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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

BASIN DISPOSAL, INC.,
Complainant,

DOCKET TG-220215

v.
JAMMIE’S ENVIRONMENTAL, INC.,
Respondent.

JAMMIE’S ENVIRONMENTAL, INC.’S
RESPONSE TO BASIN DISPOSAL,
INC.’S MOTION TO STRIKE

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INTRODUCTION

I. Basin Disposal, Inc.’s (“BDI”) Motion to Strike asks the Commission to strike testimony that is directly responsive to BDI’s prefiled direct testimony. Striking that testimony would deprive Jammie’s Environmental, Inc. (“Jammie’s”) the opportunity and right to respond to BDI. It would also withhold relevant testimonial evidence from the Commission relating to BDI’s unsatisfactory service to Packaging Corporation of America (“PCA”), PCA’s termination of BDI as its hauler of OCC Rejects, the waste stream at issue, and Jammie’s support by PCA to provide the OCC Rejects service. BDI does not contend that Jammie’s response testimony is not responsive or relevant. Rather,

JAMMIE’S RESPONSE TO BDI’S MOTION
TO STRIKE – 1

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1 BDI asserts that Jammie’s was only permitted to address BDI’s complaint and not other
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3 allegations in BDI’s direct testimony, no matter how wide ranging or inaccurate they are.
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5 BDI cites no authority for its exceedingly constrained evidentiary position.
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8 2. Moreover, BDI’s due process rights have not been violated. The response testimony
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10 filed by Jammie’s and PCA adhered to the procedural schedule. BDI and Jammie’s each
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12 were allowed two rounds of testimony, have engaged in discovery, and will be able to
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14 cross examine witnesses at the hearing. PCA properly provided testimony on the only
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16 date it was allowed to. BDI cannot credibly complain about the inability to respond to
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18 Jammie’s and PCA’s response testimony based on a procedural schedule it helped
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20 negotiate and agreed to. BDI’s Motion to Strike should be denied.
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23 COUNTERSTATEMENT OF FACTS

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26 3. At the prehearing conference in this matter on May 24, 2022, at the Presiding
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28 Officer’s direction, the parties negotiated a procedural schedule that they presented to
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30 the Commission.¹ All parties agreed to the proposed schedule.²
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33 4. On June 8, 2022, in Order 01, the Commission consolidated the dockets due to
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35 “related facts and principles of law”³ and established the procedural schedule that
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37 matched the schedule proposed by the parties with the exception of a slightly longer
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39 discovery period.⁴ Then, on August 5, 2022, the Commission issued an Errata to Order
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44 ¹ Howard, Steele, Fassburg, Whittaker, Blancaflor, Tr. at 16:4-19:3.

45 ² *Id.* at 18:16-19:3.

46 ³ Order 01 at ¶ 10.

47 ⁴ Order 01 at ¶ 21.

1 01, clarifying the procedural schedule by including an opportunity for cross-response
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3 testimony from the Protestants (BDI), Applicant (Jammie’s) and Intervenors (PCA and
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5 WRRRA) set for October 14, 2022. The Errata specifies “that Jammie’ Environmental,
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7 Inc.’s Response Testimony would also be due October 14, 2022.”⁵
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10 5. On September 16, 2022, Jammie’s filed its direct testimony while BDI also filed its
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12 direct testimony. BDI’s witness Charlie Dietrich provided wide ranging testimony
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14 including addressing the services it asserts Jammie’s is providing for PCA, the nature of
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16 OCC Rejects, BDI’s OCC Rejects service for PCA, BDI’s challenges with hauling OCC
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18 Rejects for PCA, whether OCC Rejects require special handling, the fire hazards
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20 associated with OCC Rejects, Jammie’s alleged performance in providing OCC Rejects
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22 service to PCA, and more.⁶
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26 6. On October 14, 2022, Jammie’s and BDI both filed cross-response testimony,
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28 responding to the testimony filed by the other party on September 16, 2022. Jammie’s
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30 witness, Jammie Scott, filed cross-response testimony responding to BDI’s direct
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32 testimony filed by Charlie Dietrich. For BDI, Mr. Dietrich and Andy Foxx filed
33
34 testimony responding to the direct testimony filed by Ms. Scott and Owen Scott.
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38 7. Also on October 14, 2022, the only date designated for intervenors to file testimony,
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40 PCA filed response testimony by three PCA witnesses: Brian Wilhelm, Kurt Thorne, and
41
42 Skyler Rachford. WRRRA did not file testimony.
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46 ⁵ Dockets TG-220243/TG-220215, Errata to Order 01 (Aug. 5, 2022).

