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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.

Complainant,

v.

JAMMIE’S ENVIRONMENTAL, INC.

Respondent.

Docket TG-220215

BASIN DISPOSAL, INC.’S MOTION FOR
PARTIAL DISMISSAL UNDER WAC
480-70-091(2)(C)

1. Basin Disposal, Inc. (“Basin Disposal” “BDI”) files this Motion to Dismiss under WAC 480-07-375 and WAC 480-70-091(2)(c)¹, requesting that the Commission dismiss or otherwise deny Jammie’s Environmental, Inc. (“JEI” or “Jammie’s”) application for a certificate of public convenience and necessity under RCW 81.77.040 because Jammie’s failed to make a

¹ BDI notes that the deadline for a Motion to Dismiss under WAC 480-07-380(1)(a) applies to motions to dismiss on the basis that the party’s pleading fails to state a claim on which the Commission may grant relief. However, WAC 480-70-091(2)(c) permits dismissal when an application is incomplete, which in protested application proceedings is not known until an applicant’s case-in-chief is filed. Because there is no procedural rule specific to a motion to dismiss under WAC 480-70-091(2)(c), the Commission should construe the nature of this pleading liberally pursuant to 480-07-395(4).

1 prima facie case that its proposed service is in the public interest under RCW 81.77.040,
2 Commission rule, and Commission precedent.

3 I. INTRODUCTION

4 2. These consolidated proceedings consist of Basin Disposal's formal complaint against
5 Jammie's for violation of RCW 81.77.040 by its regular transportation of solid waste in the
6 form of OCC Rejects from Packaging Corporation of America's paper mill near Wallula,
7 Washington, and Jammie's application for a certificate of public convenience and necessity to
8 transport a variety of classes of solid waste from a territory consisting of PCA's paper mill.
9 Pursuant to statute, Commission rule, and long-standing Commission precedent, an applicant
10 such as Jammie's must support a protested application with particular minimum evidence to
11 establish a prima facie case demonstrating that the proposed service is in the public interest.
12 Those standards have long required that an applicant supply statements from a shipper
13 supporting public need for the service. In protested cases such as this one, the Commission has
14 also required that the applicant supply a live shipper support witness to be cross-examined at
15 the hearing. The Commission also requires applicants supply evidence of the cost of the
16 facilities to be utilized in the plant for solid waste collection and disposal. Jammie's
17 application itself, and now its direct case, is devoid of these minimum requisite showings. As
18 an additional concern, Jammie's application includes a contradiction between the commodities
19 that it seeks to transport (OCC Rejects) and the certificate restrictions that it would include (an
20 exclusion of municipal solid waste). This contradiction cannot be reconciled now by an
21 amended application because it would prejudice any other person that might have objected to
22 the application or otherwise sought intervenor status based upon the Commission's Docket
23 Notice. Consequently, the Commission should dismiss or otherwise deny Jammie's application
24 on the existing hearing record, without need for a hearing, permitting only Basin Disposal's
25 formal complaint to proceed.

1 II. STATEMENT OF FACTS

2 3. JEI filed an application for Class C authority to provide solid waste collection service
3 with the Commission on April 1, 2022. Jammie’s application included the following
4 documents as listed on the Commission’s docket:

- 5 1) Cover letter;
- 6 2) UTC Solid Waste Application form;
- 7 3) Balance Sheet;
- 8 4) Profit and Loss Statement;
- 9 5) Contract with PCA; and
- 10 6) Evidence of Drug and Alcohol Testing

11 No other documents accompanied JEI’s application.

12 4. Jammie’s application states that it seeks the following authority:

13 Jammie's Environmental, Inc. requests a solid waste collection certificate
14 of public convenience and necessity authorizing it to operate as a
15 Specialized solid waste collection company (as a class C company) from
16 Packaging Corporation of America located at 31831 S Hwy 12 in Walulla,
17 WA 99363 specifically for industrial and commercial industries that we
18 currently provide other services to. Primary commodity to be hauled:
19 processed OCC reject waste other commodities to be hauled on occasion:
20 hazardous waste, dangerous waste, special waste (e.g. any solid waste that
21 requires additional processing, special handling, special packaging, special
22 transportation and or additional disposal techniques due to its quantity,
concentration, physical or chemical characteristics or biological
properties, and other solid waste that is not hazardous, dangerous or
special, excepting (a) Non-hazardous solid waste from residential
customers, (b) Municipal solid waste and (c) biomedical or biohazardous
waste. Dropbox service may be provided for Hazardous, Dangerous and/or
special waste only.

23 5. In reliance on Jammie’s application, the Commission issued a Docket Notice dated
24 April 6, 2022, giving notice to interested persons that Jammie’s had applied for authority to
25 operate as a Class C solid waste collection company, and provide the following:

1 ...service to Packaging Corporation of America located at 31831 S Hwy
2 12 in Walulla, WA 99363. Collecting processed and rejected corrugated
3 cardboard waste, hazardous waste, dangerous waste, special waste (e.g.
4 any solid waste that requires additional processing, special handling,
5 special packaging, special transportation and or additional disposal
6 techniques due to its quantity, concentration, physical or chemical
7 characteristics or biological properties, and other solid waste that is not
8 hazardous, dangerous or special, excepting (a) Non-hazardous solid waste
9 from residential customers, (b) Municipal solid waste and (c) biomedical
10 or biohazardous waste. Dropbox service may be provided for Hazardous,
11 Dangerous and/or special waste only. (Emphasis added).

