On April 20, 2022, Basin Disposal, Inc., (BDI) filed a protest to the Application. On April 25, 2022, the Washington Refuse and Recycling Association (WRRRA) petitioned to intervene in this matter. On May 18, 2022, the Packaging Corporation of America (PCA) filed a petition to intervene.
- 3 On May 24, 2022, the Commission convened a prehearing conference before Administrative Law Judge Michael Howard.
- 4 On June 8, 2022, the Commission entered Order 01, Consolidating Dockets; Granting Petitions to Intervene; Prehearing Conference Order; Notice of Hearing (Order 01). The Commission consolidated Docket TG-220243, the Application proceeding, and Docket

TG-220215, the complaint proceeding. The Commission noticed an evidentiary hearing for November 15, 2022, at 9:30 a.m., and granted the petitions to intervene filed by WRRRA and PCA. Order 01 also made Commission's discovery rules available to the parties, setting the discovery end-date of October 31, 2022, "so that the parties have the benefit of the Commission's discovery rules during the majority of the pendency of the case."

- 5 On July 26, 2022, Jammie's filed a Motion to Compel (Motion). Jammie's explains that it submitted its First Data Requests (001-020) on BDI on July 7, 2022. Jammie's avers that, on July 21, 2022, BDI objected to 15 of Jammie's data requests on the grounds that "[t]he Commission has not specifically authorized discovery in Docket TG-220243." In sixteen of its responses, BDI objected further that "the fitness of the protestant is not at issue in application proceedings." BDI did not produce any documents in response to eight of these data requests. Jammie's explains that it conferred with BDI on July 22, 2022, in an effort to resolve the discovery disputes, but BDI did not withdraw the two objections at issue. Jammie's argues that the Commission authorized discovery in these proceedings and that whether BDI is providing fitness to the satisfaction of the Commission is clearly at issue. Jammie's therefore requests that the Commission grant its Motion and award Jammie's attorney's fees and costs for having to prepare its Motion.
- 6 In support of its Motion, Jammie's attaches its Data Request No. 010 along with BDI's response. Data Request No. 010 requests, in part, that BDI "[d]escribe in detail the service BDI provided relating to OCC Rejects for PCA . . ." ¹ BDI objected to the data request on the grounds of relevance; that the Commission did not authorize discovery in Docket TG-220243; that the fitness of the Applicant is not at issue in this proceeding; and that this information is publicly available from the Commission. Subject to and without waiving these objections, BDI also referred to its response to Data Request No. 002.
- 7 On August 2, 2022, PCA filed a Response in Support of Jammie's Motion to Compel. PCA notes that the Commission authorized discovery in the consolidated dockets in Order 01 and that the presiding administrative law judge discussed the issue of discovery with the parties at the prehearing conference. PCA therefore requests that the Commission clarify the scope of discovery by directing BDI to withdraw the objections at issue. PCA also notes that BDI's fitness is clearly at issue in this proceeding. PCA explains that BDI has provided inadequate service for OCC rejects and that this led PCA to obtain services from Jammie's.

¹ In this proceeding, "OCC" refers to "Old Corrugated Cardboard" generated by PCA's facility.

8 On August 2, 2022, BDI filed a Response to Jammie’s Motion to Compel. BDI argues that the Commission did not authorize discovery in the Application proceeding in Docket TG-220215. BDI argues that its attorney did not tacitly authorize use of discovery in this same proceeding at the prehearing conference. BDI also disagrees with Jammie’s suggestion that Order 02, the protective order entered in this proceeding, authorized discovery in Docket TG-220215.

9 BDI raises several other arguments against Jammie’s Motion. BDI argues, for instance, that Jammie’s Motion should be denied because it does not specify the records it seeks to obtain or present the specific data requests it seeks to compel. BDI also argues that Jammie’s has leveled vast and burdensome discovery requests and that Jammie’s has not attempted to resolve this discovery dispute in good faith. BDI also attaches relevant data requests from Jammie’s, explaining that these data requests are overly broad, reach beyond a defined test-year period, and request information for BDI’s entire service territory.

DISCUSSION

10 We grant Jammie’s Motion in part and deny it in part. Jammie’s has brought forward sufficient evidence to establish that BDI’s objections to Data Request No. 010 should be overruled. Our ruling is limited to Data Request No. 010, however, because Jammie’s has not submitted other data requests and responses for the Commission’s consideration.