47 ⁶ See Exh. CD-1T.

1 8. Also on October 14, 2022, BDI filed a motion for partial dismissal in part based on
2
3 the incorrect theory that Jammie’s case concluded with the submission of its testimony
4
5 on September 16, 2022.⁷ This is contradicted by the analysis and case law discussed in
6
7 Jammie’s Response to BDI’s Motion for Partial Summary Judgment, and it is also
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9 contradicted by the Errata issued on August 5, 2022, which calls for the submission of
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11 “Cross-Response Testimony from Protestants, Applicant, and Intervenors” on October
12
13 14, 2022 (emphasis added).
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17 9. On October 21, 2022, BDI filed the subject Motion to Strike, requesting the
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19 Commission strike portions of Ms. Scott’s testimony and a significant portion of the
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21 testimony provided by PCA, which if granted, would remove most of PCA’s testimony.
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23
24 **LEGAL STANDARD**
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26 10. The Commission has broad discretion to consider any evidence it deems relevant.⁸
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28 WAC 480-07-495(1) provides that:
29

30 All relevant evidence is admissible if the presiding officer believes it is the best
31 evidence reasonably obtainable, considering its necessity, availability, and
32 trustworthiness. The presiding officer will consider, but is not required to follow, the
33 rules of evidence governing civil proceedings in nonjury trials before Washington
34 superior courts when ruling on the admissibility of evidence.
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42 ⁷ See BDI’s Mot. for Partial Dismissal at ¶ 9.

43 ⁸ *In Re the Application of Speedishuttle Washington, LLC d/b/a Speedishuttle Seattle for A*
44 *Certificate of Pub. Convenience & Necessity to Operate Motor Vehicles in Furnishing Passenger &*
45 *Express Serv. As an Auto Transportation Co. Shuttle Express, Inc., Complainant, Docket TC-143691*
46 *et al.*, Order 09/16 (Feb. 3, 2017) (striking testimony that “exceeds the scope of this proceeding” but
47 declining to “resolve factual disputes between the parties”).

1 II. The standard the Commission applies in evaluating whether testimony is admissible
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3 “is whether the testimony at issue is relevant.”⁹ “The Commission, therefore, need only
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5 determine whether any portion of that testimony is so demonstrably irrelevant to the
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7 disputed issues that the Commission would not admit it into evidence.”¹⁰ The
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9 Commission considers potential prejudice to all parties, including the party whose
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11 testimony would be stricken.¹¹ Response or rebuttal testimony is appropriate if it
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13 responds to direct testimony and there is an opportunity for cross-examination.¹²
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16 ARGUMENT

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19 12. BDI’s Motion to Strike should be denied. Jammie’s response testimony is responsive
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21 to BDI’s direct testimony, is directly relevant to the issues before the Commission, and
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23 BDI is not prejudiced because Jammie’s testimony does not expand the issues before the
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25 Commission. Nor can BDI complain that its due process rights have been violated.
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28 Jammie’s filed its testimony in accordance and within the scope of the procedural rules
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35 ⁹ *Id.*

36 ¹⁰ *Id.*

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38 ¹¹ *WUTC v. Century Link*, Docket UT-181051, Order 05 ¶ 12 (Apr. 26, 2022) (denying motion to
39 strike when party missed deadline to file testimony because the party would be “greatly prejudiced”
40 if stricken and the Commission “would be deprived of information necessary to resolve the issues
41 presented in this proceeding”).

42 ¹² *In the Matter of the Application of QWEST CORPORATION Regarding the Sale and Transfer of*
43 *Qwest Dex to Dex Holdings, LLC*, Docket UT-021120, Fifth Suppl. Order (May 2, 2003) (denying
44 motion to strike because the topic was part of the “essential thrust” of the subject matter despite
45 movant claiming it was “sand bagged” by testimony that should have been filed as part of the direct
46 case and because testimony “can be explored via cross-examination and by questions from the
47 Bench”).

1 and BDI will have the opportunity to cross examine Jammie’s witnesses at hearing.

2
3 BDI’s Motion to Strike should be denied.