8 6. On September 16, 2022, pursuant to the procedural schedule set forth in Order 01,
9 Jammie's filed its case-in-chief, supporting its protested application with prefiled testimony
10 and exhibits supplied by Jammie Scott and Owen Scott. Notably, these exhibits failed to
11 include a statement of support from any shipper, or any information relating to JEI's costs of
12 service, including its costs of facilities to be utilized in the plant for solid waste collection and
13 disposal. Instead of supplying a sworn statement of a shipper supporting the need for service,
14 JEI appears to attempt to support its own application through the self-serving testimony of
15 Jammie Scott and Owen Scott regarding the alleged desires and interests of Packaging
16 Corporation of America.

17 7. Additionally, although JEI's witness Jammie Scott contends that OCC Rejects require
18 specialized handling, packaging, transportation or additional disposal techniques,² OCC
19 Rejects remain Municipal Solid Waste, which JEI has not and cannot credibly dispute.

20 III. EXHIBITS

21 8. This Motion to Dismiss is made based upon the existing record, including JEI's
22 application, as well as the exhibits filed by JEI in its direct case, including Exhibits JDS-1T
23 through JDS-14 and OJS-1T through OJS-6.

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² Exh. JDS-1T. 24: 10 - 25: 16.

1 IV. ARGUMENT

2 9. Jammie’s application for authority to provide solid waste collection service should be
3 dismissed on the existing record without the need for further adjudication because Jammie’s
4 failed to support its application with evidence required by statute, Commission rule and
5 Commission precedent. As a protested application, BDI anticipated that JEI would be
6 permitted until its direct case to supply evidence in compliance with the statutory and
7 regulatory standards applicable to solid waste applications. However, pursuant to the
8 Commission’s Procedural Schedule in Order 01, the September 16, 2022 deadline for JEI to
9 make its case-in-chief has passed. JEI failed to timely supply competent evidence needed to
10 cure the defects in its initial application. It should not now be permitted to cure these
11 deficiencies because authorizing it do so would prejudice Basin Disposal as well as any party
12 that may have sought intervention to oppose Jammie’s application had its application been
13 complete. Instead, Jammie’s application should be denied or dismissed.

14 10. Section 81.77.040 of the Revised Code of Washington, requires that the issuance of a
15 certificate of public convenience and necessity, such as the one sought by JEI, be determined
16 on the following factors:

- 17 1. The present service and the cost thereof for the contemplated area
18 to be served; an estimate of the cost of the facilities to be utilized
19 in the plant for solid waste collection and disposal, set out in an
20 affidavit or declaration;
- 21 2. a statement of the assets on hand of the person, firm, association,
22 or corporation that will be expended on the purported plant for
23 solid waste collection and disposal, set out in an affidavit or
24 declaration;
- 25 3. statement of prior experience, if any, in such field by the petitioner,
set out in an affidavit or declaration; and
4. sentiment in the community contemplated to be served as to the
necessity for such a service.

1 Here, JEI failed to support its application with evidence supporting either the first or fourth
2 mandatory statutory factors.

3 11. As the Commission has previously concluded, under RCW 81.77.040 “applicants have
4 an affirmative burden to come forward with evidence about the cost of facilities and of
5 providing service and the economic feasibility of the service.”³ When the record in solid waste
6 application proceedings is devoid of this requisite showing, the Commission historically denies
7 the application.⁴ Here, as noted, JEI’s application and direct case included no information by
8 which it could demonstrate to the Commission the economic feasibility of its proposed
9 services. Specifically, it lacks any information regarding its costs of service. At a minimum,
10 JEI was required to establish an estimate of the cost of the facilities to be utilized in the plant
11 for solid waste collection.⁵ Consequently, JEI’s application is incomplete on this basis.

12 12. Regarding the fourth statutory factor, the Commission has long concluded that to
13 demonstrate a grant of authority is required by the public convenience and necessity under any
14 Title 81 standard, the applicant must provide evidence from the shipping public.⁶ As a matter
15 of long-standing precedent applied to every Title 81 transportation company, the Commission
16 does not accept self-serving statements of the applicant as testimony of need, and additionally
17 requires live testimony of a shipper in a contested application case. On this point, the
18 Commission has historically been unambiguous:

19 Applicant’s President...testified about asserted needs of shippers.
20 The Initial Order disregarded that testimony, and the Commission
21 believes the ruling to be proper. *An applicant may not present*
22 *testimony about the needs of others for its own services. Every*
applicant would present such testimony, if allowed to do so. Cross
examination could not adequately explore the details of shippers’

23 ³ Order M.V.G. No. 1.367, *In re Application of GA-864 of Northwest Unitech, Inc.*, (Jan. 18, 1989).

24 ⁴ *Id.*

⁵ RCW 81.77.040.