I. Jammie’s Motion

11 As Jammie’s and PCA correctly observe, the Commission made its formal discovery rules available to the parties in these consolidated dockets. Pursuant to WAC 480-07-400(2)(b)(iii), the Commission may exercise its discretion to make formal discovery available in any proceeding. In Order 01, the Commission made formal discovery available to the parties in these consolidated dockets. The Commission first consolidated Dockets TG-220243 and TG-220215.² The Commission then considered the parties proposal for a discovery end-date of August 31, 2022. However, the Commission explained that “[t]he discovery end-date in a case normally falls after the last round of pre-filed testimony, so that the parties have the benefit of the Commission’s discovery

² Order 01 ¶¶ 5-10.

rules during the majority of the pendency of the case.”³ The Commission then adjusted the discovery end-date to October 31, 2022.⁴

12 Order 01 therefore made discovery available to the parties in these consolidated proceedings. BDI was wrong to object to Data Request No. 010 on the grounds that the Commission did not make discovery available in Docket TG-220215. To the extent that there was any ambiguity in the language of Order 01 on this issue, this ambiguity is resolved by this Order.

13 Jammie’s and PCA are also correct that the quality of BDI’s service is a relevant issue before the Commission. RCW 81.77.040 provides:

“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.”

14 Interpreting the phrase “service to the satisfaction of the commission,” the Court of Appeals in *Superior Refuse v. WUTC* drew from the Commission’s past decisions and required the Commission to consider “(1) the nature, the seriousness and pervasiveness of complaints, (2) the existing carrier’s response to complaints, (3) the carrier’s demonstrated ability to resolve them to the Commission’s satisfaction, and (4) its history of compliance with regulation, with special attention to the carrier’s cooperativeness on matters central to regulation in the public interest.”⁵ The time period for considering the existing company’s service ends with the date of the application.⁶

15 While BDI argues that its fitness is not at issue in this proceeding, BDI presents a selective quotation or paraphrasing of a past Commission order.⁷ In *In Re Application E-18894 of Carl Oscar Lundell d/b/a Lundell Trucking*, the Commission clearly

³ Order 01 ¶ 21.

⁴ *Id.*

⁵ 81 Wn. App. 43, 47 (Wa. Ct. App. 1996).

⁶ *See id.* at 51.

⁷ *See* BDI’s Response at 7, n.13.

distinguished between penalizing the protestant and assessing its service quality. The bolded language undermines BDI's characterization of this case:

Protestant properly states the rule that the fitness of a protestant to conduct operations is not at issue in the course of an application proceeding. This means, of course, that the Commission cannot issue a penalty assessment against a protestant or suspend, modify, or cancel authority of a protestant in an order deciding an application.

The ability of a protestant to conduct the traffic in question is a proper subject for exploration in an application proceeding, however. If it is demonstrated that applicant's supporting shippers have reasonable cause to question whether shipments can be safely and capably transported by a protestant, an applicant may be found to have demonstrated a need for service.⁸

- 16 Thus, BDI was wrong to object to Jammie's Data Request No. 010 on the grounds that "the fitness of the protestant is not at issue in application proceedings." This is contrary to statute, caselaw, and the Commission order BDI cites.
- 17 Because BDI's objections to Data Request No. 010 fail, we next turn to the appropriate remedy. Pursuant to WAC 480-07-405(3), "[a] party's motion to compel responses to data requests must include the relevant data request, any objection to the request, and any response to the objection." While Jammie's Motion submits that BDI has objected to 16 data requests, it has only provided BDI's response to Data Request No. 010. We therefore agree in significant part with BDI that Jammie's is seeking to broadly compel discovery responses without bringing those specific data requests and responses before the Commission. The Commission's rule on this issue allows for appropriate consideration of a motion to compel, and the requirements of this rule cannot be easily overlooked.
- 18 The Commission therefore grants Jammie's Motion in part and denies it in part. The Commission orders BDI to withdraw its objections to Jammie's Data Request No. 010, and to produce relevant documents in response to that same Data Request. While the Commission does not reach the issue of Jammie's remaining Data Requests, the parties should be aware that the Commission's findings in this Order are binding unless overturned on review. These findings should inform the parties' discussions in any discovery disputes.

⁸ Order M. V. No. 129479, Hearing No. E-18894 (April 6, 1984).

19 **THE COMMISSION ORDERS that** Jammie's Motion is GRANTED IN PART AND DENIED IN PART as explained in this order.

DATED at Lacey, Washington, and effective August 4, 2022.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

/s/ Michael Howard

MICHAEL HOWARD

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.