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6 **A. Jammie’s Response Testimony Is Directly Responsive to BDI’s Testimony and**
7 **Directly Relevant to the Issues in this Proceeding**

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9 13. BDI’s Motion should be denied because Jammie’s response testimony is directly
10 responsive to BDI’s direct testimony and is directly relevant to the issues in this
11 proceeding. BDI argues the testimony provided by Jammie Scott on October 14 it
12 proposes to strike was inappropriate because it only supports Jammie’s application and
13 expresses new opinions.¹³ BDI asserts that unless Ms. Scott’s response testimony relates
14 only to BDI’s complaint, it must be stricken.¹⁴ Under this rationale, this would mean that
15 Jammie’s cannot respond to the host of assertions made by Mr. Dietrich relating to
16 BDI’s alleged service to PCA, Jammie’s actions and performance, the waste stream at
17 issue, and any related issues discussed by Mr. Dietrich. In a consolidated proceeding
18 with mixed issues of fact and law, Jammie’s testimony appropriately responds to BDI’s
19 direct testimony and covers topics well understood by BDI to be relevant to the
20 proceeding. BDI does not claim that Jammie’s testimony is not responsive or relevant.
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36 14. BDI identifies six portions of Ms. Scott’s testimony that it asserts should be struck.
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38 In each instance, the testimony is directly responding to a relevant issue or topic
39 identified or discussed in Mr. Dietrich’s testimony:
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46 ¹³ Mot. at 2.

47 ¹⁴ *Id.* at 6, 10.

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Exh. JDS-17T testimony proposed to be stricken by BDI. ¹⁵	How Exh. JDS-17T is directly responsive to BDI’s testimony.
1:15 through 18, commencing with the words “BDI’s refusal...”	BDI asserts that “Ms. Scott is not addressing issues raised by Basin’s complaint, but is doubling down on her-ill-informed legal opinions regarding whether Basin is providing solid waste service collection service to the Commission’s satisfaction.” ¹⁶ Ms. Scott’s testimony is entirely appropriate. Her statement is directly related to BDI’s handling of OCC Rejects and where Mr. Dietrich stated the OCC Rejects do not require “any special handling or processing prior to disposal.” ¹⁷ That issue is clearly relevant to whether BDI’s service was to the satisfaction of the Commission.
2:19–21	BDI is proposing to strike Ms. Scott’s answer to what she intends to cover in her response testimony, which includes her analysis of Mr. Dietrich’s claims that BDI provided satisfactory service to PCA. ¹⁸ That issue is clearly responsive to BDI’s testimony and relevant to the issues in this case.
3:2–5 (commencing with the words “Overall, I reiterate that if the Commission decides...”	Ms. Scott is simply stating that after reviewing Mr. Dietrich’s testimony, and the evidence presented therein, she reiterates her request to the Commission in this case. BDI cannot credibly claim her request is inappropriate, not responsive, not relevant, or prejudicial to BDI.
3:10–20	As the question clearly asks, Ms. Scott’s testimony is directly responsive to Mr. Dietrich’s testimony and is clearly relevant to the issues in this proceeding.

¹⁵ *Id.* at 10.

¹⁶ *Id.*

¹⁷ Exh. CD-1T at 3:24-4:3.

¹⁸ *Id.* at 4:4-10:15, 12:1-2; 26:7-27:11.

4: 10–16 (commencing with the words “BDI’s seeming...”	Ms. Scott’s testimony here is directly responsive to Mr. Dietrich’s testimony ¹⁹ and is clearly relevant to the issues in this proceeding.
7:12–8:10	Ms. Scott’s testimony is directly responsive to Mr. Dietrich’s dismissal of fire hazards associated with the OCC Rejects. ²⁰ Clearly, this is a relevant issue that Jammie’s was entitled to respond to having direct knowledge of this issue.
10:10–15	Ms. Scott’s testimony is in direct response to the testimony provided by Mr. Dietrich’s regarding his opinion of whether Jammie’s work was incidental to the services Jammie’s provides PCA. ²¹ Clearly, that issue is relevant to BDI’s complaint.

15. BDI cannot credibly contend that the testimony BDI seeks to strike is not directly responsive to BDI’s testimony or relevant to the issues before the Commission in this case. BDI has not provided any Commission rule or authority supporting exceedingly narrow position of what information can be in response testimony.

B. BDI’s Complaints About Due Process or “Implicit” Limitations in the Procedural Schedule Are Baseless

16. BDI’s complaints about due process are unwarranted. As set forth in Jammie’s Response to BDI’s Motion for Partial Dismissal, a party does not conclude its “case-in-chief” upon the filing of its direct testimony, it is concluded following presentation at hearing.²² BDI seeks to prevent Jammie’s from presenting evidence responding to Mr.