25 ⁶ *See In re Richard & Helen Asche, Bremerton-Kitsap Airporter, Inc., d/b/a Bremerton-Kitsap Airporter, Inc., Kitsap-Sea-Tac Airporter, Inc., The Sound Connection*, App. No. D-2444 (May, 1984); Order M.V. No. 126429, *In re Application P-65982 of Glenn Mar, Inc.*, (Nov. 16, 1982).

1 *need nor perhaps even its truth...The Commission will disregard*
2 *an applicant's testimony about others' need for its service.*⁷

3 Because JEI did not support its case-in-chief with prefiled testimony of a shipper witnesses to
4 be cross-examined at the hearing, its application is incomplete and should be dismissed.

5 13. Finally, as noted above, there is an internal conflict within both JEI's application and
6 the Commission's Docket Notice that was issued in reliance upon Jammie's application. As
7 noted above, Jammie's applied for authority to collect and transport OCC Rejects from PCA's
8 paper mill (the Docket Notice described the commodity as "processed and rejected corrugated
9 cardboard waste"). However, Jammie's expressly sought a certificate restriction that would
10 exclude all municipal solid waste.

11 14. "Municipal Solid Waste" is defined in state law as follows:

12 a subset of solid waste which includes unsegregated garbage, refuse and
13 similar solid waste material discarded from residential, commercial,
14 institutional and *industrial sources* and community activities, *including*
15 *residue after recyclables have been separated*. Solid waste that has been
segregated by source and characteristic may qualify for management as a
non-MSW solid waste, at a facility designed and operated to address the
waste's characteristics and potential environmental impacts. The term
MSW does not include:

16 (a) Dangerous wastes other than wastes excluded from the requirements of
17 chapter 173-303 WAC, Dangerous waste regulations, in WAC 173-303-
071 such as household hazardous wastes;

18 (b) Any solid waste, including contaminated soil and debris, resulting
19 from response action taken under section 104 or 106 of the
20 Comprehensive Environmental Response, Compensation and Liability Act
21 of 1980 (42 U.S.C. 9601), chapter 70.105D RCW, Hazardous waste
22 cleanup—Model Toxics Control Act, chapter 173-340 WAC, Model
Toxics Control Act—Cleanup, or a remedial action taken under those
statutes and rules; nor

23 (c) Mixed or segregated recyclable material that has been source-separated
24 from garbage, refuse and similar solid waste. The residual from source
separated recyclables is MSW.⁸

25 ⁷ Order M.V. No. 143916, *In re Safco Safe Transportation.*, App.P-73623, (Oct. 1991)(emphasis added).

⁸ WAC 173-350-100.(emphasis added).

1 As the parties agree, OCC Rejects are residual materials removed from the process of recycling
2 corrugated cardboard. JEI does not and cannot credibly contend that PCA's OCC Rejects
3 constitute dangerous waste, hazardous waste, contaminated soil and debris, or recyclable
4 materials. As the manifests produced by JEI in discovery demonstrate,⁹ the material
5 transported from PCA was classified as "Material not Regulated by DOT (Cardboard Waste)"
6 (i.e., non-hazardous waste). Additionally, the waste profile PCA completed prior to disposing
7 of its OCC Rejects in the Columbia Ridge Landfill indicated that the materials did not meet
8 any criteria requiring special treatment for disposal.¹⁰ OCC Rejects are undeniably Municipal
9 Solid Waste under state law. Consequently, the certificate restriction proposed by JEI cannot
10 be reconciled with its proposal to transport OCC Rejects for disposal.

11 15. Commission precedent concludes "[s]ound regulatory policy demands that each
12 application be interpreted as docketed. The principle of full notice to affected persons would be
13 undermined were the Commission to read a docketed application in a manner inconsistent with
14 its plain published language."¹¹ When the plain interpretation of a Docket Notice would render
15 the application ineffective as to the commodity the applicant truly seeks to transport, the
16 Commission will not permit an application to proceed to hearing.¹² And when other
17 deficiencies in the applicant's case exist, the Commission will simply deny the application.¹³

18 V. CONCLUSION

19 16. As addressed above, Jammie's failed to support its application for Class-C authority to
20 provide solid waste collection service with numerous supporting documents which must be
21 provided as a matter of statutory and regulatory requirements. Its application also includes an
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24 ⁹ See e.g., Exh. CD-08, p. 17.

¹⁰ Exh. CD-09, p. 123-24.

¹¹ Order M.V. No. 136052, *In re Cartin Delivery Service*, App. E-19099, (Jun. 1987) ¶3 at 4.

¹² See, e.g. Order M.V.G. No. 1451, *In re application of Sure-way Incineration, Inc.*, (Nov. 30, 1990).

¹³ *Id.*

1 irreconcilable conflict between the commodity that it seeks to transport and the certificate
2 restriction that it proposes. Because it failed to supply these requisite records and cannot cure
3 its application without republication, the Commission should forego any hearing on JEI's
4 application and dismiss and or deny it on the existing record.

5 DATED this 14th day of October, 2022.

7 /s/ Blair I. Fassburg
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