¹⁹ *Id.* at 4:2-3, 6:15-19.

²⁰ *Id.* at 11:6-7, 28:1.

²¹ *Id.* at 24:5-23.

²² See Jammie’s Response to BDI’s Motion for Partial Dismissal at 10. *AT&T Commc’ns of NW., Inc. v. U S W. Commc’ns, Inc.*, UT-991292, ¶ 13 (May 18, 2000); *WUTC v. All My Sons Moving and Storage of Seattle, Inc.*, Docket TV-071125, Initial Order Cancelling Carrier Permit, Default Order

1 Dietrich's testimony. By striking Jammie's testimony, BDI would be depriving
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3 Jammie's of the opportunity to do exactly what BDI complains about in this case:
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5 responding to the opposing party's factual assertions. Except like Jammie's, BDI already
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7 had that opportunity on October 14. Not only does BDI's theory lack precedential
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9 support, it is also belied by the established procedural schedule which gave each party a
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11 fair chance to file response testimony.
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15 17. Without citing any credible authority, BDI complains that Jammie's and PCA
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17 violated "implicit limitations in the Commission's procedural schedule."²³ Apparently,
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19 BDI's position is, whatever Mr. Dietrich may have said in his direct testimony that
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21 relates to Jammie's Application and the services and waste stream at issue in this
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23 proceeding, unless it aligns with BDI's perceived scope, that Jammie's and PCA are
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25 barred from responding to Mr. Dietrich, however inaccurate or misleading his testimony
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27 may be. BDI seems to be operating under a different set of "implicit" rules that are not
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29 supported by Commission rule or precedent.
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33 18. In this case, BDI and Jammie's were actively involved in negotiating a procedural
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35 schedule that was adopted almost entirely by the Commission. Following direct
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37 testimony on September 16, the schedule provided that each could respond to the other
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39 party's testimony on October 14 and that intervenors could also provide testimony on
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46 ¶¶ 8-10 (Oct. 22, 2008) (presiding officer confirmed that a party's prima facie case-in-chief is not
47 concluded until it is presented at hearing).

²³ Mot. at 6:8-9.

1 that date. That is exactly what happened here. Jammie’s response testimony
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3 appropriately responded directly to statements made in Mr. Dietrich’s testimony. BDI’s
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5 complaints about due process are baseless. BDI had a fair opportunity to file two rounds
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7 of testimony, issue discovery, and can cross examine witnesses at the hearing. BDI
8
9 agreed to that schedule and cannot complain about it now.
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12 19. Demonstrating it has no authority for its position, BDI’s cites *City of Spokane v.*
13
14 *Union Pacific Railroad Company*, Docket TR-210814/TR-210809 (*consolidated*), Order 02
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16 (May 5, 2022). But that case is not analogous or helpful to BDI. In that case, the
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18 Commission set a testimony schedule that allowed for direct, response, and rebuttal/cross-
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20 answering testimony.²⁴ After the City of Spokane filed direct testimony, and Union Pacific
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22 Railroad filed testimony responding to the City, Union Pacific Railroad then filed another
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24 round of testimony again responding to the City.²⁵ The Commission struck the testimony
25
26 because Union Pacific Railroad “should not be permitted to file a second round of Response
27
28 Testimony in the guise of Rebuttal Testimony.”²⁶ This is inapposite to the present case
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30 where the procedural schedule did not allow rebuttal testimony nor has Jammie’s or PCA
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32 submitted a second round of response testimony. Rather, each submitted responsive
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34 testimony in accordance with the procedural rules and BDI did the same. In agreeing to the
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36 procedural schedule, BDI knew it would not get a chance for rebuttal prior to the hearing.
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41 *City of Spokane* does not stand for the “implicit” limitations suggested by BDI in its motion.
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45 ²⁴ *Id.* ¶ 3.

46 ²⁵ *Id.* ¶¶ 4-7.

47 ²⁶ *Id.* ¶ 13.

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CONCLUSION

20. BDI's Motion to Strike should be denied. Jammie's followed the procedural schedule by submitting testimony on October 14 that directly responds to the testimony BDI filed on September 16. Moreover, Jammie's response testimony is directly relevant to the issues before the Commission in this proceeding.

RESPECTFULLY SUBMITTED this 28th day of October, 2022.

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